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Considerations on addiction in illicit drug trafficking and consumption

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Abstract

"Accompanying us since the dawn of humanity, the drug continues to fascinate, to suscitate interest, to claim countermeasures, but also to ask questions which have not yet been answered satisfactorily."[1] Public perception about drugs is different, but many people with trauma, stress, depression, irritable, consider drug use as a mean to create different states, special, which help them to feel charming, fascinating.

Throughout this presentation, I have tried a brief description of drug addiction and illegal drug trafficking and consumption, given that terms as "major addiction" and "minor addiction" remain in an abstract sphere, not having in this moment a meaningful interpretation.

The purpose of this study is represented by some clarifications on some aspects of current affairs and perspectives aimed at this problem.

Keywords: drug, major addiction, illegal drug trafficking, khat, dependency

Introduction

Drugs of various types have been and are considered some "magic" pills whose molecular composition is well known to chemists, doctors, pharmacists. Consecrated authors in the field call them "poor millennial molecules", which from the mist of time are haloed, that do not really make us supernatural beings but lie to us, being in fact a coin with two sides. The first facet is the one that creates the charm, and the second one is what creates our dependence, makes us change our behaviour, to avoid our family, to lose our friends.

"Dependency or addiction is a state of chronic intoxication, characterized by the constraining need for using drugs or toxics "[2]

According to the classic definition given by the World Health Organization in 1969 addiction or drug addiction is "state of periodic or chronic intoxication caused by the repeated consumption of a drug (natural or synthetic). Its characteristics are: the desire or need to continue consuming the drug and procure it by all means; tendency to
increase doses; psychic dependence and physical dependence toward general effects of the drug, with the occurrence of abstinence syndrome and its suppression; harmful effects on the individual and on society. ”[3]

In the same sense, habit (drug habituation) is ”condition resulting from the repeated consumption of a drug. Its characteristics are: the desire to take drugs for good condition, low or zero tendency of increasing doses; a kind of degree of psychological addiction to the drug effect without physical addiction, lack of abstinence syndrome.”

The World Health Organization defines addiction as ”loss of freedom to refrain from toxic”[4]. It is characterized by four defining states:

1) Psychic addiction – psychological need to use a particular drug;
2) tolerance – progressive decrease of effect when administration is repeated resulting in the need to increase the dose to achieve the desired effect;
3) physical addiction – is the need to continue to use that substance in order to avoid disorders, sometimes serious, arising from discontinuation and are known as ”abstinence syndrome” or ”withdrawal”;
4) psychotoxicity –is manifested through behavioural disorders, sometimes psychotic. They arise in terms of yearlong and abusive use of big doses of narcotic drugs (cocaine, amphetamines, etc.).

In specialized literature, the term ”addiction” is used to denote a behavioural syndrome and physical and physiological addiction.

Therefore, the physical and physiological addiction to certain drugs, facing any drug addict, is a form of voluntary consume, abusive, periodic or chronic of dependogene substances without being based on medical motivation. However, in terms of psychological, physical dependence is defined as an alteration of the central nervous system manifested by tolerance and withdrawal symptoms (after long-term administration of the drug) when substance use is discontinued.

As confusion emerged about the state of physical and psychological addiction (or even simultaneously physical and mental), the Committee of Experts of OMS have proposed to experts to replace the terms of ”addiction” and ”habit” with that of
"dependence", indicating the drug leading to this state, for example, morphine dependence, cocaine, amphetamine, barbiturate, etc.

Psychological addiction, considered more dangerous than physical, is defined as a mental state, particular, manifested by the irresistible and imperative urge of the individual to continue drug use and remove psychological discomfort. Psychological addiction manifests by an irresistible urge to use that mean that is the drug, to influence, change or control mood, feelings or even self-consciousness. It can be or not accompanied by physical addiction and tolerance.

Physical dependence or addiction is also the result of yearlong drug administration, manifesting immediately when reducing doses or complete interruption of drug administration, situations that will trigger a series of physical manifestations which take the aspect of syndrome specific to drugs addicts, withdrawal. This, in respect of certain drugs, is unspeakably difficult to be borne by the body.

The way of manifestation of physical addiction or withdrawal syndrome varies depending on drug, both in terms of symptoms' nature and also their intensity. So it is more pronounced in opiates or in barbiturate but more moderate and might even miss at the addiction forms created by the other drugs.

The risk of drug addiction installation in an individual always results in joint action of three factors, as determined by the World Health Organisation since 1973[5]:

→ personal characteristics of the individual;
→ nature of the social-cultural general and immediate environment;
→ pharmacological properties of the substance in question in relation to the amount consumed, use frequency and how to use (ingestion, inhalation, subcutaneous or intravenous injection).

Thus, on the above mentioned matters, addiction is classified into two categories, as follows::

1. Major addiction:
   - Opiates (opium, methadone, morphine, heroin, fentanyl, pethidine, hidormorfonul);
   - Psychoanaleptic (cocaine, crack, amphetamines, speed, ecstasy, khat, ICE);
- Psychodisleptic (cannabis, LSD, mescalina, DMT- dimethyltryptamine, PCP- phencyclidine).

2. Drug abuse minor (theism and addiction to coffee, smoking, drug addiction, addiction to ether).

Thus, in the last decades, there is signalled a gradual shift from major addiction, which is generally represented by narcotics to a minor addiction, which is represented in particular by narcotics (barbiturates, tranquilizers, amphetamines). This explanation is that drugs are more difficult to access, while drugs can be purchased easily. Because of this, it was reached in ordinary use of about 50 barbiturates derivates, dozens of amphetamines and hundreds of tranquilizers.

Simultaneously, it is applied also improvised drugs, with unpredictable effects, the drug addicts being extremely inventive. Thus, in this sense, we can mention the "KHAT".

KHAT- is a plant with the scientific name of "Catha Edulis", which has psychostimulant properties well known by the Muslims living in East Africa and South-East Arabian Peninsula, this being also called “African Coca” due to the effects achieved by chewing the leaves, as result of alkaloids release and also endemic character of its consumption.

Also here, we can remind of "crack" designating a new form of cocaine, with a great capacity to develop addiction. It has the form of crystals with a high content of alkaloid that it is smoked. Using it gives an intense euphoric state called flash, which takes a few minutes, determining the individual to use it further to achieve the same effect.

The abuse of crack is very harmful to heart, lungs and central nervous system and leads to a serious cocaine type addiction, the consumer's health being severely affected.

We can also mention the CRANCK-UL which is a mixture of crack and amphetamine, for example heroin. It combines the physical effects of addiction created by the heroin with the intense flash of crack. The cranck effect lasts between 8-24 hours and produces to the consumer a state of euphoria but also of aggression, hallucinations and paranoid notes. Long term consumption can cause fatal injury to lungs and kidneys.
as well as long-term mental illness. Cranck site is also known as "speedball" and the mixture is smoked by pipe, heroin, in this case extending the cranck’s effects.

Therefore, by the fact that the new derivates chemically different from the substances that go, it is given the chance of those involved in illegal drug activities of this type, to avoid the rigors of the law.

Conclusions

The explosive growth of drug consumption in Romania is a matter of utmost importance currently facing society.

By its actuality, the scale of the analyzed phenomenon and the consequences it causes, constitutes an intense concern for all countries.

Although currently both knowledge and experience has accumulated to treat drug addicts and their reintegration into social, most approaches to combat drug consumption are focused on prevention, medical and psychological treatment, without initiating some activities that would address their social rehabilitation as integrated medical and social services represent an important therapeutic stage; this services being almost non-existent in Romania.

Along with awareness of the gravity of the consequences of this phenomenon there also appeared a legal dimension of drug trafficking and consisted in putting under social control the circuit of plants and products qualified as drugs.

Also, there is an alarming increase in the consumption of a new type of product known as "ethnobotanical type products" , consumption with devastating effects especially among the young. They are difficult to detect because, they, typically, appear for the first time at low levels and in specific localities or in restricted sub-groups of the population.

In conclusion, I consider it is necessary to take concrete measures on training specialists in addiction treatment because this area is designated only to psychiatrists according to the Order of Ministry of Health no. 923/2001 which approves the Nomenclature of Medical and Pharmaceutical Specialties for healthcare network.[6]
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The simplicity of the form and complexity of normative content of Constitution

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Abstract
The coding is not only the expression of the political will of the law maker, it firstly is a complex juridical technique for the choosing and systematization of the normative content necessary and adequate to certain social, political, economical, institutional realities. Since Constitution is a law, yet it nevertheless distinguishes itself from the law, the problem is to establish which juridical norms it contains. The solving of this problem needs to consider the specific of the fundamental law and also of the requirements of the coding theory. The determining with all scientific stringency of the normative content of the Constitution is indispensable both for the removal of any inaccuracy in delimiting the differences from the law, for the stability and predictability of the fundamental law and last, but not the least, for the reality and effectiveness of its supremacy.

In our study we realize an analysis based on compared criterions of the techniques and exigencies for the choosing and systematization of the constitutional norms with reference to their specific, to the practice of other states and within a historical context. The analysis is aiming to the actual proposals for the revising of the Constitution.

Keywords: Constitutional norms / constitutional norm establishing criterions / technical - judicial structure / supremacy of Constitution / normative content.

I. PRINCIPLES OF LAW, A POSSIBLE SOLUTION TO THE REQUIREMENT FOR SIMPLICITY IN THE JURIDICAL DOMAIN

Simplicity is a concept that is constantly to be found in the theoretical elaborations of theology, but in most philosophical doctrines, is associated to the idea of unity of rationality, and generally, of the existence. Understanding the concept of simplicity, involves a comparative report with contradictory accents: simplicity opposes to diversity and composed realities that do not shelter under a law or order. Simplicity does not exclude, however, the complexity of the content, be it rational, of an idea or an objective reality. Simplicity is contrary to uniformity: it is the expression “of one diverse in itself”. In the reality plan, the concept of “person”, for instance, expresses, in our opinion, the dialectical coexistence between simplicity of the form and the inexhaustible depth of the existential content complex.

We consider as significant in philosophical thinking plan, the philosophical ideas of the great Romanian philosopher Constantin Noica: “The pace of history, in
philosophical thinking. The simplicity of pre-Socratic element (that gives the composition of world), the simplicity of self-knowledge, with Socrate, of Idea, with Platon, of the form, logical and substantial, with Aristotel, of subjectivity, with the Christianity, of divine, with medieval philosophy, of simple natures, with Descartes, of perception and representation, with the empiricists, of the monad, with Leibniz, of transcendental conscience, with Kant, of the Self, with Fichte, of the Spirit, with Hegel. The pulsations of history” [1].

In the meanings given above, the simplicity can be accepted as a fundamental aspect of law, mainly in the form imposed by contemporary realities. In the sphere of juridical, the diverse, opposed to simplicity, is mainly made of a multitude of normative regulations that do not answer to a unifying idea and to the unity of the principle expressing the essence. The requirement of simplicity in the sphere of juridical, in our opinion, is best expressed and may be accomplished by the principles of law, as their normative form, simple, preserves at the same time the complexity of the content.

In the followings, we try to make a brief analysis of the notion of principle of law associated both to the idea of simplicity, as to the idea of complexity of content. The normative act that by its nature can highlight better this blend between simplicity of the form and complexity of the content, specific to the principle of law, is the Constitution. That’s why we will customize the analysis on the principles of law with referral to the normative content of Constitution.

In philosophy and, in general in science, the principle has a theoretical and explanatory value as it is meant to synthesize and express the foundation and unity of human being, of the existence in general and knowledge, in their manifesting diversity. The discovery and assertion of the principles in any science gives the certitude to knowledge, both by expressing the prime element that exist by itself, without the need to be inferred or demonstrated, both by accomplishing the cohesion of system, without which no knowledge or scientific creation may exist. The principle has multiple meanings in philosophy and science, but for our scientific approach, to remember this one: fundamental element, idea, basic law on which is grounded a scientific theory, a political, juridical system, a behavior norm or the totality of laws and basic concepts of a
The common place for all meanings of the term of principle, is the essence, an important category for philosophy and law.

A good systematization of the meanings which the notion of principle has is done in a monography [3]: a) the founding principle of this domain of existence; b) what would be hidden to the direct knowledge and requires logical-epistemological processing; c) logical concept that will allow knowing the particular phenomenon.” This systematization, applied to law means: a) discussion on the essence of law; b) whether and how we may know the essence of law; c) operability of settlement in the phenomenality of law, correlated or not with the essence.” [4] The need of the spirit to climb up to the principles is natural and particularly persistent. Any scientific construction or normative system need to relate to principles to guarantee or substantiate them.

The law, as it implies a very complex ratio, between essence and phenomena, and a specific dialectic to each of the two categories in terms of theoretical reality, normative but also social one, cannot be outside the principles. Mircea Djuvara states: “All science of law consists not in reality, for a serious and methodical research, other then in releasing from the multitude of law provisions, of their essential, meaning just the ultimate principles of justice from which the other provisions derive. Thus the entire legislation becomes of a greater clarity and what is called the juridical spirit, is being captured. Only then is done the scientific development of the law.” [5] The words of the great philosopher Kant are still actual, which we propose for meditation to any contemporary legislator: “It’s old the desire, which, who knows when?, will it ever be fulfilled: to be discovered for once, instead of the infinite variation of the civil laws, their principles, as only in this will reside, as one says, the secret to simplify the legislation.”[6] In our opinion this is the starting point for understanding the principles of law.

In the literature in specialty, there is no unanimous explanation with regard to the definition and significances of the principles of law.[7] One can identify a series of common elements which we emphasize in the followings: a) the principles of law are general ideas, guiding postulates, fundamental requirements or foundations of the law system; b) The general principles of law configure the structure and development of the
law system, ensure its unity, homogeneity, balance, coherence and developing capacity; c) The authors distinguish between the fundamental principles of law, which characterize the entire law system and reflect what is essential within the respective law system and the valid principles for certain branches of law or juridical institutions.

One of the great problems of juridical doctrine is the ratio between the principles of law, law norms and social values. The views expressed are not unitary they differ depending on the legal concept. The natural law school, rationalists, Kantian and Hegelian philosophy of law admit the existence of some principles outside the positive norms and superior to them. The principles of law are grounded on human reason and configure in term of values, the entire juridical order. Contrary, the positivist law school, Kelsian normativism considers that the principles are expressed by the law norms and in consequence there are no law principles outside the juridical norms’ system. Eugeniu Speranția established a correspondence between the law and the principles of law: “If the law appears as a total of social norms, mandatory, the unity of this totality is due to the consistency of all norms related to a minimum number of fundamental principles, they themselves having a maximum of logical affinity between them.”[8] In connection to this problem, in Romanian literature in specialty is stated the idea that the principles of law are fundamental prescriptions of all juridical norms.[9] In another opinion, was considered that the principles of law orientate the elaboration and applying of juridical norms, they have the force of superior norms, to be found in the normative act texts, but can be inferred from the “permanent social values” when they are not expressly formulated by the positive law norms.[10]

We consider that the general principles of law are delimited by the positive norms of law, but undoubtedly there is a relation between the two realities. For instance, equality and freedom or equity and justice are foundations of the values of social life. They need to find their juridical expression. In this way appears all kind of juridical concepts that are expressing these values, which concepts become foundations (principles) of law. From these principles the juridical norms derive. Unlike the other normative regulations, the general principles of law have an explanatory value as they contain the grounds of the existence and evolution of law.[11]
Alongside other authors[12], we assert our opinion, that the juridical norms are related to the principles of law in two ways: the norms contain and describe most of the principles; the principles are then accomplished by putting into practice the conduct prescribed by the norms. In relation to the principles, the juridical norms have a teleological, explanatory value, more restricted, the scope of the norms being the preservation of the social values, not to explain the causal reasoning of their existence. We may say that the most general principles of law coincide with the social values promoted by the law.

One can identify several most important features of the principle of law:

A) Any principle of law must be of the order of essence. It cannot be identified with a specific case or an individual appreciation of the juridical relations. The principle needs to represent the stability and balance of judicial relations, regardless of the variety of normative regulations or particular aspects specific to judicial reality. Consequently, the principle of law must be opposed to randomness and express the need as essence. Being of the essence order, the principles of law have a generalizing character, both on the variety of judicial relations, as well as for the norms of law. At the same time by expressing the essential and general of judicial reality, the principles of law are the grounds for other normative regulations.

There are important principles of law that do not depend on their consecration through judicial norms, yet the norm of law determines their definite content, in relation to the reference historical time.

B) The principles of law are consecrated and recognized through constitutions, laws, customs, jurisprudence, international deeds or formulated in the judicial doctrine. With all variety of ways of consecration and recognition of the principles of law, it is obvious the necessity of at least of their recognition in order to be characterized and applied to the law system. This consecration or recognition is not enough to be doctrinaire, yet it must accomplish itself through norms and jurisprudence. It should however be applied a distinction between the consecration and recognition of law principle, and on the other side, on their application.

C) The principles of law represent values for the law system, as they express both the judicial ideal, as the objective requirements of society, have a regulatory role for the
social relations. In case the norm is unclear or it does not exist, the solving of litigations can be achieved directly based on the general or special principles of law. As an ideal, they represent a basis for the coordination of the work for lawmaking.

The principles of law, by their nature, generality and depth, are themes for reflection, primarily for law’s philosophy. Only according to their construction in the sphere of metaphysics of law, these principles can be applied in the general theory of law, can be normatively consecrated and applied to jurisprudence. Moreover, there is a dialectic cycle as the “meanings” of the principles of law, after the normative consecration and jurisprudential development, are to be elucidated also within the law philosophy.

Such a finding imposes nevertheless the distinction between what we may call: constructed principles of law, and on the other side “metaphysical principles of law. The distinction we propose has as philosophical substantiation, the distinction between ‘constructed” and “given” in the law.

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

The metaphysical principles of the law may be considered as a “given” related to the judicial reality and by their nature are outside the law. At their origin they don’t have a legal, normative, respectively jurisprudential, drafting. They are a transcendental ‘given” and not transcendent of the law, therefore they are not “beyond” the sphere of law, but are “something else” in the justice system. In other words, they represent the
essence of values of the law, without which this constructed reality cannot have an ontological dimension. Not being constructed, but being a metaphysical, transcendental ‘given’ of the law, they need not be explicitly expressed through judicial norms. The metaphysical principles may have an implicit existence, discovered and exploited in the work for interpretation of law. As an implicit “given” and at the same time as a transcendental essence of law, these principles need to be found, at last, within the content of each judicial norm and in any act or manifestation that represents, where appropriate, the interpretation or application of the legal norm. It should be emphasized that the existence of the metaphysical principles grounds also the teleological nature of law, as any manifestation in the legal sphere, in order to be legitimate, needs to be adequate to such principles.

In our opinion, the metaphysical principles of the law are: principle of justice; principle of truth; principle of equity and justice; principle of proportionality; principle of freedom. In a future study, we will expose extensively the general considerations that allow us to identify the principles above mentioned as having a metaphysical and transcendental value in relation to the legal realities.[13]

II. CONSTITUTIONAL PRINCIPLES AND NORMS

The constitutional norms are provisions containing the formulation of the general principles of law or constitutional law. These norms legitimate the power of state, bases and organizing of the power, define some of the institutions or consecrate principles applicable to the fundamental rights. In this context we emphasize that the constitutional regulations containing the formulation of some law principles cannot be excluded from the sphere of the concept on judicial norm because here we find all features specific to them. [14]

The compliance of entire law with the fundamental Law is an important consequence of supremacy of the Constitution, and it should be understood not only through the correspondence in content and form of the lower norms as legal force with the constitutional ones, but also through the need to translate the constitutional regulations and rules (within their spirit and letter) in other judicial regulations.
To note as an important feature of the constitutional norms that arises from the principle of supremacy of fundamental law, the possibility and even the necessity to be translated, concretized through normative regulations, in other branches of the unified system of law. In relation to this element of specificity of the constitutional law norms, it is necessary for the constituent legislator to establish a synthetic content, generalizing these norms’ content, and not an analytical, procedural one. In the event that, when in the normative content of a constitution would prevail the descriptive, procedural character of the norms, this would lose too much of its constitutionalism finality, the one of being an essence, generalizing factor, for the whole law system. However, the generality of the constitutional law norm’s formulation, would not exclude its clarity and precision. Therefore, any codifying work in the matter of constitutional law, is difficult as it should combine dialectically the generality specific to some norms containing law principles, and on the other side the clarity and precision, the last one absolutely necessary to ensure their correct application and to avoid thus, the arbitrariness or possibility for asserting in the name of some constitutional values, of any partisan political interests. This requirement’s fulfilling, can be verified in the practice for transposing and interpretation of the constitutional norms met in all state authorities.

One of the most important problems to elucidate the specific of the constitutional norms’ aims the answer to the question if all constitutional provisions contain legal norms. The constitutional provisions that aim the economical, social or financial system are norms of constitutional law with the value of a principle, and not mere political goals, as they regulate the conduct of the law subjects taking part in specific social relations. Likewise, the constitutional norms in question establish genuine legal rights and obligations for the law subjects. For example the constitutional obligation for the derived legislator (Parliament or Govern) like in the process of law making to comply these constitutional regulations, otherwise may intervene the sanction of unconstitutionality of the normative acts in question. We note in conclusion that all constitutional provisions contain legal norms because they have the essential features of a norm of law: prescribe the conduct of the subjects to whom they address and generate legal obligations, and such obligations’ breaching may attract legal sanctions specific to constitutional law.
The logical-formal structure of the constitutional law needs to contain all three elements: hypothesis-provision-sanction. The main feature of these norms lies in the way the sanction is being expressed. Thus, for several provisions a single sanction may be present. Also there are specific sanctions in the constitutional law, for instance declaring as unconstitutional a legislative act or revocation of a state body. Given the structuring role of constitutional law for the entire law system, the logical-formal appreciation of the constitutional norms must also be made by reference to other categories of legal regulations. For the regulations of principle or of maximum generality contained in the fundamental law, some sanctions are included in the norms of other branches of law (civil law, criminal law, administrative law). In this regard, the solution of principle was correctly mentioned into the doctrine: "I think that sanctions are to be found even in the constitutional norms for the violation of any provision provided that the obligation or entitlement is exactly identified, in other words the conduct of the subjects of law." [15]

Another element of particularity for the principles with legislative value of the constitutional law refers to the regulation subject. Without going into detail, we retain the idea contained in the contemporary doctrine, according to which the common element and proper only to social relations that form the regulation subject of the constitutional law norms, is that they appear in the process for establishing, maintaining and exercising of state power.[16]

All norms contained in the constitution are norms of constitutional law, and also principles of law, even if some of these regulate also the social relations specific to other law branches. Having into consideration that the constitutional law, in particular the constitution, contains norms with value of principle, referring not only to the organizing and functioning of state authorities but also referring to the social and economical system. In consequence, the subject for regulation of the constitutional law is formed by the social relations that appear during the process for the establishing, maintaining and exercising of state power, but also those referring to the bases of the power and bases for power organizing. These categories refer to the sovereignty of the people, characters attributed to the state, to the territory of population, included those referring to the fundamental features of social economical system.
From the technical, juridical point of view, the regulation object of the norms with principle value of the constitutional law and implicitly of a constitution, can be split into two categories of social relationships: a) specific relations of constitutional law that relate to the organizing and exercising of state power and cannot be a regulatory object for other juridical branches; b) double legal natured relationships, governed both by the constitutional law norms and by the norms of other law branches.[17] The existence of such legal relationships justifies by because between the branches of the law there is no rigid demarcation. One needs to consider also the superior legal force of the constitutional law norms, the criterion differentiating them from other norms of law, which confers a structuring value for entire law system.

III. NORMATIVE CONTENT OF CONSTITUTION

Constitution is a law, but at the same time through its juridical force and content distinguishes from all other laws. At the same time, the fundamental law supremacy confers to it the quality of a primary formal source for all other branches of law. In a comparative analysis of the regulations contained in the contemporary constitutions is noticed that the historical, political, national, cultural, religious etc. diversity of the states, does not directly result in a diversity of the legislative content for the fundamental laws. The content of the modern states’ constitutions present many resemblances and sometimes wordings almost identical with some of the institutions regulated.[18] This resemblance is determined mainly by the identity of the regulatory object of the constitutional norms.

On the other side, the diversity in the normative content removes the idea of uniform standards generally valid for the contemporary constitutions. The diversity of normative content is a consequence of the fact that the fundamental law of the state is determined in terms of the content of social, political and economical realities, on the characters and attributes of the respective state, historically expressed and at the same time on the will of the constituting legislator, essentially a political will, at a certain historical moment.

Along with other authors, we believe that the scientific definition of constitution is the main criterion for identifying the normative content. Such a criterion ensures the
generality necessary to give a scientific character to the scientific elaborations in the matter and it explains at the same time the regulatory unit but also the constitutional normative diversity.

For the purpose of this scientific approach, we retain the essence of every attempt to define the fundamental law namely: “The Constitution is a political and legal fundamental establishment of a state” [19]. In the legal acceptance, the fundamental law is the act through which it is determined the power statute and therewith all legal rules, having as object the regulation of the bases of power and bases for power organizing.

The legal concept of constitution can be expressed in two different meanings, respectively in a substantial and a formal meaning. Analyzed separately, the formal and material acceptation cannot be a sufficient criterion for identifying the normative content of the fundamental law. Accepting the formal criterion has as a consequence that the fundamental law could regulate any social relationship, regardless of their importance or object of regulation.[20] The material criterion is also unilateral as it excludes the procedural elements, required for a scientific characterization of the fundamental law. The scientific approach regarding the identification of the normative content of the constitution must consider cumulatively both the formal and the material acceptation to which the political dimension referred above, is added. Therefore, we consider one may identify three criteria in order to establish the normative content of a constitution:

The establishing of the normative content of constitution is made according to the specific, importance and value of the social relation regulated. We share the view expressed in the literature that, unlike other categories of legislative acts, the norms contained in the constitution should regulate the fundamental social relations that are essential for the establishing, maintaining and exercising of power, but also those referring to the bases for the power, respectively the bases for power organizing. Therefore, the constitutional norms are always principles of law having a decisive role in establishing and functioning of the government bodies and in determining the form of the state, namely its character and attributes.

The normative expression of the constitutional principles, themselves simple as a normative form, but complex in nature and in the content determined by the object of regulation, constitutes a source and the normative-value ground of the unity and
simplicity of entire legislative system of the state. The reporting of legislator to the constitutional principles, not only for guaranteeing the simple formal correspondence between the judicial norm and the fundamental law, but mainly to legislate in respect to these principles and having as a finality their content, is a prerequisite to eliminate the diversity of norms, a natural consequence of the governors’ excess of power in legislative matters. There are therefore two ways through which the power can legislate: the first that is disregarding the teleological reporting to the constitutional principles and in general to the principles of law, aiming only the formal correspondence with the constitutional norms, and the second one teleological oriented to the content, meaning and limits imposed by the principles of law. In the first case, the result is the normative diversity, lacking a rational, unifying factor; in the second hypothesis there is at least the possibility of achieving the simplicity and unity of the normative system within the content’s complexity.

IV. CONCLUSION

It is important to underline the constitutional dynamism. The fundamental law is a dynamic, opened act, and in a continuous crystallization process. The constitutional status is achieved through a continuous and complex process of interpretation and application of the texts contained in the body of the constitution by state authorities. Furthermore, the constitutional norms cannot and must not provide definitions. For instance also in Romania’s constitution exist such concepts, definable by way of interpretation and forming an object of analysis for the Constitutional Court: “spirit of tolerance and mutual respect” (article 29, paragraph 3); “identity” (article 30, paragraph 6); “private life” (article 30, paragraph 6); “lawful state principles” (article 48, paragraph 2); “public interest” (article 44, paragraph 3); “proportionality and public moral” (article 53) or “extraordinary situations” (article 115, paragraph 4).

The normative content of constitution needs to be understood and determined by having into consideration the teleological criterion highlighted in the above stated definition. Namely, the fundamental law’s structuring role for entire social, political and state system, guarantor of fundamental rights and liberties. The fundamental law must achieve the social dynamic balance but also the stability and institutional harmony, the
efficient guaranteeing of the fundamental rights, essentially the real constitutional democracy requirements based on the values of the lawful state, on institutional and social balance and on proportionality [21].

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Personal securities – a different approach the regulation of DCFR

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Abstract
Personal securities are a guarantee instrument, particularly attractive for creditors, reason why they play an important role in practice, especially in trade. Their regulatory way in European legislation, however, is essentially different, being one of the least uniform subjects at European level. The form, let’s say the classical one, of personal security is the fidejussion, known since the Roman law as “fideiussio”, a legal mechanism which experienced a relatively uniform regulation at level European, precisely due to the common source of Roman law. Other forms of personal securities such as the independent warranties are a modern phenomenon, recently introduced in member States legislations and their regulatory mode varies from one state to another. Based on the existing regulations in the Member States, DCFR – the model of a European Civil Code regulates personal securities, but in its own way, different from that existing in internal regulations. DCFR classifies personal securities, in a simple manner, into two broad categories: dependent personal securities and independent personal securities. The European Civil Code draft thus introduces a new terminology which is not found in any European legislation, a solution that has not been used in any other model regulations. As a general rule, the DCFR authors chose to use terms used in national laws, thus avoiding to create a new terminology, without internal equivalent. This paper proposes to make a short presentation and also an analysis of this proposed regulation, which has, at least in terminology, a different approach.

Keywords: personal securities, European legislation, uniformization.

Chapter 1 The notion of personal dependent security and independent personal security

Personal securities are regulated in Book IV of DCFR, called Specific contracts and the rights and obligations arising from them, Part G. It should be noted that, in the view of DCFR, personal securities fall under special contracts, unlike our civil code where personal securities are regulated separately, in Title X of Book V dedicated to obligations matter. The regulation of DCFR is divided into four chapters, the first chapter providing definitions and common rules for all personal securities, followed by Chapter 2 dedicated to dependent personal securities, Chapter 3 dedicated to independent personal securities and Chapter 4 providing special rules for the situation in which, within the legal relationship, one party is a consumer as defined by the DCFR.
DCFR creates a clear distinction between dependent personal securities and independent personal guarantees, this distinction being precisely the DCFR innovation, at least in terminology. The terms of dependent personal security and independent personal security are not used in any of the domestic laws of European countries. Different types of securities known and regulated in the national laws of European states, fall under one of the two categories following a key criterion: the close connection or, in other words, the dependence on major aspects of the original debt or the absence of a close link/independence from the debt underlying the personal security.

In article IV. G–1:101 Definitions, letter a) “a dependent personal security” is defined as “an obligation by a security provider which is assumed in favour of a creditor in order to secure a right to performance of a present or future obligation of the debtor owed to the creditor and performance of which is due only if, and to extent that, performance of the latter obligation is due.” The “independent personal security” is defined as “an obligation by a security provider which is assumed in favour of a creditor for the purposes of security and which is expressly or impliedly declared not to depend upon another person’s obligation owed to the creditor” (IV. G–1:101)

It should be also noted that DCFR editors give great importance to the accuracy of the terminology used, this sanctioning some expressions encountered in various European internal regulations that are not rigorously accurate. In the case of securities, DCFR editors consider accurate the use of the concept of “secured right” rather than “secured obligation.” Although a secured obligation is most frequently mentioned, it is creditor’s right that is actually the one that is guaranteed, with the security affecting the right, not the obligation. The debtor’s obligation remains the same and the creditor’s right is the one who benefits or not from an additional security. DCFR editors consider accurate that, when we speak of a personal security, we talk about “as an obligation whose right to enforcement is guaranteed.”

1.1 Dependent personal securities

As previously stated, the term of dependent personal security is not used in any legal system in Europe, the types of dependent personal securities in these systems being regulated under a different name, such as: security, bail, fidejussion. By way of
example, the term of cautionnement is used in France and a part of Belgium; in Italy, Portugal and Spain where Roman origin of personal securities is more obvious, the term of fideiussione is used in Italy, fianca in Portugal and fianza in Spain. In all these countries, the independent personal guarantees securities have another name, respectively independent warranties. A similar terminology is also used by our Civil Code under Article 2279, the personal securities being the fidejussion and the independent warranties. A distinctive terminology is used in all other European countries. The lack of a clear and universally accepted terminology is the reason why the DCFR editors opted to create its own distinct terminology.

The form of the dependent security, as regulated by the DCFR, is known in all Member States as being the usual and classical form, by which a third party undertakes to enforce the debt of another person, by assuming a new obligation to the creditor.

The dependent personal security develops a triangular relationship between the creditor, the principal debtor and the person who secures the obligation (security provider) to the principal debtor. However, only two parties are most frequently involved in the contractual relationship generating the personal security: the principal debtor and the person guaranteeing the fulfilment of its obligation. The contract may be bilateral in nature, especially if the person guaranteeing the fulfilment of the obligation is a professional, whether it is a banking institution or an insurance company that charges a fee for assuming the guarantee, or it is a unilateral agreement generating an obligation only to the person who guarantees the fulfilment of the obligation, especially when the latter is a natural person who does not collect any payment for the guarantee. The primary obligation guaranteed can be of any kind, but most frequently it is an obligation to pay an amount of money, whether it is the return of a loan, payment of a price or a rent or payment of damages. The primary obligation may exist at the moment of setting a personal security or may guarantee a future obligation, as in the case of guaranteeing the payment of damages for failure to fulfil an obligation undertaken through a contract between the creditor and the principal debtor. However, the primary obligation may be conventional or an obligation imposed by law.

The main feature of dependent personal securities is the close connection to the primary obligation, this type of securities appearing as an accessory of this one. The
relationship of dependence between the personal security and the primary obligation should not be sought in the contract concluded between the debtor and the person who guarantees the fulfilment of the obligation but in terms of the contract or the legal act generating the primary obligation. The dependent personal security is characterized by the fact that, in almost all aspects, depends on the obligation of the principal debtor. Basically, this character dependent to the primary obligation is supposed to depend on the validity, the terms and the content of the primary obligation. For example, in a situation where the contract that gave rise to the obligation of the principal debtor is declared invalid, the dependent personal security will be void. In addition, the person who guarantees the fulfilment of the obligation can oppose to the creditor all the exceptions and all the defences that the principal debtor can also invoke.

The dependence of such a type of personal security to the obligation assumed by the principal debtor knows one exception: the principal debtor’s insolvency. All defences that can be invoked by the principal debtor under a special protection granted by the insolvency law cannot be of benefit to the person who guarantees the fulfilment of the obligation. Therefore, the insolvency of the principal debtor has no effect on personal security, a contrary approach being ineffective for the fundamental purpose and function of such a security.

The dependence principle on a personal security is also recognized in practice of CJEU (Court of Justice of the European Union), which ruled that the fidejussor’s obligation can be enforced only at the time when the primary obligation has fallen due and its content cannot exceed the content of the obligation assumed by the debtor (Bayerusche Hypotheken – und Wechselbank AG v. Dietzinger, case C- 45/96, 1998, ECR 1998 I 1199).

1.2 Independent personal securities

The independent personal securities are a creation of trade practice in the last century, gradually gaining a legal regulation in most European countries, based on the existing practice in every state. Some states, such as Germany, have introduced special regulations in the Civil Code on independent personal securities, motivated by the fact that this type of guaranteeing has a variety of forms, but the creation of such securities is perfectly valid. In terms of terminology, several European countries use the term of
independent security or an equivalent of that, such as in Italy, Portugal, Spain, Belgium and Luxembourg where, in order to define such a personal security, words like independent, abstract or autonomous are used. In our civil code, the same terminology was introduced, the autonomous securities being covered in Chapter III of Title X, in two forms: the letter of guarantee and letter of comfort.

The obligations assumed by an independent personal security varies depending on the will of the parties, expressed in the contract giving rise to such security, but also according to the provisions of laws existing in each state. The internal regulations in the European states on independent personal securities have many differences, but there is a common characteristic in all cases: the obligation assumed by the person guaranteeing the fulfilment of an obligation to the creditor will cover against any losses incurred by the creditor, without having the same content as the principal debtor's obligation. Therefore, an independent personal security is characterized by independence from any other contract, even to the contract concluded between the creditor and the principal debtor.

For such personal securities, DCFR imposes a special rule: the independent character to be explicitly or implicitly declared. DCFR provides the presumed independent character of a personal security in Article IV.G – 2:101; the creditor must produce the contrary evidence. Stating the independent character of a personal security is usually found in the very title of such a document, most commonly called independent security. A personal security may be implicitly considered independent if its content does not refer to any obligation of which fulfilling guarantees, such an omission being considered as an implicit declaration of independence. The reference in the contract giving rise to an independent personal security of a transaction under consideration in its constitution is not likely to affect the independence of such security. In most cases, an independent personal security envisages another transaction of the creditor, in order to specify the event which gives the creditor the right to require the execution of the security. Such a general provision on an obligation underlying the independent personal security does not affect the independent character thereof, critical in determining whether such a security being the creditor's right to request the execution of the
personal security, independent of the performance of the obligation by the principal debtor.

For banks or insurance companies issuing such securities as part of their current activity, independent personal securities bring economic advantages compared to dependent personal securities. In the case of these independent personal securities, the risk assumed can be calculated, this underlying the rates they will charge for taking such a risk. Instead, dependent personal guarantees are advantageous as they allow the person who secures the obligation to oppose to the creditor the exceptions and defences based on pre-existing report of obligations, but such a process involves additional costs and time, without guaranteeing the success. At the same time, the possibility to execute an independent security exempts the creditor to prove the debtor’s fault in fulfilment of the obligations. While all these characteristics of the independent personal securities are beneficial for professionals issuing such securities, as well as for the creditor, for the principal debtor, the independent character of the primary obligation assumed is a disadvantage. In order to prevent abuse or fraudulent conduct of the creditor, manifested by the request to execute the personal security, DCFR introduced special regulations in Article IV.G – 3:104 and IV.G – 3:105. Similar regulations are found in our Civil Code, where Article 2321, paragraph 3, which governs the letter of guarantee, provides that the issuer of the letter of guarantee cannot be liable to pay in case of abuse or conspicuous fraud.

Chapter 2. Different approaches on personal securities in DCFR and our Civil Code

As stated above, our civil code regulates personal securities in Title X of Book V – On obligations. The title is divided into three chapters, Chapter I – General Provisions, contains one article, 2280, which describes the types of personal securities, Chapter II covers the first type of personal security – the fidejussion, respectively, and Chapter III regulates the autonomous securities which includes the letter of guarantee and letter of comfort. We should mention that the autonomous types of securities were not covered in the old civil code, even though they were used in practice, especially in banking practice.
DCFR classifies personal securities in dependent personal securities and independent personal securities, with special regulations for the two types of securities and general rules applicable to all types of securities.

The two regulations are different in almost every aspect, but we will limit ourselves to present the most important differences. Firstly, according to DCFR, the personal security represented by the comfort letter does not automatically constitute an independent or autonomous security, as considered in our civil code. According to DCFR, the comfort letter is presumed to be a dependent personal security, unless there is an explicit or implicit statement showing the opposite. The liability of issuer depends on the concrete commitment concluded between parties and the independent nature of this type of security is treated differently in European countries. Our Civil Code regulates the comfort letter within the Chapter on autonomous and personal securities, and the legal text unequivocally reveals the independent nature thereof to the primary obligation for which fulfillment was created. According to paragraph 1 of Article 2322, the comfort letter is that irrevocable and autonomous commitment by which the issuer assumes an obligation to do or not do, in order to support another person called debtor, in the execution of his/her obligations to a creditor. The issuer will not be able to oppose to the creditor any defense or exception deriving from the obligation report concluded between the creditor and the debtor.

Another major difference between the two regulation is that DCFR has a versatile form which can be applied to more guarantee instruments currently used in trade, especially in international trade relations, such as if the credit letters of stand-by type. The credit letters of stand-by type are similar to independent personal securities, as they are an instrument mainly used in international trade and do not have their own regulation in most European countries. Most commonly, this type of guarantee instrument, internationally recognized regulations are applicable, regulations such as ISP98 issued by the International Chamber of Commerce in Paris or the UN Convention of 1995 on Independent Securities. On the other hand, our Civil Code in art. 2279 states that besides fidejussion and autonomous securities regulated in the code, there can also be other personal securities expressly provided by law. Therefore, the Civil Code does not contain limiting rules, thus leaving the possibility to create other types of
personal securities, but in the absence of their special legal regulation, such instruments remain outside the actual legal framework.

**Conclusions**

Introducing the autonomous securities in the civil code is welcome, given that such instruments were already being used in practice, this being an alignment to the realities of economic and commercial practice.

However, compared to DCFR regulation, our Civil Code is limitative in terms of autonomous securities. DCFR addresses general rules based on the differentiation of personal securities in two major types: dependent personal securities and independent personal securities. DCFR rather not uses their name when it covers a type of personal security; the starting point of regulation is their characteristics. Therefore, according to the DCFR regulation, the two main categories may include a variety of types of securities, whether it is the classical fidejussion, the bank grant, the guarantee letter, the comfort letter or stand-by credit letter. The multitude problem of personal securities was thus removed, securities which may be encountered in practice and for which the legislator ought to define and create its own definitions and distinct rules.

However, the new approach proposed by DCFR has a downside: the legal text accessibility to people without specialist knowledge. Thus, for practical application of the DCFR text, the first step to do is classifying the personal security in one of the two board categories, based on its essential dependence or independence from the primary obligation, and this is not easily to achieve for those who are not familiar with the specific concepts. In this respect, our Civil Code text is more practical, the regulation on personal securities is based on the concrete form they may take, is also accessible to those without the specialist knowledge but interested in finding out the provisions applicable to a specific type of personal security in which they may punctually be interested. Nevertheless, we consider this a minor drawback compared to the advantage created by the flexibility of rules on personal securities.

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Cooperative Societies, European Forms of Organizing the Economic Activities

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Abstract
The European cooperative (wholesale) society represents a form of organizing and unfolding economic activities, and its Regulation issued in 2003 determines its legal nature, by also offering it a standard regulation, different from the standardization which exist as far as the trade law is concerned. The key element of this European institution or construction is its international, cross border nature, a feature which is present from the start and all through its existence.

This type of company is a legal person, having legal personality, and its purpose is not to unfold a trading activity and gain profit, its objective and main purpose a social one, namely to satisfy the needs of its members.

Keywords: European Cooperative Society, regulation, establishment

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1. Introduction

Achieving an inner, national market and the improvements this market intends to bring to the economic and social situation within the European Union requires not just surpassing the obstacles that trade has to face, but also adapting the production structures to the size of the European Union. By ensuring such an adaptation, it is very important for companies which unfold their activities on a larger scale and satisfy more than local needs to be able to start and develop their economic activity in other member states. Restructuring and cooperation implied by such an activity, regarding companies from different member-states, face a series of legal, psychological and financial difficulties.

The standardisation of trading company law which is functioning within member states, by issuing provisions based on European Union treaties, may solve some of these difficulties. Nevertheless, such a standardisation does not exclude companies regulated by different legal systems from choosing a type of company regulated by a certain national legal system.
The legal frame within which the companies have to unfold their activities all through the E.U is still basically based on the national systems, and this is the reason why it no longer corresponds to the economic background within which businesses need to develop in order to achieve the objectives established by the Treaties.

This situation represents a serious obstacle for the creation of company groups belonging to different member states. It was very important to ensure, as much as possible, a maximum coherence within the European Union between the economic frame and the legal business system. Hence, it is necessary to provide the conditions for the creation, aside from companies regulated by the national law, of companies based on the legal provisions of an European Union regulation, applicable directly within all member states.

These provisions allow the creation and the management of companies which have an European vocation, without the inherent constraints caused by the borders or by the limited appliability of national legal systems concerning trade companies.

The expression societies and companies is clearly defined, according to art. No 48 in the Treaty regarding the European Community, and it refers to all civil or trading persons (including cooperative associations), public or private persons except non-profit associations.

From the European point of view the concept of company is a broad notion, comprising any economic activity which has a clear patrimonial purpose. The differences as far as trading is concerned compared to the civil association are pointless and make no sense. Such is the case of public or private economic activities. The key element of the trading activity is making a profit, as the main objective of the entity.

2. Regulating the European Cooperative Company (SCE).

The European legislator defined by the Regulations the legal nature of the European Company (SE) [1], according to the general provisions regarding joint-stock companies, and the European Economic Interest Grouping (GIEE)[2], allowing businesses to unfold some operations and activities in common, without losing their autonomy. Still, it did not consider these regulations as being enough for the cooperative businesses.
As it wanted to ensure the equality of conditions as far as the competition is concerned, and to offer economic development a chance, it provided to the cooperative entities, which are generally acknowledged by all member states, some legal instruments in order to help transnational and cross-border activities.

The United Nations Organization encouraged all governments to ensure an adequate environment to cooperative development, where these entities may function under the same conditions as all the other forms of organization.[3]

The legal base of the European Cooperative Company is offered by the CE Regulation no. 1435/2003 [4], on different levels; if the upper levels do not offer a complete regulation of the company, the legal source shall be found on a lower level. SCE is to be governed by the above-mentioned Regulation, by the national law, if the Regulation allows it, or, if there is no provision within the Regulation or if the provisions are incomplete, for areas which are not regulated by the national law, by its own constitutive documents are by the provisions of the national law of the member state where the legal office is.

In case the national legislation offers norms and/or special restrictions regarding the nature of the activities unfolded by a SCE, or a form of control by a special authority, these provisions apply to the SCE as they are.

Relevant texts which regulate the European Cooperative Companies are:
(a) CE Regulation no. 1435/2003 shows the constitutive elements of the European Cooperative Company. The previous regulation intends to create a standard legal frame for the cooperative entities, as well as other legal entities or other natural persons, to plan and reorganize their activities in a cooperative manner, within the Union.
(b) Directive no 2003/72/CE issued on July 22nd 2003 completes the European Cooperative Companies statute regarding workers' participation.[5]
(c) the Report of the Comission filed to the Council, The European Parliament, the Economic and Social Commitee and the Region Commitee regarding the revision of Directive no 2003/72/CE issued on July 22nd 2003 which completes the European Cooperative Company statute regarding workers' participation [6].
2.1. SCE functioning: objective and general principles.

The European Cooperative Companies are, according to the Regulation, first of all, groups of natural or legal persons which have legal personalities and follow special functioning principles, different from other economic agents. One can easily mention, for example, the principle of democratic control and structure, or the even distribution of the net profit during the financial exercise. The special principles concern the preeminence of the person and materializes in member adherence, withdrawal or exclusion conditions; we should mention the rule „one person, one vote”, the right to vote being strictly linked to the person, so the members may not exert any right on the cooperative company assets.

As Directive no 2003/72/CE stipulates, SCE represents any cooperative company established according to CE Regulation no. 1435/2003.

The cooperative companies own a registered capital and the members may be natural persons or legal persons. The stock-holders may be customers in part or entirely, workers or suppliers. In case the cooperative company is made up of members which are cooperative companies themselves, we are talking about a “second degree” cooperative company. Under certain circumstances, the cooperative companies may also have a well-defined percent of investing members which are not customers or third parties which benefit from their activities or exert or unfold activities for the cooperative company.

An European cooperative company has as a main objective to satisfy the needs of its members and/ or the development of their economic and/ or social activities, especially by signing agreements with them, in order to supply goods or render services or in order to execute works within the activity SCE (the European cooperative company) exerts or controls. The cooperative company may also have aim to fulfill or meet the needs of its members while encouraging at the the same time their participation to the activities of one or more SCE and /or the activities of national cooperative companies. SCE may develop its activities through a subsidiary.

The European cooperative company works according to the following principles: - the activities should aim the mutual benefit of the members, in order to ensure a proportional benefit or profit, according to their participation;
- the SCE members are either customers, workers, or suppliers, or somehow connected to the SCE activities;
- the control is equally shared between the members, even though in some cases a proportional vote is allowed, according to every member’s contribution to the SCE;
- the retribution received from the borrowed capital or from the shares should be limited;
- the profit is distributed or shared according to the activities exerted by the SCE, or it may be used for meeting the needs of the members;
- there shall be no artificial obstacles or boundaries facing the association;
- in case of termination, the actual assets and the resources are distributed and shared according to the principle of selfless transfer, meaning to another cooperative entity having similar general objectives and aims.

2.2. The Establishment of SCE. General Provisions.

An European cooperative company may be established within the European Union territory, according to the Regulation.

The key element for this type of company is the cross-border component. SCE is to be established, from the membership point of view, as it follows:

(1) by at least five natural persons residing in at least two member states;
(2) by at least five natural persons and companies, or by other public or private legal entities (legal persons), established accordingly to the laws of a member state, residing in at least two member states or subject to the laws of at least two member states.

The Regulation names three ways of establishing an European cooperative company, any all three imply overreaching the national legal systems:

(a) by companies or by other legal entities subject to public or private law, established accordingly to the legislation of a member state, residing in at least two member states or regulated by at least two different national legal systems;
(b) by merging cooperative companies established according to the laws of a member state, having their legal office and central administration within the European Union, provided at least two of them be regulated by different national legal provisions;
(c) by transforming a cooperative company established according to the laws of a member state and having its legal office and central administration within the E.U
A member state may allow a legal entity which does not have its central administration within the European Union to participate in the establishment of a SCE, provided it be established according to the laws of a member state, while having its legal office within that state and having an actual and continuous binding relation to the economy of that state.[7]

As far as the legal office is concerned, a mixed solution has been adopted, stating that „the legal office of the SCE is situated within the Community, within the same member state which shelters the central administration. Another member state may also impose on the companies registered within its territory the obligation to have the central administration and the legal office in the same place”[8]. Taking into consideration the particular nature of a SCE, the provisions regarding the „actual office” imposed on the SCE by the Regulation do not affect the legislation regarding the joint-stock companies of the member states, or any other virtual, potential community legal provisions (texts) regarding trade companies. The advertisement or publicity are made according to the legal provisions on joint-stock companies of the member state where the legal office is registered.[9] The registering, the delisting of a SCE are subject to a notification which is to be published in the Official Journal of the European Union after having been previously published within the state where the legal office is. The notification should comprise the name, the number, the date the place where the SCE (the European cooperative company) is registered, the date, the place and the name of the publication, the legal office and the field of activity.

2.3. The Structure of the Constitutive Documents. Basic Requirements.

The social capital (the assets) is expressed using national currency. An European cooperative company (SCE) which has its legal office registered outside the Euro zone may also express its assets (its capital) using euros. The subscribed capital (share capital) has to be at least 30.000 euros. The legal provisions of a state which require a higher subscribed capital for legal persons unfolding certain activities apply to the companies (SCE) which have their legal office registered within that state. The state regulates a certain amount (sum) under which the subscribed capital cannot be reduced.
by the drawback of the shares held by members which seize to be a part of the SCE. This sum cannot go under the above-mentioned limit (30,000 euros). The capital may be increased by consecutive installments made by the members or by admitting new members and may be lowered by total or partial drawback of the contributions. The variations of the capital do not require modifications of the constitutive documents or any publicity.

SCE is a type of joint-stock company, as its subscribed capital is divided into shares, and their value is expressed in national currency. There are more types of shares that may be issued. The constitutive act may stipulate the fact that, as far as benefit distribution is concerned, different types of shares offer different rights. The shares which offer the same rights constitute a category. Shares are nominative, and this is a mandatory condition. Their nominal value is identical for each type of shares. This value is stipulated within the constitutive documents. Shares may not be issued for a value under their nominal value.

The shares issued for cash contributions are paid off on the subscription day, and at least 25 percent of the nominal value has to be discharged. The rest of the sum is to be discharged within no more than five years, except the case where the constitutive act stipulates a shorter period of time.

The shares issued for in-kind contributions are to be entirely paid off on the moment of the subscription. The provisions which apply to joint-stock companies within the state where the legal office of the SCE is registered, provisions regarding expert designation and contribution assessment, aside from cash contributions, are analogically appliable to SCE.

Under the conditions stipulated by the constitutive documents and after having the green light of the board or of the management, shares may be demised or transferred to a member or to any person who obtains the membership. When the SCE members face a limited liability, the name of the SCE ends in „limited-liability”

3. Conclusions

The fierce competition and the increasing search for performance influence the manner in which trade companies are organized and the way they function, and the evolution implies company systems, namely groups of economic structures linked by
various legal relations (European Economic Interest Grouping or European Societies). Societies (holdings) may develop by creating subsidiaries and branches in order to cover large territories, thus expanding the business opportunities.

Transnational or crossborder cooperation between cooperative companies used to face, within the European Union, legal and administrative difficulties, which have been overcome within a borderless market.

The establishment of an European legal cooperative institution, based on some common basic principles which have taken into consideration the particularities of cooperative entities, has allowed these entities to operate outside national borders, within the entire European territory or on a part of this territory.

The main objective of this standardization is to allow the creation of a SCE by natural persons residing in different member states, or by legal persons established in accordance to the legal systems of different member states. This will also allow the establishment of a SCE by merging two existing cooperative companies or by transforming a national cooperative company, without going through delisting, in case this cooperative company has its legal office and the central management within a member state and a branch or a subsidiary within another member state.

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The right to a fair trial and to avoid expedite justice

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Abstract:
The expedition of the judicial process and, implicitly, of justice, is not only a theoretical advantage for the parties to trials, but rather, a huge advantage for the trust of all persons in justice and in the judge and ability thereof to sanction any breach of any right, particularly since the system of the law is a field with a social feature that governs relationships between individuals. Any legal process needs a certain timeframe within which to be performed for it to be built as appropriately as possible and the absence of such a period is sufficiently harmful to personal right safeguarding. The principle of celerity is not necessarily a quality, because a prompt justice may be an expedite justice, hence, a bad justice or a failed justice. For these reasons, any judge is bound to seek and find a balance between the need for a judgment performed based on the principle of celerity and the need for a complete, correct judgment of the de jure and de facto matters deferred for judgment.

Keywords: expedite justice; legal process; principle of celerity; fairness principle.

One of the core principles of a democratic society is the right to a fair trial, a principle that plays an essential role in the value system of any rule of law, because the establishment of the protection of fundamental rights and freedoms is to be mandatorily reinforced by the establishment of procedural safeguards appropriately ensuring the effectiveness of this protection. The right to a fair trial is a procedural guarantee in the absence of which the other rights and freedoms would significantly lose value.

The recent doctrine states that the fairness principle…imposes on the lawmaker to be moderate when developing normative acts and to maintain a state of impartiality and balance for all parties subject to the legal rule. [1]

The desideratum of creating a democratic society governed by the principle of the pre-eminence of the law may be achieved not only by preventing the breach of human rights and ensuring the sanctioning of such breaches, but also, by creating a complex of safeguards and instruments which to ensure the compensatory and sanctioning functions of the justice are exercised in a legal and operational framework, thereby eliminating the possibility for new injuries to occur during the very process of performing the act of justice. [2]
For the purposes of achieving this aim, the European Convention on Human Rights regulates two procedural rights, which materialise into safeguards for enhancing, in the courts of law, the rights recognised for people.

In this framework, the provisions of Art. 6 and Art. 13 of the Convention, relating to the right to a fair trial and the right to an effective remedy, express a general idea, according to which an effective protection of human rights cannot be ensured by the mere establishment of substantial rights, but there is the need for these rights to be accompanied by fundamental procedural safeguards, which to ensure the appropriate enhancement mechanism.

The good administration of justice imposes an appropriate response from the state on all levels, including in terms of the timeframe needed for settling a dispute. Therefore, the obligation of the State, as arising from Art. 6 of the European Convention on Human Rights, is to create an efficient legal system, capable of settling a case within a reasonable timeframe. Moreover, in addition to this obligation, Article 6 of the Convention is corroborated with Article 13, on the grounds of which, it is under the obligation to regulate as part of the internal law a ‘remedy’ which to allow to the concerned person to make use of the rights and freedoms established under the Convention. The ‘effective’ feature of this remedy is to be appraised according to the capacity thereof to provide appropriate satisfaction to the party involved, by comparison to the breach incurred.

Even though, during a first stage, the Court has reflected a different approach in regard to the correlation between the right to an effective remedy and the right to benefit from the settlement of cases within a reasonable time, the European court has subsequently reached the conclusion that also in terms of the reasonability of the timeframe needed for conducting the judicial procedures, there is need for the parties to trials to be able to obtain, at national level, the elimination of the breach of this right before acting the international protection mechanism before the European Court.

The excessive timeframe needed for the procedures is frequently invoked before the European Court of Human Rights, the main reasoning being the difficult situation of the Romanian State as a result of the many convictions ordered for the breach of this right, and also, the existence of a legislative gap in relation to the adoption of a solution
in the matter of the prevention and remedial of the excess of the reasonable timeframe of procedures.

The general procedural safeguards prescribed by Art. 6 (1) of the Convention include the 'reasonable time' during which a person has the right to be judged; therefore, the principle of the judicial procedure celerity is expressed. The right to a reasonable timeframe for the procedures is not established only by the Convention. It is expressly regulated both at the level of other international instruments, such as the International Covenant on Civil and Political Rights (Romania ratified the Covenant under Decree no. 212 of the 31st of October 1974, published in the Official Gazette no. 146 of the 20th of November 1974), and at the level of other instruments for fundamental human rights protection at domestic level, the Romanian Constitution providing, in Art. 21, the right to a judgment performed with celerity. However, it was the Court the one that realized both the importance of actual and exact application of this guarantee, and the one that provided for the first time the criteria for analysing the reasonability of the timeframe within which a dispute is judged, therefore compelling the States, by the jurisprudence thereof, especially by the Kudla Decision (this decision stating that 'the time has come to reconsider its jurisprudence taking into consideration the increasing number of applications filed before it in relation to, either exclusively or as a main claim, the lack of the obligation to settle the cases within a reasonable time, under Art. 6§1)[3], to take action to meet this interest. The excess of the reasonable timeframe for procedures is one of the most frequent claims put forward by the claimants before the European Court. The reasonable timeframe for the procedures, as prescribed in Art. 6 (1) of the European Convention applies to all persona involved in a criminal proceeding, regardless of whether they are under arrest or not and aims at protecting them against the excessive slowness of the procedures, with the aim of avoiding to extend the uncertainty regarding to the fate of the accused [4] for too long.

The reason for the existence of the law with a reasonable timeframe of the procedure is obvious. It is elegantly expressed both as part of a frequently quoted British adage – justice delayed, justice denied, and of a French maxim having similar contents – justice rétive, justice fautive. The Court has resumed this idea in a more juridical form stating that, by imposing the need for a reasonable timeframe for
procedures, the Convention emphasises the importance of the idea that justice is to be performed without any delays which to compromise the reliability and effectiveness thereof, the State being responsible for the activity of the services thereof as a whole, not only that of the legal bodies.

Furthermore, the Court has decided, on several occasions [5], that the provisions of Art. 6 (1) of the Convention ‘bind’ the contracting states to organise the legal system thereof so that the latter meets all the requirements of the abovementioned text, therefore, including that of settling any dispute ‘within a reasonable time’ taking account, among other things, of the difficulties generated by different factors that may delay the national judicial procedures (hindrances that are to be overcome by way of legislation). Another emphasis made by the European court takes also consideration of the fact that, in time, the urgency of the settlement of a case or types of cases increases and the means commonly used may prove to be temporarily insufficient. Therefore, in this cases also, the State is under the obligation to take action more effective than the usual one, in order to conform to the requirements provided by Art. 6 of the Convention.

Considering such situations, the Court has adopted tailored, balanced solutions, deciding, for example, that the temporary overloading of the role of a court of law does not give rise to the international liability of the State in such a situation if the latter promptly takes action to remedy such circumstance, in these cases appearing to be reasonable even to establish ‘certain provisional orders when settling cases’, grounded on the urgency and importance thereof. However, the Court has also stated that, when the loading of the court of law dockets ‘has become current’ does no longer justify the excessive duration of the legal procedures [6] [7] [8].

On the other hand, the trial involves a timeframe during which to be appropriate handled. The lack of such a timeframe is harmful to the safeguarding of the personal rights. Therefore, it is to be mentioned that celerity is not necessarily a quality, a quick justice may be an expedite justice, therefore, bad justice [9]. For this reason, the judge is held to find the balance between the need for a judgment performed with celerity and the need for a fair complete judgment of the matters of law and of fact subject to judgment. As long as Art. 6 § 1 of the Convention governs the right to judgment within a reasonable timeframe, a textual interpretation thereof does not limit its scope only to the
time when the proceeding is beyond normality, and the wording allows the interpretation thereof also in the sense of the establishment of a right of not being subject to expedite justice. Just as a procedure too long practically cancels the right of access to justice, a too expedite procedure threatens to have the same effect, namely, the person is deprived of actual concrete access to justice. For this reason, when a longer time is needed for a thorough consideration of the case for the good settlement thereof, a delay in giving a decision appears to be justified and it prevails over celerity and the states must not, from a desire to conform to the requirement of procedure celerity, go to the other extreme and organise their legal systems so as to produce bulk rulings from a mere desire to make quick judgements, no matter how, a fair slow justice being preferable to a quick unfair one.

The application of the law is a meticulous process, highly accurate, having social and human implications. This process is closely related to the requirements of the fair determination of the state of fact and the application of the appropriate legal rule. The application of the law is subordinated to the principle of finding out the truth and also, of the protection of the fundamental human rights and freedoms.

The expedition of justice is not only a rather theoretical advantage for the accused, but more of a huge advantage for the public trust in justice and in the capacity thereof to sanction the breaches of the law. When the public notices that, quickly, any person having breached the law becomes sanctioned, the benefits for the trust in justice and for the general prevention function are significant, and this reaction of the public is, in reality, a projection of the legal culture, which significantly influence the system of the law [10].

In criminal law, emphasis is to be made as much as possible on the need to guarantee the right of the accused, of which the latter does not usually want to take advantage, so that, when protecting thereof, the higher interests of the society are protected. For this very reason, when analysing complaints from persons putting forward the right to a judgment performed with celerity in criminal law, the Court is rather harsh when appraising the conditions for the application of the provisions of Art. 6.
The right to a reasonable timeframe of the procedure in criminal law, as a procedural guarantee for the right to a fair trial, as established by Art. 6 of the Convention, is a fundamental right, and not a freedom, because it is important not only for the person concerned, but also for the public trust in justice, therefore, for the society as a whole and beneficial for the entire society, so that the person for whom the right is recognised is able to waive the exercising thereof. Because of the role thereof in the current structure of the society, this right is certainly among the most inherent rights to the human being.

Moreover, this right is a relative one, because it can be limited, reduced or restricted by the State to the extent certain conditions, expressly provided by Art. 53 of the Constitution of Romania and by Art. 18 of the European Convention on Human Rights, are met. Therefore, this right could be limited on the assumption that a legitimate purpose out of those provided by the Constitution, is sought.

In the Romanian legal system, the general legal procedures that guarantee the principle of the judicial procedure performance within a timeframe, which may be characterised as reasonable, can be primarily found in the Constitution of Romania. Therefore, according to Art. 21 (3), the parties are entitled to the settlement of cases within a reasonable time. The regulation can also be found in Art. 10 of Law 304/2004 on judicial organisation.

The Criminal Procedure Code includes several newly-inserted legal provisions which mainly represent attempts to award more substance to the principle of the criminal trial celerity. Therefore, the setting of hearings as part of the criminal trial aims, on the one hand, at limiting the duration of trial actions (without these hearings, the privative or restrictive actions related to rights would become arbitrary) and, on another hand, they prevent the postponement of the criminal trial performance, ensuring the operation of the action required by the fair settlement of the criminal case.

The celerity indicates appraisal difficulties not only in terms of the reasonable character, but also, in terms of determining the timeframe the reasonable character of which is subject to analysis. To be able to conclude on the exigency of the reasonable time, the European Court had to determine the period required for consideration purposes, by emphasising the initial moment (dies a quo) and the final moment (dies ad
quem) and, in order to provide to the parties to trials a due materialisation of the rights and interests thereof, the timeframe between the two moments had to be as short as possible.

In order to assess the reasonable timeframe of procedures, consideration is taken of the entire procedure timeframe, however, being possible that a proceeding before a court of law is enough to lead to the conclusion on a lack of celerity (CEDO, Scopelli Decision). In fact, this procedural guarantee has a special character compared to the other provisions of the Convention, namely, the plaintiff is no longer bound to use all internal legal remedies. The solution is logical, as long as it is unnatural for the plaintiff to have to wait for the finalisation of a procedure that has already taken too long.

For this reason, it is difficult to express a figure based on which to state that the trial has taken too long. For example, in Zimmermann and Steiner [11], the Court decided that a trial having taken three and a half years does not meet the celerity requirement, while in Pretto [12], it was found that the requirements of Art. 6 (1) of the Convention, relating to a procedure having taken a similar time, have been met.

In the civil trial, the principle of the availability for the procedure performance is applicable. The Court has decided that the provisions of the Convention do not prevent the contracting states from grounding their civil procedure on this principle [13], but that it does not exempt the national judge from their duty of celerity. The interested party [14] is held, in its turn, to diligently perform the trial acts devolving upon them, not to use stalling mechanisms, make use of the possibilities provided by the internal trial rules, with the aim of reducing the time for the judgment procedure, and not to take action contrary to the accomplishment of this purpose. However, a plaintiff cannot be accused of having used, during the challenged legal procedure timeframe, all the legal remedies available under the internal law [15].

In civil law, as a rule, the term reasonable starts from the day when the court of first instance is awarded competence for dispute [16] settlement and relates to the overall procedures needed for the case, both on the substance, and in terms of rights of action, until the final settlement of the challenge on the concerned right or obligation.

Therefore, two mentions must be made: the reasonable time in civil proceedings may also include the timeframe of preliminary administrative procedures, when the
possibility of initiating a proceeding is court is mandatorily conditioned on the performance of such a proceeding [17]; the reasonable time also includes the court order implementation procedure, which is considered an integral part of the term trial [18].

If the solution of the proceeding performed before the national constitutional law influences the solution of the dispute analysed by the national jurisdictions of common law, the term reasonable also includes the duration of the constitutional proceeding [19], but the duration of preliminary question examination by the Court of Justice of the European Communities is not taken into account, because this would prejudice the system established under the provisions of the institutional treaties thereof. In this regard, the activity of an expert cannot represent a reasonable ground for the extension of a legal proceeding, because he/she conducts his/her activity under the control of the court of law, which needs to bound him/her to comply with the deadlines ordered for performing the technical works necessary for the settlement of a case [20].

In conclusion, the expediency in trial activity performance must not deprive the trial and procedural acts of quality and soundness, for the act of justice to become an expedite act of justice. For the purposes of avoiding expedite justice in the settlement of a case referred for judgment, to which organisation, handling, administration, and performance of the legal process are subordinated, the principle of celerity must not remain at the level of the doctrinal discussions and opinions, but it should be provided under rules, transposed in institutions and trial proceedings, safeguarded under deontological and conduct rules of the legal bodies, otherwise, this principle will continue to be a generous, yet utopic, ideal. The term reasonable provided under any remedy of legal proceedings involves a short time, but which does not result in an expedite justice, which may be a failed justice or a denied justice. Just as a long judicial proceeding cancels, practically speaking, the right if access to justice, in the same way, a too expeditious justice is likely to have the same effect, namely, the person being deprived of a real an actual access to justice. For this reason, in the circumstances when a longer timeframe for a thorough analysis of the case is needed for a better settling thereof, a delay in the ruling appears to be justified and it prevails over celerity and, wanting to conform to the need of the proceeding celerity, one may obtain the
opposite effect when organising the legal systems, and thus rulings may be rendered one after another, driven by a desire to make a quick judgment regardless of the manner thereof; instead, a correct, justice, in a slow pace is preferable to a quick, unfair one.

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Legal liability for violations of the law on hunting and animal kingdom.

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Abstract
Understanding respect for the rules on protection of the environment as a whole, the social responsibility of everyone for this activity and to improve environmental conditions is one of the fundamental problems of formal environmental conscience. Legal liability is one of the most important institutions applicable to infringements of environmental law. It should be noted that the conceptual inconsistencies were found regarding the identification of injury were analyzed traditional forms of legal liability such as criminal, administrative and civil.

Keywords: environment, hunting legislation, environmental liability, ecological damage, criminal liability, hunting legislation, administrative liability.

1. Introduction
Legal liability is a legal institution of major importance because any problem in contemporary society leads to its application. Generally speaking, the institution of legal liability primarily ensures the effectiveness of rule of law, stimulates the proper attitude of compliance, establish and maintain social order.

Man being an indispensable element of the company is required to comply with certain rules of conduct which forms the subject of evaluation and social reaction. Findings of conduct lie in its confrontation with the model of conduct established by different sets of rules in society. Liability occurs when a certain conduct does not conform to the model established by social norm and this behavior is viewed as negative.[1]

"Man is the only being read Kant, able to act as a moral force fully responsible for their own actions."

Legal liability is a specific form of social responsibility, disregard social norms causing negative consequences for others and for society in general.

Legal liability differs from other forms of social responsibility through that relates to the obligation to be aware of a rule violation. Neglect legal provisions inevitably lead to application to the institution.
Legal liability in environmental law is continually changing due to environmental situations seriously affected by the process of industrialization, application of advanced technologies, irrational use of natural resources and waste. Legal liability for violation of game is only one aspect ratios assembly to be established environmental protection system and rational use of existing resources.

2. Theoretical

There is a need to make certain clarifications on the rules applicable in the Republic of Moldova game, and the damage that can be made from the infringement of those rules. It goes without saying that once subjects of law enforcement violate these rules applicable legal liability.

The hunting farm Regulation[2] expressly provides that "hunting is considered detect the purpose of acquiring, tracking and acquisition of actual animals under natural conditions." Finding people hunting land, including common access routes included weapons holstered, while installed, ready for application with other tools of hunting and hunting dogs and birds (falcons) or game production, equating to hunt. At the same time it stated that hunting is a way of using animal kingdom.

In the Republic of Moldova is allowed amateur sport hunting and hunting in order to establish, regulate livestock and their selection and for scientific, cultural, educational, aesthetic and trophies. The method and the means to hunt shall be determined by the central authority with natural resource management and environmental protection jointly with the central forestry authority, after establishing herd of wild game to be shot. Hunting rights are granted based on the book hunter approved by the Society of Hunters and Fishermen of Moldova permit (sheet, sheet for harvesting) issued by the Society of Hunters and Fishermen of Moldova for sport hunting of waterfowl and fur animals or authorization to hunt wild ungulates, issued by the central forestry authority.

Each time, the liability will suggest the idea of sanctions or repair. We can deduce that violation of game rules can be brought damage of a certain kind (repairable or not appropriate) which affects the animal kingdom.

Moldovan legislator exposes not express the concept of "environmental damage or ecological" using the term "environmental impact", which in turn forms the direct or indirect environmental changes caused by implementation of planned activities which
affect or may affect both human health as well as biological diversity, soil, subsoil, water, air, climate, landscape of, material assets, cultural heritage and the interaction of these factors. [3]

At the same time, the Romanian Government Emergency Ordinance no.195/2005 on environmental protection [4], determines the concept of "injury" that constitutes the cost of damage quantifiable effect on human health, property or the environment caused by pollutants or harmful activity disasters. According to the definitions of Government Emergency Ordinance no.68/2007 [5], the "injury" generally means "a measurable adverse change in natural resources or measurable impairment of a natural resource service which may occur directly or indirectly ".

Referring to the environmental law doctrine, we can deduce that "environmental damage or ecological" is considered "the injury affecting all environmental factors, in one form or another, irreversible effects and consequences difficult to establish." The concept of "ecological damage" includes damage caused to the natural and artificial, legally protected. [6]

Analyzing the above, we can conclude that in fact the concept of "damage and environmental damage or ecological" finally have the same meaning when it comes to harm to the environment.

3. **Scientific research.**

Legal liability in relation to environmental law in the European Union has changed dramatically over recent decades. At mid-century environmental issues, especially environmental protection and legal responsibility in this area, there were a great theoretical and practical concern, they are not reflected in any international acts such concerns being absolutely isolated.

At the same time, the population began to grow rapidly, industries and economic growth in general demands have evolved considerably parallel to it has grown significantly and environmental pollution. It identified the need for shaping a unified environmental policy, organized a global total reflection.

The international responsibility of the state synthesizing find in the Stockholm Declaration [7] (1972), where paragraph 21 establishes that states have the "responsibility to ensure that activities in their jurisdiction or control do not cause
damage to the environment of other States or of areas outside the limits of national jurisdiction. " Similar wording is found in the Rio Declaration on Environment and Development (1992), principle 13 provides a general statement: "States shall develop national law regarding liability and compensation for victims of pollution and other environmental damage ( ...) States must cooperate with greater timeliness and determination to further develop international law concerning liability and compensation for adverse effects of environmental damages caused by the activities under their jurisdiction or under their control in areas outside the jurisdiction national ".

In civil liability for damages dangerous for the environment to an important step by opening for signature by the Committee of Ministers in March 1993, the Lugano Convention, which has tended to establish a common European matters. The current regulation is contained in the Directive nr.2004/35/EC on environmental liability concerning the prevention and remedying of environmental damage.

Was a question of regulation at EU level of environmental protection by means of criminal law, but it has not failed.

Nationally breach of environmental legislation inevitably lead to the application of criminal responsibility or civil offenses as appropriate. The Law on Environmental Protection[8] and the Law on Animal Kingdom[9] expressly expose when the stipulations existing natural or legal persons shall be subject to appropriate criminal, administrative, and disciplinary materials in the manner and amounts set by legislation.

As noted, the Law on Animal Kingdom in addition to traditional forms of legal liability also includes material and disciplinary accountability. No liability as an institution of labor law is the outdated, being used financial liability, which is held under the rules and principles of civil contractual liability. Disciplinary liability is characteristic of labor law, especially being applicable to cooperative relations, having now obsolete character.

Opposite the Romanian environmental law there is a sentient evolving. The first general Law of environmental protection[10] in Article 73 sanctioned application of disciplinary liability, materials, civil, or criminal offenses as appropriate. This law was repealed by Article 89 of the Environmental Protection Law no.137/1995 [11] (as amended), which provided in Article 81 that the violation of this law entails civil, administrative or criminal appropriate. Compared to the previous regulation, gave notice
that the Romanian legislature to maintain discipline and accountability among the forms of material legal liability for violation of this law. This waiver was the right one, because those penalties were for labor law and cooperative law, based on an employee or member of the cooperative of production and work relationships of an individual, who perform the work, and usually, almost exclusive legal entity where he was employed or whose cooperative member was natural. [12]

Moreover, we find that national environmental legislation requires urgent changes to comply unanimously nationally and internationally. Therefore we address criminal, civil contravention and violation of hunting or harming the animal kingdom.

• **Criminal liability for violation of hunting or harming the animal kingdom.**

  Criminal liability arises in any sector of economic and social life in any of the fields of law. It is therefore normal that this form of legal liability should be present in the relations of environmental protection. Under the current criminal regulations, "criminal liability for violations of legal norms on environmental protection expresses some peculiarities of the nature and specific object protected consequences of the alleged misconduct." [13]

  Fill in principle on specific criminal liability environmental protection being determined by the nature of the object protected by law, object which prejudice by an act considered an offense. [14]

  Offences on the environment can be defined as "dangerous being those facts, which are brought by committing social relations, which is subject to protection of natural and artificial defense of the environment, harm which is reflected in terms of consequences, into damage brought individuals and businesses they control, endangering human health, animal and plant or serious damage to the national economy ".[15]

  Currently the Criminal Code of the Republic of Moldova[16] environmental offenses are punishable following:
  - illegal hunting (art.233), hunting without proper authorization is prohibited during or in prohibited places or with tools and methods allowed (poaching) or use service situation, if it has caused damage exceeding 200 conventional units, punishable by fine of 200
to 500 conventional units or by unpaid community work for 180 to 240 hours or by imprisonment of up to 3 years and the legal entity shall be punished by a fine of 1000 to 3000 conventional units with the deprivation of the right to practice certain activities.

- the practice illegal fishing, hunting or other exploitation of water (art.234) using explosives and poisonous substances or other means of mass destruction of wildlife if it has caused damage exceeding 200 conventional units, punishable by a fine of 200 to 700 conventional units or by community service for 180 to 240 hours or by imprisonment of up to one year, and the legal entity shall be punished by a fine of 1000 to 3000 conventional units with deprivation of the right to practice certain activities.

• Liability for breaching the rules of game or harming the animal kingdom.

Natural and legal persons carrying out activities contrary to the rules of environmental law or do not fulfill their obligations of environmental legal relations are punishable offenses for which the maximum or minimum limit specified by law.

Liability contravention is an objective, which means that administrative penalty of a fine or research will be without fault offender. If criminal liability apply to actions which create a serious social threat, then the liability administrative- low social danger.

At the same time we can formulate the concept of environmental liability offenses which means "a state reaction consisting of applying administrative sanctions for unlawful acts or omissions committed with guilt, which creates a social risk lower than the offense because of the uniqueness actions, creating a hazard damage or injury very minor, taken individually, and environmental factors".[18]

Contravention Code of the Republic of Moldova[19] provides for administrative sanctions in the following cases:
- Violation of acts is concerning the use and protection of hunting (Article 128). Violation of acts concerning the use and protection of hunting, the hunting and other kinds of wildlife resource use is punishable by a fine of 20 to 50 conventional units for individuals and by a fine of 200 to 400 conventional units function liability. Hunting without permission (license), without the hunter's license or firearm possession without authorization d use of arms and hunting, harvesting exceeding standards established game and hunting in prohibited places and at times of prohibition, use of weapons, tools
and Prohibited Methods shall be sanctioned with a fine of 50 to 100 conventional units for individuals and by a fine of 200 to 400 conventional units for responsible.

- The destruction or willful damage to fauna living places (Article 129). Destruction or willful damage to the dens, molehills ant nests of birds and other wildlife living spaces on forest land is punishable by a fine of 20 to 50 conventional units or by unpaid community work for up to 60 hours.

- Collecting or destroying plants and capturing or destroying animals listed in the Red Book of Moldova and Annexes to the Convention on International Trade in Endangered Species of Wild Fauna and Flora Endangered (Article 140). Collecting or destroying plants and capturing or destroying animals listed in the Red Book of Moldova and Annexes to the Convention on International Trade in Endangered Species of Wild Fauna and Flora endangered (CITES) and committed other acts or omissions that may cause reduction the number of such plants and animals or their disappearance is punishable by a fine of 50 to 100 conventional units. Violation of export or import of plant and animal species included in the Red Book of Moldova and Annexes to the Convention on International Trade in Endangered Species of Wild Fauna and Flora endangered (CITES) is fined from 100 to 150 conventional units for individuals and by a fine of 400 to 500 conventional units for legal entities.

• Civil liability for the violation of hunting or harming the animal kingdom.

  Civil liability is one of the classic manifestations of legal liability, which appears as a very large and complex institution in civil law, made up of all the legal rules governing the obligation of any person to repair the damage caused by his act for which contractual times called by law to respond. [20]

  Civil liability arises in environmental law as a means to that last resort, with priority given to other techniques and instruments, especially those of economic and fiscal nature. For these reasons and in view of its specific fundamental, it appears more like a repair, rather than as a liability in the classical sense.

  In the application of tort liability in environmental law will be met the following conditions:
  - Be committed an act unlawful,
  - To produce injury,
There is a causal link between the unlawful act and injury,
Culpability be unlawful act,
Have the capacity tort Author.[21]

The act of unlawful conduct is outlined in an action or omission contrary to the law aimed at hunting rules and regulations concerning animal kingdom. The effect of the unlawful conduct prejudicial externalizes in which it appears, is always patrimonial.

Ecological damage is damage or injury caused wildlife, unapproachable, res nullius, or community interests through the receiving environment - air, water, and soil, independent of direct damage to a human interest. In environmental law, the damage must be certain. They are certain, however, not only actual damage, but future damage if there is certainty that they will produce.

Establishing a causal link between the wrongful act and the damage or ecological damage is subject to some uncertainty. The literature states that it is necessary to consider the case coexistence and conditions (for example: time and space), including in the causal facts that constitute not only necessary cause, but also conditions caused, that the infringements which have made possible environmental and causal action. The recognition of causation is necessary to know all the concrete conditions of the process of determining causal.

Guilt is the author's psychological attitude towards crime actions and probable consequences. Application specific fault liability practice environmental law is the protection scope of the principle of presumption of guilt or presumption of responsibility that will lead author unlawful act liable if it proves that the damage is caused not by his own guilt.

The concept of capacity is one like tort civil capacity, which states the existence of discernment in committing the illegal acts of environmental law.

4. Conclusions and Implications

Analyzing all applicable forms of legal liability for violation of hunting and damage kingdom we can conclude the following:
Nationally to be made to certain conceptual clarifications concerning the determination of the concept of injury, environmental damage or impact on the environment, thus uniting environmental legislation;
- It is necessary to exclude disciplinary and material responsibility, in the context of these forms being outdated environmental legal liability;
- Taking best practices from neighboring states legislation applicable in relations platform environmental liability;
- Adherence to international bodies empowered to assign systems to monitor compliance with environmental legislation;
- Finalization and unanimous acceptance of the existence of legal liability environment, in addition to other traditional forms of liability such as civil, administrative and criminal.

Bibliography:
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[17] According to the Criminal Code a conventional unit is equal to 20 lei, which is currently (05.29.2015) about a euro.
[19] Published on 16.01.2009 in the Official Gazette of the Republic of Moldova no. 3-6 Effective Date: 31.05.2009.
E-Business Legal Perspective

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Abstract
The existence of the electronic commerce law, doubled by the electronic signature law, will have positive implications on the entire country's economic framework. Banks will entail much more seriously in the development of the infrastructure that allows online payment and will try to find solutions not only for the card holders, but also for those who have bank accounts. In one form or another, the virtual transactions have been made so far. Although most payments are made in cash, upon the delivery of the product, or by cash on delivery, banks allow electronic operations ranging from gaining access to your account until the payment, transfer order, order of deposits and currency exchange.
On the other hand, the law should not be viewed only through the position of the advantages it brings, but also by the unseen costs of its absence. Insufficient use of the opportunities provided by the e-commerce represents a barrier to the expansion of the business. It is as if one would opt for autarky in an environment in which globalization and interdependence are the rule.

**Keywords:** law, e-commerce, product definition, electronic signature, electronic control, merchant account, electronic payment.

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1. LEGAL RULES ON E-BUSINESS

In a broad sense, the electronic commerce is an electronic exchange of information between a business and its customers. This can be done through fax, phone, voice-mail [1],[2],[3] , e-mail or internet, extranet [4].

Narrowly, the electronic commerce is one of complex solutions offered by the Internet technology. This means that a multitude of applications and Internet service providers should work together in a perfect timing for an e-commerce site to be able to operate.

The concept of e-commerce, although known formerly to 2000, was not enacted in Romania until the advent of the electronic commerce Law no. 365/7 June 2002. The draft of this law No. 277/7 June 2000 was drawn up in accordance with UNCITRAL Directive on electronic commerce, adopted by the United Nations through the resolution No. 51/162 of 16 December 1996 with its adopted amendments in 1998 and with the Directive No. 0191/98 of 13 May 1998, of the European Union's electronic signature.
Electronic commerce involves the use of the computer networks in furtherance of acts and deeds of Commerce. The two main types of transactions in electronic commerce are business to business (among traders) and business to consumer (between merchants and consumers). In the first case it is necessary, first of all, the formalization of the documents has in its composition services as telnet for connecting to other computers on the network, FTP (File Transport Protocol)-used in bringing files in public archives scattered in Internet, Internet Phone and Fax-Internet telephony and fax services available through the Internet and www (world wide web) service that distributes information using a model called hypertext, or switching to another page of information by pressing a word or text in the home page; commercial, with contractual value, while in the second case we have put into place, in particular, the elements necessary for the functioning of the virtual store. The e-commerce industry also speaks more about the transaction "business to employee", referring to the transactions within a company, intended for employees of the company and carried out by its own intranet system.

To understand the concept of a commerce deed it must be started from the notion of a legal act, legal fact, to reach the commerce act, commerce deed or commercial operation. On the other hand, in order to analyze the two main types of transactions in electronic commerce, it should be established the notions of a trader (natural or legal), non-trader, consumer.

Electronic commerce is based on electronic signature, regulated by law No. 455/2001 and on the acceptance of standards relating to the safety of the transmission and storage of data (law 365/2002).

Within these general types of transactions there are several models of commercial activities on the Internet[5] , such as electronic [6], electronic supply stor[7] , electronic department store[8] , electronic companies[9], [10] , services suppliers[11] and others from a third party.

2. TERMS AND NOTIONS SPECIFIC TO ELECTRONIC COMMERCE

As regards to the definition of the product in cyberspace, the service provider and the applications are the first choices that the trader must make.
Shopping cart technology underlies any process of e-commerce. This system allows to be exposed images of the products, descriptions, prices, they provide mechanisms by which the consumer can choose the amount of products he wants to buy, verifying and recording the data, calculating and displaying the total amount of purchases, even including shipping charges, if applicable.

The components included in the application can be purchased from the web hosting provider with the selected service package, and some can be added and on the way.

Because of these variables, the producer-bidder should consider in choosing a shopping cart system, the following: If the shopping cart that the web hosting provider who intends to host the site offers has the necessary components of its products, which are the costs, how easy it is to install the system if the site is made within the company, and shall not resort to a specialized company[13] , how many such products may be exhibited in total, how many categories, what variations of the product, what features are allowed, if complementary products can be added in the future.

The merchant account (Merchant account) is different from the ordinary bank accounts, whereas it allows accepting payments via credit cards or debit cards as a form of electronic payment from the customers. On receipt of a merchant account, it will also be obtained and a number of the identity card (Merchant ID) and POS[14] – terminal at the point of sale. This terminal communicates through phone lines, as a fax. Through POS it should be read and recorded information about the consumer on the magnetic tape of a credit or debit card and details of the transaction shall be transmitted to the information and authorized institutions to process the payment or to the issuing bank, in the case of a debit card. They respond with the information if the existing loan funds are enough for the payment and authorises or declines the transaction.

With respect to the electronic order, there are several options for the display of products and submitting the online orders. The most common is a simple HTML page for display of the products and an order form.

If, however, the number of products is higher and customers are buying, as usual, a large number of products, it requires a more complex scripts: free JAVA scripts or CGI, or what may be sufficient in the first stage, or the e-commerce solutions offered
by the web hosting providers. Unlike the latter, free scripts are more difficult to install, are more difficult to maintain in terms of product updates or pricing, are less dynamic, offer limited possibilities for special promotions, do not provide tools for managing the portfolio of the customers, have limited opportunities for the exposure of products, load pretty slowly, some versions expire over time and do not justify the effort consumed with their installation on your web server.

On the electronic payment methods, the choice of the method depends on what kind of commerce site is managed: Business to consumer, addressed to the consumer or Business to business type dedicated to the business transactions.

The development of the commercial activities between the merchants located at great distances to each other cannot be conceived without the use of some electronic payment systems. These electronic means of payment allow very quick and convenient transfer of the money between the merchants.

The most common methods of payment are the payment order, the transfer, payment by credit card or debit card, travellers cheques. The websites of Business to consumer type the most common method is by credit card, and at the Business to business type, the money orders and transfers.

In addition to these methods, there are some methods of payment in electronic commerce: the value cards [15], electronic funds transfer at the sale point system[16], credit cards system [17],[18], or the electronic exchange of financial data.

The notion of the Trade Act and merchant

The civil legal act represents a manifestation of will submitted with the aim of producing legal effects, that is to born, modify or extinguish a specifically civil/legal relationship [19]. To determine the relationship that forms the object of the commercial law, the commercial code lists in articles 3 some legal acts and operations which it describes as "facts of trade", by committing to which legal relations are governed by the rules of the commercial law. The name of the commercial code is improper, since the distinction between acts and civil torts and by tradition, doctrine and examines the facts of Commerce, although under that name are also contained commercial legal documents. Due to the fact that, unlike the French or the Italian commercial code, the Romanian commercial code governs the facts and not the acts of Commerce, the
Romanian legislature passed the regulation of the commercial law, not only the obligations resulting from legal acts but also those arising from unlawful legal acts (unjust enrichment, are not due payment, business management) or in illicit activities on the dealer commits them in connection with its usual, professional activities.

The commerce facts represent those documents, acts or operations which are carried out through the production of goods, performance of works or provision of services or the interposer in turnover, by an operator, natural or legal person, or even by a non-commerciant, in order to obtain profit.

Also, art. 5 of the commercial code states that there is no deed of purchase of goods or merchandise, or for the use of the buyer (if that's the merchant) or his family, the resale of the products or the sale the products that the owner or the producer has acquired from his land or cultivated by him. Therefore, being entitled to conclude legal acts and foreign professional activity the dealer may, that through his own will to endow this fact a non-commercial character.

Therefore, although the commercial code adopts the objective theory over trading, it alternatively admits the subjective one.

From the objective facts of trade there can be distinguished two subcategories, namely that of the documents whose commercial nature results from the shape of the instrument itself, such as the ticket to the draft order or the cheque and documents which are of a commercial nature, encompassing all those acts which, in general, are expressly defined as acts of trade.

*The natural person trader*

The commercial code does not define the trader, but it only specifies what people have the quality of traders, in art. 7, according to which "there are retailers who do trade facts having trade as usual profession and companies". We consider this provision incomplete and obsolescent from two points of view: first, due to the fact that a person does not become merchant only by committing acts of Commerce as a regular profession, and secondly because not only those listed are traders. [20] That is why we will consider that the above mentioned provisions have been changed by certain default acts arising subsequently, which specify clearly and more completely which is category
of traders and under what conditions the natural person, respectively the legal person acquires the status of a trader.

Law No. 507/2002 concerning the organisation and conduct of economic activities by natural persons, which repealed and replaced the Decree-Law nr. 54 in 1990, has retained the traditional conception of the legal nature of the family Association for the purposes of the Association without legal personality, the simple form of the exercise of a commercial set up with a view to obtaining profits.

In conclusion, we consider that a natural person, in order to acquire the status of a trader, must meet the following conditions, cumulatively:
- to do trade facts
- trade works to be perpetrated by way of ordinary profession
- facts of trade to be perpetrated in its name
- to be obtained prior administrative authorization.

**Legal person trader**

Art. 7 of the commercial code lists, in the field of the legal persons only the companies dealers.

Art. 1 from Law no 26/1990 [21] on the commercial register as amended by Law no 161/2003 on certain measures to ensure transparency in the exercise of public dignities, public functions and in business, the prevention and sanctioning of corruption, defines the traders as "... the trading companies, national companies and national firms, autonomous and cooperative organisations and administrations". Note that in this definition there have been included as distinct topics also the national companies, yet we believe that these also represent trading companies and their distinct provision in the remembered regulatory act is pointless.

Also, art 1 of the Law No 64/1995 concerning the procedure of bankruptcy and judicial reorganization, as amended by the governmental order no 38/2002, included in the category of traders a number of legal entities, such as the consumer cooperatives and craft cooperatives and associations of such cooperatives.

Therefore, the retailers are legal persons:
- trading companies
- the autonomous administrations
cooperative organizations

The consumer

The Government Ordinance No. 21/1992, as amended and supplemented successively by a series of regulations, defines the consumer (article 2) as the natural person who acquires, uses or consumes, as the ultimate recipient, products obtained from operators or receiving services provided by them. The doctrine focused on the definition of the customer purchase, acquisition, use and consumption of products or services, in addition to the professional activity of the consumer.

3. CONCLUSIONS

The E-commerce law is a law inspired by the European legislation, which provides protection to the consumer in B2C relationship. The promulgation of this law will increase the consumer's confidence during the online transactions, which should lead to an increase of the volume.

In fact, the long-awaited law on electronic commerce will not do anything other than create the legal framework for conducting transactions on the Internet and to regulate the problem of delinquency, being referred to long prison terms for crimes such as hacking and carding. Provisions of the law are complemented by articles of the criminal code, and the Ministry of communications and information technology (MCTI) preparing for this year a special law draft on crime in the electronic environment.

The law of the electronic commerce, doubled by the electronic signature law, will have positive implications, however. Banks will entail much more seriously in the development of infrastructure that allows online payment and will try to find solutions not only for the card holders, but also for those who have bank accounts. In one form or another, virtual transactions have been made so far. Although most payments are made in cash, upon delivery of the product, or by cash on delivery, banks allow electronic operations ranging from gaining access to your account until the payment, transfer order, order of deposits and currency exchange.

The real earning of the law would be for the banks to increase the speed of the clearing operations. The law of electronic commerce will not directly influence this aspect, but by increasing the traded volume, the improvements might come right inside the banking system. Through this regulatory action traffic on the Internet will increase
and will diversify the range of services of the Internet providers and operators of the mobile communications. Both categories of companies would be able to provide customers with various credit financial services, such as mobile banking. In addition, the benefits of the new law will not just be the banks whose traded volumes will increase, but also at the level of reviews that will incur reduced monetary costs.

On the other hand, the law should not be viewed only through the prism of the advantages it brings, but also by the unseen costs of its absence. Insufficient use of the opportunities provided by the e-commerce represents a barrier to the expansion of business. It is as if one would opt for autarky in an environment in which globalization and interdependence are the rule.

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[1] The Voice mail is a type of mail practiced on-line by which it sends a message in the form of an audio file;
[2] The E-mail is a communication system via which you can transmit a text with or without attachment;
[3] The Extranet represents a network between remote computers;
[4] The Internet represents a global network of computers bringing together the majority of local and national networks into a single "virtual world space";
[6] Called e-shop, it is managed by a company for marketing and sales of its products or services; through these it attracts a large number of clients without the distance may be an impediment;
[7] By this, auctions are held by the big trading companies and even by public authorities, to purchase goods and services; by publishing the tender specifications on the Internet decreases the time and cost of
transmission and increases considerably the number of contractors who find out about the auction in due time (article 3, paragraph b from the G.O. No. 20/2002 regarding the procurement through electronic auctions);

[8] Represents a combination of electronic shops, using various models of transactions, depending on the type of service that the universal shop owner wants to offer ofere;

[9] There are used where large organizations or Government bodies launch calls for the purchase of goods and services;

[10] In this case it uses a user interface for the company's product catalog, the interface belongs to a third party, usually an Internet service provider or a bank;

[11] It may be any natural or legal person who shall make available to a given number or indeterminate persons an information society service (article 1 paragraph 3 of law No. 365/2002 on electronic commerce);

[12] Special packages of applications for electronic commerce;

[13] Whereas the majority of the suppliers who induced commerce packages in the installation interface is accessible and is based on the choice of options from an undefined set;

[14] Point of sale terminal;

[15] It represents a form of cash, where the value is not stored physically, but electronically;

[16] It represents a form of cash, where the value is not stored physically, but electronically;

[17] The buyer presents the seller the credit card, the seller sends the identification data of the credit card and the transaction details to a system of authorization, authorizing the transaction directly or routed to the issuing bank of the credit card, for approval. Periodically, the seller sends the details of the transactions approved by its bank. At the end, the consumer receives invoices that he must pay;

[18] Involves the transmission of data related to a transaction, as well as the information regarding the sending of funds from a payer to his bank, for a subsequent submission by the beneficiary or his bank;


[20] In the legislature from 1887, the traders from the first category were individuals, because the merchant was then the prototype trader, while small companies in the second category were the only legal entities with relevant commercial vocation; for a more extensive development, Ioan Schiau, „Some considerations on the recent legislative developments of the concept trader - as natural person”, in Commercial Law Magazine, no 9/2003, page 72-84;

The Enriched Person’s Behaviour, Condition of the Unjust Enrichment

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Abstract
To designate the enriched person’s behaviour as regards his possible act that led to the increase of his own patrimony is more appropriate to relate to the concept of the enriched person’s good faith. Thus, good faith is fully consistent and justifies inclusively the specific extension of the obligation of restitution of the enriched person “to the extent of the patrimonial loss suffered by the other person, but without being held beyond the limit of his own enrichment.” On the other hand, non-imputability of the enrichment drives more to the idea of the enriched person’s guilt and implicitly to the civil criminal liability, in which case the obligation to restitution it would be total, irrespective of the value of the enrichment. As the case is of a licit juridical act it is necessary a fair remedy of the legal and economic imbalance thus created between the two patrimonies, and not the sanction of a culpable conduct.
The enriched person’s subjective behaviour must be dominated by the ignorance of the material act of his patrimony enrichment or by his intimate conviction that this added value is entitled, namely his own enrichment has a legitimate basis.

Keywords: unjust enrichment, good faith, non-imputability

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The unjust enrichment as a legal institution had a difficult way from its recognition on the jurisprudence way under the Civil Code of 1864 until its express establishment as a source of obligations (art. 1165 in the Civil Code) and its regulation in the current Civil Code (art. 1345-1348).

1. The enriched person’s behaviour under Civil Code of 1864

In a first phase, the conditions that had to be met for this institution were established by the doctrine and jurisprudence that stated by a majority that from the material viewpoint there had to be an enrichment and an impoverishment of different patrimonies, and between them a connection could be established, i.e. there was a necessary correlation between the two phenomena, and in terms of legal requirements it was asked the absence of a legitimate basis of the enrichment and the lack of any other legal means available to the impoverished person.
As regards a third juridical condition, namely of the good faith of the enriched person, more specifications are needed. First, under the Civil Code of 1864, in the absence of an express regulation of the institution, few authors [1] considered that the good faith of the enriched person represented a legal condition of the unjust enrichment, most of the doctrine not expressing any viewpoint either to its consideration as a condition or to its negation.

Emphasizing the essential difference between undue payment and unjust enrichment which consists of the fact that in the case of the advantages obtained without a legal ground there is no guilt of the party who gets benefits, so there is no bad faith of this party, it is considered [2] that a natural consequence of this lack of guilt is that the person who obtained benefits will have to return them within the limit of his gain, without any addition, such as the legal interest or the civil fruits, as in the case of undue payment. The foundation of the notion of "benefits without a legal ground" consists of the obligation with general and objective character of not becoming rich to the prejudice of another person. This moral duty involves the absence of any guilt from the part of the person whose patrimony was illegitimately enlarged, and actio de in rem verso will have as object the restitution only of what increased the defendant’s patrimony to the prejudice of the claimant’s.

Starting from the premise that life demonstrates that there are situations when the person who obtains benefits without a legal ground is guilty, in the sense that these advantages were gained in bad faith, it was considered that such a circumstance does not belong to the sphere of the general objective obligation of not becoming rich unjustly, but to the sphere of other general obligation, i.e. of not prejudicing another. Thus, is "the enriched person" is guilty and is going to pay integrally the damages, the action is neither for restitution and nor de in rem verso, but an action for the payment of the damages according to the principles of the civil criminal liability, damages which will add to the return of the objects in kind, and, in the case of their loss, to the restitution of their value.

It is considered [3] that good faith in this matter consists of the enriched person’s belief that the increase of his assets and the decrease of his liabilities have a legitimate cause. He ignores the lack of the just clause, considering himself entitled to increase his
patrimony. In the situation when the enriched person is of bad faith, knowing that the value that increases its patrimony does not belong to him, it is not anymore the case of unjust enrichment, but of civil criminal liability. He breaks the general obligation of not prejudicing another person and committing thus a civil offense for which he will be punished. In this case the creditor has an action in civil criminal liability within which he will obtain the total repayment of the caused damages. He will receive the value of his impoverishment, even if the value of the defendant’s enrichment is lower without being opposed the limits of the obligation of restitution within unjust enrichment.

2. The enriched person’s behavior under the regulation of the current Civil Code

As a consequence of the express regulation of the institution, in the provisions of art. 1345 in the Civil Code it was stipulated that the obligation of repayment belongs to "the person who, non-imputably, unjustly got rich to the prejudice of another person....". From the perspective of the other party of the legal relationship of obligation, similar formulations can be found in art. 1346 lett. b and lett. c: "the injured", respectively in art. 1348 in the Civil Code "the prejudiced". Before the amendment by Law no. 71/2011 regarding the application of the Civil Code, the provisions regarding the restitution stipulated in para. 3 of art. 1347 that "despite all these, the person who unjustly got rich has to return the value according to the date of the enrichment."

It has to be mentioned the fact that the corresponding provisions in Québec in the Civil Code, i.e., art. 1493, which represented the source of inspiration of the Romanian law-maker, do not include any mention regarding the guilty character of the attitude of the enriched person.

In this regard, in the recent doctrine there have been two fluctuating trends between identifying this condition as "enrichment should not be imputable to the defendant" [4] or that "the enriched person should be of good faith".[5]

Thus, even if under the Civil Code of 1864 it was analyzed [6] the good faith of the enriched person as a legal condition of the institution, currently the same author speaks about the circumstance that the enrichment should not be imputable to the defendant, but in his argumentation retains that the grounds of the action de in rem
verso consists of the general obligation of any person of not getting rich unjustly to the prejudice of another person and not of a culpable behavior of the defendant. The respective moral duty involves the absence of any guilt of the enriched person, who has to return, as the final part of art. 1345 stipulates, only the value of his enrichment, even if the claimant's impoverishment is higher.

It was stated [7] that the unjust enrichment is a subsidiary source of obligations, so that, anytime the increase of a patrimony takes place as a consequence of an imputable act of his owner, it will be subject to a special sanction, in relation to the nature of the act through which the enrichment took place. It was also noticed that the unjust enrichment raises questions only about the legal ground of the enrichment (the cause of the obligation) and not the imputability of increasing the own patrimony. Consequently, the condition imposed by law so that the enrichment takes place "non-imputably" does not account for the mentioned definition.

Later, the same author [8] states that a text analysis of art. 1345 of the Civil Code highlights the fact that unlike the undue payment, defined from the perspective of the person who receives it, the unjust enrichment appears as a sanction of the person who got rich to the prejudice of another person; the same conception can be found in art. 1493 of Québec Civil Code. Therefore, the reality which is the starting point is the enrichment, not the impoverishment. It is the reflex of the same classical conception about the aim of the civil criminal liability, which starts from the reality of the act of the person who has to be sanctioned, not from the prejudice suffered by the claimant, which has to be repaired. It was also expressed the opinion that the unjust enrichment has to be analyzed as a remedy that aims at the amelioration of the unjust situation of the impoverished person, which makes the premise of any unjust enrichment be examined from the perspective of the effect it produces.

On the other hand, for the argumentation of the opinions [9] which require that the enriched person be of good faith exactly the same arguments were presented, regarding the general duty of not getting rich to the prejudice of another person and the absence of any culpable behaviour of the enriched person, the contrary consequence being the activation of the civil criminal liability.
If the enriched person was of bad faith it is not the case of unjust enrichment [10], but of an illicit and prejudicial act for the impoverished, act that can lead to the implication of the civil criminal liability of the enriched person, in the conditions stipulated by art. 1357-1359.

It was also stated that the non-imputability of the enrichment equals in fact to the good faith of the enriched person. [11]

According to another opinion [12], the analysis of the good faith of the enriched person should not be mistaken for the guilt of any party to the occurrence of the legal act that led the enrichment and the correlative impoverishment without a cause.

Considering that the equal sign cannot be put between the non-imputability of the enrichment and the good faith of the enriched person, some specifications are necessary.

The good faith is an exclusively legal concept with moral fundament. [13]

As regards the good faith, we mention the provisions of art. 14 para. 2 of the Civil Code according to which the assumption of good faith is made until the contrary evidence. Hence, the impoverished person will not have to make the evidence of the good faith of the enriched person, as this is legally assumed. Even if apparently the enriched defendant has the possibility to make the contrary evidence, so that to prove his bad faith, this is not necessarily in his favour (we take into account the extension of the obligation of restitution), only if the possible action in civil criminal liability could not be promoted because of a juridical obstacle, such as for instance the extinctive prescription, in which sense the action de in rem verso would not be also admissible as the impoverished person made use of another juridical means to recover his impoverishment.

We emphasize the fact that the unjust enrichment is a licit legal act whose initial fundament was equity, an institution regulated as such in the chapter dedicated to this source of obligations. That is why using terms such as "the person who, non-imputably, got rich", "the injured" or "the prejudiced" which belong to a civil liability for an illicit act appears unjustified.

An argument in the favour of imposing the good faith as a juridical, subjective condition of the unjust enrichment can consist of the corroboration of the modality of
establishment the extension of the obligation of restitution with the removal by the law-
maker by Law no. 71/2011 of the stipulations of para. 3 of art. 1347 regarding the
moment of establishment of the extension of the obligation of restitution in the
hypothesis of a bad faith enriched person.

In the case of civil criminal liability based on guilt, the recovery of the prejudice
has to be integral, but in the case of the unjust enrichment the law-maker took into
account the double limitation of the extension of the duty of restitution given by "the
measure of the patrimonial loss suffered by the other person, without having to make
the restitution beyond the limit of his own enrichment". It is thus revealed how the
character of the unjust enrichment was established to be a legal remedy for a licit act
that created a relationship of obligation, and not a sanction of an illicit act.

As regards the relationship between the good faith and the civil criminal liability,
taking into account the general opinion according to which the civil criminal liability
cannot be influenced in its extension by the author’s good faith as it is subject to the
principle of integral restitution and the principle of non-proportionality to culpability and
predictability, it was considered [14] that the good faith is inoperative. The application of
that principle makes the good faith inoperative, but also what belongs to the essence of
the liability, namely the existence of guilt under all its forms (offense committed on
purpose or intentional offense or offense committed negligently).

On the other hand, retaining the fact that the notions of guilt and bad faith are not
equivalent, we consider that the renunciation of the law-maker to the regulation of the
moment in relation to which it is established the extension of the obligation of restitution
in the hypothesis in which the enriched person was of bad faith, a solution established
by Law no. 71/2011, confirms the opinion according to which the legal figure of the
unjust enrichment was legislatively consecrated in relation to the good faith of the
enriched person, which justifies the special character of his obligation of restitution.

Conclusions

We consider that for designating the behaviour of the enriched person in relation
to his act that determined the augmentation of his own patrimony it is more appropriate
to relate to the notion of good faith of the enriched person. Thus, the good faith is in fully
agreement with and justifies inclusively the specific extension of the enriched person’s
obligation of restitution "to the extent of the patrimonial loss suffered by the other person, but without having to make the restitution beyond the limit of his own enrichment". On the other hand, non-imputability of the enrichment leads more to the idea of guilt of the enriched person and implicitly to the civil criminal liability, in which case the obligation of restitution is integral, regardless of the value of his enrichment.

As we discuss about a licit legal act it is necessary an equitable remedy of the economic and juridical unbalance thus created between the two patrimonies, and not the sanction of a culpable behaviour. Hence, considering the action de in rem verso as a remedy, not as a sanction of the unjust enrichment corresponds both to the appreciation of the enriched person’s behaviour from the viewpoint of his good faith and to the specific modality of establishing the extension of the enriched person’s obligation of restitution.

We also consider that the external manifestations that belong to the structure of the good faith and that accompany the legal relationship of obligation generated by the unjust enrichment will have a totally different configuration than those that characterize the notion of good faith in the case of the legal acts, being particularized by the exigencies of the duty of not getting rich to the prejudice of another person. Thus, the subjective behaviour of the enriched person has to be dominated by ignoring the material act of the enrichment of his patrimony or by his intimate conviction that this added value is entitled, respectively that his own enrichment is based on a legitimate ground.

As regards the current regulation of the institution, we consider de lege ferenda that it should be eliminated the use of the expressions "the person who, non-imputably, got rich", "the injured" and "the prejudiced", expressly stipulating the good faith of the enriched person as a condition of the unjust enrichment. We do not consider a problem the use of the traditionally consecrated terms in the juridical language “the enriched person” and “the impoverished persons” even if they apparently lack the legal character, especially because other European legal systems also use them.

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[10] We also mention the isolated opinion in the literature, expressed most probably before the modification of the Civil Code by Law no. 71/2011 and the removal of the provisions of para. 3 in art. 1347 in the Civil Code, according to which even if the enriched person was of bad faith, he returns the amount of the enrichment at the date of receiving the act of enrichment, thus being practically admitted the existence of the unjust enrichment also in the hypothesis in which the enriched person was of bad faith. In this regards see, I. Turcu, Noul Cod Civil. Legea nr. 287/2009. Cartea a V-a Despre obligaţii (art. 1164-1649). Comentarii şi explicaţii (The New Civil Code. Law no. 287/2009. Book V On Obligations), C.H. Beck Publishing House, Bucharest, 2011, p. 405.


Key notes on the regulation of alternative consumption disputes resolutions procedures in the European Union Law

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Abstract
Most consumers, faced with violations of their rights by professionals, are reluctant to address the Court, considering the legal proceedings too complicated and too expensive, at the same time. This context, detrimental to consumers, could be improved by a coherent regulation of alternative procedures for the settling of potential disputes occurring between consumers and professionals, procedures which, in principle, are simpler, faster and less expensive.
In these circumstances, the European legislator considered essential the need to implement in all the Member States some common principles for the operation of consumer disputes alternative settlement by adopting the Directive no. 11/2013 on the alternative consumer dispute resolution for and the Regulation (EU) no. 524/3013 on online consumer dispute resolution.

Keywords: consumer protection, consumer litigation, internal dispute, cross-border dispute, court procedures, ADR procedure, ADR entity.

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1. The premises for the passing of the Directive no. 11/2013/EU on alternative consumer dispute resolution

It is widely known that in the European Union, the consumer protection legislation is characterized by its indissoluble connection with the establishment and proper functioning of the internal market. Generally, the existence of some regulation differences between the Member States, both on substantive grounds, as well as on proceedings grounds, determines obstacles in cross-border exchanges, at the same time undermining the consumer confidence in the internal market. More specifically, in relation to the procedures for dealing with consumer complaints, both on the sectors covered by these procedures and on the quality thereof, these regulatory differences are an important reason for which the consumers do not buy goods and / or services from another Member State as they are not convinced that a possible dispute with a professional can be resolved easily, quickly and inexpensively. Most of consumers, faced with violations of their rights by the professionals, are reluctant to address the
Court, considering the legal proceedings too complicated and too expensive. This context, detrimental to consumers, could be improved by a coherent regulation of the alternative procedures to solve possible disputes occurring between the consumers and the professionals, procedures which in principle are simpler, faster and less expensive. In addition, in some Member States, there is a considerable delay of the cases pending in the Courts, which prevents the EU citizens to exercise their right to a fair lawsuit, within a reasonable period of time.

In these circumstances, the European legislator considered essential the need to implement in all Member States some common principles for the operation of the alternative consumer disputes resolution, meeting thus the requirements of ease, speed and accessibility (low costs) to cover all sectors of activity.

In this regard, on May 21st 2013 the Directive no. 11/2013 on alternative consumer dispute resolution was passed (Directive on consumer ADR) and on the amendment of Regulation (EC) no. 2006/2004 and of Directive 2009/22/EC [1]. Together with the Regulation (EU) no. 524/3013 on online consumer dispute resolution (Regulation on consumer ODR) [2], the Directive is part of the so-called legislative package on the alternative consumer dispute resolution addressing the problem of effective and concrete implementation of the consumer rights in their disputes with the professionals, considered by the doctrine, the Achilles heel of the consumption law [3].

The two legislative acts are designed as two interconnected and complementary legislative instruments. Thus, the regulation provides the establishment of an ODR platform (on line disputes resolution), to provide the consumers and the professionals with a single point of accession for online alternative dispute resolution through ADR entities that are connected to the platform, thus providing a means of alternative consumer dispute resolution with the help of some quality ADR procedures. The concept of ADR procedure includes extremely varied ways. In general, the use of these procedures allows the solving of disputes without the need to go through the legal proceedings, due to the involvement of an entity outside the Parties, such as: an arbitrator, a mediator, an ombudsman or a complaints office, excluding direct negotiations between the parties.
By the time this Directive was passed, the ADR procedures were not sufficiently developed and consistent, despite several initiatives at the EU level; exempli gratia, the European Commission passed two recommendations on the procedures for the solving of alternative consumer disputes [4], creating at the same time, two networks responsible for ADR: ECC [5] and FIN-NET [6]. Therefore, in order to strengthen the consumer confidence in the internal market, including in the online trade field, and to exploit the potential of the cross-border trade, the regulations passed provide the development within the European Union of a proper functioning ADR system, based on the ADR procedures existing in the Member States and to observe the legal traditions thereof.

2. Scope of the Directive

The scope of alternative procedures covered by the Directive is relatively wide, as the purpose is to support the functioning of the internal market while maintaining a high level of consumer protection by ensuring that the disputes occurring between the consumers and the professionals will be solved by the bodies applying the extrajudicial procedure with impartiality, transparency, effectiveness speed and fairness.

According to art. 2 of the Directive, this applies to the alternative solving procedures of national and cross-border disputes concerning the contractual obligations arising from Sale or Service Agreements concluded between a professional established in the Union and a consumer residing in the Union, through the intervention of an ADR entity which either proposes or imposes a solution or brings the parties together in order to facilitate an amicable settlement.

A first remark, important to be done after reading this text, is that, for a better understanding of its scope, one should consider the definitions that are found in art. 4 of the Directive. If some of them are well known, such as the definition of consumer [7] or of the professional [8], others are designed to clearly delineate the scope of the Directive.

Therefore, both the national and the cross-border disputes are considered which concern the contractual obligations that may arise from Sales or Services Agreements, where the quality of the parties, consumer, respectively the professional, is essential.
Per a contrario, the Directive scope thus excludes the extra-contractual disputes, such as, for example, a dispute that has as object the pre-contractual information obligation.

According to the definition contained in article 4, paragraph f), decisive for the classification of a dispute as being cross-border, is the fact that, when ordering goods or services, the consumer is resident in a Member State other than that in which the professional is established. Also, the ADR entity is any entity, irrespective of the name thereof, which is established on a durable basis and offers the resolution of a dispute through an ADR procedure and which is included in a list according to the mechanism provided for by art. 20 of the Directive. The inclusion in this list is decided by each competent authority, evaluating whether the dispute settlement entities that have been notified to it qualify as ADR entities falling within the scope of the Directive and meeting the quality requirements laid down.

The following are excluded from the scope of the directive, according to par. 2 of art. 2: the procedures that are carried out before the dispute resolution entities where the natural persons in charge of dispute resolution are employed or paid exclusively by the professional, unless the Member States choose to allow for such procedures to be considered ADR procedures in accordance with the Directive and the requirements laid down are provided, including the specific requirements of independence and transparency; the procedures subject to the systems for the handling of consumer complaints managed by the professional; non-economic services of general interest; disputes between professionals; direct negotiations between the consumer and the professional. Also, the Directive does not apply to the attempts made by a judge to settle a dispute in the course of the judicial proceedings concerning that dispute, to proceedings initiated by a professional against a consumer, to health services provided to patients by health professionals, including prescribing, dispensing and provision of medicines and medical devices, to public academic or additional education institutions.

3. Requirements Applicable to ADR Entities

The Directive sets forth quality harmonized requirements for the entities applying alternative dispute resolution procedures in order to ensure the same level of protection and the same rights to consumers in all Member States. In this respect, the following
quality requirements are established, that the ADR entities and the ADR procedures must meet:

a) expertise, independence and impartiality (art. 6); therefore, the individuals responsible for ADR should, first of all, have the knowledge and skills necessary in the field of alternative dispute resolution or the judicial settlement of consumer disputes, as well as a good understanding of the legislation. Secondly, these people will be appointed for a period sufficient to ensure the independence of their actions and cannot be dismissed without good reason. Then, in order to ensure a fair character, these people should not receive instructions from either party, and the compensation must be done in a way that is not bound by the outcome of the procedure [9].

b) Transparency (Article 7); the ADR entities must publish on their Internet sites, on durable support, clear and understandable information about the entity and about the ADR procedure, such as: their contact details, the fact that the ADR entities are included in a list in accordance with art. 20 of the Directive, the individuals responsible of ADR, the types of disputes they are competent to deal with etc.

c) Efficiency (Article 8); the Directive deems met the efficiency requirement if the procedure is available and easily accessible online and on paper for both parties irrespective of where they are located, the ADR procedure is free of charge or at a symbolic price for consumers, the parties have access to the procedure without the requirement to use a lawyer or a legal adviser, the result of the ADR procedure is made available to the parties within 90 calendar days of the date on which an ADR entity has received the complete file to the applicant.

d) Accuracy (art. 9); In this respect, the criteria that ADR procedure should meet are established, as for instance, the parties have the opportunity to express their point of view, to receive from the ADR entity, the arguments, the evidence, the documents and the facts presented by the other party, any statements and expert opinions and to comment on them; the parties are informed that they may seek independent consultancy or they can be represented or assisted by a third party at any stage of the proceedings; the parties are informed about the outcome of the ADR procedure, stating the arguments on which it relies. Similarly, in the case of ADR procedures, which aim at solving the dispute by suggesting a solution, the parties should be informed of their right
to withdraw from the proceedings at any time, if not satisfied with the conduct of the proceedings; before accepting the solution proposed, the parties must be informed on the following elements: they can choose whether or not to accept / follow the solution proposed, that the solution proposed may be different from the one established by a Court, that before giving the consent to a proposed solution or amicable agreement, are allowed a reasonable period of time to reflect.

e) Freedom (Article 10): This requirement is reflected, on the one hand, by ensuring the non-binding nature of a possible agreement between the consumer and the professional to submit complaints to an ADR entity, if it was concluded before the occurrence of the dispute and if it has, as effect, the consumer depriving of his/her right to bring an action in Court to resolve the dispute. In relation to this requirement, are evocative the specifications on the conditions under which the right to bring an action in Court could be compromised under some alternative procedures for disputes settling brought by the Court of Justice of the European Union [10]. On the other hand, within the proceedings aimed at resolving the dispute by imposing a solution, it can become binding on the parties only if they were informed in advance about the binding nature of the solution and if they formally agreed.

f) Legality (Article 11); This requirement takes into account the consumer remedies imposed by the ADR entity, distinguishing between the internal character disputes, in which case there is no a conflict of laws and the cross-border disputes. Thus, in the first case, the consumer is protected by the fact that the solution imposed cannot lead to depriving the consumer of the protection provided by the mandatory legal provisions of the country in which the consumer and the professional normally reside [11]. A similar rule is also applicable in the other situation; thus, if the applicable law is determined according to the rules of private international law, or in accordance with the Regulation (EC) no. 523/2008 (Rome I Regulation) or in accordance with the Rome Convention of June 19th1980 on the law applicable to contractual obligations, the consumer cannot be deprived of the protection guaranteed by the mandatory provisions contained in the legislation of the Member State in which he/she normally resides.
3. Conclusions

As conceived, the Directive no. 11/2013 on the alternative consumer dispute resolution, can become a viable alternative of the traditional Court proceedings, which can be used by the consumers harmed in the wake of their rights breach by professionals, in the matter of contractual obligations. It is premature to talk about the real impact of the directive, given that it has not yet been transposed in all Member States and it is unlikely that this will happen, although the transposition should be carried out by 9 July 2015. In the specialized literature, it is deemed with good reason, that the correct and in term transposition of the Directive will be crucial not only to strengthen the consumer protection and to ensure their access to quality ADR procedures, but also because it equally, is a prerequisite for the proper implementing of the Regulation (EU) no. 524/3013 on online consumer dispute resolution. [12].

At the same time, we should stress that the European legislator uses in this case, the technique of minimum harmonization, leaving Member States a significant margin, therefore, the application thereof will depend greatly on the national political choices. According to Article 2 para. 3, the Member States may maintain or introduce rules that exceed those laid down by this Directive, in order to ensure a higher level of consumer protection. Also, according to par. 4 of art. 2, this Directive acknowledges the competence of the Member States to determine whether the ADR entities established on their territory should be able to impose a solution.

It is to be noted, once again, the European legislator preference for the minimum harmonization technique, mainly used in the field of consumer protection, based on the argument that although favoring the legal regime differences, it creates the conditions to provide a high level of protection for consumers.

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[1] Published in the Official Gazette, the Law no. 165 of 18 June 2013. The transposition of this Directive should be carried out by 9 July 2015. In Romania, the Directive has not been transposed yet; the National Authority for Consumers Protection (ANPC) proposed for public consultation a presentation of a bill on the alternative resolution of the disputes between consumers and professionals. In Belgium, for example, the Directive was already transposed by the Law from 4 April 2014 on inserting the Book XVI Extrajudicial Regulation of the Consumption Disputes in the Code of Economic Law. (http://www.ejustice.just.fgov.be/cgi/article.pl?language=fr&caller=summary&pub_date=2014-05-12&numac=2014011245).
2013. The Regulation constitutes a European regulatory instrument, mandatory on all its elements and directly applicable in the national legal systems, therefore, an instrument that may be used to adopt an uniform regulation on the matter.


[5] ECC-NET - is a network of European consumer centers which directs the consumers to a ADR entity competent in another European state in the case of cross-border disputes. The European Consumer Center in Romania, as part of this network, has jurisdiction only in the amicable settlement of the cross-border disputes, respectively those disputes that arose following the acquisition by a resident consumer in Romania of faulty products/services from an economic operator established in a EU Member State, other than Romania, as well as those disputes arose following the acquisition by a consumer resident in another EU member state of faulty products/services from an economic operator with the headquarters in Romania.

[6] FIN-NET is a network of national extrajudicial settlement systems concerning the complaints (appeal chambers, ombudsmen and mediators), which handle the complaints of the cross-border consumers within the financial services.


[9] According to the letter c) of the Article 6, paragraph 1, the SAL responsible individuals have the continuous obligation, throughout the SAL procedure, to immediately notify to the SAL entity any element which may affect their independence and impartiality or which could give rise to a conflict of interests with any of the parties of the dispute to be to settled. This does not apply if the SAL entity consists of only one person.

[10] C.J.U.E., The Decision from 18 March 2010 on the joined cases C-317/08, C-318/08, C-319/08 and C-320/08, Rosalba Alassini against Telecom Italia SpA (C-317/08) and Filomena Califano against Wind SpA (C-318/08) and Lucia Anna Giorgia Lacono against Telecom Italia SpA (C-319/08) and Multiservice Srl against Telecom Italia SpA (C-320/08) (...). Neither the principles of equivalence and effectiveness, or the principle of effective judicial protection do not oppose to a national regulation which requires, for such disputes, the prior implementation of an extrajudicial conciliation procedure, when this procedure does not lead to a mandatory decision regarding the Parties, does not cause a substantial delay for bringing an action in the court, suspends the prescription of the concerned rights and does not generate costs or generates reduced costs for the parties, to the extent that, however, the electronic means is not the only means of access to that conciliation procedure and interim measures are possible in exceptional cases, where the urgency of the situation requires them.


The Independence of Judge – a guarantee of the rule-of-law state

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Abstract
One of the principles of justice organization and performance is the independence of judge. This principle implies the fact that the judge may not be undoubted in any way when resolving different invested cases in the determination of the pronounced solution, excluding all divisioned activity referring to the Ministry of Justice. Constitutional principle of the independence of judges is an essential guarantee for any system of law, reflected in the procedures of the recruitment and promotion of judges, in their deposition, but also in judges remuneration, adding the control of court orders made after certain juridictional procedures.

Keywords: independence of judge, immovability, justice, rule-of-law.

1. General Considerations to the Justice

One of the aspirations of people from everywhere is justice. Justice, as a public service, organized by the state in centuries and millennia, has been carried out on the basis of different criteria, but it was always considered that those official criteria are the criteria of justice. The rule-of-law state requires that the dimension of constitutional democracy, the independence of the judiciary and judges obedience only to the law, in order to ensure that the act of justice is straight, both to the official criteria and the aspect of popular perceptions.

It is understood, after December 1989, that the Romanian citizens have had an expectation in respect of justice. For various reasons, citizens perception of justice is far from what it should actually be justice, as an element of Western civilization where to Romanian society tends [1].

On the basis of European officials warnings in respect of misdeeds in the justice system, or of the corruption phenomenon as a whole, it has laid the foundations of legislation modifications by filling out existing texts, including constitutional, without any modification which, the process of identifying solutions for the entry into normality would have been more heavily, which would generate a loss of the citizens trust in the act of justice.
By "justice" someone should mean, the one hand court system (judicial authorities), and on the other hand we understand the activity of processes for resolving the civil, administrative, commercial, penal, employment, etc., for the application of penalties, the laying down of the rights and infringed legitimate interests. In usual language, doing justice means doing equity. And Puffendorf’s remark, within the meaning of that, "If there weren't justice, we would eat each other", has been and remains valid even today.[2]

2. Aspects Concerning the Independence of Justice System

Designed as a function performed independently and impartially, the justice has established itself as an idea and reality in which people believe that it can defend them when their legitime rights and interests are infringed, as a similar of justice always triumphant. Fiat justitia pereat mundus (justice should run its course, even if the world were to be destroyed) has become a favorite saying in connection with the justice. The meaning of this principle is that as well as the recurrent right of Divinity is steady in its firmness, unveiled in all conditions, even of collapse all over the world, just as the judge who is in charge of a specific event was to be completed and resolved as he urges science and consciousness, even if, in the meantime, it would be the end of the world in all the terrible deeds (Werner Bergengmen).[3]

The understood and reversed independence of the judges is meant to have a great role in ensuring all the institutions of the rule-of-law state. The correct division of doing justice is in fact an essential proof of the attachment of a country or another in front of the great international principles. On the other hand, it is found that the truly effective role of judicial power shall be subject to the guarantee of the judges immovibility, by clear and effective mechanisms to guarantee the personal rights, the access without discrimination at all the courts of law, the opportunities of any citizen who feels that an injustice has been done to appeal to Justice services. Arbitrary interference of the executive in justice has always been a real obstacle in the way of exercising the functions of courts of law. Mixtures of any kind and "suggestions" given to the judges in one way or another have blighted the idea of justice, thereby reducing the value of one of the most important functions of the state and reducing its servers to the modest position of ordinary officials. Besides his ideas of the rule-of-law, and the
guarantee of an authentic democracy are, therefore, the re-establishment of the middle-aged prestige of the judiciary, to guarantee its efficiency mechanisms, discarding any conditions which would dent, it would prevent or diminish the reputation of judges to make dependent on certain political forces. In this respect it is to be mentioned that all democratic constitutions granted an essential role of the judiciary, the matter shall be referred to law supremacy, ensures that immovability of judges, shall establish clear, efficient mechanisms that the citizens can use to address justice and obtain the ensuring of compliance with their rights.[4]

3. The Independence and Commitment of Judge Only to the law

It is one of constitutional principles of the justice system. According to this principle, in the course of work, the judge shall be subject only to the law and his own conscience. As a result, in solving the disputes, the judge may not receive any kind of orders and instructions, hints, tips or other such stimuli on the given solution.

The independence of judge and of the justice system, even come under occulted/balance of powers in the state, people speak of judicial independence of the authority. It expresses the possibility of protection of governers, being in fact a guarantee for the abuses of powers (authorities). Of course, independence is substantially linked to the character, morals and traditions specific to each country, it cannot be guaranteed absolutely by law.[5]

According to the dispositions of Article 124 para.(3) of the Constitution of Romania, "Judges shall be independent and conformed only to the law". Independence of judges and their obedience only to the law are of such a nature as to ensure the quality and objectivity of judgments, to inspire confidence in the course of their work parties courts and increase in this way the justice prestige.[6]

Independence of judges considers, in the first place, their relationships with other public authorities. Indeed, the judges are not in relationships of subordination toward other public authorities and regardless of their position in the state .[7]

4. Guarantees Referring to Independence of Judges

A special role to consolidate the independence of judges is represented by the rules relating to recruitment, promotion, immovability, the incompatibilities establishment, judges responsibility, as well as the control of judgments.
Admission to Magistracy shall be carried out following a contest based on professional competence, skills and a good reputation, it will be made by National Institute of Magistracy, in compliance with the principles of transparency and equality.

Independence of judges is guaranteed by another principle, covered by Article 125 para. (1) of the Constitution of Romania, namely that of judges inamovibility, principle according to which the judge is protected against transfer, assignment, detachment, suspension and arbitrary prosecute.

The provisions of Article 21 para. (3) of Law No. 303/2004 shall provide that only the judges appointed by the President of Romania shall be irremovable, judges trainees enjoying only stability. Promoting judges shall be made only following a contest organized by the Superior Council of the Magistracy, and the transfer, the delegation and the secondment of judges shall be available to the judges of the Superior Council of the Magistrature.

Sanctions against judges shall be made only in accordance with the conditions laid down by the law, by the judges of the Superior Council of the Magistracy, in accordance with the procedure laid down by an organic law. Division judgment is subject to appeal to The panel of 5 judges at the High Court of Cassation and Justice (Article 51 para. (3) of Law No. 317/2004 ).

Incompatibilities establishment constitutes of another guarantee of the independence of judges. Thus, the office of a judge, irrespective of the level at which court and carrying on their business, it is incompatible with any other public or private office, except that of an academic professorial activity. This ensures the independence and impartiality of judge.

Immovability assumes that the judge may not be transferred (to another court or to the prosecutor's office) or promoted to a superior court without his consent, and the disciplinary sanction can be ordered only in case of having committed serious deviations and after a jurisdictional procedure.

Another guarantee for the independence of judges is the control of the decisions of the court, checking that it is carried out by courts in compliance with court proceedings.
Immovability is a guarantee of the proper management of the justice system and
the independence and impartiality of judge. It is not included only in the interest of
judge, but also in the case of the justice system. That's why the legislator understood to
lay down special conditions for appointment as a function of the magistrates. This
system requirements established for appointment magistrates are meant to carry out
effectively the principle of independence of judges, while at the same time providing
prestige professionalism and justice. Immovability refers to the judge status, not to his
ability to be part of the court.[10]

Judges may not be independent of law, as they were bound to respect and apply
the law.[11]

Constitutional provisions, according to which, "Judges shall be independent and
subject only to the law", are not declaratively, but they constitute binding constitutional
rules for the Parliament, which has duty to legislate appropriate mechanisms to ensure
real independence of judges, without which the existence of the rule-of-law state cannot
be conceived[12].

5. Constitutional Jurisdiction on Romanian Independence of Judge

A vast range of decisions of the Constitutional Court relating to independence of
judge, we will examine only a part of them, namely those concerning legal guarantees
of the principle of independence of judge.

Interpretative solutions given in the appeal in the interests of law, being named
clarifications of law may not be regarded as source of law, in the ordinary sense of this
concept. The institution of appeal in the interests of law confers to the supreme court
judges the right to give a certain interpretation, by unifying the differences of
interpretation and application of the same text of law by inferior courts. Interpretative
solutions also remain constant and uniform, and are not linked to some of the parties as
they have no effect on previously pronounced solutions, which have been in judged trial,
are invoked in doctrine as "judicial precedents", being considered by legal literature as
"secondary sources of law" or "interpretative sources".[13]

European Court for Human Rights, through the judgment handed down in
"Brincat against Italy", 1992, acted that independence of judges is regarded in relation
to the executive, without the fact that this independence exclude subordination to other judges, if they enjoy themselves to be independent of the executive.

The Court stated that: "The principle of judge’s obedience only in front of the law, in accordance with Article 123 para. (2) in the Constitution, does not and cannot have the significance of applying different and even contradictory of the same provisions laid down by law, depending only by subjective interpretation of belonging to different judges. Such an idea would lead to the consolidation, even on grounds of independence of judges, of some solutions which could be an infringement of the law, as it is unacceptable, whereas the law was given, its application may not be different, and intimate conviction of judges cannot justify such a result." The Court also considered, by the same decision, that "Ensuring unitary character of judicial practice is imposed by constitutional principle that all citizens are equal before the law and public authorities, therefore including the judicial authority, because this principle would be seriously affected if in applying one and the same law courts solutions would be different and even contradictory" [14].

Independence of justice involves a special status, adequate to magistrates, designed to print an unquestioned value to act of justice, through the protection of members of magistrates against subjectiveness and unjustified or abusive actions of criminal prosecution components which could affect their credibility[15].

Principle of independence of justice, enshrined in Article 124, para. (3) of the Constitution, derives from the separation of powers in the state, in view of the need of a balance between the authorities who exercise power in the state. It is imperious that courts of law to be protected from any interference and, therefore, independence of judges is a fundamental guarantee of the pursuit of human rights.

Principle of independence of justice reforms on the one hand, the judges requirement to settle disputes with which are invested only based on the law, but on the other hand, the requirement that all public authorities refrain from any interference in the activity of the court.

Considering the judicial control which shall be exercised by the courts which rectify the judicial remedies available on courts which have pronounced attacked judgments, it does not constitute a restriction on the independence of justice, because
the judiciary is always back, which is not possible to have an influence on judge who delivered the judgment given to judicial supervision.

The legal criticized provisions do not constitute a breach of the independence of judge by the fact that, rejudging the case, it takes the resolve in as laid down by the court disposition, because these guidelines are given in the course of judicial activity of courts of varying degrees, on the way to pronounced judgment on the basis of contradictory debates. Also, independence of judge from the fund is not analyzed by the fact that, rejudging the case, it adopts the resolve in as laid down by the court disposition, because by doing this he is not subject to a foreign authority by the judged cause, but he complies with a judgment given in the exercise of legal jurisdiction of judicial control.

On the other hand, the Court noted that in all the legislations shall be permitted upper courts intervention within the framework of the system of appeal, this principle keeping independence of the justice system. In the same direction is the case-law of the European Court of Human Rights relating to the concept of "independent court", contained in Article 6, paragraph 1 of the Convention for the protection of human rights and fundamental freedoms (Cauza Pretto and others against Italy, 1983) [16].

Thus, the Court noted that both independence of justice system - institutional component (concept of the "independence of judges" referring entirely to judges, but covering the whole justice system), as well as independence of judge - single component implies the existence of many aspects, such as: no involvement of other powers in respect of the work of the court, the fact that no other component part than the courts cannot decide on their specific powers provided by law, that there is a procedure laid down by the law relating to the means of redressing the decisions of the court, the existence of sufficient financial funds for the purposes of carrying out and managing the activity of the court, the procedure for the appointment and promotion on the basis of the magistrates and, possibly, the period for which they are appointed, appropriate working conditions, the existence of a sufficient number of magistrates of the respective court in order to avoid the risk of an excessive amount of work and in order to allow for the processes completion within a reasonable time period, proportional remuneration to the nature of the work, impartial distribution of the files, the
possibility to form associations which have as main object the protection of independence and interests of magistrates, etc.

There's no doubt that the principle of freedom of justice may not be restricted only to the amount of remuneration (including both the salary, as well as their pension) of magistrates, this principle involving a series of guarantees, such as: the status of magistrates (the access conditions, the nomination process, solid guarantees to ensure transparency of procedures by which the magistrates are to be appointed, promotion and transfer, suspension and termination of office), stability or their irremovability, financial guarantees, administrative independence of magistrates, as well as independence of the judiciary against the other powers in the state. On the other hand, the independence of justice includes financial security of the magistrates, which involves the ensurance of social guarantees, such as the pension of service of the magistrates.

In conclusion, the Court found that the principle of freedom of justice defend the pension of magistrates service, as an integral part of their financial stability, to the same extent to which appear other warranties of this principle.

Both in the case law of the Court of Romania’s Constitution, as well as in the case law other Constitutional Court has stated that financial stability of the magistrates is one of guarantees relating to the independence of the justice system. Constitutional Court has found that the concept of the independence of judges shall include an adequate remuneration, comparable to the reputation of profession and for the purpose of responsibility. Taking into account the status of judge, the purpose of remuneration of judges is to ensure the independence, as well as to compensate for the partial restrictions imposed by law. Also, the requirement to ensure the adequate remuneration for judges is not only in connection with the principle of independence of judges, but also with the requirements of set qualification and competence and with prohibitions imposed on them [17].

Conclusions:
Independence of judge is a necessary element in a democratic society which implies that there is no interference with the act of justice, as well as protection of judge in relation to all pressures which could arise from the outside of public authorities.
Constitutional Court, by its vast law, has made a major contribution to judge outlines independence principle as a guarantee of the rule-of-law state.

Moreover, the independence of judge is guaranteed by immovibility principle, to which other specific guarantees add results from both constitutional provisions, the provisions of other normative acts, as well as on the extensive law of the Constitutional Court in this matter.

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Specific matters of the judgement in first instance when the object of the trial is about the liability of manufacturer for the quality of products

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Abstract
The Civil Procedure Code is establishing the general civil litigation broad sense. Sometimes, given certain reasons, the legislature intended to derogate in part or in full from the rules of civil procedure established by the Civil Procedure Code. In this regard, special civil proceedings were created. Regarding claims for the approach of producer responsibility for the quality of the lawmaker meant to regulate the content of special laws and legal procedures derogating from the Civil Procedure Code, meaning that we remind Law no. 240/2004[1], OG no.21 / 1992[2], Law no. 449/2003[3]. Analyzing these procedural rules which are derogating from common law, we find that, in reality they do not constitute the real special procedures that would involve a set of rules affected a particular purpose, but are rules derogating from the Civil Procedure Code rules which governing the procedural aspects within these proceedings, as we detail in the following.

Keywords: judgment in first instance, special procedures, liability, producer, consumer, written stage

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1. Preliminary issues

Running relations between producer and consumer in relation to the sale-purchase of defective products, can lead to the emergence of disputes between the two entities, disputes which can be resolved amicably out of court, or where this is not possible, these processes will be resolved by the ordinary courts or arbitration, thus obtaining the rights and obligations of each party under the law.

2. The consumer actions against the producer

Firstly, for the consumer, the following litigation situations are possible:
-the recovery of loss which suffered as a result of the lack of product safety / non-compliance product / product failure.

Ab initio, we mention that, regardless of the cause of action (tort liability, contractual liability, tort objective) the procedural aspects are the same.
From the point of view of the objective pursued by the applicant consumer action is an action against the manufacturer in achievement[4], because the consumer, who claims a civil right, is asking the court to obligate the manufacturer to a compensation for the damage that he suffered, the applicant seeks a judgment that if it will not be executed if the defendant voluntarily by the manufacturer will be made in enforcement.

Depending on the nature of the right that is recovered by action, this action is a personal one, as the applicant seeks the use of a right-consumer personal debt. At the same time, this action is movable personal one as it has a movable object by determining the law (a claim) [5].

Finally, depending on the procedural path chosen by part, as a rule, it is a primary action, but may include heads accessories such as costs. However, I appreciate that this may have an incidental [6] and can be made during a pending lawsuit by a third part or which is justifying its own right [7], in which case we are in the presence of an application for voluntary intervention main or only supports interests one of the original parties, in which case we are in the presence of an application for voluntary intervention accessories [8]. However, if the third part do not wish to intervene in the lawsuit between consumer and producer on his own initiative, the original claimant has the opportunity to make a claim in court [9], other persons in the conditions in which he is aware that the same food causes harm and others.

3. The Jurisdiction

3.1. The material competence of the court

Since we are assuming a share in achievement, material competence is shared between the two courts, and according to article 94 paragraph 1 item 1 letter j NCPC "any other requests which have the value of up to 200,000 lei including whatever the quality of the parties, professionals or non-professionals will be solved by the first court. However, given NCPC Article 98 which states that "jurisdiction shall be determined by the value of the application shown in the main end demand" over the amount of 200,000 lei application will be resolved by the second Court, being the court with unlimited jurisdiction under Article 95 para 1. NCPC point 1. However, if after the instance was invested intervene changes on the amount of compensation sought, so
that, in respect of new value belongs to another court jurisdiction should initially
invested court retains jurisdiction in dispute [10].

3.2. The territorial jurisdiction

In terms of territorial jurisdiction is fully applicable the rule which is established in
article 107 NCPC content, in the sense that, the demand is for the court where the
manufacturer is domiciled, if he is a physical person and in the situation in which the
producer is a legal person or a legal entity, the competence is for the court of the place
where he has his headquarters.

In this matter, considering the rationale of consumer protection, the legislature intended
to regulate an alternative jurisdiction. In this regard, we consider useful to analyze the
applicability of these disputes, two cases of alternative jurisdiction, cases governed by
Article 113, section 8 [11] and Section 9 NCPC.

As is clear from Article 113 section 8 NCPC in addition to the home or premises
court defendant would be competent court in the consumer's home, covering
applications performance, absolute nullity, cancellation, termination, termination or
unilateral termination of the contract with a professional or claims for compensation for
damages caused to consumers. Relating to the type of liability, we consider that the text
is applicable on the last sentence, in the event an application is requesting
compensation for the damage caused to consumers as a result of the movement of a
product unsafe.

With regard to the provisions of Article 113 Section 9 NCPC, the legislature
provided that, in addition to the home or premises court defendant would be competent
"court where the wrongful act was committed or the damage" for requests regarding
taxes arising from such unlawful act. Text analysis is useful and finds full force when
injury recovery is based upon the manufacturer's tort liability. In this sense, in the
following question: in such a case, (when under cover of injury torts) would be
competent court of the place or the damage occurred unlawful act committed with
application of Article 113 section 9 NCPC? From our point of view the provisions of
Section 9 Article 113 NCPC are not applicable to such an action, whereas coverage of
harm arising as a result of committing an illegal act by the producer, consisting in
putting into service of unsafe product, there is a law text specifically, that Article 113
NCPC pc.8 which specifically refers to "repair damaged consumer", without distinction as to the nature of liability, contractual or tort. Therefore, in consideration of the "ubi lex non distinguit, nec nos distinguere debemus", the text of Article 113, section 8 NCPC content is applicable to both types of liability. Accordingly, Article 113 NCPC section 8, as it concerns a specialized area and exclude applicable priority item 9 concerning a common law tort, unspecialized.

The jurisdiction signal the existence of a particular legal text, namely Article 12 of Law no. 240/2004 which provides that "action to repair damages is for the trial court in whose jurisdiction the damage occurred, is situated or, where appropriate, the domicile of the defendant".

Based on this text, the question arises: being a special text does not apply with priority over Article 107, Article 109, Article 113 NCPC?

The legal provision lays down another jurisdiction, at least in part, for proper action which seeks compensation for losses caused as a result of circulation of an unsafe product, respectively, establishes a jurisdiction alternative, meaning court of the seat or domicile of the defendant (provided case and article 107 NCPC) or the court at the place where the damage (Article 113 Section 9 variants of the NCPC). In this text the applicability of Law nr 240/2004, in our view, will be borne in mind that, according to Article 83 lit. k) of the Law no.76 / 2012 "any contrary provisions NCPC) is repealed, even if contained in special laws". In this regard, we consider that the Article 83 Article 12 is repealed default letter k) of the Law no.76 / 2012, Whereas Article 12 of the Law nr 240/2004 contains a provision on jurisdiction contrary to article 13, section 8 NCPC [12]. So, the jurisdiction for disputes promoted by consumers against producers or, where applicable, sellers conclude that NCPC art.107-109 applicable provisions, namely Article 113 section 8 NCPC.

And in this matter, in terms of territorial jurisdiction, we consider the applicable provision on the ability of the parties to choose the competent court. This is allowed by reference to the subject of such a request or payment of a sum of money found its full force the provisions of Article 126 paragraph 1 of the NCPC.
However, the choice of jurisdiction regarding all disputes through the special aspect of this matter, the lawmaker meant to provide expressly in the wording of paragraph 2 of Article 126 NCPC a derogation on the choice of jurisdiction.

Thus, protection of consumer rights disputes in the matter, the parties may agree to choose by agreement the competent court in terms of territory, according to paragraph 2 of Article 126 NCPC, but "only after the birth of the right to compensation, any agreement to the contrary is deemed unwritten".

Of course, this rule has a derogatory nature, which is censored the ability of the parties to establish jurisdiction of a particular court before delivery right to compensation is legislation enacted in order "to protect certain categories of persons and prevention of abuses [13]" in the case of agreements concluded with consumers, and other categories of persons mentioned in the law. In the situation in which the parties would violate the provisions of paragraph 2 of Article 126 NCPC with the consequence election court will settle the dispute before delivery is entitled to the compensation, such a clause will be deemed unwritten.[14]

4. The forms of intervention of third parties in disputes between the consumers and the producers

Regarding the participation of the third parties in litigation alleging breach of legitimate rights of consumers find their full force provisions on applications for voluntary intervention of third parties, admissible an application for voluntary intervention main under 66 art.61- NCPC, the third main intervening as reflected in Article 61 paragraph 2 NCPC [15] can claim a right for itself closely linked to the right to trial by the original applicant. In this regard, we believe that among the main claim made by the plaintiff - who report violations of the consumer by the manufacturer or other person required to respond to a legitimate right to intervene and the main voluntary third party-the consumer there is a close connection justified by the same product with different risk generated more harm consumers. In my opinion, an application to intervene in their own interests is fully admissible when another consumer who was injured in his rights by same product put in circulation by the manufacturer as the applicant, initially intervenes in the dispute between the applicant (consumer) and the defendant (producer) claiming
in turn a personal right against the manufacturer or the equivalent damage caused as a result of the circulation of a product unsafe.

The demand for voluntary intervention accessory [16], we appreciate that it is admissible in a trial pendente between the consumer and the producer, a third party intervenor it can hold, for example, a consumer association which has supported the applicant’s claims—the consumer, his interest is justified by the protection of interests of other consumers who have been or could be harmed by exposure by the manufacturer of risk products on the consumer market.

From the perspective forms of interference of third parties in relation to specific disputes between consumers and producers, we consider that only the complaint in the office of guarantee and the introduction of third parties should be admissible [17]. This, because the application of summons others as a form of forced entry intervention of third parties in the process, implies a third party could claim the same rights as complainant [18]. Or, the injury suffered by the consumer is personally assessed individually.

Even if there may be consumers who, after consuming the same product were injured, they could stand trial as plaintiffs, in this case there is a complicity standing, or as interveners in their own interest and not as interveners - applicants as Following applying for a lawsuit against the others, since they can not claim the same rights as the original claimant, the two applications regarding procedural independence, the outcome of a request is not likely to influence the outcome of the other application, through the personal nature of the damage suffered by each of the people who came into contact with a poor product.

We consider that an application for the detection [19] of the right holder would be inadmissible in the context of the claim would be the main applicant compensation to the producer-consumer product causing injury. This is because, for the admissibility in principle of such applications are required to be fulfilled two conditions: on the one hand, be made by the defendant in the proceedings, on the other side of the dispute to defend a real right [20]. Or, in the situation in which the dispute is the order the defendant to pay the applicant a sum of money in compensation for the damage suffered, it is apparent that the claim is a claim, something which leads to the
inadmissibility of such a request [21]. Of course, if the defendant or any party including ex officio court considers that there is no identity between the sue and the defendant as required in the report before it, can invoke a plea of lack of standing PASV defendant with the consequent dismissal of the action against promoted it as the locus against a person without passive.

In this context, we consider admissible a claim made by the defendant in warranty [22] against manufacturer in the event that the consumer would straighten an action in damages against the seller on contractual basis. The last one has the possibility of bringing a claim in guarantee against a third party, in this case the manufacturer, against which they could be drawn in the event they lost. Thus under Article 15 of Law nr.449 / 2003, "if the seller is liable to the consumer for lack of conformity resulting from an act or an omission of the manufacturer or operator of a chain of the same contract, the seller has the right to head against the charge of lack of conformity to the law. "Of course, the special law confers a right of option for the seller, in the sense of either opt for calling the manufacturer's warranty, either to promote its recourse against loss in the event of dispute promoted by the consumer. But although the special law provides, if the seller chooses to promote an action in regress after losing party manufacturer will be able to stand exceptio processus mali, with the consequent recourse if the application is rejected it will be able to demonstrate that, in event that would have been called in warranty in the dispute between the consumer and the seller had sufficient evidence as to lead to the rejection of the applicant's request. Of course, if in the action in regress manufacturer would fail to prove the existence of such means, the seller action could be admitted.

5. Derogatory aspects relating to the consumer's right of action for damages

The producer responsibility for consumer detriment as a result of the movement of a product at risk, poor or inconsistent to be engaged, whether it takes the form of contractual liability, tort or objectives. But for cases in which liability is intrinsic, being in the presence of strict liability, in particular liability under this legislature has established special limitation periods.

Thus, according to article 11 of Law nr 240/2004, "the right to sue for damages (...) is prescribed within 3 years, which run from the date on which the claimant knew or
ought to have informed the existence of damage, the defect and the identity of the manufacturer and the action for recovery of damages can not be brought after the 10th anniversary of the date on which the producer put the product into circulation."

Therefore, and in the case of strict liability, as for tort liability, the period in which the consumer may submit claim against the manufacturer in order to recover damages is 3 years, which term starts from the moment the consumer knew or ought to know the existence of damage, the defect and the identity of the producer.

However, if the common law the term starts from the time the injured person knew or ought to have known of the damage and the person responsible for its production, the special law introduced a third condition, namely the date of knowledge of the defect, which we highlighted in previous chapters that in this matter merges with the wrongful act.

In other words, although three are the elements that form the content of strict liability, the time at which the limitation period begins to run the consumer's right to seek redress is one, in that context, consider that you might not put in question the existence of many of limitation in relation to the time of knowing the damage, the defect and the person responsible, but since the fulfillment of the last of these, will begin to have effect the limitation period of three years.

However, the consumer's right to request the producer ordered to pay damages caused as a result of the movement of a risk product, knows limitations, in the sense that "action for recovery of damages can not be brought after the 10th anniversary of the date on which the producer put the product in circulation ".[23]

Therefore, an application for compensation after expiring the 10 years from the date the manufacturer has launched that product will attract dismiss it as inadmissible. I appreciate that the 10 years term is one of decay, which attracts the penalty of inadmissibility of an application for compensation after this time, not lateness of the application.

**Conclusion**

Given the existing consumer protection to special rules, it is natural that in disputes of this kind to be special rules relating to jurisdiction, locus or features of the forms of intervention of third parties. However, it can see that the special law sometimes
"silent" so go on to become fully applicable rules enshrined in the Code of Civil Procedure. In establishing civil procedural rule applicable to such litigation should be considered traditional contest between the general rule and the special rule. In this regard, we consider that the provisions of special laws of civil procedure mentioned above, the special rules apply with priority to the problem that regulates the scope, these rules complementing the Code of Civil Procedure (Article 2) It represents the common law, the natural complement the more special as these rules expressly sent to the Civil Procedure Code (eg Article 13 of the Law nr 240/2004).

References:
[1] Thus, according to the article 12 of Law nr 240/2004 " in the action for damage is competent the court in the territory where the damage occurred is situated, as appropriate, defendant";
[2] According to Article 16 para 2 of Ordinance no.21 / 1992, "Addressing the request for payment of moral damages or damages related remediation or replacement of defective products or services required by consumers or operators is for the competent court or the organism competent in mediation";
[3] According to Article 15 of Law nr.449 / 2003, "If the seller is liable to the consumer for lack of conformity resulting from an act or an omission of the manufacturer or operator of a chain of the same contract, the seller has the right to head against the charge of lack of conformity, under the law ";
[5] Idem, p. 299;
[6] According to article 30 paragraph 6 NCPC. "Incidental requests are requests within a trial in progress";
[7] For example, if the applicant makes a request in damages against the manufacturer of yogurt, the intervention requests may be made by the third parties which by consuming a foodstuff have suffered damage, in which case, interlocutory applications made by, and they in turn claim their own rights against the same defendant;
[8] The accessory intervention could be formulated by the Consumer Protection Associations which would take pending trial to support consumer claims;
[9] According to the article 68 paragraph 1 of the NCPC, "either party can sue another person who can claim on a separate application, the same rights as the plaintiff.";
[10] According to Article 106 NCPC, "the court according to the provisions on legal jurisdiction vested by the value of the application retains jurisdiction to judge even if the investiture, a change in terms of the amount of value the same object."
[11] Under Article 108 NCPC, "The application for summons against a legal person of private law and the court can make the place where she has a dismemberment unincorporated obligations to be executed in that place or that spring from dezmembrământului representative concluded by acts or acts committed in it. ";
[12] This is because the text provides consumer the court in the place as the competent court, whereas article 12 of Law no. 240/2004 regulates the court of the place of the crime;
[14] According to NCPC 126 para 2 "in disputes in matters of protection of consumer rights, and in other cases provided by law, the parties may agree on the choice of court, as provided in par. (1) only after the birth of the right to compensation. Any agreement to the contrary is deemed unwritten. ";
[15] According to Article 61 para 2 NCPC, "The principal Intervention is when the intervener claims for itself in whole or in part, right before the Court or as closely associated with it.";
[16] Under the provisions of Article 61, paragraph 3 NCPC, the demand for voluntary intervention by third party accessory is when he come into the process to support or defend claims one of the original parties, the claimant or defendant;
[17] When I argue the admissibility or the inadmissibility of an intervention in view of the current civil procedural regulation requiring mandatory court issue a decision to accept in principle on all forms of assistance whether they are voluntary or forced, unlike the old regulation court ruling on admissibility in principle only voluntary intervention requests;
[18] Under article 68 paragraph 1 of NCPC, "either party can sue another person who can claim on a separate application, the same rights as the complainant";
[19] According to Article 75 NCPC, "a defendant who has a good for another or who exercise rights on behalf of another may show the same thing in whose name holds or exercises the right thing if it was sued by a person claiming a real right of the good. ";
[21] In the last code "the use of this form of intervention is excluded in case of applications which exploit a personal right" - Pitesti Regional Court, dec.civ. nr.3828 / 1958 in popular Legality No.7 / 1960, p.115, quoted in M.Tăbărcă, op.cit., p.396. Referring to this solution, we consider that it is maintained in the current regulation;
[22] According to Article 72 (1) NCPC, "the interested party can call in a third party collateral against which it may proceed with a separate request warranty or compensation";
Specific aspects regarding the settlement of litigations within the consumers protection field, from the perspective of the new European regulations

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Abstract
The alternative dispute resolution settlement represent a viable alternative for classical justice. In the consumer protection field, the litigation settlement using extrajudicial procedures will enable the consumer accession to the effective and fast services for conflict solution. The unitary legislation in this field will produce the increase of commercial transactions on the internal market as well as concerning the cross-border commerce by institution of some plain and fast mechanisms for litigation settlement.

Keywords: alternative policies, consuming market, mediation, consumer protection

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1. Foreword

The alternative dispute resolution within the consumption related field stands for a constant preoccupation of the European Union, whose aim is for the internal market to be able to provide its consumers with some high quality standard products and services, as well as an efficient protection of the latter’s rights.

The legislation on consumers’ protection has significantly improved within the recent years. However, European consumers have to deal with some particular difficulties in terms of getting damages anytime one breaches upon their rights. Legal procedures tend to be difficult, expensive and time consuming, and most of the times they prove to be either inefficient, or they tend to provide an uncertain outcome.

Given all the aforementioned, at the European Union level, one has required the adoption of some unitary measures in terms of an alternative resolution of disputes, in terms of consumption, which should help European consumers overcome their linguistic barriers, the legislative differences as well as the costs, as involved. Thus, those consumers involved in litigations within the consumption market field and particularly, in
several cross border consumption related transactions, shall have some efficient procedural means at their disposal, so as to efficiently settle their litigations.

The term of such an alternative dispute resolution relates to certain extra – legal procedures regarding an amicable settlement of such litigations, such as mediation, conciliation, arbitrage, the appeal chambers, the adjudicator’s institution, etc., with several specific differences in terms of each and every single such method.

The ADR and ODR procedures, as regulated at the European Union level, shall apply in view of settling those litigations between consumers and traders, by means of one ADR entity, both in terms of the e – commerce and in terms of the offline commerce. In order to facilitate consumers’ access to such above mentioned procedures, one requires that at the European Union level there shall be applied a number of unitary, coherent and efficient procedures for the alternative resolution of disputes in the consumption market field, within the context that the actions taken at a unilateral level by the member states have had no satisfactory results whatsoever in terms of both consumers and traders alike.


Directive 2013/11/EU of the European Parliament and Council regarding the alternative resolution of disputes in the consumption related field, and the EU Regulation no. 524/2013 of the European Parliament and Council regarding the online resolution of disputes in the consumption related field, set up a number of efficient and low cost – consuming measures and procedures, in view of getting a fast resolution of litigations occurring in connection with the conclusion, running / performance of any sale or service providing agreement, both in the field of online transactions and in the offline trade field.

The drawing up of the two above mentioned normative deeds has occurred within the context where there were a number of differences between the alternative procedures in terms of the settlement of litigations in the consumption related field in the member states. Thus, one provides for a unitary framework which shall regulate the relationship between traders and consumers within the Union and which shall foster the
conducting of commercial transactions on the Union internal market under some safe conditions in terms of the security and protection of the consumers' rights, by means of establishing a number of efficient control mechanisms.

By the time of the adoption of the legislative pack in the consumption market field, there were no such unitary norms which shall settle the litigations generated by such consumption, and consumers had no efficient means whatsoever to deal with any such litigation. In the event of a cross border litigation between consumers and traders, if the two parties do not have their headquarters within the same member state, consumers may address the European Consumer Center. At the European Union level, one has established the European Consumer Centers Network, with attributions in amicably settling the cross border litigations in the consumption market field. Nowadays in the European Union there are over 750 ADR entities, which are, however, not available in all regions and in all sectors of the common market.

Thus, by such new legislative regulations one aims at guaranteeing all EU consumers the latter's possibility to solve their litigations, without showing up before a given court of law, regardless of the type of product or service making up the subject matter of any such dispute, as well as irrespective of the place of purchase on the European market. One estimates that the global access to quality ADR within the EU shall trigger the saving by the consumers, of around 22.5 billion of Euros / year. [1]

In Romania, in the case of one such litigation between a consumer and a trader, if both parties have their residence within this member state, consumers may address either a public authority holding attributions within the consumers protection field, namely the National Authority for Consumers Protection, or they may address a mediator, by virtue of Law no. 192/2006 on mediation and the organization of a mediator’s profession, or they may address the courts of law.

Whereas the existing differences in terms of the national systems for the regulation of litigations in the consumption field, the need has arisen for the establishment of a unitary and coherent legislative framework for all entities managing such alternative procedures for litigations settlement in the consumption market field within the European space, thus one fostering the purchase of assets and services on the European internal market.
Directive 2013/11/EU of the European Parliament and Council, regarding the alternative settlement of litigations in the consumption field, has been drawn up so as to enable consumers to take advantage and fully benefit from the internal market potential, as well as to provide the consumer with the access to ADR mechanisms, as available for all types of national and cross border litigations, as regulated by virtue of the present Directive; ADR procedures should comply with the coherent quality requirements, which should apply within the entire Union and consumers and traders should become aware of the existence of this type of procedures. [2] As a consequence, the normative deed aims at creating the European legislative framework for the implementation of the ADR mechanism, as an alternative method for litigations settlement, within the context of enhancing consumers’ trust in the European internal market.

There are also other European normative deeds which include several dispositions relating to such alternative settlement of litigations / conflicts, which legal dispositions are meant to adjust the legislative framework having been established by virtue of the Directive 2013/11/EU of the European Parliament and Council regarding the alternative settlement of litigations in the consumption related field. Thus, the European law enforcement agent, stipulates the fact that the Directive 2013/11/EU is aimed to be horizontally applied to all types of SAL procedures, including those ADR procedures regulated by virtue of Directive 2008/52/EC on mediation in the case of cross border civil and commercial litigations. [3]

As a consequence, Directive 2013/11/EU does not impede the enforcement of the other normative deeds that include dispositions relating to such an alternative settlement of litigations. The ADR procedures which are to be managed in compliance with the dispositions of the Directive 2013/11/EU of the European Parliament and Council, regarding the alternative settlement of litigations in the consumption related field, may vary from one member state to the other. The type of such ADR procedure shall be chosen by the interested member state subject to its national regulations and the legislation specificity. We hereby consider the fact that we may talk about one ADR entity behaving in a similar manner with the mediation institution, where the solution belongs to the parties, or that we may be speaking about one ADR entity that proposes or imposes such a solution on the parties.
The field of application in terms of the Directive 2013/11/EU of the European Parliament and Council, regarding the alternative settlement of litigations in the consumption related field, limits itself to the management of alternative procedures for the extra-legal settlement of national or cross border litigations that relate to contractual obligations deriving out of the conclusion or performance of sale or service providing agreements, as concluded between a trader established within the Union and a consumer having his residency within the same Union. The extra-legal procedure shall be managed by an ADR entity, namely a structure within the central public administration holding responsibilities within the consumers protection field, which shall either propose a certain solution, or which shall get the parties together in order to facilitate the process of reaching an amicable solution to the problem.

The Directive 2013/11/EU of the European Parliament and Council, regarding the alternative settlement of litigations in the consumption related field shall not apply to those activities/contracts that are run by the higher education or complementary education institutions, the health services provided to patients and the services relating to the provision of medicines and medical devices, the procedures being initiated by a trader against a consumer, the direct negotiations between a consumer and a trader, the litigations between traders, or in the case of general interest services without any economic character whatsoever.

The provisions of the normative deed shall only be applicable in the case of consumer’s filing complaints against the trader. To this end, one stipulates the fact that member states shall be under the obligation to establish by virtue of some national norms, a number of ADR entities which shall enable consumers’ access to such alternative procedures for the settlement of litigations within its regulatory scope. The latter member states shall be under the obligation to facilitate consumers’ access to ADR procedures, as well as to ensure that ADR entities conduct their business activity in an efficient and productive manner. At the same time, by virtue of several internal procedural norms, the member states may allow ADR entities to deny the management of a certain type of litigation anytime one meets the conditions that are restrictively and expressly stipulated within the Directive. [4]. However, neither the procedural norms established by the member states, in view of such a denial in terms of managing ADR
procedures in certain cases, nor the establishment of the financial threshold that may be introduced in order to limit access to such ADR procedure, shall have any negative impact and nor shall the latter directly influence the consumer’s right to address such ADR entities.

Once a consumer has invested such ADR entity with the settlement of his complaint, as filed against a certain given trader, the public authority shall appoint the natural person who is to be responsible with the management of such ADR procedure, in compliance with the Directive provisions. One establishes the obligation that the member states shall make sure that natural persons responsible with ADR procedure shall possess the necessary expertise and shall be independent and unbiased. [5]

According to the legal dispositions, such a natural person responsible with the SAL procedure shall bring proof to its professional background in the field of procedures regarding the alternative settlement of litigations, or in the field of the legal settlement of litigations in the consumption related field, as well as to the fact that he possesses a good knowledge of the legislation in the field. Although the law does not stipulate the obligation of such a natural persons responsible with ADR procedure to be a qualified specialist within the legal field, yet in order to be able to meet the legal requirement, that the ADR responsible natural person shall possess general knowledge of the legislation in the field, shall hold sufficient knowledge of law so as to fully understand the legal implications of such litigations, one requires for such a natural person responsible with the ADR procedure to bring proof to this end ( either by means of holding a diploma certifying his graduation of the Faculty of Law, or a certificate certifying his having graduated a post – academic course or a Master Degree in the general legal field). Also, the ADR procedure responsible natural person shall be specialized either in the field of the alternative settlement of litigations, such as the mediator, the arbitrator or he shall be specialized in the legal settlement of litigations in the consumption related field, such as the Lawyer, the Expert, etc.

The ADR procedure shall be managed based upon the principles of independence, expertise and impartiality in terms of the ADR responsible natural person within the context of ensuring and guaranteeing by the member state of the transparency of such a procedure (which shall not prejudice either the principle of
confidentiality or the compliance with privacy during the entire length of running the said procedure), the efficiency, correctness and legality as well as the freedom of choice in terms of the alternative method for the settlement of the said litigation. The non disclosure principle shall be complied with both during the process of running the procedure relating to the litigation settlement and on a subsequent basis, following the initiation of a civil or commercial legal procedure, or of the arbitrage procedure.

Within 90 days as of the ADR entity’s having received the full file of the said complaint, the outcome of the procedure shall be made available for the parties. In several well justified cases, the ADR entity may extend such aforementioned term, by informing the parties to this end.

The consumer may not be compelled to complain about a certain non – compliance or non – accomplishment of contractual clauses to one ADR entity and be deprived of his right to address the court of law. Such ADR procedure is facultative and not compulsory for the parties. In the event when, within the ADR procedures one stipulates the litigation settlement by imposing a certain solution, this shall become binding for the parties only to the extent the said parties have been informed ab initio on the binding character of the said solution and have agreed upon it. One shall not require the specific agreement on the trader’s part if the national norms stipulate that the solutions shall be binding for traders. [6] Unless the outcome of such ADR procedure is binding, the parties may subsequently initiate a legal procedure (arbitrage – based or before a court of common law), in terms of the said litigation. The running of such ADR procedure in compliance with the Community related provisions may not be achieved in parallel with the legal or arbitrage procedures.

The directive 2013/11/EU regarding ADR procedures in the consumption related field, alongside the Regulation no. 524/2013 on ODR in the consumption related field, stand for two complementary and interrelated legislative instruments. Regulation no. 524/2013 has been adopted within the context where the online commerce has reached an unprecedented expansion, there being a necessity for the appropriate operation of a platform for the alternative settlement of litigations which shall provide the consumers with an unique entry point in view of an extra – legal settlement of the litigations by means of such ADR procedures. The ODR platform provides a simple, efficient, fast
and inexpensive extra-legal solution in the case of those litigations deriving out of online transactions. [7]

The European regulations cover the alternative procedures regarding the settlement of litigations both in terms of the physical commerce and in terms of the trade from the virtual space. If by the time of the appearance of the Regulation no. 524/2013 the online commerce development has been impeded mainly due to the lack of several coherent and valid mechanism for the litigations e-settlement, upon adopting the said Regulation, one enables the creation of a ADR platform at the European Union level, which shall act as an interactive site for the online settlement of the litigations deriving as a consequence of those transactions from the virtual space.

Regulation no. 524/2013 shall apply in terms of the extra-legal settlement of the litigations initiated by the consumers having their residency within the Union, against certain traders established within the Union, which relate to the contractual obligations deriving out of the agreements of sale or providing services within the virtual space, with the introduction of new mechanisms that shall enable both consumers and traders to achieve an e-settlement of the said litigations.

The extra-legal settlement of these litigations within this sector shall be accomplished by using the ODR platform and only to the extent the legislation of the member state where the consumer has the latter's regular residency allows for the settlement of such litigations through a SAL entity. [8]

In view of a good management of the alternative procedures for the settlement of litigations, the Regulation stipulates the creation of an ODR platform, namely of an interactive site which shall provide both the consumers and the traders with an unique entry point. The platform shall allow access to general information regarding the method for such litigations settlement. The consumer/trader shall be able to fill in the e/form for complaints, by attaching all the documents he may find to be pertinent and conclusive within the case. The said complaint shall be subsequently forwarded to the ADR entity with competence in settling the litigation by applying its own procedural norm principles.

The member states shall be under the obligation to appoint ODR contact points whose main obligation shall be the facilitation of communication between the parties
and the ADR entity that is competent in settling the said litigation by providing specialized assistance and support upon the registration of the said complaint, through its advisors, by providing the applicant with the general information regarding the consumers’ rights that apply in the member state of the ODR contact point, with information on the way how the ODR platform works and on the procedural norms enforceable within the said litigation, as well as on the means of appeal that are pertinent within the case. These obligations shall be incumbent on the ODR contact point only to the extent the parties involved within the said litigation shall not have their regular residency within the same member state, unless otherwise determined by the concerned member state, given the specificity of the legislation at the national level.[9]

From a procedural perspective, the said complaint having been filled in as per the legal dispositions in force, shall be registered by the plaintiff on the ODR platform, which shall forward the same to the respondent. The parties shall be under the obligation to agree upon the ADR entity where the plaintiff shall be submitted for settlement purposes. Unless the parties shall agree upon the competent ADR entity and unless one identifies any such entity, the complaint shall be closed.

Once the ADR the said complaint to this SAL entity that the parties have agreed upon, and the latter entity shall be under the obligation, after having been notified, to issue a ruling if it is to manage the case or if it is to deny the said litigation. To the extent the ADR entity shall accept managing the litigation settlement, it shall immediately communicate its applicable procedural norms and the costs, as involved, to the interested parties.

The ADR entity having accepted to manage the litigation settlement shall be under the obligation that within 90 days as of its having received the full case file, it shall conclude the procedure in compliance with the dispositions of art. 8, letter e of the Directive.

The use of the ODR platform in view of the litigation settlement shall not require the physical presence of the parties or of the latter’s representatives before the ADR entity competent in this case, and in the event of managing the alternative online settlement of litigations, the competent SAL entity shall not be under the obligation to run the ADR procedure through the ODR platform.
Regulation no. 524/2011 aims at the extra-legal settlement of litigations in compliance with the stipulations of the normative deed. This does not mean that the plaintiff no longer has any access to a legal procedure for the settlement of the latter’s litigation. Whereas the dispositions of art. 47 of the European Union Book on Fundamental Rights, the ODR / ADR procedures may not substitute the legal procedures and they may not impede the parties to exercise the latter’s right to have access to a court of common law, to an efficient means of appeal and to a fair trial.[10]

3. Conclusions.

The ADR and ODR procedures that are operating at the European Union level shall guarantee to the consumers the fact that the internal market alongside the latter’s digital size provide efficient mechanisms for the settlement of the various litigious matters and shall foster the running of the cross-border trade given the fact that there are several efficient and unitary extra-legal alternative procedures at the Union level.

The regulated procedure shall facilitate to the consumers the latter’s access to an amicable settlement of their litigations regarding the purchase of certain types of services and products, shall enhance consumers’ trust in the European internal market and shall terminate the linguistic and legislation related barriers within the regulatory field, by introducing one standard procedure at the Community level. The regulations in this field are all the more required since in compliance with the dispositions of the Treaty regarding the European Union Operation, the European Union is under the obligation to bring its contribution to the protection of consumers’ economic interests. The ODR / ADR procedures, as established by virtue of the normative deeds under analysis shall enhance the potential of the alternative means for the litigations settlement and shall generate a certain balance in terms of the efficacy and efficiency of managing disputes within the consumption market field, particularly in the case of cross-border litigations.

Member states shall provide for the coming into force of the deeds with the power of the law and of the administrative deeds, as required for the implementation of the dispositions of both the Directive and the Regulation by the 9th of July 2015.

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[2] Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC, Whereas, (7) „In order for consumers to exploit fully the potential of the internal market, ADR should be available for all types of domestic and cross-border disputes covered by this Directive, ADR procedures should comply with consistent quality requirements that apply throughout the Union, and consumers and traders should be aware of the existence of such procedures. Due to increased cross-border trade and movement of persons, it is also important that ADR entities handle cross-border disputes effectively.”;
[8] Regulation (EU) no. 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer Article 2 (2);
[9] Regulation (EU) no. 524/2013 of the European Parliament and of the Council on online dispute resolution for consumer Article 7 (3) and (4);
[10] Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No2006/2004 and Directive 2009/22/EC, Whereas, (45) „The right to an effective remedy and the right to a fair trial are fundamental rights laid down in Article 47 of the Charter of Fundamental Rights of the European Union. Therefore, ADR procedures should not be designed to replace court procedures and should not deprive consumers or traders of their rights to seek redress before the courts. This Directive should not prevent parties from exercising their right of access to the judicial system. In cases where a dispute could not be resolved through a given ADR procedure whose outcome is not binding, the parties should subsequently not be prevented from initiating judicial proceedings in relation to that dispute. Member States should be free to choose the appropriate means to achieve this objective. They should have the possibility to provide, inter alia, that limitation or prescription periods do not expire during an ADR procedure.”
The Rule of Law in Armed Conflicts Project

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Abstract
The Rule of Law in Armed Conflicts Project aims to report on every concerned State and disputed territory in the world, considering both the legal norms that apply as well as the extent to which they are respected by the relevant actors. The Project is an initiative of the Geneva Academy of International Humanitarian Law and Human Rights to support the application and implementation of international law in armed conflict.

Keywords: „Rules of law”, „Armed Conflicts Project”, „Geneva Academy”, „International Humanitarian Law”, „Human Rights”

International humanitarian law refers to two different types of armed conflict: international armed conflicts and conflicts of a non-international character. [1] For example, the four Geneva Conventions of 1949 (with the exception of common Article 3) and 1977 Additional Protocol I concern international armed conflicts. Common Article 3 to the 1949 Geneva Conventions and the 1977 Additional Protocol II concern armed conflicts of a non-international character.

An international armed conflict usually refers to an inter-state conflict. Common Article 2 of the 1949 Geneva Conventions states that:

“In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them. The ICRC commentary on the provision explains that:

“Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place. The respect due to the human person as such is not measured by the number of victims.” [2]
Thus, it is generally agreed that a single incident involving the armed forces of two states may be sufficient to be considered an international armed conflict. In cases of insignificant border incidents involving members of the armed forces of two states it may be unclear whether the threshold has been reached for the incident to be considered an international armed conflict. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. "If a state intervenes with its armed forces on the side of another state in a non-international armed conflict, it is generally agreed that this does not change the qualification of the conflict. An armed conflict confined geographically to the territory of a single state can, however, be qualified as international if a foreign state intervenes with its armed forces on the side of the rebels fighting against government forces.

It is unclear, though, whether foreign military intervention in an armed conflict which would otherwise be a non-international conflict triggers the internationalization of the entire conflict or only the conflict between the two states. The better view is that there are two different types of conflict taking place at the same time. [3] Thus, for example, according to the International Court of Justice in the 1986 Nicaragua case:

"The conflict between the contras' forces and those of the Government of Nicaragua is an armed conflict which is 'not of an international character'. The acts of the contras towards the Nicaraguan Government are therefore governed by the law applicable to conflicts of that character; whereas the actions of the United States in and against Nicaragua fall under the legal rules relating to international conflicts."

Where a state intervenes indirectly without the use of its armed forces in a non-international armed conflict on the side of the rebels, the Tadić case, decided by the International Criminal Tribunal for the former Yugoslavia (ICTY), concluded that "overall control" of a rebel group would be sufficient to internationalize the conflict. The standard set by the Tribunal does not require the "issuing of specific orders by the State, or its direction of each individual operation"; it is sufficient that a state "has a role in organizing, coordinating or planning the military actions" of a given non-state armed group. [4]
Article 1, paragraph 4 of 1977 Additional Protocol I provides that conflicts shall also be qualified as international when they occur between a State party to the Protocol and an authority representing a people engaged in a struggle "against colonial domination and foreign occupation and against the racist regimes in the exercise of the right of peoples to self-determination". This provision has never been triggered. There is a procedural requirement that the authority representing the people formally undertakes to apply the Geneva Conventions and the Protocol in relation to the conflict with the government in question. This must be done by means of a unilateral declaration addressed to the depositary (the Swiss Federal Council).

Article 2 of 1949 Geneva Convention IV reads in part:

“The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.”

Occupation is not defined in the 1949 Geneva Conventions, but 1907 Hague Convention IV offers the following definition:

“Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” [5]

In the Tadić case, referred to briefly above, the ICTY affirmed that a non-international armed conflict exists when there is: “protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.” [6] Thus, in the view of the ICTY, for there to be a non-international armed conflict:

• non-state armed groups must carry out protracted hostilities; and
• these groups must be organized.

Two key treaty provisions set thresholds for identifying the law applicable to armed conflicts of a non-international character:

• Common Article 3 to the 1949 Geneva Conventions; and
• Article 1 of 1977 Additional Protocol II to the 1949 Geneva Conventions.

Common Article 3 (which appears with identical language in each of the four 1949 Geneva Conventions) provides, inter alia, that:
“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions…”

In its commentary on the article, the ICRC states that:

“Speaking generally, it must be recognized that the conflicts referred to in Article 3 are armed conflicts, with armed forces on either side engaged in hostilities of conflicts, in short, which are in many respects similar to an international war, but take place within the confines of a single country. In many cases, each of the Parties is in possession of a portion of the national territory, and there is often some sort of front.” [7]

Control of a portion of the territory by a non-state armed group is not required for the application of common Article 3, but would certainly be strong evidence of its application.

The scope of application of 1977 Additional Protocol II is stated by its Article 1 to be as follows:

“1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions or application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.”

In its commentary on the article, the ICRC states that:

“the Protocol only applies to conflicts of a certain degree of intensity and does not have exactly the same field of application as common Article 3, which applies in all situations of non-international armed conflict.” [8]
Certain criteria are required for the application of 1977 Additional Protocol II, namely:

- A confrontation between the armed forces of the government and opposing “dissident” armed forces; [9]
- That the dissident armed forces are under a responsible command; [10]

According to the ICRC, the existence of a responsible command “implies some degree of organization of the insurgent armed group or dissident armed forces, but this does not necessarily mean that there is a hierarchical system of military organization similar to that of regular armed forces. It means an organization capable, on the one hand, of planning and carrying out sustained and concerted military operations, and on the other, of imposing discipline in the name of a de facto authority.”

- That they control a part of the territory as to enable them to “carry out sustained and concerted military operations” and to implement the Protocol. As the ICRC notes, “In many conflicts there is considerable movement in the theatre of hostilities; it often happens that territorial control changes hands rapidly. Sometimes domination of a territory will be relative, for example, when urban centres remain in government hands while rural areas escape their authority. In practical terms, if the insurgent armed groups are organized in accordance with the requirements of the Protocol, the extent of territory they can claim to control will be that which escapes the control of the government armed forces. However, there must be some degree of stability in the control of even a modest area of land for them to be capable of effectively applying the rules of the Protocol.” [11]

As a consequence of these criteria, the Commentary opined that common Article 3 and 1977 Additional Protocol II have different, but overlapping, application:

“In circumstances where the conditions of application of the Protocol are met, the Protocol and common Article 3 will apply simultaneously, as the Protocol’s field of application is included in the broader one of common Article 3. On the other hand, in a conflict where the level of strife is low, and which does not contain the characteristic features required by the Protocol, only common Article 3 will apply. In fact, common Article 3 retains an autonomous existence, i.e., its applicability is neither limited nor affected by the material field of application of the Protocol. This formula, though legally
rather complicated, has the advantage of furnishing a guarantee against any reduction of the level of protection long since provided by common Article 3.” [12]

The element of territorial control will often be the distinguishing factor between a situation where only common Article 3 applies and one where both common Article 3 and 1977 Additional Protocol II apply. [13]

Where a non-state armed group is engaged in protracted armed violence with a state and is operating from across an international border, the prevailing view (14) is that this is a non-international armed conflict with the associated rights and obligations.

Where, however, a state is party to such a non-international armed conflict and conducts military operations in a second state on whose territory the non-state armed group is present, views differ as to the legal consequences. One view is that if attacks by the outside state are limited to the non-state armed group and its associated military infrastructure, this does not change the status of the conflict. If, though, attacks are made more broadly on the infrastructure of the state on whose territory the non-state armed group is present, this transforms the entire conflict into an international one.

The better view is that the determinant factor is whether the second state has given its consent to the military intervention, or at least acquiesced in it. Where such consent or acquiescence occurs, the conflict remains one of a non-international character. Where, however, the state opposes this intervention, or at least condemns it, this results in an armed conflict of an international character between the two states simultaneous and in addition to the non-international armed conflict between the first state and the non-state armed group. International humanitarian law – also called the law of armed conflict or the laws of war – regulates the conduct of warfare. Most of the applicable rules are to be found in the four 1949 Geneva Conventions and their two 1977 Additional Protocols. In addition, the 1907 Hague Conventions and the annexed Regulations lay down important rules on the conduct of hostilities, notably on military occupation. There are also several treaties that prohibit or restrict the use of specific weapons, including anti-personnel mines, exploding or expanding bullets, blinding laser weapons, and, most recently in 2008, cluster munitions.

An important distinction exists between international armed conflicts and those of a “non-international character”. (For a detailed discussion of this issue, see our paper
on the legal qualification of armed conflict.) The legal regulation of international armed conflicts is more detailed and the protection afforded by the law greater than is the case with non-international armed conflicts. A notable example is the obligation on parties to an international armed conflict to accord captured combatants the status of prisoner of war (POW) with the associated rights and obligations. This prevents the prosecution of a POW for the mere fact of participation in hostilities. There is no such right to POW status in the law governing non-international armed conflicts (although captured fighters are still entitled to legal protection). For example, according to common Article 3 to the four 1949 Geneva Conventions, which governs conflicts of a non-international character: "Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

The basis of international humanitarian law is the principle of distinction, which applies in all armed conflicts. This principle obliges "Parties to a conflict" (i.e. the warring parties, whether states or non-state armed groups) to target only military objectives and not the civilian population or individual civilians or civilian objects (e.g. homes, schools, and hospitals). Failing to make this distinction in military operations represents an indiscriminate attack and is a war crime.

Similarly, although it is understood that it is not possible for parties to a conflict always to avoid civilian casualties when engaged in military operations, international humanitarian law also requires that parties to a conflict take precautions in any attack to minimize civilian deaths and injuries. Attacks likely to cause deaths or injuries among the civilian population or damage to civilian objects which would be "excessive" compared to the expected military advantage must be cancelled or suspended.

These rules are generally considered to be customary international law, which binds every party to a conflict – government or non-state armed group – whether or not the state on whose territory a conflict occurs has ratified the relevant treaty.

References:
[9] i.e. where there is a rebellion by part of the government army or where the government’s armed forces fight against insurgents who are organized in armed groups. As the ICRC further notes, this criterion illustrates the collective character of the confrontation; it can hardly consist of isolated individuals without coordination. ibid., p. 1351.
[10] Ibid., p. 1352.
Cybersecurity – Dimensions of national security

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Abstract
In the present view on the concept of security there are a number of constituents that act interdependently. These build-up a pluridimensional morphology of security that features: the political dimension, the military dimension, the economic dimension, the social dimension, the ecological dimension. Alongside these traditional dimensions of the concept of national security a number of authors also theorized the informational dimension. In the light of the gravity of risks and threats, cybersecurity is deemed to be an important component of national security. This is why at European level there is an intense process of attunement and adaptation of the legislation regarding states’ cybersecurity for the purpose of ensuring a safe, free and democratic cyberspace.

Keywords: national security, cybersecurity, legislative framework, strategy

1. Introduction
The phrase „national security” is unanimously used in all specialist works being deemed the expression most representative for the concept of defending a state’s fundamental national interests against any aggressions, dangers, threats or risks [1]. Specialists in international relations theory, political sciences, public politics or law proposed numerous definitions and analysis schemes. Some authors define national security as a concept that „concentrates on the preservation of state sovereignty and its protection against any external or internal, conventional or unconventional threats” [2]. In a slightly different perspective, it is insisted upon the fact that national security is “a state of affairs, the one where a nation is protected against the dangers that threaten the unity of the state where it develops, its territorial integrity, independence and sovereignty, its constitutional order and own system of values”.[3]

We note that these definitions are constructed around the notion of threat to common or individual values. There is, however, a modality of analysis that potentiates precisely these values in the definitional effort. Thus national security is regarded as being “the essential category that refers to the state of the nation, of social communities, of the citizens and of the state, based on economic prosperity, legality, socio-political balance and stability, expressed in the rule of law and guaranteed through economic,
political, social, legal, military, informational and other actions, for the unrestricted
exercise of rights and freedoms, full manifestation of state’s freedom to decide and
action, of its fundamental attributes and of its status as an international law subject” [4].

Other authors hesitate to assume the pattern of a standard definition and
consider that the most effective manner to define security is represented by this concept
dimensions’ social relevance [5]. In this context, the issue was raised on the error in
assuming there is a similitude between the state and society regarding security. The
state can be both a point of reference and an agent of security, but, in principle, the
society is the one defining its identity, while the state identifies and follows its interests
[6].

2. The Dimensions of National Security

The traditional approach to the dimensions of the security concept identifies 3
analysis levels: individual, state and international. In the present view on the concept of
security there are a number of constituents that act interdependently. These build-up a
pluridimensional morphology of security that features: the political dimension, the
military dimension, the economic dimension, the social dimension, the ecological
dimension. Shaped for the first time during the Copenhagen School these dimensions
have experienced a different evolution determined by the emergence of new types of
threats to national security. Thus, although the political and military dimensions maintain
their privileged place in the content of security, lately the accent was on the non-military
aspects of security.

The political security focuses on the role of the state in international relations and
possible threats to its security. Traditionally the political security was related exclusively
to states survival and was defined in terms of sovereignty. Defending state’s
fundamental interests is its ultimate goal and this can be achieved mainly by increasing
[7]. In the current political context, threats to a state’s security can come from another
state actor, but can also come from non-state actors.[8]

Military security refers to state’s military capacity to confront internal or external
aggressions [9]. Redefining the concept of security did not lead to a significant decrease
in the role of armed forces and international military organisations. In the current
geopolitical context, there was even noticed an increase in the competencies of
professionalised military bodies capable to assume specific missions [10]. Moreover, the discrepancy between the military capabilities of the states with advanced technologies and the military power of the states that have weapon systems from previous generations [11].

Economic security implies counteracting all the dangers, threats and risks to economic resources. Economic blockades and economic boycotts, as well as any limitations on the development of economic exchanges, fall in these categories [12]. The objective of economic security is to maintain a certain level of citizen welfare and cohesion of power through access to resources, finances and markets [13]. It is unanimously accepted that underdevelopment, famine and poverty constitute risks to security, regardless of its level (national, regional, continental or global) [14].

Ecological security presupposes protecting humans from the damage produced by environment deterioration. At the same time, this means protecting the environment from damage caused by man, because these can be a source of threats to the environment as a result of abusive behaviour that can lead to ecological disasters[15]. Deforestations, water pollution, natural and industrial gas emissions in the ozone layer, massive resource exploitation etc., all fall in this category.

Some authors criticize this multidimensional model of security finding the excessive expansion of the concept of security inefficient and dangerous. The main arguments are that the theoretical development of new dimensions can cause the dilution of the concept of security. Furthermore, the issue was raised on the danger of the “militarisation” of responses to problems deemed to threaten security by including in the same category very different threats that can generate a repressive approach to the detriment of political or social solutions [16].

Along with these dimensions of national security a number of authors theorized the informational dimension. This notion is based on the concept of informational security defined as “the state of protecting individual’s, society’s and state’s informational needs, that would allow guaranteeing their fulfilment and progressive evolution, irrespective of the presence of internal and external informational threats” [17]. Several types of informational security have been identified: physical security, document security, personnel security, communications security and computer security.
[18]. On a theoretical level, it was proposed that a national informational security system be designed within the national security system, and that it had the following objectives: revealing and forecasting destabilising factors and informational threats to national interests; drafting a set of measures to prevent and remove these factors and threats; creating and maintaining a state of readiness of the forces and means of ensuring informational security [19].

By its characteristics (the absence of frontiers, dynamism and anonymity) the cyberspace ensures free access to information and communications, but it also represents a favourable environment for threats, vulnerabilities or incidents for the security of people and goods. In the light of the gravity of risks and threats, cybersecurity is deemed to be an important component of national security. This is why at European level there is an intense process of attunement and adaptation of the legislation regarding states’ cybersecurity for the purpose of ensuring a safe, free and democratic cyberspace. The main directions of this process consist of elaborating a number of national strategies and adopting the legislative framework regarding the creation, administration and functioning of a cybersecurity integrated system is functioning.

3. Current Cybersecurity Regulations

In Romania, the relevant legislation in the field of cybersecurity is deficient in terms of systematisation and terminology. It is, mainly, the result of the process of transposition into the Romanian legislation of a number of directives from the Council of the European Union without the organic vision of the Romanian law maker for this essential field. From this viewpoint, we can see that cybersecurity regulation presents the same shortcomings that can be seen in Romania’s national security general regulation.

The first regulatory act that affects this matter is Government emergency ordinance no 98/2010 on the identification, designation and protection of critical infrastructures [20], that represents the transposition into Romanian legislature of the Council’s Directive 2008/114/CE of 8 December 2008 on the identification and designation of critical European infrastructures and evaluation of the necessity to improve their protection. By its provisions this ordinance established the legal
framework on the identification, designation of critical national/European infrastructures and evaluation of the necessity to improve their protection, with the aim of increasing the capability to ensure the stability, security and safety of the economic-social systems and the protection of individuals. In accordance with Article 3 (a) the critical national infrastructure represents “one of its elements, systems or components, on national territory, that is essential for the preservation of society’s vital functions, health, security, social or economic welfare of individuals, the perturbation or destruction of which would have a significant impact at national level as a result of the incapacity to preserve those functions”. For the purposes of the emergency ordinance, the protection of these critical infrastructures presupposes any activity that is intended to ensure infrastructure's functionality, continuity and integrity in order to deter, diminish and neutralize a threat, a risk or a weakness.

Coordination, at national level, of the activities regarding the identification, designation and protection of critical infrastructures is carried out by the prime-minister through the appointed counsellor, and the designation of the critical infrastructure is carried out by Government Decision. Article 9 of Government Emergency Ordinance no 98/2010 mentions 3 cross-sectoral criteria underlying the identification of a critical infrastructure: the criterion on victims; the criterion on the economic effects; the criterion on the effect on population. In Annex 1 there are listed 10 sectors of the critical national infrastructure (energy; information technology and communications; water supply; nutrition; health; national security; administration; transportation; chemical and nuclear industry; space and research) each including more subsectors.

Government Decision no 1110/2010 on the competence, attributions and organisation of the Interinstitutional Working Group for the Protection of Critical infrastructures [21] establishes that this group is composed of experts/specialists appointed by competent public authorities (ministries, the Special Telecommunications Service, the Foreign Intelligence Service, the Romanian Intelligence Service, the Romanian Space Agency, etc.) and that it is coordinated by a state counsellor appointed by the prime-minister.

of this public institution with legal personality as an independent expertise and research-development structure in the field of cyber infrastructure protection were established. In accordance with the provisions of Article 3 for cyber infrastructures administered by institutions in the field of defence, public policy and national security, CERT-RO carries out only the cooperation tasks, based on agreements concluded with their CERT structures.

This regulatory act also defines a set of notions and expressions, including “cybersecurity” and “cyber incidents”. In accordance with Article 2 (e) by cyber security it is understood “the state of normality following the implementation of a set of proactive and reactive measures ensuring the confidentiality, integrity, availability, authenticity and non-repudiation of the information in electronic format, of public or private resources and services in the cyberspace. The proactive and reactive measures can include: policies, concepts, security standards and guides, risk management, instruction and awareness-raising, implementation of technical solutions to protect cyber infrastructures, identity management, consequences management”. The cyber incident is any event that occurred in cyberspace and could affect cybersecurity.

The Cyber Incidents Real Time Early Warning and Information National System is constituted under CERT-RO. The data received in the system will be centralized and processed for the purpose of real time warning and issuing of reports regarding the distribution and nature of incidents, as well as for the collaboration with national authorities responsible for ensuring cybersecurity.

By Government Decision no 718/2011 on the approval of the National Strategy on Critical Infrastructure Protection [23] it was stated that this framework document is “intended for the adoption and implementation of specific measures and actions for the purpose of reducing the negative effects induced by specific risk factors on critical infrastructures, at national and regional level”. The weaknesses, risk factors and threats in the field of critical infrastructure protection are defined in its body, and the main goals, strategic objectives and principles underlying the protection of critical infrastructures are identified.

A significant moment in building the cybersecurity concept was the adoption of Government Decision no 271/2013 for the approval of Romania’s Cybersecurity
Strategy and the National Action Plan on the implementation of the National Cybersecurity System [24]. The scope of this strategy is to “define and maintain a safe virtual environment, with a high degree of resilience and trust, based on national cyber infrastructures that would constitute a significant support for national security and good governance, for maximising the benefits of the citizens, business environment, and Romanian society, as a whole”. The concepts and definitions from previously adopted regulatory acts are included in its contents and new ones, like cyber threats, cyber terrorism, cyber espionage, security risks in cyberspace, cyber infrastructure resilience etc., are added.

Cyberspace threats are defined as circumstances or events that constitute a potential danger to cybersecurity. They take one of the following forms: cyber-attacks on infrastructures that carry public utility functions or informational society services the disruption/affecting of which could be a threat to national security; unauthorized access of cyber infrastructures; unauthorized change, deletion or damage of informational data or illegal restriction of the access to this data; cyber espionage; material damage, harassment and blackmailing natural or legal persons, of public and private law.

Romania’s Cybersecurity Strategy also establishes the foundations of the national cybersecurity system (SNSC). This represents the general cooperation framework that brings together public authorities and institutions for the purpose of coordinating actions nationally to ensure cyberspace security, including by cooperation with the academic and business environment, professional associations and non-governmental organisations. At national level, SNSC’s activity is coordinated by the Supreme Council for Defence of the Country. In particular, SNSC’s uniform coordination is carried out through the Cybersecurity Task Force Council (COSC) headed by the presidential counsellor for national security issues and composed of ministries and state bodies’ representatives with attributions in the field of national security.

One of Romania’s Cybersecurity Strategy objectives is to adapt the regulatory and institutional framework to the dynamics of threats specific to cyberspace. In this respect, it is stated that “the Romanian government will elaborate the draft law on cybersecurity, that will be submitted to Parliament for its approval, accordingly with the law”.

In this context, on 30 April 2014, the Government agreed the submission to the Chamber of Deputies, of the draft on Romanian cybersecurity. This regulatory draft was presented in the Statement of Reasons as a “national priority” the adoption of which aims: establishing the general framework for the regulation of cybersecurity activities; defining the obligations of the public or private law legal persons for the purpose of protecting cyber infrastructures; ensuring the general cooperation framework for cybersecurity, by establishing the National Cyber Security System [25]. On 16 September 2014 the draft law was adopted by the Chamber of Deputies, and on 19 December 2014 by the Senate, in its capacity as Decisional Chamber.

By Decision No 17 of 21 January 2015 on the objection of unconstitutionality of the provisions set out by the Law on Romanian Cybersecurity [26] the Constitutional Court assumed that this law’s purpose “is to supplement the legal framework in the field of national security” and that this framework already includes “a set of regulations, primary or secondary regulatory acts”. Consequently, beyond the 10 aspects of unconstitutionality, the Court found that “the whole regulatory act has deficiencies in terms of respecting the legislative technique norms, coherence, clarity, predictability, which could determine the violation of the principle of legality enshrined in Article 1 (5) of the Constitution”.

4. **Aspects of comparative law**

In line with other regulatory models of cyber security we consider that a short analysis of the solutions adopted in France and the Republic of Moldova would be helpful. Both states recently had a broad debate on the recast of legislation regarding national security, including cybersecurity aspects. The French model is positively singularized also through an Internal Security Code, adopted on 12 March 2012, which enshrined security as a fundamental right and as one of the conditions for the exercise of individual and collective freedoms [27].

In France, the National Association for Information Systems Security (ANSSI) was established in July 2009 in order to ensure the technical aspect of these systems’ security. In terms of national security, this body has prevention, audit and inspection tasks. In particular, it writes reports and recommendations and authorises the use of a number of cyber devices. Under it there is an Operational Centre for Informational
Systems Security (COSSIL) which, upon referral from another internal body, from a foreign partner or ex officio identifies the origin of a threat or a cyber-attack and takes appropriate technical measures [28]. The White Paper of Defence of 29 April 2013 defined the concept of cyber threat and put it on the third place in the risk list, after classic war and terrorist attacks. Based on this document, the Information Systems National Security Agency becomes National Authority and has new attributions in the field of control of the electronic communications operators [29].

In the Republic of Moldova, by Decision of the Supreme Security Council of 7 October 2014, it was recommended to the Parliament the examination, as a priority, of the regulatory acts drafts concerning the fields of informational security, prevention and counteraction of cybercrimes and telecommunications. Through the same decision, the Government was recommended more actions concerning cybersecurity as for example: the implementation of the Action Plan regarding the implementation of the “Digital Moldova” 2020 National Strategy for the Development of the Information Society; the creation of the national CERT (security incident response team); the elaboration and promotion of regulatory acts drafts in the field of information security; elaboration, approbation and implementation of a set of proactive and reactive measures to reduce possible information weaknesses, risks and dangers, to decrease the impact of threats, attacks and incidents from cyberspace etc. Last but not least, the Intelligence and Security Service of the Republic of Moldova was recommended to ensure the elaboration of the Information Security Conception and of the Information Security Strategy [30]. In this context, on 29 April 2015, during the ministerial session on cybersecurity, the minister of Information Technology and Communications of the Republic of Moldova launched a public debate for the Cybersecurity Programme Draft that contains a set of actions for the safety of processing, circulation, storing and accessibility of data in the digital environment.

5. Conclusions

The dynamics of the contemporary security environment makes the issue of regulating cybersecurity an essential objective for the national security policy. The solutions identified so far both in Romania and in other European states create the impression of a partial and deficient regulation. The national security policy actors
denounce the need for an adequate regulatory framework that would be effective against the numerous threats and danger in cyberspace. At the same time, regulating such a vulnerable field imposes respecting fundamental human rights, like the right to respect for private life and communications or the right for protection of personal data. Judicial review and the appointment of independent civil supervisory authorities are, in an equal measure, aspects concerned when elaborating any democratic legislation. In this respect, it is considered that the adoption of the NIS Directive (Network and Information Security) regarding the measures for ensuring a high common level of network and information security will have a positive impact on the regulation of cybersecurity in the states of the European Union.

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[18] For details see Robinson P., op. cit., p. 207.
Constitutional Order of the European Union

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Abstract
The basics of European construction, as well as ideas that generated it have been diverse. Member States of the first European community took into account in particular the traditions of parliaments as fundamental democratic institutions, as well as the indestructible values of democracy, entrenched in the life and practice of these countries, such as: respect for human rights, independence of the judiciary, free elections, etc. These, and not only these, constituted relevant coordinates that determined that the European idea to affirm fully, to maintain its timeliness, earning the adhesion of the governors, enforcing political and social forces to achieve a better life in Europe, the continent ruined as a result of the Second World War. 

The European ideal is far from complete, the challenges are getting bigger and the European Union will have to answer categorically to demands, mainly in the field of law. 

Keywords: Constitutional order, traits, fundamental rights

1. Introduction. The international organizations do not have, generally, legislative powers for States Members or for the international society as a whole. Not even the United Nations, which brings together the vast majority of world states, does not represent a government or a world parliament that can take regulatory measures. UNO is a forum for discussion, in which all issues can be approached and discussed according to similar procedures to those of the Parliament with or without the consent of the states concerned. The European Union, as a relatively new structure with its own specific, seems to be an exception in this regard. First, a structure so complex which involves so many new challenges, can not achieve its mission only through the ratification of treaties. The Union was created from the outset, in order to evolve, a sometimes controversial and uninterrupted process. Giuseppe Manzzini, almost two centuries ago, said that Europe is in a crisis because it does not have a unity in purpose, destiny and mission. The future European structure will probably be a role model for other structures for other organisms, perhaps even for a world body, especially under the conditions in which the older forms of international organizations
tend to show their limitations in the face of increasingly complex challenges (globalization, pollution, overpopulation, economic crisis, etc.).

2. The Specificity of European Structure. More broadly, EU law contains all the rules of law applicable in Community law [1]. In this sense, European law comprises conventional acts concluded between the Member States in implementing the treaties. The authenticity of the European construction consists of its superiority over the legal systems of Member States; the European Community has not stated a moment that it will supersede the sovereignty or the right of states to decide. The subsidiary principle has remained - and remains - a basic rule according to which an intervention is necessary and desirable only in those areas where the states lack the means to carry out by themselves the community commitments without decisive support from it.

Yet these shared competencies have generated and will generate controversy between conservatives and pro-European, both sustaining with relevant arguments their points of view. Untrusting the democratic European values, Pierre Manent argues: “the meaning of democratic nation has been lost in the very places where this extraordinary form of human association and has appeared, that being, in Europe” [2]. Some of the issues that must find a solution as quickly as possible, within the European structure, are the difficulties in integrating law. One problem that arises is that the introduction of exactly the same rules in different areas as economic development, social-cultural, with the recipients subjects of law so diverse, it is at least ineffective and in some cases may even consist of a severe violation of the subject’s rights. Such challenges that exist even at national level, are generally resolved through specific constitutional mechanisms. The question that arises is whether such mechanisms are possible at EU level and whether they can fulfill a similar role, while maintaining, almost paradoxical, a balance (of increasingly frail yet) between the European legal order and national sovereignty.

According to the findings from the specific literature [3], sovereignty is the basis of contemporary state, the principle of sovereign equality of States, rules of ius cogens [4], customary formed, about being enshrined currently through treaties and fundamental documents of international law, such as the UN Charter, Declaration on the principles of international law concerning friendly relations and cooperation among
States in accordance with the UN Charter, adopted by the General Assembly in 1970, or the Helsinki Final Act of the Conference on Security and Cooperation in Europe from 1975.

Although the international judge, as well as the national one, has the role to interpret and apply the law in force and not to create it, in practice the application of the rule is often difficult if not impossible to separate from the creation norm. According to the American Judge C. Ehughes, „we are bound by a constitution, but the constitution is what the judge says it is”.

The origin of EU law is found not only in institutive treaties, but also in the practice of institutions and Member States and in the systematization of the rules, made by the Court of Justice itself [5].

The sources of Community law is the form under which Community legal norms materialize, the rules of conduct applicable in the Community legal relations [6]. The European Union is an original legal structure, based on ratified treaties by Member States. These treaties also constitute the foundation of Union law and are in fact the constitutional order of the EU. All legal texts adopted by the EU institutions must conform to these treaties that rest on fundamental principles (liberty, democracy, respect for human rights) and define the powers delegated to the Member States of the European Union.

3. The Treaty of Establishing a Constitution for Europe, a Failure or a Step Forward Towards a European Constitutional Order? Primary sources are the Community treaties and other fundamental documents which, along with secondary sources, represent the Union law, narrowly. The treaties determine the area of applicability of Union law, ratione materie, ratione loci and ratione temporis, empower institutions and sets out the principles and procedures to be followed to achieve the referred purpose and objectives [7]. The authority of European treaties result from their rank, prevailing in comparison with all other sources of EU law. The containing rules are applicable through themselves, the origin right hands the institutions the task to follow up the objectives set by providing them for this purpose, a wide range and complex set of legal instruments. The change of institution treaties was required several times, mostly due to the expansion of communities, through the accession of new states [8].
More broadly, EU law contains all the rules of law applicable in Community law order[9] and are considered sources of European law and the following categories:

- The General principles of law;
- Jurisprudence of European Court of Justice;
- The international agreements concluded by Member States to the extent that they provide rights or impose obligations for EU institutions, Member States or their nationals;
- Internal regulations, institutional acts, resolutions and declarations of the Community institutions that are complementary sources of Community law [10].

In terms of jurisprudence, we note that one of the major tasks of the European Court of Justice is ensuring the proper training and respecting of European law and the interpretation and application of treaties. The Court was faced with a nascent legal system, consisting often of rules and legal concepts containing an undetermined, general, sometimes incomplete or inaccurate content. The Court had therefore the mission to complete or form the legal norms adopted, ensuring the legislative function of the EU. Therefore, we can say that there are strong similarities between the Constitutional Courts, at national and C.E.J. level. The Court was concerned with achieving a coherent judicial practice and, to this end, to solve new cases it is considering solutions pronounced in earlier cases. This consistency results from the overview of the purpose of the Community Treaties [11]. Constituents traits are not subject to judicial review under European law, the C.E.J. being competent on the interpretation thereof, not having the opportunity to establish new treaties. The competence conferred to the Court of Justice is to ensure the uniform interpretation and application of Community law [12]. For the purpose of uniform application of European law, the Court was vested with the mission of authentic interpretation of both the original law and secondary law. The Court thus contributes decisively to the formation of a coherent and structured European law, system within which jurisprudence is a spring for formal law. In the Decision of the Court from 1986 ("Les verts“ against the European Parliament, C-294/83), the Court held that CEE is a community based on the rule of law, because neither the Member States nor its institutions can avoid the review of control according to the „basic constitutional charter“ which is the Treaty.
Community legal order consists of the set of rules governing relations between the community states, EU states, and relations between the EU and states that make up this supranational structure. Depending on the importance of the legal law they have, rules of European law were classified [13] into two categories:
- Norms that have a value of fundamental laws, constitutional (institutive and modifying treaties);
- Norms with value of ordinary law rules drawn up by various EU institutions.
Founding Treaties have therefore a privileged position compared to any other rule of European law. These treaties can not be amended by European judges, with the existing presumption that they are legitimate.

A unifying role in the Union, in terms of jurisprudence, is held by the European Court of Human Rights. Starting from the particular cases it refers to, the Court (CEDO) supports its decisions on a number of rules regarding: legal security, legitimate expectations, the effectiveness, accountability, non-discrimination and, in particular, proportionality.

A moment of utmost importance for U.E. is the Lisbon Treaty in 2007, which was adopted as a result of the failure of the adoption of the European Constitution. The Treaty signed in Lisbon on 13 December 2007, which would enter into force on 1 December 2009, it is one of the most important sources of European Union law. The treaty was signed by representatives at the highest level of all 27 Member States of the European Union, the declared purpose being to complete the process started by the Treaty of Amsterdam and by the Treaty of Nice with a view to enhancing the efficiency and democratic legitimacy of the Union and improving the coherence of its actions. By changing art. 1, paragraph three, shall be determined exactly the legal legitimacy of the EU and its international legal status, noting that: „The Union is founded on the present Treaty and on the Treaty on the Functioning of the European Union. These two Treaties have the same legal value. The Union shall replace and succeed the European Community. „In the preamble of the Treaty on European Union has been introduced a new recital on the necessity of the existence of the Union, inspired and based on" cultural heritage, religious and humanist inheritance of Europe, from which have developed the universal values which constitute the inviolable and inalienable rights of
the person, as well as freedom, democracy, equality and the rule of law’. Affirming the values and objectives of the Union, as well as the rules underpinning relations with Member States, there is highlighted the inclusion of the Charter of Fundamental Rights, in the content of the Constitutional Treaty [14].

The Brussels Convention would amend the modification of the ‘three community pillars’ and the establishment of a constitution, with the introduction, as we have shown, of the Charter of Fundamental Rights of the European Union as part of the Constitution. Another goal, of particular importance, was to give the EU legal personality.

The Charter of Fundamental Rights of the European Union is a complex document that combines and declares a large number of fundamental rights and freedoms guaranteed for EU citizens. The Charter, adopted in 2000, at the Intergovernmental Conference in Nice, has initially remained a political statement, not invested with legal power, although in practice it turned out that its provisions have often influenced by jurisprudence, doctrine and public opinion. The Charter has acquired legal force through art. 6 of the EU Treaty, in aggregate form, as a result of the amendments brought to this Treaty and the Treaty on the Functioning of the EU by the Lisbon Treaty. Art. 6 of the Treaty on U.E. in consolidated form provides that the Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights of 7 December 2000, as adopted on 12 December 2007 in Strasbourg, which has the same legal value as the Treaties. The provisions of the Charter do not extend in any way the Union's competences as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions of Title VII of the Charter regarding its interpretation and its implementation taking into account the explanations referred to in the Charter that set out the sources of those provisions.

The Charter reaffirms, with due regarding for the powers and tasks of the EU and the principle of subsidiarity, the rights resulting from the constitutional traditions and international obligations of Member States, of the European Convention on Human Rights and Fundamental Freedoms, of the Social Charters as well as from the case law of CEJ and C.E.D.O. The legal force of the Charter extends only to the European Union. The fundamental rights of European citizens in this document are grouped into six major headings: dignity, freedoms, equality, solidarity, citizens’ rights and justice.
One of the main concerns of the Member States, referring to the Charter was that of a too strong interference in national legal systems. According to art. 51 para. (1) the provisions of the Charter are addressed to Member States „where they are implementing the Union law”. However, CEJ [15] case law envisages a broader sense of the application of the Charter. The Court considers that the provisions of the mentioned document apply to Member States also when they act „according to the purpose of Union law”.

Much of rights contained in the Charter are consistent with those provided in the Convention. Often drawing rights is made in a form more suited, in a modern form (for example, where property rights or the right to protection of personal data). Recognition of rights in the Charter was based on the recognition of these rights in national constitutions of some Member States (eg., Art. 49 stipulates the principles of legality and proportionality of criminal offenses and penalties and recognizes retroactive criminal punishment if more favorable) . Although the Charter does not recognize entirely new rights (most of them had already been recognized in national constitutions, law, treaties or pacts), but it is a reaffirmation of the rights and freedoms initially recognized, in this document recognition is more categorical on an imperative a tone.

Article 2 para. (1) of the Treaty on European Union states that: „When the Treaties confer the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so only if so empowered by the Union or for the implementation of Union acts „. But the Member States still have a strong influence from outside the Community. The most important influence on national legal systems at this time seems to exert the recognition principle and that of guaranteeing fundamental human rights.

As regards the legal personality of the EU, from the provisions of the Treaty of establishing the European Union it is clear that the Union does not replace the European Communities [16]. The recognition of legal personality by the Treaty of Lisbon (Art. 46A), specifically, is an important step forward in European integration. According to art.2 para. (1) of the Treaty on the Functioning of the EU, in aggregate form, in areas falling within its exclusive competence assigned by the Treaties, only the Union may legislate and adopt binding acts, the Member States having this ability only
to implement Union acts, or when they are empowered by the Union. The article is a recognition of the fact that it is directly applicable in national legal systems. The direct application of EU rules in the national law systems can lead to law conflicts, conflicts that will always be resolved in favor of the Community law, as it applies with priority. At the same time, some provisions of the Treaty on the Functioning of the EU (and the Treaty regarding EU) clearly expresses maintaining national sovereignty and Member States’ constitutions [ie. art. 223, para. (1), Art. 357].

Union law has triggered a new legal order - the Community, for which the Member States of the European Union agreed to limit their sovereign powers in some areas, expressly provided by the EU treaties.

New Community legal order is based, simultaneously on classical international law, on the federal law known models, borrowing cumulatively from them, and on the national law of the Member States, intending to popularize, at Community level the best national regulations. The relatively new structure that we call U.E. call into question some concepts considered so far as true axioms, such as sovereignty and constitutional order.

Even if establishing a Constitution for Europe was a failure and even if the future existence of such a Constitution is dubious, many provisions of the Treaty establishing a Constitution became a reality. Also, I think that in the UE there is a „constitutional order”, understood not only as a sum of national constitutions but also by recognizing the primacy of European treaties, by recognizing the direct applicability of European Community law.

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[8] There were other changes, among which we can mention, by way of example: Convenția din 1957; Tratatul de instituire a Consiliului Unic și a Comisiei Unice a Comunităților Europene; Actul Unic European din 1985; Tratatul de la Amsterdam din 1997; Tratatul de la Nisa din 2001
Controversies regarding the requirements of the administrator managing the company’s patrimony – the associate quality and cumulation of mandates

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Abstract
Two questions have aroused the interest of doctrine and jurisprudence regarding the administrator’s task of managing the company’s patrimony: the administrator’s quality of associate and the administrator’s plurality of mandates to various companies. Regardless of doctrinal and jurisprudential controversies regarding the two issues in question, there should be noted that, at present, more and more administrators cumulate mandates as administrators within 1-2 companies. Moreover, nothing precludes for the administrator to be not only an associate of the company (shareholder), but also a person without this quality.

Keywords: administrator, asociat , mandat, cumul of mandate

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1. Introductive considerations

The view that dominated the doctrine according to which an associate would be the best to ensure the management of a company governed by Law no. 31/1990, at first glance is fair; therefore, it is only natural for the administrator to be an associate. However, in practice, the associates, in order to set up the company, need specialists in various fields to manage the patrimony: economic, financial, banking, legal etc. In other words, organizing, leading and managing the economic activity is, in fact, entrusted to natural or legal persons, others than associates.

Having in view the law governing regulates limits of the mandates cumulation only regarding the administrators/ members of the supervisory council of the joint stock company or limited liability company, the question is if the administrator of a person limited company or a limited liability company may be simultaneously manager of other companies.

2. The manager’s associate quality

The issue of the manager’s associate quality governed by Law no. 31/1990 was the object of doctrinal controversy[1] , jurisprudence and even legislative. Thus, in an
isolated doctrinal opinion [2] it was held that "an associate is most capable of ensuring the interests of members, which means that the administrator must be an associate."

Instead, the vast majority of doctrine, based on the regulations of Law no. 31/1990, considered as binding the administrator’s quality of associate in person limited companies and partnership limited by shares, and optional in limited liability companies and stock companies.[3]

Reported to the regulations in force, Law no. 31/1990 regards the manager’s associate quality differently, depending on the legal form of the company.

1. Under the law, the manager’s quality of associate is a condition of validity of the appointment only in limited partnerships and companies limited by shares. Pursuant to art. 88 of Law no. 31/1990, „the limited partnership's administration shall be assigned to one or more active partners.” Art. 188 para 1 of the Law on partnership limited by shares has the same effect, „the company’s management is entrusted to one or several active partners.” Thus, in the case of limited partnerships, the law expressly requires the administrator to be an associate, and even more, to be a partner with unlimited liability for social obligations, ie an active partner. Any interference in the administration of the company is sanctioned by his exclusion from the company, under art.222 par. 1 letter c [4] (in the case of the active partner in a limited partnership) as well as with unlimited liability to third parties and solidarily, for all the company's obligations, just as an active partner (in the case of active partners both in the limited partnerships, and the partnership limited by shares).

Just recently [5] it was argued that limited partnerships can be administered both by third parties and active associates. The foundation of this opinion is in art. 90 [6], which refers in terms of management of the company in partnership to the provisions of art. 77, the latter allowing, through the articles of association, to derogate from the rule according to which administrators can be appointed only among members (in this case only among the active partners). According to art.77 para. 1 „associates [...] can choose one or more administrators among them [...]only if, by articles of association, it is not provide otherwise.” Therefore, it was said that, if the articles of association expressly provide contrary to the rule in art.88 third parties or active associates could be appointed as administrators.
Although „daring”, we consider that the opinion is not justified, even by the wording of legal texts.

Firstly, even if we interpret art. 77 para. 1 that by articles of association the management of the company can be performed by persons other than active partners, text of art. 88 does not include such a possibility. Thus, we find ourselves in the presence of two diametrically opposed provisions.

Secondly, Art. 88 must be interpreted strictly in the sense that the company’s management can be entrusted to one or more active partners. And to the extent that the text would be given a different interpretation, limiting provisions no longer justify, meaning that administrators can be active partners. If the legislator had allowed active partners and third parties to take part to the management, it should have expressly provided that, or at least would have given up the restrictive nature of Article 88 of the law.

However, to interpret the text otherwise, would make inapplicable subsequent provisions of art. 89 that exceptionally allows the active partners to intervene in management, concluding operations on behalf of the company, but only under a special mandate given by the company’s representatives and registered in the Trade Register (para. 1), to provide administration services within the internal company management, to participate in the appointment and revocation of administrators, or to grant administrators with authorization for transactions exceeding their powers (para. 2). Consequently, if active partners may be appointed administrators it would not justify the provisions of art. 89 which would allow, if the active partner activity is useful the intervention within the management.

Thirdly, an active partner may not be a manager because his responsibility for social debts is limited [7], it must be prevented to engage in reckless operations at the expense of the company. In addition, thus it is avoided the misleading of third parties who may think that they worked with an associate, responsible personally and unlimited for social debts.[8]

Fourthly, the rule established by art. 88, is to be interpreted strictly, and cannot be eluded by an otherwise provision in the articles of association. For this reason, we cannot agree with the view that the articles of association can be an express provision
contrary to art. 88 which stipulates that there could be appointed as administrators active partners or third parties. Thus, art. 77 para. 1 (which sends to art. 90 as applicable to partnerships), should be interpreted in a different manner than as the articles of association can elude the rule of appointing administrators only among the associates. We believe that the rule referring to art. 77 para. 1 it was wanted to regulate the subsequent appointment of administrators - active associates. In this regard, associates representing the absolute majority of capital may elect one or more administrators among of them, unless the articles of association provide otherwise. The text should be read in conjunction with art. 88 which allows the administrator's appointment to be made only from the active partners. This is because the law provides the opportunity to the active partners to participate in the appointment of administrators (art. 89 paragraph 2 of Law no. 31/1990).

Consequently, the analysis put forward by the texts it results that all active partners dormant partners representing the absolute majority of the capital share may elect one or more administrators among them or of the active partners, as stated in article 88 of the law. And the fact that „by articles of association it may provided otherwise” does not have in view the possibility of appointing a third party as administrator, but the possibility that the articles of association to provide for another majority to elect the administrators legally.

2. In general partnerships and limited liability companies, the administrator can be an associate or not. Principle solution is contained in art. 7 lit. e) of the Law, which requires the incumbency of including in the articles of association of the limited liability partnerships, the claim about the „associates who represent and manage the company or mangers not associated.”

Regarding the limited liability company, the provisions of the law are clear, art. 197 para 1 in accordance with article 7 letter e) expressly stipulates the possibility to be associated or unassociated administrator. Thus, according to art. 197 para 1 „the company (limited liability-sn) is managed by one or more associates or administrators not associated.” It unequivocally results that in the limited liability company, the administrator can be a partner or a third person.
However, in general partnerships [9], the same art. 77 para. 1 raises a number of issues, not linked to the provisions of article 7 of the law. According to art. 77 para. 1 „associates [...] can choose one or more administrators among them ...”, and hence the administrator must be an associate. In contrast, however, art. 7 letter e) provides that the articles of association of the general partnership must state the associates who manage it or the unassociated administrators. Along with other authors [10], we consider that it is just a simple inadvertence of article 77, para. 1, which, despite recent amendments to Law no. 31/1990, remained uncorrelated with article 7 letter e).

3. In the limited company, article 8 regulating the content of the articles of association, does not provide for the requirement that the administrator should be a shareholder (associate) [11]. At the same time, in the doctrine [12] it is undeniable that the supervisory board member may be a shareholder or a third person from the company. However, if by the articles of association or by the decision of the general shareholders meeting it was established that one or more members of the board/supervisory should be independent (in accordance with art. 1382, paragraph 1 and Art. 1538 para. 2), the law requires that they should not be significant shareholders in the company. Thus, when appointing an independent administrator it shall take into consideration the criterion laid down in art. 1382, paragraph 2, letter g of the law, namely to not be a significant shareholder of the company. In other words, the law provides an exception to the rule according to which administrators can be both shareholders and third parties, meaning that the independent member of the board or of the directorate cannot be a significant shareholder of the company. As regards the exception, the law requires the cumulative fulfillment of both conditions, that of not being a mere shareholder but a significant one.

3. The administrator’s possibility of cumulating mandates

3.1. The situation of cumulating mandates by the administrator of a joint stock company and a company limited by shares

Regarding the cumulation of the administrator quality within several companies, Law no. 31/1990 contains express provisions with strict reference to joint stock companies and companies limited by shares.
In the case of joint stock companies, art. 15316, paragraph 1 establishes the rule that „an individual can exercise at the same time more than 5 mandates of administrator and/or member of the supervisory board in joint stock companies whose headquarters are in Romania. This applies equally to individual administrator or member of the supervisory board and individual permanent representative of a legal person administrator or a member of the supervisory board.” As provisions of art. 187 of the Law on limited partnership by shares, the legal provisions „are completed with the rules on joint stock companies, except those in the dual management system”, the provisions of art. 15316 (para. 1) which limits the cumulation of mandates, also applies to the sole administrator or administration board members of the company limited by shares.

Motivation of banning the cumulation of mandates results from the presumption of inability of exercising the company management powers by the individual who holds the position of administrator and/or member of the supervisory board in more than 5 joint stock companies at once.

Text analysed needs certain clarifications.

Firstly, art. 13516 para. 1 regulates the prohibition of holding more than 5 mandates of administrator and/or member of the supervisory board. In other words, it still allows a person to exercise between 2 to 5 mandates, but without exceeding the limit of 5, as the administrator or member of the supervisory board in joint stock companies established in Romania.

We note that, unlike the previous regulation [13], in which the maximum number of administration boards in which a person was able to operate was of 3, now this number has been increased to 5. Also a novelty, the changes brought by Law no. 31/1990, is the cumulation of mandates to individuals who meet quality of permanent representative of the administrator – natural person.

But even if the law does not distinguish, we believe that the prohibition of cumulation of more than 5 mandates applies to administrators/ members of the supervisory board appointed provisionally only [14].

Secondly, the analyzed text contains mandatory provisions which cannot be derogated from by contrary clauses of the association. To the extent that the articles of association provide simultaneous exercise of more than 5 mandates by the
administrator and/or member of the supervisory board, such a clause is absolutely void and cannot produce any effect, penalties provided for by art. 13516, para. 3 being applicable.

Thirdly, the prohibition applies, as provided by the limiting text, just in case of joint stock companies whose headquarters are in Romania. From a per a contrario interpretation that the prohibition does not operate as far as exceeding the maximum number of five mandates takes place through the exercise of such functions in companies headquartered abroad.

And last but not least, even if the law expressly regulates the cumulation of mandates in stock companies, the calculation of mandates shall take into account not only the positions held in the boards of directors/ supervisory boards of joint stock companies, but also the position of administrator in other companies [15].

From the set rule, the law allows the exemption in two circumstances specified in art. 13516 para. 2. According to the text mentioned, the prohibition does not apply if the elected person from the board of directors or the supervisory board is the owner of at least ¼ of the total shares of the company or in the situation in which he is a member of the board of directors or the board of supervision of a joint stock holding the aforementioned one fourth. Consequently, in these two cases it is allowed the exercise by the same person simultaneously of more than 5 mandates of administrator and/ or member of the supervisory board [16], therefore it is considered that the risk of inadequate fulfillment of duties as well as the causation for any loss or neglect of the shareholders’ interests decreases if the holder of the interdiction is the owner of at least ¼ of the total shares or the administrator of a company that owns such quarter.

Failure in applying the interdiction attracts cumulatively for the culprit administrator/supervisory board member the loss of position held by exceeding the legal number of mandates as well as the refund of the remuneration and other benefits received by the company who has served respectively.

With regard to administrators and members of the directorate of the joint-stock company, the law does not have in principle a provision like the abovementioned one, the prohibition of cumulating mandates, and therefore, since the law does not prohibit, such a cumulation is allowed. Instead, cumulation of mandates of the
administrator/member of directorate in competing companies or having the same activity is subject to authorization restrictive condition by the board/board of Supervisors.

According to art. 15315 of the law, by virtue of the non-competition, „administrators of a joint stock unitary system, and members of the directorate, in the dualist system, cannot be, without the authorization of the board or supervisory board, directors . . . members of the directorate .... in other companies competing on the same subject or activity .....” Given that there is needed an authorization on behalf of the board or supervisory board only if the director or member of the executive board cumulates this quality only in a competing company or having the same type of activity, we believe that in any other circumstances the cumulation of mandates is unrestrained.

The law does not establish the obligation of publishing the cumulation of mandates, making it difficult to know when an administrator violates the prohibition against exercising at once more than 5 mandates. However, to prevent the emergence of incompatibility by art. 15317 of the law [17] it was established the obligation of the person nominated for the position of administrator/member of the supervisory board, to notify (inform) the company body charged with appointing him [18], information on the number of mandates held in other companies. The same obligation have the administrators, members of the directorate in informing the board of directors/supervisory board to appoint him, regarding the mandates held in competing companies.

Meanwhile, for the first directors/supervisory board members appointed by the articles of association, prohibition of the simultaneous compliance with more than 5 mandates lies with the Trade Register Office Director or a designated person, charged with the application for registration in the register of the Company Trade. And for administrators/members of the supervisory board elected subsequently by the Ordinary General Meeting by virtue of their right to information, shareholders may request clarifications about the proposed number of companies in which the proposed person has the quality of administrator/ member of the supervisory board.

However, in the event that the appointment of the nominee actually takes place, the fact that he has fulfilled his obligation to provide information on the number of
mandates or the mandate held a competitor, does not remove the applicability of sanctions under art. 13516, para. 3.

3.2. The situation of cumulating mandates by the administrator of a general partnership and limited liability companies.

Most of the doctrine advocates the thesis of inadmissibility of cumulating the administrator function in several companies, the conditions necessary to obtain the administrator’s duties to manage the company. This can be achieved only if the person in question is an administrator in a single company [19]. Likewise, it was advocated [20], referring to the companies analyzed that, due to complexity of the administrator’s activity, it is not allowed to cumulate the quality of an administrator in a general partnership, limited partnerships and limited liability company.

By regulating non-competition obligation incumbering the administrators in the limited liability company, art. 197 para. 2 of the Company Law stipulates: „the administrators cannot receive, without the authorization of the shareholders' meeting, the mandate of director in other companies competing on the same subject or activity.” Thus, under the penalty of revocation and liability for damages, if the law allows the administrator to cumulate the mandate of administrator in another competitor or having the same activity, obviously, with the authorization of the shareholders' meeting, a fortiori it should be allowed such cumulation under the conditions the companies are not competitors and do not carry out the same commercial activities. Also, under the principle qui potest plus, potest minus, if an administrator can receive mandate in a competitor or a company with the same type of activity, the more he can be a manager of a company that is not in relationships of competition with the company that he originally administered.

Referring to partnerships (general partnerships and limited partnerships), a doctrinal opinion [21], based on the fact that managers are recruited among members and by virtue of the intuitu personae of the association, it was argued that there cannot be accepted the cumulation of administrator position in several companies. We appreciate, with strict reference to general partnerships and limited partnerships, that the law does not provide that such a prohibition in the administrators’ task, but only in the members’. Therefore, such a prohibition with limited applicability to individual
associates cannot be extended by analogy to administrators [22]. Thus, art. 82 para. 1 stipulates for the general partnerships that „associates cannot take part as partners with unlimited liability in other competing companies or having the same activity [...] without the consent of other partners.” The provision is applicable to the general partners of limited partnerships (based on article 90 cumulated with article 82).

Since art. 82 refers only to associates and not administrators, and article 7 letter e) [23] allows in partnerships to be designated as administrators third parties (unassociated administrators), we believe it is possible for an administrator unassociated to compete, even unfair, to the administered company.

The text of the law establishes a capacity restriction of use, so it cannot be extended by analogy (exceptio est strictissimae interpretationis), to unassociated administrators. Therefore, in the partnerships, the administrator of such a company, having the quality of an associate, shall be bound by non-competition and cannot be associated (and not administrator) to other competing companies or having the same object without consent of the others, under the penalty of payment of compensation for any damage caused and could be sanctioned including by removal from the position. But as far as the manager is not associated, he is not bound by this obligation and, therefore, the administrator can cumulate the mandate in other companies. But of course, in this case, he shall have to comply with the ethical obligation of loyalty towards the company.

3. Conclusions

Regardless of doctrinal and jurisprudential controversies on the two issues raised, it should be noted that at present, more and more administrators cumulate the mandate of administrator within 1-2 companies. In this context, nothing precludes the administrator to be not only associated in the company (shareholder), but also a person without this quality. De lege ferenda it would be useful a regulation in the sense that in large companies, the appointment of the administrator not to depend on his quality of shareholder, in order to designate real professionals in these positions.

We also appreciate that the silence of the law regarding the cumulation of mandates by the administrators could be interpreted in the sense that for the general partnerships, limited partnerships and the limited liability companies, status of
cumulation the administrator position in several companies can be upheld. Thus, if the legislature had intended a possible ban of cumulative capacity of the administrator in several companies, it should have expressly provided it.

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[1] Since the interwar period there were two opposing positions on the problem in question. Some authors advocated the theory the parties' freedom, both in general partnerships, and in a capital companies, according to which the administrator may be an associate or a third party. It was considered that the interests of the company are better achieved if the company relies on third parties if, among the associates or shareholders there is no competent person to carry out the management of the company. Other authors thought that for partnerships the administrators can only be among members or active partners.

[4] According to art. 222 paragraph 1, letter c „may be excluded from [ ... ] the limited partnerships [ ... ] ... c) partners with unlimited liability that without the right interferes the administration.”
[6] According to art. 90 „provisions of art. ... 77 ...shall apply to partnerships.”
[7] Dormant partners respond within his contribution to the share capital.
[9] From the initial texts drafting of Law no. 31/1990 on general partnership (formerly article 3 and article 47 paragraph 1) it results that the administrator of these companies must be an associate . The solution was shared by S. Beligrădeanu , „Exceptions to the common labour law under Law no. 31/1990” in „Law” no. 9-12 / 1990 , p. 34 and O. Căpățână, „Companies”, 2nd Edition , Lumina Lex Publishing House, Bucharest, 1996 , p. 327. According to the latter author , „by the very wording of art. 3 it is precluded the appointment as administrators of those persons who are not associates as well.”
[10] Gh. Piperea, Obligations and liability of company administrators, All Beck Publishing House, Bucharest, 1998, p . 19. However, the author believes that “due to the contract intuit personae, the people of this company, in principle, the company's administrators shall be recruited from associates.”
[11] Law no. 31/1990, in its original form, provided that the company articles of association must specify, along with other mandatory mentions, the full name, date and place of birth, residence and nationality of the administrators [ ... ] (art. 8 para. 1 pt. g ) of Law no. 31/1990. At the same time, art. 140 para. 2 (now
repealed) provided a specific way to provide the guarantee, consisting of 10 shares if the administrator was a shareholder. Thus, in the two legal texts conclude that in the limited company, the administrator may be appointed among the shareholders or not.


[13] According to art. 145 paragraph 1 of Law no. 31/1990, in the version prior to its amendment by Law no. 441/2006 „Nobody can operate in more than three boards of directors.”


[15] C. Micu, Organization of administration in stock companies. The unitary system, in Romanian Journal of Business Law no . 2/2007, p.61 . According to the author , the solution is justified in the light of the aim pursued by the legislator, to ensure that the company of the administrator has the time necessary for a good objective exercise of the social property right.

[16] E. Cârcei, op. cit., p. 247

[17] According to art. 15317 „before being appointed director or administrator or member of the board or the supervisory board in a joint stock company, the nominee shall inform the company body charged with his appointment on any relevant issues from the perspective of art. 15315 and art. 15316.”

[18] The body in charge of appointing covered by the legal text is the ordinary general meeting of shareholders for subsequent members of the board, respectively for the first administrators founders (according to art. 1371) . Similarly, in the case of members of the supervisory board, the body responsible for their appointment is the Ordinary General Meeting for members elected subsequently, founders respectively, for the first members of the supervisory board (according to art. 1536) .

[19] S.D. Cărpenaru, op. cit., p. 27. The author believes that waiving the inadmissibility of cumulation established by law in matters of public limited liability companies is explained by the fact that a Board of Directors holds working meetings regularly, which allow a person to be a member and take part in the activity of several councils of administration.

[20] E. Munteanu, op. cit., p. 47. In addition and as a justification of the first doctrinal views, the author argues that the law established a small number of administrators for partnerships and limited liability companies, „ not organized into a collective management activity and practically not having time to manage simultaneously with all the benefits other collective entities, even if they are not competing .”


[22] The restrictions of competition (non-competition obligation) only concern managers of joint stock companies and limited liability companies not those in partnerships (in the latter case, the restriction of competition concerns the associates). See S. Cărpenaru C. Predoiu, S. David, Gh. Piperea, op. cit., p. 337, note1.

[23] According to art. 7, „Articles of association in general partnerships, partnerships shall include: ... e) ... unassociated administrators”.
Current regulation of the sanctions which can be applied to legal entities

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Abstract
The criminal liability of the legal entity is a rather delicate subject in Romanian law, especially since this institution was only recently regulated. We feel that Romanian criminal law, much like other laws, needed to reconsider the exclusion of the legal entity from criminal liability considering that, once the country had a market economy, the possibility of creating such legal entities increased and they are all capable of committing crimes. The current study contains information regarding the main aspects of this institution as it is regulated by the new Criminal Code. Also, at the end of this study, we have described a few examples of international law which are relevant to the matter we are discussing.

Keywords: legal entity, crime, criminal liability, sanction, conditions, compared law.

Introduction
The issue of criminal liability of the legal entity caused several contradictory discussions across time, in regard to the possibility of the legal entity to become the active subject of a crime. After nearly a decade of existence in the Romanian Criminal Code, the institution of criminal liability of legal entities continues to arouse the interest of literature and is a truly controversial topic. This institution gave rise to different opinions and conflicting solutions. As a consequence, the practitioners are rather reluctant regarding this topic, due to the lack of jurisprudential sources. The absence of a coherent jurisprudence in the matter of criminal liability of legal entities led to a slow evolution of this institution, which the legislature expressly regulated for the first time after the fall of communism (in the spirit of which legal entities present no social danger in order to require regulation), by Law no. 301/2004 on the new Criminal Code of Romania. Therefore which we chose this subject are easy to understand as well as our desire to study this matter. From a legal perspective, there are three relevant texts in the new Civil Code, essential in the phrasing of possible definitions of the legal entity. The first text which claims our attention is art. 25 para. (3), which states that "a legal entity is any form of organization, meeting the conditions required by law, and isthe
holder of civil rights and obligations". The second text, art. 187, states that "any legal entity must have a legitimate and moral purpose, in accordance with the general interest" and, finally, according to art. 188, "legal entities are those established by law, and any other legally formed organizations which, although not declared legal by law, meet all the conditions of art. 187". Sometimes the expression of "moral person" is used for designating a legal entity. In other words, the entity that fulfils all the conditions provided by law and is a holder of rights and obligations represents a legal entity. As the legal entity holds some obligations, it entails the possibility of liability, both civil and criminal, of a legal entity seen as logical and normal. Regarding criminal liability, which we shall discuss, the legislator has established a series of conditions which need to be fulfilled for this liability to be involved.

**The legal entities which are not criminally liable**

The new regulation distinguishes between legal entities of private law and legal entities of public law. The rule is that public legal entities are not criminally liable and the exception is represented by those public legal entities which undertake activities that can be the subject of the private field [1]. Thus, art. 135 of the new Criminal Code, in its first paragraph, exempts from the criminal liability the State and public authorities. The state, as a legal entity is not criminally liable in most systems of law in Europe. This is explained by the fact that the State holds the monopoly on the right to punish, so it would be absurd to punish himself [2]. On this occasion, we shall list Romanian public authorities, as they are prescribed by law: Parliament, Government, central and local public administration, the judicial authority, which includes the courts, the Public Ministry and the Superior Council of Magistrates, Court of Accounts and Constitutional Court, the Ombudsman. In paragraph (2) of the same article, public institutions are exempted as well, provided that they have not committed a crime in the exercise of an activity that can be the subject of the private field. Per a contrario, if a public institution commits an offense in relation to an activity that can be the subject of the private field, it will be prosecuted. Instead, any legal entity of the private field can be held criminally liable, regardless of the legal form they have. As an example, their legal forms may include associations, companies, foundations et cetera. Although foundations and associations can acquire the status of legal entities of public interest under the terms of art. 39 of
Ordinance no. 26/2006, by Government Decision, they remain essentially private legal entities and can still be held criminally liable [3]. Another condition of criminal liability of a legal entity results from art. 135 of the new Criminal Code and is that the offense must be committed in regard to the object of activity (offenses which basically are committed by individuals – e.g. the representative of a legal entity) or interest or on behalf of the legal entity (which usually targets to acquire material and / or moral gains). In the meaning of criminal law, a crime is committed on behalf of the legal entity when the person who performs the material element of the crime acts as an organism or representative of the legal entity, being officially empowered to act, without the deed being committed as a part of achieving the current activity of the entity or to the benefit of that legal entity.

As a principle, a legal entity can commit any crime. However, it is obvious that not all offences can be committed by a legal entity (as author), among which we can list rape, bigamy, escape from prison, false testimony and so on, but that does not mean that legal entities cannot participate in such offences as instigator or accomplice. For example, a legal entity facilitates new marriages for people who already married, by issuing forged documents stating the termination of the previous marriage [4]. Usually, legal entities act illegally in order to obtain a material benefit or to avoid material damage, such as offenses of money laundering, tax evasion, deceit or the ones on copyright and so on, and sometimes they even reach the offense of manslaughter in the aggravated form [5].

**Main sanction**

In regard to the sanctions which can be applied to a legal entity, the legislator distinguishes, just as he does in the case of individuals, between main sanctions and complementary sanctions. The fine is the only sanction which can be applied to a legal entity "and consists of the money a legal entity is ordered to pay to the State" as provided by art. 137 of the new Criminal Code.

In establishing the amount of the fine, the day-fines system is used. First, the number of days is established, taking into account the general criteria for customization of penalty provided by art. 74 of the new Criminal Code. Subsequently, the amount of one day-fine is established, in relation to its turnover (as it is the case of for profit legal
entities) or according to the patrimonial assets and other obligations of legal entity (as it is the case of the other legal entities). Finally, the fine that shall be paid results from multiplying the amount of a day-fine with the number of days subject to the fine. The same article provides both general limits and special limits of days-fine. The general boundaries are between 30 days and 600 days, and a day-fine amount is between 100 lei and 5.000 lei. The limits on the fine are between 3.000 lei and 3.000.000 lei and they cannot be exceeded in establishing the penalty. Moreover, there may be mitigating or aggravating circumstances which can influence the final penalty and which will operate within the general limits.

Regarding the special limits of the days subject to the fine, they range between:
- 60 and 180 days, when only the penalty consisting of the fine is provided by law for the offense committed;
- 120 and 240 days, when the law provides a term of imprisonment of maximum five years, as such or as alternative to the fine;
- 180 and 300 days, when the law provides a term of imprisonment of maximum 10 years;
- 240 and 420 days, when the law provides a term of imprisonment of maximum 20 years;
- 360 and 510 days, when the law provides a term of imprisonment exceeding 20 years or life imprisonment.

When the offense committed by the legal entity resulted in obtaining of a monetary benefit, the special limits of the fine-days provided by law for the committed offense may be increased by one-third, without exceeding the general maximum of the fine. However, it appears that the task of the court to determine the involvement of criminal liability of a legal entity is not always easy, especially because the actual offences are committed by individuals whose criminal liability is by no means removed by engaging liability for legal entities. In other words, the court must identify those situations where an individual commits crimes under the guise of a legal entity in order to give a proper sanction.

According to the provisions of article 497 of the Criminal Procedure code, „the legal entity sanctioned with a fine is forced to present to the judge the receipt which
proves payment of the fine within three months since the sanctions was final; when the legal entity is unable to pay the entire fine, the judge can rule to pay the amount in several monthly payments within two years”.

**Complementary penalties**

Complementary penalties apply to legal entities usually on a voluntary basis, this being left at the discretion of the court, considering the nature and gravity of the offenses as well as the circumstances of the case, as such penalties are necessary. Thus, the court may pronounce one or several complementary sanctions (except for the complementary sanction of natural dissolution which cannot be applied along with other complementary sanctions). As an exception, the law may explicitly stipulate the application of these penalties.

The complementary sanctions which can be applied to legal entities are:
- Dissolution of the legal entity; it is applied according to the law, when the entity committed a crime;
- Suspension of one of the activities of the legal entities; forbidding one or more of the activities which was performed when committing the crime.
- Closing of some branches of the legal entity, in case the legal entity has at least two branches.
- Removal of the right to participate in public tenders from 1 to 3 years; removing the possibility to participate, directly or indirectly, in any tenders for awarding contracts as stated by law.
- The placing under judicial supervision; According to article 144, placing under legal supervision represents the designation of a person by the court, a legal administrator or an empowered person who will oversee the activity of the legal entity for 1 to 3 years.

The legal administrator or the empowered person is obliged to call upon the court when they see the legal entity did not take the necessary means in order to prevent new crimes. In case the court finds this to be true, the sanction is replaced with that of suspending the activity of the legal entity.

- Listing or publishing the sanction. Sanctioning legal entities for committing crimes and publishing the sanctions can cause a much stronger impact on public opinion. This
complementary punishment is an advantage for all those who can work with the legal entity which was sanctioned, as they would be warned regarding the conduct of the entity; this is also a sanction with positive effect in regard to its purpose, as it affects the public image of the legal entity which committed a crime.

**Comparative law elements**

Whereas the discussed topic represents a relatively new institution for Romanian law, a research work on this matter, as is the present study, prevents the scarcity of sources both doctrinal and jurisprudential, which is natural in this context. It becomes therefore inevitable and justified the use of foreign sources, especially the European ones. For example, in the Estonian Criminal Code [6] there are two main penalties which can be applied to legal entities, namely: fine and dissolution of legal entities. Moreover, the Code allows these two penalties to be applied simultaneously, as opposed to Romanian law where the only main penalty is a fine, which can be applied along with the complementary sanction of dissolution of legal entity. Basically, the final sanction resulting in both codes (the Romanian one and the Estonian one) can be identical, as only the theoretical framing of sanctions is different. In Germany [7], on the other hand, the criminal liability of legal entities is not established, the as the German legislator chose to regulate an administrative liability that is less expensive and quite effective given the fact that the fines may reach enormous amounts of money of up to one million euros. In French law, the criminal liability of the legal entity was first regulated by the 1994 Criminal Code; the same regulation is found in Romanian law in case the entity is a legal one. In regard to the conditions which need to be met for criminal liability, the French Criminal Code was interpreted in such a manner that criminal liability ca be entailed only if a crime was committed by an organism or representative o the legal entity [8].

**Conclusion**

Therefore, the issue of criminal liability of legal entities represents an exciting subject, which, like any emerging institution, arouses the interest of Romanian literature. Also, it raises many problems of practical application, and manages to become a real challenge for international debates. This work is represents a panoramic view of the subject, which although did not fully treat all the theoretical and practical problems
concerning this institution of criminal law, this research approach is far from being superficial.

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The concept of crime in the context of globalization

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Abstract
The author presents the influence of globalization on the concept of crime, this process might be reflected in the stimulation of the unification of the different conceptions at the European and world level, defining the crime and the conditions for criminal responsibility.

Keywords: criminal, globalization, the unification

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1. As it is known, currently all over the world mankind is facing a social phenomenon with wide implications, namely globalization.

Globalization is characterized by intensified global cooperation of the states in order to create a single market, to give up the customs duties, to intensify the movement of goods, to identifying new sources of raw materials and product sales opportunities.

In fact, Professor George Antoniu believes that globalization fosters the creation of unions of states in which cooperation is increasing to finally reach a unitary state at continental and global levels.

In other words, this process of globalization should have the character of a process that will intensify in the future the economic and cultural needs that are in constant growth and complexity.

2. In this regard, it would be necessary to consider whether globalization influencing the concrete manifestations of the offense will influence the very definition of this concept [1]. In other words, if there will continue to subsist as traits of the concept of offense those traits currently stipulated the Penal Code in Article 15, namely to exist
an offense under the criminal law committed with guilt and also imputable [2] (as a positive trait) and unjustified (as a negative trait [3]).

It should be noted that the new law-maker, following the tradition of the previous Penal Code defines the offense in a text of the Code, although in most laws there is no such definition, as it is regarded to be in the jurisdiction of the doctrine, not of the law-maker.

Referring to the new definition of the crime, we notice the removal of the requirement that the offense should represent a socially dangerous act. It was satisfied thus an older requirement of the doctrine to be adopted a formal, and not a substantial definition of the offense.

In this respect, the new definition is a step forward and brings the Romanian doctrine closer to other penal which define criminal offense this way (crime is the offense which according to the criminal law is committed with guilt). The new definition of the crime is not limited to this, but includes also two new features, namely that the act should be unjustified and imputable to the person who committed it. The first requirement would establish the idea that the criminal offense involves the lack of the justifying cases. Although this corresponds to reality, as the crime is also defined by a negative demand (not only the positive ones that we mentioned above), namely the lack of the justifying cases, the notion of "unjustifiably" is not adequate, in our view, to render the reality to which we refer. In the Romanian language this concept has multiple meanings (unjustifiably severe, mild, unjustifiably in the sense of not having a reason, a ground, etc.), and not only that of the lack of the justifying causes. As such, globalization could act also with the aim of unification of the justifying causes and the non-imputability causes, unification that would be necessary both as regards the definition of these cases and their field of application, and the consequences that would produce, in rem and in personam.

A certain unification of these definitions imposed by globalization, in case it could be done, would consist, in our opinion, of a future unified doctrine in formulating a simplified definition of the concept of crime, conceived as an offence committed with guilt and stipulated by the penal law, without reference to other features of the concept.
Also, there were reflected in the provisions of the new Penal Code the progressive ideas related to the execution of criminal penalties, possibly in an open environment, which emphasizes the alignment of the Penal Code to the important trends of the science of penal law.

Also in the Romanian criminal doctrine it has been raised the question whether the purpose of the penal law should or should not occur in the content of the penal law?

This question was answered, according to an opinion, (C.Buali) that the penal laws of the former socialist countries used to stipulate a provision with this content.

Other authors (George Antoniu) claimed that this issue belongs to the criminal doctrine and not the law-maker (the Western countries).

The law-maker of the new Penal Code followed the last opinion, renouncing to an explicit provision regarding the purpose of the penal law.

This different position on the need to include or not in the penal law an explicit provision regarding the purpose of the penal law is not an ad-hoc option, but it reflects a certain way of conceiving the role and general significance of the penal law in the context of globalization.

It should be noted that globalization could affect the principle of legality of incrimination and punishment at most in terms of formulation (we consider more appropriate a unitary formulation of the principle of legality of incrimination and punishment, as provided in most of the penal legislations and not a separate formulation of the of legality of incrimination and of legality of punishment like in the new Romanian Penal Code, according to the Spanish model, article 1 and 2).

In connection with this, the recent doctrine defines general principles of law as fundamental prescriptions containing key ideas that should be included in any rule of law, with a creative role on judicial phenomenon, and conditional in that they contain the objective conditions that must exist in any law [4].

Referring to the influence of globalization on the concept of crime, this process might be reflected in the stimulation of the unification of the different conceptions at the European and world level, defining the crime and the conditions for criminal responsibility.
Also, some authors of penal law [5] have reported that at present, both in our
country and in other countries there is a process of decriminalization of certain acts that
do not present anymore a social hazard or of depenalization of other acts, i.e. their
removal from the field of the penal law, as they will be punished in other ways (misdemeanors, civil wrongs).

In the stipulations of the Code, we see the reflection of ideas of classical penal
school of the positivist schools.

At the same time, there will also be highlighted new categories of offenders
appearing in the context of globalization. Within these categories an important place will
have not only people who becomes insolvent, in state of poverty beyond a rational
admissible limit, but also people will break the penal norms that protect the economic
relations and that are concerned with their fast enrichment and with speculating the
poor living conditions of most of the citizens to accumulate wealth at the expense of
society and the people deprived of other means.

The latter category should also include the legal persons who violate the existing
regulations to accumulate significant capital to be distributed among the members of
those companies.

It is also likely that the globalization process should lead to the incrimination of
new illicit acts committed by individuals and by legal entities.

3. It can be concluded that the Romanian law-maker has succeeded to achieve a
certain unification of the appropriate regulatory framework capable of providing
adequate suppression of illicit acts committed under the influence of globalization.

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Individual labor contract law

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Abstract
Labour law, as we know it in its entirety, was not always as distinct branch of law, this being the result of a continuous development process, constantly reflected in how society evolves. Autonomy sector labor law is ascribed to the emergence and continued expansion of employment, circumstances which implicitly prompted the adoption of appropriate legislation and its improvement due to diversification of social relations work.
Given that labor law is divided in turn into two branches: collective labor law and individual labor law, in the following we address issues related to the latter branch said, referring, in particular, the main object of its study, ie the individual employment contract.
Keywords: Work, individual contracts of employment, parts contract, employee, contract.

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Introduction
Individual labor contract law

Because I've always known labor law as its own, no individual employment contract was not specifically object regulatory discipline concerned. Therefore, please note the initial legal approach under the previous Civil Code, art. 1470 pt. 1, along with the contract of enterprise and transport, being known as labor tenancy (art.1413).


Of course, we can not omit subsequent amendments to the legislation in question currently applicable: namely Law no. 40/2011 amending and supplementing Law no. 53/2003, published in the Official Gazette of Romania, Part I, no. 225 of 31 March 2011. The current Labour Code deals with individual employment contract
institution exhaustively in Title II, for which is considered to be primarily a law of this contract.

1. Definition

In the primitive, in the absence of law and State, there was no legal regulation on labor supply. Also, even during slavery there was no independent regulatory work on. During this period the work was indirectly regulated through legal norms on private property. The same can be noticed in feudal order - even if the lord did not have the same absolute rights over who's worked the land (compared with the slave master) - all work performed was regulated through legal norms regarding the property.

Between capitalist ownership proved to be insufficient for the worker to be required to work. With time appeared distinct rules of law, civilian in nature, related to work. For the first time in the history of civil society have become necessary specific regulations regarding labor relations.

In Romania, leasing services were governed by art. 1470 Civil Code in summary, this regulation only limited to the formulation of two reciprocal obligations, namely the obligation to work and the obligation to pay labor. The evolution of over 50 years in this area has caused separation of the individual employment contract of civil contracts and thus led to the creation of a separate branch of law - labor law.

The employment contract is the contract whereby a person undertakes to perform physical to personal service of another natural or legal person under the continuing dependence or subordination of the second and payment.

Not providing the service, is called employee who receives remuneration employer pays is called, whatever shape is called wage.

In legal doctrine in Western Europe while there were different theories regarding the source of legal labor relations of employees. Thus there:

I. necontractualiste theories:

1. institutional theory - was held in Germany, but with followers in Italy. Institutional theory held that the legal relation of employment source is the effective integration of certain establishments person team;
2. theory actually benefits - was presented especially in the Nordic countries. According to this theory, the source of the legal relationship of employment is the materiality of the fact labor supply, which is certainly a manifestation of the will expressed by conclusive facts.

II. contractualist theories:

1. adhesion contract theory - supported mainly in Italy and USA that the disposition of one party (the employer) to provide some employment in certain circumstances, it is free to join or not the other party (the employee). It is obvious, however, that an individual employment contract is the result of a simple membership, but usually is the result of individual negotiations free.

2. association contract theory. According to this theory between employer and employee are a unique combination, similar to the civil existence founded on the idea for a common purpose based on the overriding interests in common. In fact, despite the objective of achieving social peace, individual employment contract is a contract associative.

3. exchange contract theory. This theory is the majority opinion, that the source of legal labor relations of employees is the individual employment contract or a contract covering the provision of work for a salary.

    Also in Western doctrine, due to the increasing role of the collective labor agreement in the standardization of legal work, it is estimated that manifests a decline in individual employment contract. Such an opinion but finds no counterpart in the case of labor legislation of our country.

    In Romania, the legal regime applicable to the individual employment contract is governed by the Code muncii- Law. 53/2003, recently amended by Law No.40 / 2011, which aimed to conduct more flexible labor relations.

    Starting regulating legal institutions laid down by the Labour Code, we consider it necessary to mention the following:

    -River contract of indefinite duration individually and working full time is regulated in a dual perspective: on the one hand, itself, as an autonomous institution and, on the other hand, the common law rules as the other two individual contracts of employment categories: fixed-term and part-time;
Works Temporary agency work is essentially an individual contract of employment itself but a species of individual employment contract of limited duration;

Works at home not an individual employment contract themselves. In an individual employment contract of limited duration, indefinite, full-time or part-time employee's work place is not at the employer's residence.

According to Article 10 of the Labour Code individual labor contract is a contract under which a natural person, called the employee undertakes to perform work for and under the authority of an employer, natural or legal person, for remuneration called wages.

In legal literature specialist noted deficient and unilateral nature of that definition, especially because not expressly mentioned employer's obligation to pay wages, insufficient relevance of the reference to work performed for remuneration - salary.

The doctrine uses the concept of subordination of the employee to the employer during the performance of individual work. Defining the individual employment contract, the legislator preferred to use the term of authority; prestrază employee working for and under the authority of an employer.

In a concise manner, the individual employment contract is the agreement signed in writing, whereby one party - the employee - is committed to providing with continuity in time of work on the behalf and under the authority of the other party - the employer - and that in Then he shall, in turn, salary and appropriate working conditions.

According to art. 10 of the Labour Code, "individual employment contract is the contract under which a person, called the employee undertakes to perform work for and under the authority of an employer, natural or legal person, for remuneration called wages".

Although weak and incomplete, this legal text was not subject to amendments and completions by Law no. 40/2011, so that the doctrine formulated a series of definitions, considered more appropriate. In this sense, proposed the following definition: "An individual employment contract is the agreement under which a person, called the employee undertakes to perform a certain activity for and under the authority of an employer, legal entity or natural person, which in turn his undertakes to pay
remuneration, salary named and to ensure adequate activity, the maintenance of safety and health at work ".

2. Peculiarity

According to Mr Alexander Ticlea, this definition is presented as one deficient. Because in our system of law, the term "contract" is synonymous with "convention" we concur with the proposal made by him for the purposes of reformulating the legal definition of "individual employment contract is the convention" to avoid the tautological argument this context.

An individual employment contract that puts the patterns in the sphere of civil contracts, but which he singles also. Thus, we talk about a contract - legal act, legal act bilateral mutually binding contract, called onerous and commutative, consensual contract intuitu personae, successive performance, which implies an obligation to "do" and that can not be ended with a condition suspension or terminate, but may be affected by the extinctive term.

a) The individual labor contract - legal act

We are a manifestation of the will in the presence of two people at determining the reciprocal rights and obligations and correlative, thus, the content of the legal relationship of employment. This manifestation of will on the principle of freedom of will, freedom can not be expressed only in accordance with the statutory provisions.

It is important in this respect, art. 11 of the Labour Code, which provides: "clauses individual employment contract may not contain provisions contrary to or below the minimum rights established by laws or collective agreements" and art. 38 of the same legislative source, which provides that "employees can not renounce their rights recognized by law. Any transaction that seeks waiver of rights recognized by law or limit such rights to employees is invalid. "

b) The individual labor contract - bilateral legal act

This feature we can easily identify from the definition of the contract in question. Therefore, it typically involves two parts: employee (employee), representing the natural person undertakes to perform work and the employer (owner), the legal entity or natural person may use paid labor law.
The plurality of subjects is excluded, both the active and passive, unlike civil and commercial contracts which sometimes may have a plurality of creditors and debtors. This implies that there may exist in and by the same individual employment contract more people who have, together, employee quality and usually no more people having together the employer.

From this rule there are certain exceptions, in associative forms the profession of lawyer, notary (See article 14 of Law No.36 / 1995 of the notaries and notary activities and Article 12, art. 13 and 38 of the Order of the Minister of Justice nr.710 / 1995 for adoption of the Regulation implementing the Law on public notaries and notary activity no.36 / 1995, published in the Official Gazette of Romania, Part I, no.176 / August 8, 1995, the Minister of Justice by Order no.233 / 1996, published in the Official Gazette of Romania, Part I, No. 37 / February 21, 1996 and amended by Order of the Minister of Justice nr.1410 / 1996, published in M. Of. of Romania, Part I, No. 25 / February 15, 1997) or doctor (see article 10 and article 11 of the Government Ordinance no.124 / 1998 on the organization and operation of medical offices, republished in the Official Gazette Romania, Part I, no.568 / August 1, 1998, supplemented by Government Emergency Order no.152 / 2002 on the organization and operation of spa tourism companies and Recovery, published in Official Gazette Romania, Part I, nr.826 / November 15, 2002, approved by Law no.143 / 2003, published in Official Gazette Romania, Part I, no.280 / 22 April 2003 and 17 of Annex 1 to the Order of the minister of health and family no.153 / 2003 approving the Methodological Norms on the establishment, organization and operation of medical offices, published in Official Gazette Romania, Part I, nr.353 / May 23, 2003). In accordance with legal regulations, coordinating lawyer, notary public or commissioner authorized doctor may conclude, on behalf of those with whom they are associated, individual contracts of employment with trainee lawyers, notaries interns, doctors or staff. In all these cases, the subordination of their respective employees are not perpetrated exclusively to the attorney who concluded employment contracts concerned, but also with other partners.

If domestic workers (even if no legal norms showing directly that conclusion) subordinate employees to manifest and husband / wife of / that which concluded the individual employment contracts.
c) The individual labor contract - a mutually binding contract

Sinalagmatic contract is characterized by reciprocity obligations of the parties and the interdependence of mutual obligations. A contract is bilateral when the parties agree mutually to each other, which means that each of the parties mutually binding contract is simultaneously both a creditor and a debtor.

The basic principle is do ut pro- give you to give me. An individual employment contract gives rise to reciprocal rights and obligations between the parties, because the obligation of one of them being a performance obligation other. Labor provision seeks, first, obtaining wage. Payment of wages is determined by the performance of work.

d) The individual labor contract - agreement called onerous and commutative

Clearly we are in the presence of a contract named, given the exhaustive regulation of the institution individual employment contract offered by the Labour Code in Title II, art.10-110.

The contract is the contract called corresponds to a specific legal operations and ficial- to be nominated in law in the Civil Code or other civil laws. The individual contract of employment is governed as such by rules of labor law, rules that are contained in the Labour Code. It corresponds to a specific legal transactions (See Ovidiu Ungureanu, Cornelia Muntean civil law treaty, Publisher Hamangiu, Bucharest 2008, pag.168).

The contract for consideration is that contract in which each party wishes to procure a vantaj- art.945 Civil Code. Onerous contract arising from dominating the purpose of the contract, to obtain some advantage as equivalent to the obligation assumed. The obligations of the parties shall be governed with greater severity if the contract is onerous.

For contracts that purchase consideration from the other party some advantage, aims instead to get another patrimony more or less equivalent. The contract for consideration each party has an interest and gets something from each other in exchange for what it gives. The parties are mutually consideration in exchange of which were forced to perform.
Commutative character - phrase that contract designates the existence and extent of benefits payable by the parties are clear and can be evaluated and assessed even when the contract, they do not depend in any degree of hazard.

Both benefit employee and employer benefit are known from the beginning, from the time the contract (ab initio); execution does not depend on an uncertain event. Consequently, fulfilling honorary activities can not take place, by definition, under a contract muncă- only under contract, as some civil-wage and the object respectively due to any employment contract.

e) The individual labor contract - consensual agreement

Contracts consensual nature are contracts ending by mere agreement of the parties, their mere manifestation of will, unaccompanied by any form, it is sufficient to form a contract valid. If the parties agree to accompany the declaration of intent with a document in which a record, do not give validity of the contract, but in order to provide evidence on the conclusion and content.

Contracts consensual nature can simply enter valid expression of the will of the parties, regardless of its form of expression.

Basically, the agreement is more a derogation from the principle of mutual consent with the fundamental principle value for labor relations, because according to Art. 16 para. (1) of the Labour Code, "the employment contract is concluded under the consent of the parties, written in Romanian. The obligation to conclude individual labor contract the employer in writing. The written form is required for the valid conclusion of the contract. "Or, these provisions are merely underline the necessity of the written form for the validity of the contract. Therefore, this form is a condition validitatem ad, unlike the old regulation, which required written form as a condition of probation (ad probationem).

Moreover, it is considered a prerequisite ad validitatem as a derogation from that principle, which "in this case, is the very negation of this principle."

f) The individual labor contract - the contract intuitu personae

Any employment contract is personal, but always concluded in consideration the training, skills and qualities employee. The contract can not be transmitted by
inheritance and employee performs its duties imperatively personally and not through other people (represented by delegates) or with their help.

g) The individual labor contract - a contract with successive performance

The employment contract requires mutual benefits and correlative, but this can only be achieved over time and not all at once (uno iicto). Employee work time is provided for the benefit of the employer, in return for this, the employee should receive a permanent salary paid periodically (monthly or bimonthly).

Moreover, in case of default or improper performance of obligations, the applicable sanction is termination, resulting in termination for the future (ex nunc) and was not rescinded, which has retroactive effect (ex tunc).

Work is staggered over time even if the contract is for a fixed term or as a part-time employment contract. As a consequence, in case of failure or improper fulfillment of the obligations incumbent of either Party shall be termination penalty, which requires termination only for ex nunc- viitor- and not rescinded that produces effects ex retroactive- tunc.

h) The individual labor contract - involving the obligation "to do"

The obligation to make is, in general, the duty to perform any act other than to send or constitute a real right (teaching or restitution of property, carry a consignment or service etc.).

This obligation of the employee to do the work, be executed with natural by muncă- not be turned into dezdăunări. An example of this might be: employee to provide the employer in exchange for his work, material value. In turn, any employer can not execute himself obliged to work that lies employee’s expense..

i) The individual labor contract - can not be affected by the condition.

In general, the individual employment contract is simply an agreement without being affected by the arrangements. It can not be concluded under the condition precedent because it is impossible that the effects of this contract depend on the achievement of a future and uncertain events (art. 1399, New Civil Code) but at the same time can not be affected by a condition or terminate, the fulfillment of which would result in the termination of the obligation (art. 1401, New Civil Code). Otherwise, it would circumvent the labor law.
The individual labor contract can not be concluded under suspensive condition because it can not conceive of birth effects of that contract to be based on the achievement of both future and uncertain events (see Sanda Ghimpu Al. Țiclea Labor Law Publishing All Beck, Bucharest 2001 p. 14). The individual labor contract can not be affected either by a condition to terminate because otherwise, would circumvent the Labour Code and the collective labor contract at national level which establish the basis and conditions limiting individual employment contract ends.

Although it is regarded as a condition to terminate the probationary period (art. 31-32 Labour Code) is considered to be generally a contractual clause of forfeiture appreciated by the parties.

j) The individual labor contract - affected by term

Exceptionally, the individual employment contract may be affected by the extinctive term ie when the law allows individual employment contract is concluded for a fixed term. Also exceptionally individual employment contract may be affected by a standstill period, but certainly (Certus dies et quando year) - when the parties conclude that the performance of the contract will begin at one time determined after the conclusion of the contract.

The individual labor contract can not be affected by a standstill period but uncertain (dies Certus year incertus et quando) as an obligation for the employee is an obligation of means, ie the concluding employment contract is held to make the effort to exercise due care and a creative, definite purpose or obtain a certain result, without itself being subject to the result sought its obligation, the contract of employment is not the result of work performed them.

Conclusion

In conclusion, in terms of legislation, it can be said that amendments to Law no. By Law No 53/2003. 40/2011 were determined mainly by the need to flex sprung in practice employment relationships after the European model.

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Assignment of the Lease Contract

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Abstract
Assignment of the lease contract may be pursued both conventionally, respecting, along the general rules imposed by art. 1315 and following of the Civil code, the special dispositions introduced by art. 1833 and following of the Civil code, but it may also present itself under the shape of a legal assignment of contract, in the case in which the owner-seller (the assignor) would sell the assent leased to a third (assignee), case in which the latter will be forced to respect the lease foreclosed by the initial owner within legal conditions. The present article treats the assignment of a lease contract, regarding at both the conventional manner, to which it special rules apply, rules that are divergent of the regular regime of contracts assignment, and the legal, forced version of the latter.

Keywords: legal assignment, lease, conventional assignment

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1.Premises of analysis within the assignment of the lease contract

The current Civil code dedicates its 8th section, 1st Chapter, 2nd Title of the 4th Book to rules that apply within the matter of contract assignment, which form the general frame, applicable with predilection to the conventional contract assignment.

Yet the national legislature regulated certain types of operations, qualified by the national doctrine as legal contract assignments, situations in which certain special dispositions intervene, which modify in some places the dispositions comprised within the reminded sections, IE the case of legal assignment of the lease contract.

The new Civil code establishes particular rules regarding the assignment of certain types of contracts, rules that may defer from the general rule of the assignment. In these situations, the transfer of the contractual report does not occur as a provision of the law but within the terms of a tri-lateral will agreement of parties, within the legal provisions. Special rules are set in the matter of the lease contract (that may be assigned only by written agreement of the lessor if it regards a mobile asset – art. 1805 NCC), the farm lease contract (the lessor may assign the contract only to the spouse or its legal major descendants with the written agreement of the lessee – art. 1846 NCC),
the insurance contract (which may be assigned by the insurer only with the written agreement of the insured, agreement which is not though necessary within the portfolio agreement between insurance companies – art. 2212 NCC).

According to art. 1778 of the Civil code, 2nd paragraph “the lease of mobile and immobile assets is called renting, and the lease of agricultural assets is named farm renting.”

The assignment of the lease contract may be pursued both conventionally, attending the general provisions imposed by art. 1315 and following, of the Civil code and the special amendments introduced by art. 1833 and following of the Civil code, but it may also have the form of a legal contract assignment, in the case in which the seller-owner (assignor) would sell the rented home to a third (assigned), case in which the latter would be forced to keep the existing lease contracted by the original owner within legal provisions.

Thus the assignment of the lease contract may intervene either through initiative of the lessor, usually meaning a sell of the leased asset to a third party, the lease contract being continued having the new owner as lessor (situation recognized by doctrine as being legal), either through initiative of the lessee, which, unable or unwillingly to continue the lease contract, wishes to find another party interested of it, which to overtake its contractual position, managing thus to set itself free of the contract before the provided date, and without having to withstand certain penalties for an early foreclosure.

We will continue to analyze the specific aspects of conventional assignment of lease contracts, but also the hypothesis of the legal assignment of the contract of housing lease.

2. **Specific provisions in the matter of conventional assignment of the lease contract.**

The conventional assignment of a lease contract, comprises, as stated above, special dispositions different of the ones that are found within art. 1315 and following of the Civil Code.

National provisions in this matter have had as an inspirations source, among others, the French Civil code.
French Civil code, although it does not comprise general provisions in the matter of contract assignment, (proceeding recognized within French doctrine long before within the Romanian one), it does comprise special provisions regarding the assignment of the lease contract, similar (and sometimes identical) to the ones in the Romanian Civil code, proving thus, once more, the fact that it represented a milestone and a source of inspiration in the process of modernization and update of the national legislature.

Article 1717 of the French Civil code stipulates the right of the lessee to sublet and to assign the lease to a third, if that faculty has not been forbidden. We observe thusly an identical provision to the one within art. 1805 of the Romanian Civil code, instating a rule in the matter, mainly the right of the lessee to sublet or to assign the lease to another party.

Within French doctrine, the contract of lease assignment has been defined as being a “contract of particular nature, comprising a claim assignment that would profit the assignor, but also a transfer of the payment of rent obligation and lease conditions execution”, “a such convention would not be assimilated to a sale, a price not being necessarily and compulsory”[1].

From the ruling of the 1717 art. of the Civil code, French legislature also presents cases in which the rule is to forbid the assignment, stipulating, in certain cases, exceptions that allow the assignment of the contract: IE L. 411-35 of the Rural Code, art. 78 of nr. 4801360 Law from the 1st of September 1948 in the matter of home lease etc.

There are, also, contrary situations that sanction as null clauses that would forbid the assignment of a lease contract. It is the case of a contract of lease of a commerce fund (contrat de bail commercial), in the case of which it is stipulated that “Conventions that would forbid the lessee to assign the lease are null, no matter of their form”[2]. Thus, this rule is a prohibitive one, of public order, sanctioning as null any clause contrary to the faculty to assign a lease in the case of the sale of a commercial fund. Thus, art. 1805 states, as a general rule, the possibility of the lessee “to let the lease, entirely or partially, to a third party, if that faculty has not been forbidden expressly.
Albeit the asset is mobile, the subletting or assignment is not allowed unless the written agreement of the lessor exists.”

Analyzing the quoted legal provision, namely article 1805 1st paragraph, thesis I of the new Civil code, one may observe that it imposes two general stipulations: the first states that for the lessee to be able to end its subletting or to be able to assign the lease, this faculty should not have been forbidden expressly, and the second stipulation supplements the elements of specificity of the contract assignment regarding this type of contracts, requiring the written agreement of the lessor and only if it regards mobile assets.

The lease contract, as a general rule, is consensual, being perfected, as stipulated by article 1781 of the Civil code “as soon as the parties have convened upon the asset and the price”, having as an exception the agricultural lease contract, that must exist in a written form, required to be ad validitatem, by article 1838 of the Civil code.

In the matter of homing lease, previously to the current Civil code, the provisioning was regulated through Law nr. 114/1996, completed by the dispositions of the Civil code, which allowed subletting, but did not establish provisions regarding the assignment of lease.

The above presented Law provided that the tenant may sublet the accommodations only with existing written agreement and within provisions established by the landlord – art. 26 1st paragraph of Law nr. 114/1996.

Legal practice, previous to the new Civil code, namely civil decision nr. 226/C/25.05.2011 ruled in case nr. 34430/212/2009 of the Court of Appeal of Constanța [3], the court, invested with a request to ascertain as intervened a lease contract assignment, presented the following reasoning: “The law of home leasing does not provide specifics regarding the assignment of lease contracts, situation which in the absence of regulations, has been appreciated by the doctrine and legal practice that does not forbid an assignment of contract, but for the assignment to be valid, dispositions of common legal provisioning must be enforced. According to the Civil code, the assignment of the lease contract is allowed within the terms that regulate and allow the lease (art. 1418 of the Civil code). That means that the assignment of lease
contract may only exist within the terms that allow the subletting namely, with a previous written agreement and within specifics provided by the landlord (art. 26, 1st paragraph of Law nr. 1996). If the special regulation provides this stipulation for the subletting, it means that it is all the more imposed within the case of an assignment that may produce effects even more austere then subletting (cessio est maius sublocatio est minus).” Starting from these considerations the Court ruled against the plaintiff, arguing that there was no agreement from the part of the defendant to the assignment of the lease contract towards the third party lessee, agreement that must exist, for the same considerations for which the law provides expressly the agreement of the lessor to have a valid subletting.

The quoted Law was referring at the consensus principle within the perfection of the lease contract, but required a written form, ad probationem, and the obligation to register the contract with the fiscal administration, provisions that are no longer regulated by the new Civil code. Thusly, both Law nr. 114/1996, repealed by the new Civil code, as the new code itself, through the current regulations, maintains the general rule of the possibility to assign conventionally a lease contract.

The exception from this rule is constituted by an express interdiction of the assignment of lease, interdiction that is in most cases conventional.

The second stipulation, specific to the assignment of the lease of a mobile asset, but also of a house, that it refers to the existence of a written agreement of the lessor, must be analyzed in accordance with dispositions of art. 1316, which states the fact that “the assignment of contract and its acceptance by the assigned contractor must be perfected within the form required by law in order to be exist a valid assigned contract”.

Analyzing the two presented provisions, we observe immediately the specificity element that differentiates the assignment of lease of a mobile asset from the general provisioning within the assignment matter, specifically the written agreement of the lessor, in its role of an assigned party.

If one should apply the common provisioning in the matter of the assignment (art. 1316) and should they be compared to provisions of the Civil code, that does not institute a specific form to perfect a lease contract, it would mean that the assignment of
a lease contract should be as consensual as a lease contract, with no requirement for the agreement of the assigned, in this situation the lessor, to have a specific form.

Of course, within legal practice, lease contracts are perfected, as to prove their existence, in a written form; the agreement to an assignment being thus required, for a symmetry of form, to have the same form.

But, as a difference from the general dispositions of the assignment, that may allow an oral form to assign a lease contract which does not present in a written form, the special provisions, being applicable with priority, according to the principle lex specialis derogat legi generali impose, unconcerned of the form of the lease contract of a mobile asset, that the agreement to assign should be in a written form.

Another specificity element of the assignment of lease contracts is introduced by article 1806 of the Civil code, article that regulates the problem of the interdiction to sublet or assign a location, stating with a title of principle the following: a. the interdiction to perfect a subletting includes the one to assign the lease; b. the interdiction to assign a lease does not include the interdiction to perfect a subletting; c. the interdiction of assignment includes both the total assignment as the partial assignment of a lease contract.

Thus, although the regulations provided by art. 1315 of the Civil code, in the matter of contract assignment do not indicate the possibility of a partial assignment, referring only to a complete and total assignment, which has as effect the complete release of the assigned (perfect assignment), either keeping the latter as some kind of warrant, next to the assignor (imperfect assignment), the dispositions of art. 1806 present expressly the possibility of existence of a partial assignment, meaning only one party of the initial contract. IE, the lessee may assign the lease contract for one of the rooms, rented to a third (the assignee).

This provision is new, as it sets an extensive interpretation of the interdictions to assign the lease or to perfect a sublet, expressly stipulating that the interdiction regards both a total lease/assignment and a partial one, as a difference from the interpretation given by doctrine previous to the new Civil code, which would follow a restrictive interpretation, meaning that if an interdiction to a total sublet existed that would be interpreted as a possibility for a partial sublet to exist[4].
The same article also applies an old rule, recognized within doctrine, “cessio est maius sublocatio est minus” and it represents the legal provisioning of the interdictions regime in the matter of assignment of leasing and subleasing.

Thus, in a case in which the parties of the lease stipulate though a contractual clause the interdiction for the lessee to perfect a sublet, it means they do not desire to bring any modifications in what regards the subjects of the contractual report, conferring it a somewhat “intuitu personae” character. It is only normal, that if the sublease, which would not bring contractual modifications, having the same initial parties but, providing, in the legal aspect, the sub-tenant and, with it, the right of the lessee to satisfy the claim through a direct action upon it for the payment of the rent, may not be admitted, when the assignment of contract may not be admitted, involving, through itself, an important contractual modification, within the substitution of one of the contractual parties.

Article 1808 of the Civil code, providing effects of the assignment of lease contracts, states that “through the assignment of lease contract by the lessee, the assignor receives the rights and is being held by obligations of the lessee sprung from the lease contract”, the special provisions being completed by the general ones provided by article 1315-1320, 1833 Civil code.

According to article 1833 of the Civil code, “the tenant may assign the lease contract of the home or sublet the home only with written agreement from the lessor, case in which, in the lack of contrary stipulations, the assignor, or the sub-lessee will be held responsible along with the tenant for obligations assumed towards the lessee through the lease contract”.

We observe thus, from the analysis of the above text that this provisioning, imposing the written agreement of the lessor in order to exist a sublet or an assignment of a lease contract, derogates, first from the regulations imposed in the matter of immobile lease, which did not demand this written agreement, agreement provisioned only in a case of lease assignment of a mobile asset.

Somewhat later, we observe that dispositions of article 1833 of the new Civil code, derogate, in the matter of lease contracts, also from the regulation that imposed a release for the original contractor, establishing that the assignee will be liable along the
assignor for obligations assumed towards the lessor through the contract of lease, in the lack of a contrary stipulation.

Therefore, the regulation becomes a sort of imperfect assignment of a lease contract, the assignor and assignee becoming solidary debtors towards the assigned party (the lessor).

The legislator formulates the provisioning in a facultative institution, the parties having the possibility to stipulate a release of the assigned, giving the option for the lessor to demand liabilities from the assignor alone, which is overtaking the lease contract.

3. **Legal assignment of the lease contract**

   Legal assignment of contract is the assignment that springs directly from legal provisioning, with no stipulation of such within contractual clauses that regulate judicial reports amongst the parties.

   We also believe, along other authors, that within this category of legal assignments, one must be include the so-called “forced assignments”[5], yet not the situations where the legislator provides certain stipulations or certain regimes of types of assignments (IE particular regulations are to be found within the matter of assignment of lease contracts).

   Specialty doctrine also uses the notion of “ancillary assignment”[6], calling that the assignments that appear indirectly, through alienation of mobile or immobile assets that are the object of a certain contract. It is the case of the legal assignment of lease, through alienation of the rented asset, its buyer becoming an assignor, having the obligation to fulfill the lease contract, but being the beneficiary of all rights sprung from this contract.

   Article 1811 of the Civil code recurs to the hypothesis provisioned by article 1441 of the old Civil code, hypothesis treated by doctrine as a legal assignment of contract. This is the situation in which a lessor sells the leased asset, and the buyer has an obligation to comply to the lease which exists before the sale.

   The legal assignment of contract, translated by “the opposability” of the lessee’s right towards the new owner of the leased asset, subsists with the exception of the situation in which the parties convened within the leasing contract that an alienation of
the leased asset would result in a termination of contract, as provided by article 1812 of the Civil code.

There are differences between the old and the new provisioning, but not in what regards the instituted regulation in the matter of the specifics within which the rule would intervene.

Thus, if article 1441 of the old Civil code would present the obligation of the buyer to comply with the lease “as it was perfected by authentic legal documents or by private documents, but with given date”, article 1811 of the new Civil code states different moments, based on which the lease would be opposable towards the purchaser.

In principle, the opposability conditions presented by article 1811 distinguish as the asset is mobile or immobile, subject or not to requisites of immobile publicity. In the case of immobile assets, the right of the lessee becomes opposable to the purchaser in the case of immobile assets that are noted into the land registry, if the certain date of the lease if previous to the certain date of the sale.

The novelty brought by the new Civil code is that this opposability is recognized in what regards mobile assets also, as a difference from article 1441 of the old Civil code, which tied this legal assignment exclusively to immobile assets.

Thus, article 1811 of the Civil code ties the opposability of the lessee’s right by the condition to fulfill the publicity formalities (in the case of immobile assets subject to be noted within the land registry), and in the case of other immobile assets, the condition for the valid opposition would be that the assets should be in the possession of the lessee at the time of the alienation of the asset.

If the publicity conditions are not met or the condition regarding the possession is not met, as instituted by article 1811, no obligation of the purchaser to comply with the lease will exist, thus there will not be a forced assignment of the lease contract, but a termination.

Yet, still in the same purpose of protection towards the lessee, even if the parties hat stipulated termination of lease through the alienation of the asset, article 1812 institutes a short term opposability stating that “the lease remains opposable towards the purchaser even after the lessor has notified the sale, for a term which will be twice
as long as the one that would have been appropriate to notify the termination of contract, according to provisions stated by article 1816, paragraph 2”.

We therefore consider that, for the same considerations, the above term should subsist also in the case in which the sublet would be subject to termination, following a non-fulfilment of publicity conditions, stipulated within article 1811 of the Civil code. Nevertheless, we agree with the doctrinal opinion [4], according to which a third party purchaser may plight itself, by the sale contract, to respect a lease contract which is not opposable to itself or it may agree on the matter with the lessor, implying in the end the principle of freedom of will when perfecting legal contracts.

Within legal practice born under the old Civil code, it has been appreciated that this type of assignment will only work regarding the lessee party, as an assigned co-contractor, and not within the seller party and its family members, which, with no property document may be evacuated at the purchaser’s request [7].

The phrasing chosen by the legislator denotes the fact that the national regulation treats this situation not as a legal contract assignment but as a situation that attires an opposability towards the lease from the purchaser, distinguishing only by as the asset (mobile or immobile) is subject to formalities of land registration or not.

Both within old Civil code and the ruling chosen by the contemporary legislature, the purchaser is bound to respect the lease, if the lessor and the purchaser have not perfected by contract to terminate the lease.

The new provisioning presents an opposability of the lease contract, but we appreciate, along the national doctrine, which accepted within the hypothesis presented by article 1441 of the old Civil code a legal assignment[8], that we are not only in front of a simple opposability of a lease contract, the purchaser not being only coerced to comply to the lease contract, allowing its continuation, but also in front of a forced, legal assignment of the lease contract, the lessee having the possibility to fulfill its obligations (payment of rent) towards the purchaser, but also to exercise its rights (demand of asset use) from the latter, in its turn, the purchaser being able to cash the rent in exchange for insurance in what regards the use of the asset.

Being a legal assignment of contract, in order to analyze its validity, we can no longer report to general regulations in the matter of assignment, namely those
provisioned by articles 1315-1320 of the Civil code, but to the special provisions stated by article 1811-1815 of the Civil code.

Thus, we observe that the special regulations do not take into account the consent of the assigned to the assignment, as a difference from the general regulations that would not validate an assignment in the absence of the agreement from the assigned co-contractor.

Besides, the agreement of the assignor is a forced one, embedded within the agreement given in the contract through which it alienates the assigned asset. Therefore, it is not a separate agreement, stand alone, which is demanded from the assignor; the assignment of lease contract would be valid in the presence of the agreement to perfect the contract which provide the assignor the property of the leased asset, with no special agreement to the assignment.

Observing the particularities of this operation, we consider that we are in the presence of a forced assignment, subsidiary, bound in an essential manner to the leased asset and of the passage of property towards it, a sort of “propter rem” assignment.

Due to the assignment of the passive side of the obligational report, the assigning co-contractor which is also a claimer of the lessee, and, at first glance, could not be set free of debt unless the lessor would agree to it, within conditions set by common law (art. 1318 Civil code), with the note that the lessee has specific terms to notify and sue the assigned co-contractor within the hypothesis in which the assigned co-contractor would not fulfill its obligations towards the latter (a 15 days term from the starting non-execution date or from the date when the non-execution has become known to it), after which it shan’t be able to claim execution of obligations unless from the assignor co-contractor (art. 1318, 2nd paragraph, Civil code). Nevertheless, article 1813 of the Civil code institutes a derogatory regime, provisioning that the initial lessor will not be liable unless for liabilities caused to the lessee, previously to the alienation (art. 1813, paragraph 2, Civil code)[6].

Article 1813 of the Civil code, regulates, thus, the effects of this type of legal assignments of contract, under two paragraphs.
First paragraph introduces an express, legal subrogation, of the purchaser within the rights and obligations of the lessor, which spring from the lease contract, subrogation with exclusive ex tunc effects, towards the future.

This means that the purchaser will be able to demand rent only from this date one, not having any right upon payments that became payable previously and hadn’t been paid, with the exception of the case in which these claims were the object of an assignment of special subrogation. The purchaser cannot obtain termination of location contract for non-execution of past obligations either [4].

The second paragraph enforced the future effect of the subrogation, regulating the reports between the lessee and the initial lessor. In this sense, its stipulated the fact that “the initial lessor remains liable for prejudice caused to the lessee, previous of the sale”.

Therefore, any non-fulfilled obligation of the seller-lessee cannot be demanded from the purchaser-lessee, as the latter is held only to future obligations, born from the contract.

Article 1814 of the Civil code harnesses the general provisions, according to which any claim is transmitted along with warranties and accessories, and states: “When the lessee of the sold asset has given warranty to fulfill its obligations, the purchaser is subrogated within the rights sprung from these warranty, within the terms of the law”.

Conclusions

To conclude, the assignment of the lease contract presents atypical features and comports specific effects, may it be a conventional assignment, regulated by art. 1805-1808 of the Civil code, or a legal assignment, instituted by art. 1811 and following of the Civil code, specifics that have been presented in the content of the present paper.

We observed, thus, differences within the regulations towards dispositions of the old Civil code or special Laws in the matter of lease and new dispositions introduced by the Civil code, valid since 2011.

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The returning of Russia at the status of mondial superpower

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Abstract
Internationally, Russia was seen as the natural successor of the Soviet Union, assuming the role of protector of the former USSR territories with the support of the West in this respect Soviet embassies became more embassies Moscow. Soon Russia has become the arbiter of disputes in the former Soviet Union. A delicate problem was the existence of nuclear weapons in Ukraine who had transferred to Russia as Belarus and Kazakhstan had done, fearing Russian claims on its territory.
Regarding the peaceful resolution of international disputes, the Security Council, when it deems it necessary, invite the parties to settle their dispute through various means such as negotiations, international investigation, mediation, conciliation international, international arbitration, judicial way, recourse to regional agencies or arrangements, or other peaceful means.

Keywords: Russia, Crimea international stage, global superpower

1. Introduction

On international plan, Russia was perceived like the natural successor of The Soviet Union, assuming the rol of protector of the territories of the former URSS, having the support in this sens. More, the Soviet embasseies became the embassies of Moscow. In a short time, Russia became the most important referee of the disputes from the former Societic Union. A delicate problem was the existence of the nuclear weapons on Ukraine territory, that had not been transfered to Russia, like Belarus and Kazakhstan did, beeing afraid of the russian claims about their territories. At that time, Eltîn had the total support from the Occident side, including The United States, that made pressure on Ukraine, to quit at their weapons, ending conforming. Until 1994, Russia kept thestatut of the most favorizate post sovietic nation in terms of loans,credits, helping and international reconogizing.

The situation started to change when the Ceceni war started, when Ukraine made Russia the key ally at the United States, on the former sovietic continental territory.

In the intern plan, the Gouvernament tried to dissolve the Parliament, after changint the Prime Minister Gaidar with Victor Cernomîrd. The president of the Congress asked the suspending of Boris Elţîn, the conflict beeing avoided by organising a referendum where the majority of the voters supported the president of the country. The year of 1993 was marked by a fight between the power of the president and
the legislative power, agreeing to create a Constitutional Committee. Violating his
duties, on 21 September, Elţin dissolved the Congress of populations and supreme
soviet Deputies, asking a new Federal assembly, meanwhile running the country with
presidential decrees. Also, he proposed a new referendum on 12 December, for a new
Constitution and for choosing a bicameral Parliament made from the Sovietic Federacy
and State Duma. After dissolving the Parliament, the extraordinary Congress of the
deputies put Alexandr Ruţkoi in the place of Elţin. He was a veteran from the Afghanistan
war, that installed at Kremlin un military general district.

2. Rise of Putin and Russia’s return

From Elţin’s part, remained the Russian army and the Defence Minister Pavel
Gracev, who gave an order that the tanks go in Moscow in 2 October and fire on
Kremlin’s town. The number of the death people was about 150.

When Elţin runned the country, Russia continued to dive in the 1990 years,
appearing a new group of business people, who wanted to get rich. They had good
connection with the gouvernament and they wanted to make money quick by controlling
the natural resources, using also the connection with the former nomenclature. The
economy started to be bad, causing the dissapearance of ruble in October 1994. In
February, 500,000 of the russian miners, made strike, asking to have bigger salarries.
The popularity of the president decreased dramatically, after the war started in Cecenia in
December. Elţin was counting on the associates of the Premiers cabinet and the security
board.[1]

Because of the problems of his health, he made two heart attacks in the same
years the corruption became bigger and those who earned a lot was Elţin’s family and
his oligarhi’s friends. The president was sick almost all the time, coming back to Kremlin
only for short times, depending on his subordinates people to resolve the problems.
There wasn’t existing a politic stabillity because the most important posts were changed
often, mostly the minister of externs and the prime minister.

In 31 December 1999, Elţin the demission unexpectedly and named Putin interim
president until March 2000. The 8 years when Eltin was president, were a hard period
for the russins because they tought the country was loosing its way after beeing born
from the Sovietic Union. The situation was alarming, the population was going down, the
army was criticized for the abuses from Cecenia and the standard of live was low. The medium duration of life was lower with 20 years than in Occident.

The period when Eltin was president, was one of transition, was good for the oligarchs, because they could follow their interests, beeing afraid of Ziuganov and the communasists cause they wanted to mentain control fo the resources. Of the start of his mandat , Russia had the ocassion developement itself as a national state and to ocupe a good place in the world.

Russia was not anymore the global player, becoming not needed to avoid the creating of NATO on the East side, it had only a regional role.

The relationship with the URRS former members, that were neighbours with Russia, became cold and the baltic countries cutted the relations with Russia, at the start of 1990, heading to European Union. The countries from Asia were involved in intern conflict and their relations with their neighbours were on second plan. Ukrain was not available to get near Russia. They only wanted to reestablish relation with Belarus, but the economics we re very bad if the would unite so Russia started a bigger integration, but carrefuly.

Russia needed a period of recovery, but it entered into an economic war, where bussines man were fighting for countries with colapsing economy, because they had economics advantages. These advantages were been negociated with the former nomenclature, a part of the becoming very rich, like Eltins familly, that s why Eltin wanted to be president even if he was sick. Eltin changed the prime minister so much, to find one who can trust,and that s who he found Vladimir Putin.

The first crisis faced by the new president of the Kursk nuclear submarine explosion was heard in the Barents Sea, the explosion killed 118 people who were part of the crew . Putin vacation in Crimea are reacting very slowly declined more than that Incoming offers of help from the British and Norwegian ships are in the area, his attitude was criticized public. O opinion that we had another crisis to manage chairman, held on October 23, 2002, when Chechen gunmen Dubrovski entered the hall theater complex where they took 850 hostages for three days, in exchange for their release demanded the withdrawal of all Russian forces from Cecenia. Answer Putin was sending special troops used gas Spetsnaz who died 39 paralizante.
The terrorists and 124 hostages from gas inhalation, other five hostages were killed in shootouts.

Internally Putin began the fight against oligarchs who had great influence in the political world, some of whom remain in power facilitated by Elțîn. In 2000 there was an informal agreement that the oligarchs do not get involved in politics, a character known Track the agreement that followed was Roman Abramovich owned governor autonomous district according to 2013. This Ciuhotka is a successful businessman, owning companies in the oil, nonferrous metals, televi, sports, aviation.

Externally, relations with neighboring countries have improved considerably during the first presidential term of Putin even got into a conflict with Belarusian President Alexander Lukashenko on Russia-Belarus Union conditions difficult in the context of the economy represent Belarus 3% of that of Russia.

In summer 2004, Russia offered Belarus a loan substantial part of which would be used for the purchase of Russian gas and Russian soldiers continued to use the territory of Belarus as a training polygon.

Putin supported Lukashenko running for another term, although it was criticized by the EU for violations of democracy but Russia represent the safest solution because the opposition Lukashenko promote a pro-European policy.

In his first term Putin was able to moderate the global role of Russia, in a world where the dominant power clearly belonged to the United States, accepted the country's transition from a superpower to a regional player having to start a sober attitude toward America supporting the fight against terrorism but believes that the United Nations Security Council have the authority to approve an invasion of Iraq which did not happen, the US taking this decision alone. Putin led the transition to a market economy which was not the smooth away but avoided major social disputes during Boris Eltin period. Putin liked the new role of the country, a minor world power generally restricted to Europe, being concerned about NATO expansion in Eastern Europe . In 2004 when the election took place, the opposition was defeated defeated, the economy that 6 years ago was ready to collapse, began to grow at a significantly, factors that assured Putin a share of power and trust that neither Gorbachev nor Yeltsinhad. Russia will begin a new
Reviving Russia began with obtaining second term as president by Vladimir Putin in the elections of 14 March 2004. The global recession from late 2008 meant the sudden end of economic recovery in 2009 growth was only 2.3% as a result a slump in prices of consumer goods and reduce demand.

Unemployment was 9.5% and the Russian ruble depreciated sharply against the dollar.

In late 2010 the Russian economy would recover, while reducing the effects of global recession. In his second term foreign policy has become a priority issue, it was obvious difference between the worldview of the Russians and the Americans.

US policy based on unilateral assistance for democratization and direct or indirect support of the former USSR.

In response Russia has tried to undermine the new government installed, while ensuring the complete suppression of domestic opposition.[2]

To increase its influence externally Russia is involved in the 2004 Ukrainian presidential election, which supports the illegal regime of Transnistria from Moldova snapped and supporting military intervention in Georgia breakaway regions South Ossetia and Abhazia. In this period Russia has retained orientation towards Europe rather than towards Asian countries which were most politically unstable and involved in various conflicts.

Russia and China had some common interests but relations between the two have not resulted in a firm friendship, while relations with Japan continued to be limited by Russia's refusal to discuss the future of the Kuril islands.

The intention of the US to install missile interceptors in Poland and active military presence in Eastern Europe Russian leaders were perceived as a direct threat to their geostrategic position, Russia has partially achieved international status and in 2008 started to require that the key player in the region once again demanding recognition as a world power.
The global crisis in 2008-2009 affected after Russia and the ruble collapsed at the intervention of the Central Bank introduced into the economy 130 billion dollars to halt the depreciation of the ruble and support the economy.

At the beginning of 2009 Europe was affected by the lack of Russian gas occurred amid tensions between Russia and Ukraine, following negotiations supported by other European countries reached an agreement that Ukraine will buy Russian gas at a price formula based on European but with a reduction of 20% for 2009, provided that transit fees remain at the 2008 level.

The Security Council is a principal organ of the United Nations with permanent activity, the main aim of taking measures to ensure international peace and security and eliminating violations.

The Security Council has the fundamental responsibility of maintaining international peace and security, the peaceful settlement of disputes and take action against threats to international peace and security and acts of aggression.

Regarding the peaceful resolution of international disputes, The Security Council, when it deems it necessary, invite the parties to settle their dispute through various means such as negotiations, international inquiry, mediation, conciliation international, international arbitration, judicial way, recourse to regional agencies or arrangements, or other peaceful means.

As a permanent member of the UN Security Council, Russia can block any gatherings of this statement of position when its interests are affected in area. For adoption of a resolution in the Security Council unanimously votes. Rusia need to use the this right of veto in more situations including:

Council proposal to conduct military actions in Iraq, the decision of setting up economic sanctions imposed on Iran, supporting Bashar al-Assad in Syria against any resolution and not least Russia opposed the UN denunciation by referendum on Crimean independence.

To promote stability and economic security official Russia acted through several organizations, among them there were:

a) Eurasian Economic Community that chose to combine pro-European to Asian.

c) Shanghai Cooperation Organisation, it is a military organization but also for the development of cooperation.

Russia is the dominant force in these bodies that are not necessarily strong, but that represents efforts to formulate a common policy in its immediate vicinity, is an indicator of Russia regained power in East and South together with its orientation towards Europe.

Besides the fact that Russia has a role in regional organizations, part of world organizations such as the G8, even if the moment is suspended Russia's participation in sessions.

G8 is an international forum for the governments of the developed countries in terms of economic, technological and military:

Canada, France, Germany, Italy, Japan, United Kingdom and United States.

Together, these comprise approximately 14% although the world's population, totaling 60% of global gross domestic product.

They also account for about 72% of world military spending, and four of the eight, namely France, Russia, Britain and the United States hold over 95% of the world's nuclear weapons.

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3. Conclusions

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Abstract: The European Union 's specific supranational organization that brings together a significant part of European countries. During its existence, the EU has built a number of institutions that facilitate their functioning and facilitate communication and cooperation between the member states. The creation of the judicial authorities of the EU is an important step towards the harmonization of the legal system and the member states. The European Court of Justice already represents a crucial instance for those countries that recognize it. It will probably show us the near future sustainability of the project.

Keywords: European Union institutions, communication, court

INTRODUCTION

The European Union has organized similar to the modern state. The bodies of the Union, their structure, functioning and competence greatly resemble the authorities and responsibilities of modern parliamentary states. The European Union is founded on the principle of supra-nationality when it comes to matters that are within the competence of the Union. Try greater convergence of the EU countries adopting the Constitution failed, and as much milder variant signed the Treaty of Lisbon. The future will show the strength and sustainability of this international organization.

The structure of institutions of the European Union is a key point that makes this organization different from other international organizations. Members of the European Union have accepted that part of their sovereign power to the new institutions that represent both the national interests and the interests of the Union. The four main European Union institutions are: the EU Council, EU Commission, European Parliament and European Court of Justice. The European Union institutions are very important for the proper functioning of economic and political systems all over Europe, because their editing define certain rules which must be adhered to. Also affecting the security of citizens, employment and many others, without which it is impossible to imagine a smooth development of Europe. The judicial authorities (EU Court of Justice first of all)
have a great importance in the creation of the EU legal system and strengthening legal security states and their citizens.

**The Court of Justice of the European Union**

The Court of Justice of the European Communities, known as the European Court of Justice, the Supreme Court of the European Union. This court has a decisive role in the creation of the legal system of the European Union. He interprets the provisions of the Treaties and resolve disputes concerning actions of Member States and citizens whose rights have been violated by a decision of the body of the Union. It also has overall responsibility for the interpretation of the provisions of European Union law and ensuring their continuous and uniform application. It allows simultaneous interpretation of Community law in its territory through collaboration with national and municipal courts through preliminary proceedings for the interpretation of Community law.

The establishment of the European Court of Justice linked to the creation of the European Coal and Steel Community. The conference held on 23 July 1952 it was decided that the seat of the Court is in Luxembourg where the court is today. After these organizations established the European Economic Community and the European Atomic Energy Community, and each had its own court of justice. It was clear that such a structure has no future, and it was decided to create a single court of justice for all three organizations. This was done in 1959 and then this court becomes the Court of Justice of the European association. For a long time the Court has been working as the sole judicial authority, and for the solution of particular cases waiting a long time. From 1989, the Court of First Instance is attached to the court dealing with a number of cases.

The Court consists of one judge from each member state (27) and eight advocates-five of which are still in France, Great Britain, Italy and Spain, while the other three rotate alphabetically. They are appointed by member states, from among distinguished and experienced lawyers, his term is six years. They must meet the requirements for appointment to the highest judicial functions. During their term of office may not perform any other function. Council of the European Union may seek to increase the number of attorneys. The president is elected for a term of three years but
may be re-selected. Under Article 4 of the Statute of the Court of judges after the expiry of the mandate must behave honorably when it comes to further the enjoyment of certain appointments or benefits. Secretary of the Court shall be elected by secret ballot of the judges for a period of six years. It may be re-elected. Its function is to ensure the proper conduct of procedural issues. At first glance, one could say that it is a judicial institution of a special character from the point of special powers and activities of non-typical for this type of institution, nor that it was basically a very untypical institutions. The starting base does not take into account a number of peculiarities that make particular status. Created on the basis of an international agreement which should be indicative of its international legal personality. However, the European Court of Justice is different in many ways from other international judicial bodies. The jurisdiction of international judicial bodies such as International Court of Justice in The Hague, as a rule, optional. Jurisdiction of the Court of Justice of the EU is required.

The most unique element is that international courts do not interpret the regulations, while the European Court of Justice has the function of interpreting the founding treaty. His supranational character is reflected in the independence of its judges and attorneys general, which relies on contractual basis. They can constitute mandatory decisions on the Member States, their citizens and legal entities. Also, it is difficult to be accepted as argumentative perceptions that say that it is a judicial body similar to the national courts since it is not empowered to directly annul acts of the Member States. Therefore, the proper understanding of which says that it is a non-typical sui generis [1] judicial institution which has different characteristics than of national and international courts.

The main jurisdiction of the court to respect the rights of the interpretation and application of the Treaty establishing the European Union and this Court jurisdiction implemented through different types of procedures. According to their character, the right of European Union law is not conventional, but special system structures and procedures with a characteristic not only of national legal systems, but also a supranational legal system. Any legal entity of a Member State may invite the European norms (of the Community) law, but also to the norms of national law.
Jurisdiction of the Court of Justice

Court jurisdiction is a diverse and complex, and in some cases he has the role of a court-international when interpreting the provisions of the treaty, constitutional-court when examining the legality, the appellate court-when it comes to the decisions of the previous question and the Administrative Court-when it comes to deciding in civil service disputes.

Court jurisdiction covers three areas:

• dealing with an action for breach of contract against which Member States may submit to the Commission or by another Member State;
• controlling the legality of acts adopted jointly by the European Parliament and the Council, the legality of acts of the Council, the Commission and the European Central Bank, except for those who have the character of recommendation and opinion;
• give an opinion on a preliminary issue concerning the application of the Treaty gives the interpretation of the acts that brought the Union authorities. National courts are required to request the opinion of the Court when the previous question is raised in a case before a national court against whose decisions there is no legal remedy within the domestic system.

The Court of Justice shall sit in panels of three or five judges in the Grand Chamber consists of 13 judges and the plenary. The Court shall sit in plenary in special cases prescribed by the Statute of the Court, in a Grand Chamber in session when a Member State or an institution that is a party to the proceedings so requests, in particularly complex or important cases. Other cases are searched before a panel of three or five judges. Each council has its own president who is elected for a number of years.

The European Court of Justice has the primary function to ensure proper implementation of the founding treaties. The practical meaning of this role could mean that the Court provides the form the final arbiter resolving the conflict between the European institutions and the Member States. This is achieved, first of all, that the European institutions can not possess more power than they are given on the basis of the Treaty establishing. Also, this means it can be indisputably and in accordance with the contractual commitments to count on the consent of the member states that these
provisions are applied in practice. The Court of Justice in particular in the early stages of labor played a significant role in the process of creating European law, becoming a very important factor of deepening EU integration process.

In 1963, the Court established the doctrine of direct effect, or direct application of European law. It has brought the possibility of nationals of the EU to their countries seek fulfillment of the obligations directly if they have a basis in EU law. The following year, the Court has established the supremacy of the Community Law. [2] It is, in effect, meant that, if the domestic law contrary communitarian law, preferably the latter. In this way, along with everything else came to the fore and specificity of Community law in relation to public international law, which is reflected in the fact that EU citizens have the opportunity to appeal to the Court of Justice against final decisions of their domestic courts.

According to the generally accepted opinion, it is possible to carry out the division of competences to:[3]

1) that the direct and lawsuits
2) the jurisdiction of the preliminary issues.

The first category includes the following categories of disputes that can run on the request of the Commission, other organs of the European Union, the Member States as follows:

- failure to meet the obligations of Member States stemming from the founding treaty,
- annulment of illegal acts of Community institutions,
- omission or failure of EU bodies to take action against violations of the provisions of the founding treaties,
- compensation for damages arising from non-contractual responsibility of the community,
- regarding Central and Investment Bank,
- regarding the dismissal of members of the Commission,
- labor disputes,
- disputes between Member States started on the basis of a special agreement between them,
- disputes on the basis of arbitration clauses in public law contracts.
Another category of disputes relating to the preliminary stage of judicial functions. Practically, this means that the national court may ask the European Court opinion on the case before it is located. In the event that the domestic law in conflict with the community law such provision can not be applied. A national court can not make decisions on the basis of such a regulation, no matter what it is in force in that Member State. This establishes aberrant function of the Court, which almost borders with the function of creating the law, which, by their nature, belong to the second type institution. Court justice in these disputes has compulsory jurisdiction when it comes to proceedings before a national court of the highest instance. On the lower level is not mandatory jurisdiction of the Court. The court's decision on these matters shall not be made in the form of a judgment, but declare only a previous question when this guilty condition of the judgment by the national courts.

According to the provisions of Article 177 the Court has jurisdiction to rule on preliminary issues relating to:

• interpretation of the contract,
• evaluating orderliness and interpretation of Community acts,
• the interpretation of body established by the Council when these statutes.

When it comes to the interpretation of international treaties it is possible to distinguish several types of laws as regards the jurisdiction of the Court as follows:
• Convention matters in which the community does not participate, but there is a need for a uniform interpretation,
• Agreements to which the Union is involved, and in which there exists a need in applying for a uniform interpretation,
• Contracts to which the Union or its body one party.

To a question was similar to present his case before the Court, it is necessary that what was previously pending before the national court. During this process determines the need for an interpretation of certain Community norms because it is estimated that this fact essentially defines the decision. The court is not required no special form for a referral. In practice, it happened that he accepted solving and vaguely formulated questions.
Court of first instance

Because of the overload of the Court of Justice of the EC 24.10.1988, was established in the Court of First Instance of the European Communities, and started operating in October next year. The existence of the Court of First Instance has proved very justified, not only from the standpoint of efficiency, but also from the perspective of an appropriate judicial function in the EU. In addition, notes the extraordinary dynamism and diversity of cases to be considered. It is also a serious reason to establish certain elements of the principle two-level. Because of the excessive number of cases that have led to overcrowding, labor disputes have crossed the jurisdiction of the Court of First Instance and the European Court remained responsible for administrative procedure on appeal against the decision of the first instance court except that its jurisdiction is limited to questions of law. The Court of First Instance has no general Public Attorneys. Court in session or in plenary assembly of all judges or in small groups of judges and judicial councils which decide on specific types of cases. Until the Treaty of Nice in 2001, this Court has acted as an associate body of the Court of Justice, and not as a separate court.

Court of First Instance has at least one judge from each member state, but no Advocates already one of the judges may perform this function. Judges are appointed by mutual agreement of the Member States for 6 years, and possible re-election. President of the Court elected by the judges from among its members for a term of 3 years and the same person may be re-elected. Court of First Instance has its secretary and issues regulations governing its operation. Service of the Court of Justice provide expert assistance in the work. On trial in panels of three or five judges who elect the president from among their ranks, can be tried by a single judge, a judge in complex cases much larger than 13 judges. Jurisdiction court of first instance is designated in the contract and can be changed Statute of the Court of Justice.

Jurisdiction of the Court of First Instance

Court of First Instance:

- decides on direct complaints submitted by individuals and legal entities against the body of the community;
- decides on the complaints of the Member States against acts of the Commission;
• decides on complaints against member states of the Council acts in connection with
decisions on state aid, dumping, which responsibilities for enforcement;
• decides on complaints regarding the damages that have been done of the Community
and its servants;
• decide on actions taken on the basis of contracts communities in which it expressly
envisaged the jurisdiction of the Court of First Instance;
• Decide on complaints relating to the trademark community.

The Treaty of Nice introduced the possibility that the Court of First Instance
decides on the previous question, in relation to specific areas under the Statute. These
are issues that his instructions to the national courts of the Member States relating to
the application and interpretation of the Community rights. Treaty the Lisbon Court of
First Instance is renamed the General Court 2007-2008.

Judicial panels

The first step towards establishing a judicial panel stems from demands for the
creation of specialized courts to act as the lower courts. The Treaty of Nice provides for
the possibility that the Court of First Instance adds to the judicial panels in order to
perform in certain areas of judicial judiciary. They are based on the proposal from the
Commission or the Court of Justice, a decision by the Council unanimously, after
consultation with the Parliament and the Court of Justice. The Council on a proposal
from the Commission in 2004 decided to set up the tribunal for civil service disputes.
They solve disputes in the civil service which is one side of the EU institutions, and the
other European institutions. Civil Service Tribunal judge in the first instance, with the
possibility of an appeal Court of First Instance in the second instance. The conditions for
the appointment of members of the judicial panels are the same as in the Court of First
Instance. The judges are persons qualified to hold judicial office. They are appointed by
the Council by unanimous decision. Judicial panels make rules of procedure with the
approval of the Court of Justice. Rules of Procedure approved by the Council by
qualified majority.
Composition of the Tribunal

The Tribunal has 7 judges, and the number may increase. Judges are elected for 6 years with the possibility of re-election. Applicants must be members of the European Union. A special committee examines the candidate’s suitability. The Committee consists of 7 members, former judge of the Court of Justice and of First Instance court. Tribunal have a president who is elected for three years and may be re-elected after the expiration mandates. Occupies in panels of three judges, the judge in chambers of five judges, in plenary or trial a single judge. The paper may assist the professional service of the court acting in the Court of Justice and the Court of First Instance. The tribunal has his secretary.

Other Services Tribunal

The Court of Justice has its Secretary who receives and forwards the documents to the Court and submitted documents of the Court to the parties. He is the principle of judicial administration attend sessions of the Court when considering administrative issues, but without voting rights. Secretary of the Court is accountable to the President of the Court.

Judges and advocates-general assisted by legal secretaries. Every judge and the advocate-general has three legal secretary. These are young lawyers who spend a few years in the service of the Court, and then returning to their country. They perform legal research and assist in the preparation of legal opinions. They are elected by judges and advocates-general for which they work.

Within the court, there are a number of specialized services to assist the work of the Court. These are: the library, the department of research and documentation that provide the legal systems of the Member States and the Union itself. This department prepares publications in connection with the practice of the court. Other services include: Translation Service, Directorate for simultaneous translation, the department for press and information department visits.
Organizational changes in the judicial system of the European Union

The judicial system of the European community suffered some changes by adopting reform treaty. The Treaty of Lisbon is changing the name of the EC Treaty in the Treaty on the Functioning of the European Union. Organizational changes related to the name change of courts, appointment of judges and advocates general of the European Court of Justice Judge Court of First Instance, as well as ways of appointing higher court under whose auspices in 2004 established Civil Service Tribunal.

Significant changes affecting certain types of proceedings before the European Court of Justice and the Court of First Instance. This applies to: the procedure for annulment, the procedure for sanctioning a Member State and the procedure for granting a preliminary opinion.

According to the Lisbon Treaty of the European Union judicial system and further comprises:

• European Court of Justice,
• Court of First Instance,
• judicial council - under whose auspices the 2004 Civil Service Tribunal was established.

For the first time introduces an obligation for Member States tj.njihovih national courts to provide the legal means to guarantee effective legal protection in the areas regulated community law.

The European Court of Justice changed its name to the Court of Justice of the European Union, and the Court of First Instance General Court. The number of judges remains unchanged, but the number of advocates-general at the Court of Justice has increased from 8 to 11. The mere internal organization remains the same.

The jurisdiction of the European Court of Justice under the Treaty of Lisbon

Under the new agreement leaves tripartite structure, the matter of the third tube is transferred to the first, and in conjunction with the second pillar of the Union in several ways emphasized the particularity of this kind of cooperation.

Common foreign and security policy is subject to special rules and procedures. Expands the jurisdiction of the European Court. He had long been excluded from Pillar
3, because there was a fear of the Member States of the case-making decisions to determine labor standards and respect for basic human rights in this area that are higher than national standards. Instruments from the 3rd pillar (framework decisions, common positions, decisions and conventions) that were used in the field of police and judicial cooperation in criminal matters, leaving it. The Lisbon Treaty provides for the use of traditional instruments, ie. LEGISLATIVE ACTS OF THE UNION.[5]

The supranational principle is now being applied to the matter of Pillar 3. The European Court of Justice will act as soon as possible when the preliminary issue raised before a court or tribunal in a Member State, relating to the person in custody.

**Changes within the Court of Justice**

The manner of election of judges is partially changed. Now previously consulted for the selection panel that was established specifically for this purpose. This larger gives an opinion on candidates' suitability before than member state governments make an appointment. The Chamber consists of seven members from the ranks of former judge at the European Court of Justice and the General Court, members of national supreme courts and recognized lawyers. Judicial structure of the EU in 2004 became richer by another judicial institution embodied in the civil service tribunal. Established the decision of the Council of 02 November 2004, pursuant to Article 225a and 245 of the EC Treaty. It provides education panels to interrogation and execution in the first instance certain types of activities or procedures provided for in some cases. Court higher education Council on a proposal from the Commission and after consulting the European Parliament and the Court of Justice or at the request of the Court of Justice and after consulting the European Parliament and the Commission. The trial chambers are called special courts at the General Court.

**CONCLUSION**

The European Union (EU) is a family of democratic European countries working together to improve life for their citizens and to build a better world. Although the headlines most often due conscience of disputes and occasional "family" squabbles that occur in the work of the European Union, behind the public eye Union has, for now, remarkably successful project. In just over half a century it has delivered peace and prosperity in Europe, a single European currency (the euro), and the "single market"
without borders and barriers to movement of goods, persons, services and capital. The Union has become a major trading power and a world leader in areas such as the environment and development aid. No wonder it has grown from six to 27 members and more countries waiting in line for membership. The European Union's success owes a lot to Strange how that works. Unusual because the EU is not a federation like the United States. Nor is it simply an organization for cooperation between governments, like the United Nations. It is, in fact, unique. States that make up the EU (its 'member states') remain independent sovereign nations, but they pool their sovereignty in order to gain a strength and world influence none of them alone could not have. Pooling sovereignty means, in practice, that the member states delegate some of their decision-making powers to shared institutions they have created, so that decisions on specific matters of joint interest can be made democratically EU level.

The powers and responsibilities of the EU institutions, rules and procedures must be respected, as laid down in the Treaties on which the EU is founded. With the founding treaties agreed that heads of state and government of all EU member states and ratified by their parliaments. The three main decision-making institutions are:
1) The European Parliament (EP), which represents the EU's citizens who are directly elected;
2) The Council of the European Union, which represents the individual member states;
3) European Commission, which seeks to represent the interests of the Union as a whole.

This "institutional triangle" produces the policies and laws that apply throughout the Union. In principle, the Commission proposes new laws, but Parliament and the Council that adopt them. There is a judicial system that embodies the Court of Justice upholds the rule of European law, and the Court of Auditors controls the financing of the Union's activities. In addition to the aforementioned and numerous other bodies also have key roles in the functioning of the European Union.

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The current state of the justice reform in Romania

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Abstract
Justice, is a key element of a company, is a state power, under European monitoring. Cooperation and Verification Mechanism, established in 2007, when Romania joined the European Union, is a process of pressure and a process aimed at harmonizing the judiciary at all levels of the judicial system, reliable in Member States. So, below, we try to analyze the state of the judiciary reform, are the conclusions reached in the last published report.

Keywords: CMV, report, corruption, reform, E.U., public authorities.

Introduction
Ironically, we say, one of the most fluctuating confidence in public institutions, namely trust in justice, has gained special value, so we find that there is an inverse relation between public confidence in the justice system, on the one hand, and the call its courts, on the other hand. As trust in justice has decreased and decreases, the number of addressed and that addresses the courts increase the number of cases being assigned a magistrate was of the highest in Europe. The reform in the judicial system, primarily, has an impact on the social system, but also on society, influencing impact and the other subsystems. Also the choice of studying the reform process in Romania, we try to demonstrate the ability of this system to principle adaptability and European order, and justice essential purpose of fulfilling recommendations of the first report required by CVM, namely the ability to become a public service of Justice.

One of the topics that occupy the ends of the poster, the Romanian press, the mass political discussions, but also in the doctrine and legal studies, is the reform of the judiciary. With the change of political regime in 1989 began a broad transition of Romanian society at all levels. When the transition is not completed yet, it has started a new process of reforming all Romanian institutions in accordance with the principles laid down by the Treaties. So we can conclude that the transition continues with EU accession, Romania benefiting from monitoring the level of justice, considered a key element in the accession process to the European Union. Thus Cooperation and Verification Mechanism (CVM) was set up in Romania's accession to the European Union in 2007 [1]. After negotiations with representatives of the European Union
concluded that, in the justice, there key areas where further efforts were needed to resolve weaknesses in judicial reform and combating corruption.

Through CMV reports were reviewed progress made by Romania for the period 2007-2014, and were set precise through specific recommendations, which the Romanian authorities have had to take.

In the process of strengthening the rule of law in Romania, CVM has played a crucial role, being also an essential dimension of European integration. Through continuous monitoring of Romanian authorities and cooperating with them, they succeeded augmentation results and managed to accelerate the reform process. The monitoring work, the Commission and the methodology used in the CVM, consistently enjoyed strong support from the Council [2], but also intense collaboration with many of the Member States.

Analyzing CMV report for 2014 that Romania can barely visible progress in many areas. However the report highlights the positive marks obtained key institutions in the fight against corruption. Thus this progress, we can conclude that represents an important step towards ensuring the sustainability of reforms in the field. However, the report highlights the divergence between politics and justice, there was no consensus regarding the pursuit of the objectives CVM.

The report analyzes both trends to see what areas the reforms made are irreversible.

2. Situation of the reform process in Romania

In our analysis, we will focus on several key points, such as:

• Independence of the justice
• Judicial reform
• integrity
• combating corruption

2.1. Independence of the justice

When we refer to the justice independence, referring to the independence enjoyed by them in making decisions without political involvement. CVM’s essential Fears have also included political interference in appointments to top posts of the system. The recommendations contained in previous reports and the importance of
transparent selection procedures based on merit.[3] During 2014, there were a need for new appointments to judges or prosecutors at the highest level, but recent challenge is constituted by appointing a new chief prosecutor of the Directorate for Investigating Organized Crime and Terrorism (DIICOT), following the resignation of the previous chief prosecutor in November, the challenge will occupy an important place in the analysis report on CVM for 2015. The procedure is conducted using the Commission's recommendations, but it also has a political dimension, given the role of Minister of Justice, whether or not they complied with the recommendations of the report CMV, we see the 2015 report of the Superior Council of Magistracy (SCM) attempted a draft amendment to the law to change this and to apply for the appointment of prosecutors procedures already used the judges in accordance with the recommendations of the Commission for Democracy through law of the Council of Europe (Venice Commission).[4] The Superior Council of Magistracy (SCM) attempted a draft amendment to the law to change this and to apply for the appointment of prosecutors procedures already used the judges in accordance with the recommendations of the Commission for Democracy through Law of the Council of Europe (Committee Venice). This Decision no. 113 per 2015 for the amendment of the Rules on the transfer and posting of judges and prosecutors, the delegation of judges, appointing judges and prosecutors in other leadership positions and the appointment of judges and prosecutors as judge, approved by the Superior Council of Magistracy no. 193/2006, the Council carries out the recommendations made by the report. However, the next step would be for the Government to submit a proposal on this issue to Parliament, whereas in the year 2016 will start several processes for appointing the head of the judiciary. [5] The independence of the judiciary and respect envisages judges and the judicial process. This recommendation and the key point noted in the reports from 2013 and 2012, respect the institution, which represents judges, was tarnished by attacks on political, media. The report notes the phenomenon decrease compared to previous years, but noticed about these attacks in corruption cases involving influential public figures. At the same time these attacks were directed against magistrates and their families but also against some The institutions like the Constitutional Court.
The report highlights once again the role SCM namely to guarantee judicial independence. This, since 2012, established a procedure conducted by the Judicial Inspection in order to defend the justice independence and professional reputation, independence and impartiality of the judiciary system. The procedure used intensively, which shows the growing confidence of people in the justice system.

Judicial authorities have improved media access to information on developments in the judicial system. But it is difficult to set limits beyond which it can be considered political actions interfere with the judiciary or judicial decisions and the less there is a system of sanctions in case of breach those limits. CMV report on 2014 contained the following recommendation: "to ensure that the code of conduct for parliamentarians included clear provisions regarding respect for the independence of the judiciary and in particular judgments by parliamentarians and parliamentary process".

The report distinguished role in ensuring the balance of powers and respect for fundamental rights in Romania and in terms of solving issues that they solved the judicial process that had the Constitutional Court (CCR). Constitutional Court decisions have also allowed the removal of obstacles arising from the entry into force of the new codes, Criminal Code and Criminal Procedure Code.

Judicial authorities increasingly recognize the need to take measures to implement court decisions. Society actors remarks failure judgments, even by public authorities, which should, in principle, to set an example in this respect.

CMV, stresses the importance of the revision of the Constitution whereas some amendments concern the judicial system and functioning of the Superior Council of Magistracy. Revision of the Constitution had a difficult route not finalized until now was criticized for its lack of transparency, both in terms of timing of deployment, and the consultation process.

2.2. Judicial reform

Judicial reform envisages new codes, human resources and budgetary efficiency of the judiciary and consistency of jurisprudence.

Key points in reforming the judiciary Romanian new legal codes, mentioned by previous CMV reports were successfully applied to the Romanian legal system, but encountered complications such year some cases, such as the principle of the law most
favorable, solutions were found. Some issues were regulated by the government, by adopting emergency ordinances, while others have been changed by legislative proposals, but those procedures are still pending parliamentary chambers. And we will require adaptations as a result of decisions of the Constitutional Court, some points are non-congruent with the Basic Law. As the review, the Ministry of Justice has acted to ensure continuity in the accepted term. Regarding Preliminary rooms, SCM and HCCJ and immediately began to look for practical solutions to allow the presence of defense lawyers.

Although a continuing problem, the Ministry of Justice budget, managed to grow by 4% in 2014, and the planned budget for 2015 is set to increase again. Thus managed financing of new posts in the courts and prosecutors, including 200 new posts of auxiliary officers. National School of Clerks, the National Institute of Magistracy Superior Council of Magistracy organized training sessions and competitions for filling new vacancies being filled rapidly. But we need to identify namely increasing the number of clerks, IT equipment modernization and renovation courts and supporting key institutions such as the Judicial Inspection and the National School of Clerks.

CMV report, refers to the workload of the court system, which has a negative impact on the quality of judgments and judicial system accessibility for citizens. Ministry of Justice and SCM have tried a number of legislative proposals to address the workload issue. A law (adopted swiftly by the Parliament in October 2014) covered the issues of duplication in the process of execution of judgments and estimates that this type were removed from the role of civil courts about 300 000 cases.

SCM has created a working group with the task of identifying ways to analyze and improve the operation of all courts. It provides tools that allow management to analyze the functioning of the judiciary, especially in the context of the global strategy for the judiciary. It would be useful to be included in this initiative instruments to measure the actions of the judiciary to ensure enforcement of judgments. Although polls underscores an increase in public confidence in the judiciary in Romania, especially in institutions that ensure the prosecution of perpetrators of acts of high level corruption. Beneficiaries of justice, various lawyers, businessmen and various NGOs continue to report difficulties in relations with the courts.
Another important judicial reform is to ensure consistency in the law. In order to unify jurisprudence, HCCJ has perfected the practice of using requests for preliminary ruling are a second appeal on points of law, were also taken measures to ensure better dissemination of judgments. To ensure consistency of practice, contribute similar measures that have been taken within the prosecutor and, in general, in the management of the judicial authorities and thematic inspections carried out by the Judicial Inspection. A number of obstacles persist path of consistency thus identify the lack of a clear delineation of responsibility magistrates in case of a deviation from established practice or in case law: SCM had to clarify that judicial independence is not an excuse for practice uneven. Decisions on matters repetitive, can become jurisprudence for public administration, resulting in the reduction in the number of cases brought to court and strengthening legal certainty by avoiding delivery of diverging decisions on identical issues.

2.3. Integrity

The agenda of the National Integrity Agency (NAI), there were a significant number of cases in 2014. 70% of ANI decisions concerning the incompatibilities and conflicts of interests are challenged in court, but majoritaaea cases confirmed by the courts. Both the RAC and the HCCJ [6], confirmed the interpretations of law made by the NIA. Therefore, it can be considered that the Commission acts on a solid legal basis. In 2014, HCCJ identified ways to accelerate the investigation of cases of incompatibility, supporting ANI. This has helped to ensure legal certainty and improve the deterrent effect of laws on integrity. During 2014 there were several examples of the different courts reach conflicting judgments (even courts of appeal), which offered different interpretations there, including court interpretations that have been at odds with the interpretation HCCJ.

ANI decisions (ie those that were confirmed in court) are not applied in accordance with the requirements of CVM report, the Parliament, despite the fact that reforms should enhance the automatic application of them. For example, in an emblematic case, the solution was not found until after the senator in question has resigned.
2.4. Combating corruption

The fight against high level corruption registered as CMV reports, consisted, in the year 2014 progresses. It did therefore effective fight against high level corruption cases, so this confirms both the activities of the DNA and in trial phase by the HCCJ. However, corruption remains a major problem for Romania, the DNA in 2014 covered a wide range of high-level corruption, at all levels involving civil and public figures from different political parties. Were indicted, were investigations, various dignitaries, senior officials, current and former ministers, parliamentarians, mayors, judges and prosecutors with important management positions.

Among the complaints HCCJ are notable final convictions of a former prime minister of former ministers, MPs, mayors and magistrates, also other important cases, in which involved leading figures from the business world, on which the Court of Appeal ruled. The penalty for corruption is suspended (although this is less flagrant within the HCCJ) in most cases. DNA tests to convince Parliament to lift the immunity of lawmakers to allow the initiation of investigations and pretrial measures have failed, defending their caste politics. However in late 2014 Parliament lifted the immunity of several MPs questioned the DNA in a major corruption case. Even if Parliament requests DNA hesitated, his position seems arbitrary and devoid of objective criteria, however, Romanian President responded positively in respect of requests for waiver of immunity of ministers.

In the last year, cases of corruption among magistrates, increased significantly compared to previous years, the CVM report defined as “a highly corrosive form of corruption.” on this case, DNA stresses that this high figure does not reflect an increase in corruption in the judiciary, but rather, an increasing number of complaints from the population. Such cases are complex and a new unit was established in the DNA, which was responsible for investigating these cases.[7]

In regard to corruption in general, European observers, it was very difficult to observe the situation in general, in the whole society. However, we can identify some signs of this development. To improve results prosecution in this context, the Public Ministry has taken a number of concrete measures. Such collaboration between the General Anticorruption Directorate (DGA), which operates in support of the prosecution
(DNA and Attorney General) and the national anti-corruption body under the Ministry of Internal Affairs continued to play an important role in combating corruption in general. However, the number of judgments in corruption cases decreased in 2014, and the percentage of persons convicted with sentences suspended (80%) remains high.

Public Administration, found also in full reform program, and important framework is the National Anticorruption Strategy 2012-2015.[8] In 2014, the local government level held a second round of evaluation, based on a peer review and GRECO and OECD practices. Anti-corruption strategy involves public institutions' commitment to respect a set of thirteen preventive measures legally binding and agree to be subject to peer review. Although initiatives in this area remain fragmented and are not yet strong enough to become common practice in government, faced with limited resources, there are few successful examples.

Risk assessment and internal controls are key areas of action, such cases have come to light bribes for granting substantial amounts, which could have been identified earlier by carefully examining the files, but that could not be investigated in the absence of complaints from the population. But problem there in terms of debt recovery, especially recovery of damages, the Romanian authorities having a substantial problem at this level, the system needing improvement, recovery rate is extremely low.

2.5. CMV report’s findings and recommendations:

In areas previously suggested by the CVM report, the Committee could be highlighted, progress, progress that can be interpreted with the effect of durability, these persisting and in the current report. This trend continued over the past year. The main judicial institutions and officials in integrity have developed actions to combat high-level corruption. These advances have maintained a remarkable dynamism and were reflected in increased confidence in the Romanian judicial system in general and in the prosecution of corruption in particular. The good results of reform developments were made possible by increasing the professionalism of the entire judicial body as a whole. The body demonstrates the willingness shown by its members, the ability to defend more consistently independence of the judiciary and to apply a more proactive approach in ensuring the consistency of jurisprudence. Appointments to management positions could become problematic, to developments in the justice reform.
The Commission notes that progress must be consolidated and built on proven and reliable basis. If the implementation of the codes demonstrated ability to cooperate in a pragmatic and productive state institutions, one can notice the many outstanding legislative issues that raise problems of system operation. At the same time capacity Parliament to decide on the approval prosecution of parliamentarians, and retention to apply the final judgments or decisions of the Constitutional Court is the vision report impediments to solving and simplifying the administration of justice.

One of the positive findings of the report is the consensus on the need for reforms and believes that progress must be grounded.

The main recommendations of the Commission for the next period aims:

1. The independence of Justice:
   • procedure for appointing the new chief prosecutor of DIICOT through a transparent and merit-based;
   • delimitation of new procedures clear for appointment to senior positions in the Judiciary
   • respecting the independence of the judiciary MPs by introducing a code of conduct year of clear.
   • ensuring the independence of the judiciary and its role in the context of the balance of powers, through the provision in the Basic Law.

2. Judicial reform
   • establish the necessary changes to be made to the criminal codes in consultation with the SCM, HCCJ and the DPP.
   • Creating an operational action plan for the implementation of the judicial reform strategy,
   • pragmatic solutions to maintain access to justice by changing current chart courts.
   • enforcement of judgments at all levels.

3. Integrity:
   • ensuring that judgments relating to the suspension of parliament are implemented automatically by Parliament;
• the ex ante by ANI conflicts of interest in public procurement procedures; ensure closer links between the prosecution and ANI, so any crimes related to ANI cases to be properly investigated;
• exploring ways to improve public acceptance and effective implementation of the rules of incompatibility and measures to prevent incompatibilities.

4. The Fight against corruption

• collecting statistical data on the effective recovery of assets and to ensure that the new agency could ensure better management of the assets frozen and cooperate with ANAF to improve recovery rates effective. Other parts of government should be clearly responsible if they prove unable to resolve these issues;
• intensify preventive and repressive actions directed against conflicts of interest, favoritism, fraud and corruption in public procurement and to pay particular attention to key areas such as the judiciary;
• identification of areas at risk of corruption and educative and preventive measures with the support of NGOs and taking advantage of opportunities provided by EU funds.
• Improved measures to combat petty corruption, both through prevention and deterrent sanctions.

3. Conclusion

After analyzing the CVM report for 2014, one can see the positive trend is the judiciary reform and the Romanian judiciary. But the panel highlights key points that Romania will have to make further efforts in order to achieve congruence with other European countries. However, that progress will be made in some areas on the agenda of the Commission and the list of the monitoring mechanism to be stabilized and balanced.

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[4] According to European standards imposed by the Venice Commission regarding the independence of the judiciary, it is extremely important that politicians do not have a very important role in terms of appointments in the prosecuting authorities.
[5] Attorney General and chief prosecutor DNA: in May 2016, President of the High Court of Cassation and Justice: in September 2016, the Superior Council of Magistracy: elections in 2016. President and Vice President of the National Integrity Agency (ANI) shall also be appointed in April 2016.
[6] Technical Report, Section 3.1. Between 1 January and 31 December 2014, the Criminal Chamber resolved in the first instance, 12 cases of high level corruption and the panel of five judges ruled that the final court in 13 cases of high level corruption.
[7] Raport tehnic, secțiunea 4.1
Insights on the arbitrator's requirement of independence

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Abstract
Arbitrators act as private judges, thereby assuming a judicial role. They have the obligation to be independent and impartial since the time of acceptance of this function to the last act of settling the dispute between the parties. This obligation has become a universally principle accepted in international arbitration.

Keywords: arbitrator; independence; impartiality; neutrality; the obligation to inform.

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1. Legal provisions regarding the arbitrator's obligation of independence

The international conventions in the matter of arbitration, the national laws, the UNCITRAL Model-Law of international arbitration [1], as well as the regulations of the permanent arbitration institutions promote as fundamental principles, the independence, the impartiality and the neutrality of the arbitrators.

The Washington Convention for the regulation of Investment Disputes between States and Nationals of other States, signed in 1965, stipulates in art. 14 para. 1) that people who are designated for inclusion on the arbitrators' list, in addition to a high moral, recognized competence in the legal, commercial, industrial and financial field, must offer "guarantee of independence in the exercise of their functions".

Within the art. 12 para. 2) of the Model Law - UNCITRAL are provided as grounds for recusal of arbitrators the lack of qualifications agreed by the parties, the lack of impartiality and independence: "An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made."
Also in the par. 1) of the art. 12 is regulated the obligation to inform the parties about the circumstances that might substantiate the lack of impartiality or independence: "When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him."

The Romanian Code of Civil Procedure (hereinafter, C.proc.civ.) regulates the obligations of arbitrators through the art. 562, which refers to their incompatibility, but also through the art. 565, which provides for cases in which judges can be held accountable [2].

The independence of of the arbitrators is a fact that can be endangered by circumstances such as those mentioned in the art. 562 para. 1) of the C.proc.civ.: "In addition to the cases of incompatibility provided for judges, the arbitrator may be challenged for the following reasons, which puts in doubt his independence and impartiality: a) the failure to meet the conditions for qualification or other requirements regarding arbitrators, provided in the arbitration agreement; b) when a legal person whose associate is or whose governing bodies is the arbitrator has an interest in question; c) if the arbitrator has employment or service relationships, where appropriate, or direct trade links with one party, with a company controlled by one party or under common control with it; d) if the arbitrator has provided consulting either party, witnessed or was a party or testified in one of previous phases of litigation".

So arbitrators have the obligation to be independent, impartial and neutral throughout the mission that they accepted it, pending the completion of arbitration and the arbitration award.

In the literature it is stated that this obligation has become an "universal accepted principle and, from this point of view, is than completely isolated, any distinction between domestic and international arbitration on the requirement of independence, impartiality and neutrality of the arbitrators" [3].
Also, we must not forget that even the incompatibility provided for judges in the art. 41 and the art. 42 of the C.proc.civ., according the art. 562 paragraph 1) of the C.proc.civ. applies to the arbitrators. Is therefore not allowed to take part in the judgment the arbitrator who was witness, expert, lawyer or mediator in that case.

And according to the art. 562 para. 1) in conjunction with the art. 42 of the C.proc.civ., the following situations are grounds for incompatibility for arbitrators: when the arbitrator previously expressed its opinion on the solution of the case that was assigned to judge; when there are circumstances that make justified the fear that he, her/his husband/spouse, ascendants or descendants or the in-laws, have an interest in the dispute; when she/he is the spouse or the husband, relative or in-law up to the fourth degree with the lawyer or the representative of a party or if she/he is married with the brother or with the sister's husband/spouse of one of these people; when a husband/spouse or ex-husband/ex-spouse is a relative or in-law up to the fourth degree with any of the parties; if he, his spouse/her husband or their relatives up to the fourth degree or related persons, as appropriate, are parties in a process that judges at the institution where one party is arbitrator; if between him, his spouse/her husband or their relatives up to the fourth degree or in-laws, as appropriate, and one party there was a criminal trial with more than 5 years before being appointed to settle the dispute.

In the case of criminal complaints submitted by the parties during the arbitration, the arbitrator is incompatible only if put into criminal action against him. Also, the arbitrator is incompatible if he is the guardian or custodian of a party; if he, his husband/spouse, ascendants or descendants have received gifts or promises of gifts or other benefits from one of the parties; if he, his spouse/her husband or one of their relatives to the fourth degree or in-laws, as appropriate, is enmity relations with one party, the husband or his relatives to the fourth degree; if it is a spouse or relative up to the fourth degree or in-laws, where appropriate, with another member of the arbitral tribunal; if the husband/spouse, a relative or a in-laws family member up to the fourth degree represented or assisted the party in the same cause before other arbitration institutions; when there are other elements that justified in arise doubts about his impartiality.
The Regulation of International Commercial Arbitration Court of the Chamber of Commerce and Industry of Romania provides in the art. 12 that arbitrators are independent and impartial in carrying out their judicial role, emphasizing that the arbitrators are not representatives of the parties [4].

2. Doctrinal perspectives regarding the arbitrator’s obligation of independence

In international arbitration, the arbitrators must meet in addition to the requirements of impartiality and independence, the neutrality requirement. In this context, the neutrality condition requires to the arbitrator to take a certain distance from its legal culture, politics, religion, and not be limited to their own traditions, showing openness to other ways of thinking [5].

The doctrine appreciated over time that independence and neutrality can be ensured when the arbitrator nationality is different from the nationality of the parties. Some international institutions have used arbitration doctrinal views and brought into regulations this rule regarding the different nationality between the arbitrators and the arbitration's parties [6].

There is also one part of the literature that states that the application of such rules on neutral nationality of the arbitrator can have serious consequences in practice, in the sense that, in an arbitration in which the applicable law is the law of one party and the sole arbitrator or the presiding arbitrator (the President of the Arbitral Tribunal) does not know this law. Moreover, it states that the nationality the arbitrator does not guarantee the independence and the impartiality, but only creates this appearance [7].

The criterion of the neutrality of the arbitrators qualifies them as neutral arbitrators, and in this category are included the arbitrators appointed by the administrator of the institutional arbitration or the presiding arbitrator appointed by arbitrators, selected by the parties, and non-neutral arbitrators, those appointed by the parties [8].

In the matter of US national arbitration there was the regulation according to which the arbitrators appointed by the parties are non-neutral, so the neutrality requirement does not exist in their task [9]. With regard to international arbitration, the approach was different, the International Bar Association Rules of Ethics for International Arbitration disposing since 1987, that in the international arbitration the
arbitrators must be impartial and independent, and also must be and remain impartial [10].
The position of the American Arbitration Association has changed, and in 1993 the Regulation on domestic arbitration has been substantially amended, stipulating that unless the parties have agreed otherwise, the arbitrators must be impartial and independent. A new change took place in 1997, suppressing the parties' possibility to choose whether or not the condition of independence and impartiality of the arbitrators applies, and so, the American Arbitration Association has aligned its rules provisions in most practice worldwide [11].

The status of the arbitrators appointed by the parties remains the subject of controversy, but most of the doctrine and practitioners however considered dangerous any interim solution regarding the judicial role of the arbitrator.

The Regulations of the permanent institutions of arbitration gives some examples of the application of neutral arbitrators' condition, in the sense of a different citizenship to the parties, but in a subdued manner: the Regulation of the International Court of Arbitration in Paris provides within the art. 13 para. 4) that usually, the sole arbitrator or the chairman of the arbitral tribunal shall have other nationality than the litigants. But, given that we are in the matter of arbitration, in certain circumstances and provided that neither party not raise objections within the period fixed by the Court, the arbitrators may be chosen from a country whose citizen is also a party. The International Arbitration Court in London within the art. 5 and the art. 6 of the Arbitration Rules regulates the formation of the arbitral tribunal and stipulates the implementation of the principle of neutrality, though it can be mitigated by the parties. Thus, in accordance with the art. 6, regardless of the nationality of the parties, both the arbitrators and the President of the Arbitral Tribunal must be a different nationality, unless the parties of different nationalities have agreed otherwise in writing.

It also clarifies the situation of people who have multiple citizenship or who are European Union citizens, such as: one who has more citizens will be considered a citizen of each state and for the European Union citizens, will be considered the nationality of the European Union state member whose citizens are, and does not considered to have the same nationality.
The regulations in the international arbitration field are those that provide the possibility for each party to appoint its own arbitrator. The Model Law - UNCITRAL dispose under the art. 11 that the parties are free to choose a procedure for appointing the arbitrators or to designate them, and in the case of the arbitral tribunal composed of three arbitrators, each party shall appoint one arbitrator, and the two shall designate the third; the art. 1.113 of the C.proc.civ. provides that the appointment, the revocation and the replacement of the arbitrators shall be done according to the arbitration agreement or those established by the parties after this, and by default, the interested party may request to the arbitral tribunal on seat of arbitration to do so; in accordance with the art. 7 para. 1) of the Rules of International Arbitration Court in London, if the parties agreed that an arbitrator be appointed by them or by a third party, this convention has the meaning of a proposal for an arbitrator, and the arbitrator candidate may be appointed arbitrator only by the Court; in the same direction is also the regulation provided by the art. 12 of the International Court of Arbitration in Paris' Regulation, and, if the parties decided to submit the dispute to an arbitral tribunal of three arbitrators, each party shall appoint, for confirmation, an arbitrator by the request for arbitration, respectively respond plea.

In the literature it is appreciated to be "illusory combating the hope of the party that unilaterally choosing or designating a member of the arbitral tribunal it shall not seek and will not see him, unless a lawyer in charge exclusively with the support of its view, at least an arbitrator with a predisposition in his favor [12]."

The principle of impartiality and independence of arbitrators apply whether questioning a domestic or an international arbitration, and international conventions emphasizes its importance. But, it seems that between theory and practice there is a large gap: a part of the doctrine considers that the arbitrator cannot be independent when he was appointed by a state or the very support that the arbitrator must be independent is "hypocritical". The other part of the doctrine is not as trenchant and invokes the contractual freedom under which the parties can designate arbitrators [13]. Along with other authors [14], we argue that the absolute independence of any arbitrator is required or it may jeopardize the exercise of this function, and the institution of arbitration would be seriously injured.
Matthieu de Boisseson raises the following problems: "the independence of the arbitrator, as arbitrator of all parties, it is an unattainable ideal or a legal fiction that was developed on the foundation of the arbitrator's definition in international trade? This fiction, it is, in the etymological sense hypocritical: it is the arbitrator's mask?"[15] It is sure that in this case, the ideal must be identical with the reality, because otherwise, it would raise enough problems, both ethical, and legal.

The arbitrators must be independent and impartial since assuming the function and until a decision on the last act of arbitral dispute is pronounced [16]. In this respect, the fundamental principles like the independence of arbitrators, their impartiality and neutrality need a legal guarantee regarding the compliance.

The doctrine appreciates that "the obligation to inform falls among the most important guarantees for the respect and impose conditions set forth both in national and international arbitration" [17], representing also a preventive measure to implement the requirements of impartiality and independence [18].

3. The duty to inform, the guarantee of the arbitrator's independence

The information obligation was laid down in national legal systems in matters of national arbitration and then was extended to the field of international arbitration. It is considered that the UNCITRAL Model Law had a considerable influence on the settlement of this obligation under national laws to international arbitration matters. The art. 12 of this law regulates the obligation of the nominated arbitrators to inform the parties and the arbitral tribunal, throughout the course of the arbitration proceedings concerning all circumstances likely to cause reasonable doubt on their independence and impartiality.

This obligation of the person designated as arbitrator has acquired the status of a universal principle in international arbitration law [19], and the purpose of this obligation is to ensure the possibility of the parties to recuse arbitrators which, according to their belief, not (any longer) meet the requirements of independence and impartiality [20].

In national law, this information obligation is governed by paragraph. 3), 4) and 5) of the art. 562 of the C.proc.civ., by which a person who knows that there is an issue regarding his recusal, is required to notify the parties and the other arbitrators before he accepted the mission of arbitrators, and if such cases occur after acceptance, once
knew them. This person cannot participate in the arbitral proceedings unless the parties notified the cause for recusal, communicated in writing that they do not intend to challenge the arbitrator. Even in this case, the arbitrators has the right to abstain from hearing the case, without such abstention signifying the recognition of the challenge in this respect, the abstention takes effect on its formulation without any further formality.

It can be seen that in the domestic arbitration, this obligation to inform the arbitrator's about the causes of the challenge is brought in mandatory terms, and is not exempt from legal repercussions: first, the breach of that duty may lead to the annulment of the arbitral award based on the art. 608 para. 1) lit. h, according to which the arbitration award may be canceled only if the action for annulment was adopted in breach of the provisions of the law; secondly, in accordance with the art. 565 lit. d of the C.proc.civ., the arbitrators answer for the damage caused by breach in bad faith or gross negligence of their other duties and the obligation to inform the parties and the other arbitrators; thirdly, the arbitrators may be removed following a recusal request submitted by the parties, resolved through a resolution by the arbitral tribunal.

Regarding the international arbitration, the arbitrators have no obligation to inform the parties of the circumstances that would give rise to justifiable doubt on their impartiality and independence, and there are no provisions concerning their liability. But, the arbitration award may be canceled by action for annulment if it violates public order, morals and mandatory provisions of the law, according to the art. 1.120 par. 3) of the C.proc.civ. in conjunction with the art. 608 para. 1) lit. h) of the C.proc.civ., and the lack of independence and impartiality of the arbitrator affect the right of the opposing party to a fair trial. Also, the liability of arbitrators regulated by the art. 565 of the C.proc.civ. is applicable in the domestic arbitration, but also in the international arbitration, according to the art. 1.122 of the C.proc.civ.[21].

The international doctrine considers that the lack of independence and impartiality of the arbitrator or arbitrators may be a means of cancellation of the arbitration award invoking in this regard, the irregularity of the formation of the arbitral tribunal and the violation of national or international public order [22].

The international jurisprudence states that the breach of this informing obligation by the arbitrator's cannot support the annulment of the award on which pronouncement
has participated because the independence or impartiality of the arbitration tribunal has been compromised or because the arbitrator's failure to disclose these circumstances that could give rise to justifiable doubts regarding the independence and impartiality since these represents just one of the reasons appreciation [23]. And yet the French national courts annulled awards on the grounds that there was a conflict of interest between the president of the arbitral tribunal and one of the parties or an arbitrator's declaration of independence was made elliptical, but could highlight the existence of an interest in the case because the arbitrator was appointed by the Board appointed party or the situation where an arbitrator is appointed with some frequency by the same party in disputes of the same nature (in French doctrine, "l'arbitre-maison") [24].

The appreciation of an arbitrator's independence shall be made both objectively and subjectively point of view. In the objective assessment is taking account the existence of material or intellectual dependence between the arbitrator and one of the parties, and in the subjective assessment, is weighed the effect of this dependence on the arbitrator and the parties [25].

In accordance with the art. 20 para. 1) of the Rules of Arbitration of the International Commercial Arbitration Court of the Chamber of Commerce and Industry of Romania, the arbitrators are incompatible to settle a dispute in the following cases, which question their independence and impartiality: is in one the incompatibility situations that the Code of Civil Procedure provides for judges, art. 41 and the art. 42; do not meet the qualification requirements or other requirements regarding the arbitrators, provided for in the arbitration agreement between the parties; a legal person whose associate is or whose governing bodies are concerned the arbitrator has an interest; the arbitrator has employment relationships or service, or direct trade links with one of the parties, with a company controlled by one of the parties or under common control with it.

Also, it is regulated the situation of the arbitrator who is a lawyer, in the art. 20 para. 2), 3) and 4), stating that the arbitrator who is also a lawyer cannot enter into the composition of an arbitral tribunal vested with the arbitration of a dispute about who carried out or will perform legal activities, nor may represent or assist any of the parties in that dispute before the courts established under the Arbitration Court. These activities
cannot be exercised either directly or through its substitution by another lawyer of the professional organizational whom he belongs.

Under the art. 16 on the declaration of acceptance of the mission, regulates in the par. 2) that this statement will contain, among other things, the statement that the arbitrator or presiding arbitrator is not in any of the incompatibility provided for in the art. 20 of these rules, which may can question his independence and impartiality. The arbitrator shall declare the relevant facts and circumstances existing if it considers that it can fulfill its mission independent and impartial, despite their existence. This obligation has to be respected throughout the arbitral proceedings, declaring them immediately. Both, the initial declaration and the subsequent, shall be made in writing and submitted to the case file that the parties can get to know their contents [26].

The arbitrator may request to be suspended or this measure shall be decided by the College of the Court of Arbitration, when incompatibility is about the quality of arbitrator, due to circumstances arising after its inclusion on the list of arbitrators, who puts him in the physical or moral impossibility fulfill the mission for a longer period of time [27]. Likewise, the International Court of Arbitration Rules of Paris regulates the arbitrators' obligation of independence from the parties throughout the period of the arbitration proceedings, but also the obligation to inform the parties and the Secretariat of the Court on the circumstances that question his independence and impartiality. This obligation to inform the parties and the Secretariat of the Court take the form of a declaration of independence written, and must be respected throughout the course of the arbitral process [28].

The provisions of the art. 5 paragraph. 3) - 5) of the Rules of Court of International Arbitration in London require that all arbitrators shall be and remain, at all times, impartial and independent from the parties. Also, before his appointment by the Court, each arbitrator must sign a declaration stating that there are no known circumstances which give rise to justifiable doubts regarding his impartiality or independence. This obligation to inform the parties and the arbitral tribunal on the circumstances "compromising" must be followed throughout the course of the arbitration proceedings, pending the completion of arbitration.
The American Arbitration Association provides within the Procedure for resolving international disputes that the arbitrators must be impartial and independent. They have an obligation to inform the parties about the circumstances that could give rise to justifiable doubts on their impartiality. This obligation also has throughout the course of the arbitration, regardless of its stage [29].

The doctrine and the judicial practice consider that the determination of the circumstances that arbitrators should disclose the parties and the arbitral tribunal is problematic. In principle, it must be communicated all circumstances that could affect their independence and impartiality, but the courts consider that its implementation is difficult. The French jurisprudence states that this obligation must be determined by the notoriety of the criticized situation and the reasonably foreseeable impact on the arbitrator’s ruling. Publicly known facts, and the facts that do not raise "reasonable doubt" about the impartiality and independence of the arbitrator does not fall within the scope of that duty to inform.

Who appreciates the impact of these circumstances on the impartiality and independence of the arbitrator: the arbitrator himself, the parties, the arbitral tribunal or the national court? Everyone can appreciate the extent to which the circumstances disclosed or not disclosed by the arbitrator affects his impartiality or independence, but in different procedural moments [30].

The arbitrator can appreciate the impact of these circumstances, disclosing their parties and the arbitral tribunal, both before accepting his task, and throughout the course of the arbitration proceedings and might even abstain from judging the dispute. Parties, if they are properly informed by the arbitrators on the incidence of these circumstances, they can appreciate their influence when they became aware, agreeing to appoint an arbitrator under these conditions (that they appreciate as having no impact on his impartiality and independence), and after the appointment, if it does not agree, can challenge him.

The arbitral tribunal may consider that these circumstances may influence or not the arbitrator’s independence in the case of resolution the request for recusal; in institutional arbitration, the arbitration institution may waive the appointment of the arbitrator if it considers that circumstances specified in the declaration of acceptance of
the arbitrator's mission may affect its independence and impartiality in question [31]. The court may decide upon these circumstances when the arbitral award is challenged by either party with action for annulment.

In accordance with the art. 562 para. 1) and 3) of the C.proc.civ., the obligation to inform refers to the non-compliance of the qualifications, the existence of an interest in the case of a legal person whose associate is the arbitrator or whose governing bodies is, the existence of service or employment relationships, direct trade links between the arbitrator and one of the parties or a company controlled by one of the parties or under common control, the arbitrator provided legal advice, assisted or represented one of the parties or has filed testimony in one of the earlier stages of the case. To these grounds of incompatibility are added those provided for judges by the Code of Civil Procedure. Thus, the obligation to inform is limited to those grounds for recusal required by law. There are national regulations, but also regulations of international arbitration courts, which allow the recusal of the arbitrators for their lack of independence or for any other reason, leaving on the arbitrator's interpretation the circumstances that affect their independence [32].

The International Bar Association (hereinafter IBA) has prepared a Guide [33] relating to conflicts of interest that may arise when a person assumes the responsibility of arbitrator. It reflects the vision of the IBA Arbitration Committee on the current international practice and provides general standards and their application, taking into account the existing laws and jurisprudence, but also the experience of practitioners involved in international arbitration. In this sense, it tries to balance the interests of all participants in international arbitration, parties, representatives, arbitrators, arbitration institutions, all having a duty to ensure the integrity, reputation and efficiency of arbitration [34].

4. Conclusions

Following the debate, we can conclude that there is a certain dose of subjectivity that cannot be removed nor in the situation of judges' judgments, nor in the case of the arbitration awards issued by the arbitrators: "A judgment or an arbitral award bears the imprint of the personality of the author or authors. Between the independence like goal and independence as state of fact, for arbitrator or judge will always exist a distance
and we can only strive to make it as small as possible. The overlap is only possible in the case of the machines, but these even equipped with artificial intelligence, will not be able to be judges [35]."

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[21] 578Art. 1122 of the C.proc.civ.: "Any issues concerning the composition of the arbitral tribunal, the arbitral procedure, the arbitral award, the completion, the communication and its effects, not covered by the parties in the arbitration agreement and the resolving of them not entrusted to the arbitral tribunal shall be settled by applying accordingly the provisions of the fourth book."
[27] Art. 16 para. 3) and. 4) of the Rules of International Commercial Arbitration Court of the Chamber of Commerce and Industry of Romania, into force in 2014.
Current aspects of Romania's public administration and judicial system

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Abstract
The rule of law in Romania is currently undergoing a comprehensive process of crystallization of the principles that should govern the public administration and judicial system. This study aims to reveal aspects of the current period of transition from People's Democracy to the modern Rule of Law.


INTRODUCTION

Romania's transition during the period 22 December 1989 -1 January 2007, from people's democracy to European Romania, required a structural reform of the public administration and judicial system, which plays a key role in changing mentalities.

Between 30 December 1947 or 6 March 1945, according to some authors, and 22 December 1989, the public administration and judicial system have established egalitarian principles, in line with a pronounced statist mentality.

We emphasize that not all principles and mentalities of popular democracy were negative. Thus, law enforcement was subject to the principle of firmness and primacy of collective interest.

The major negative aspect of that period was determined by the strong ideologisation of the administrative and legal acts. Even if the popular democracy society expressed some discontent towards the public administration and judicial system, such discontent was not aimed against persons exercising different powers, but against the system's mentalities.

Today, one can easily notice some crucial components of the public administration and judicial system, which are shortcomings of the system established
after December 22, 1989 and which attempt to create a new mentality, seeking the personal interest instead of a group's interest.

Some mentions need to be made, related to the context in which we analyze the public administration and judicial system.

The large number of legal acts adopted by the Parliament, Government and other government entities, acts which are not based on feasibility studies and are not in correlation, lead to the excessive bureaucratization of the public administration, with a negative impact on citizens.

At present, the judicial system is dealing with the enforcement of the "new codes", basically a massive change of the laws and traditional concepts of laws.

The new legislation represents an "experiment" and also a "test" for Romania, for its public administration and citizens.

The excessive bureaucratization of public administration has led to unreasonable expenses and the perception of citizens, the beneficiaries of public services, that they are the "slaves" of public administration.

Spending public money for outsourcing some services leads to a waste of the financial budget resources.

The Rule of Law, whose consolidation has benefited from an amazing promotion over the last two decades [1], is one of the line of action of the Public administration and Judicial system, the Rule of Law principles being supported by the two branches of governance.

SECTION I

Public administration in currently passing through structural transformations, but is reminiscent to some mentalities which are alien to the Rule of Law.

We are witnessing an excessive bureaucratization of the administrative act.

Another aspect to be noted is the politicization of the public administration structures, based on an "algorithm" that leads to the discreditation of public administration.

Public administration is not currently in the service of the community and citizens, being often hostile to them.
The media signals speak for themselves, presenting desperate situations that bureaucrat officials cannot solve. Citizens, who are also tax payers, feel "betrayed", because the public administration system is hostile to them.

SECTION II

Justice [2] is undergoing many transformations, but it is not an "effective" justice, in any respect, if we take a look at the settlement of the fundamental issues brought to justice in a state governed by the Rule of Law.

Although one of the stated goals of adopting "the new codes" was shortening the time of settlement of cases, hyper lawmaking has led to "administrative terms" and mechanisms for procedure "regulation", which have led to new extensions which do not justify the citizen's loss of time.

There is a lack of legislative consistency, which, amid the adoption of an impressive number of laws, which are in perpetual change, has led to an inconsistent application of laws, and a variety of "judicial practices" in an unitary state governed by the Rule of Law [3].

SECTION III

A careful analysis of the aspects of Romania's Public Administration and Justice, reported by the media, reveals corruption at all levels of the systemic institutions belonging to the two areas analyzed.

The perception of citizens, the beneficiaries of these public services, is negative. They note that the public services paid by them do not meet their requirements.

Recently, the Ministry of Finance through the National Tax Administration Agency created a video ad, broadcasted by several national televisions, which promotes the idea that Romania's development is the result of payment of taxes to the State, creating a mentality that is wrong and contrary to the idea of production.

CONCLUSIONS

A mentality change in the Public Administration and Justice is necessary, which must be followed by a change of the way the citizens of the state governed by the Rule of Law perceive the public services of the two components of a state governed by the Rule of Law, namely the Public Administration and the Justice.
Another negative impact on citizens is determined by the sterile and never-ending media "debates" of the same "leaders of opinions in society", leading to a phenomenon of "media intoxication", which emphasizes the public perception towards a certain direction.

The consequences of the negative impact perceived by the citizens materialize in the citizen's lack of reaction to the most important ideals of a state governed by the Rule of Law, namely their participation, as voters, in elections to various dignities - parliamentary, local, presidential, referendum - as they do not trust the fundamental institutions of democracy.

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The need to intensify measures to protect the environment through legislative and administrative means

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Abstract
One of the serious problems affecting increasingly more the environment and therefore human health in modern society is the pollution under many forms of manifestation: atmospheric soil, water, food, noise etc.
Respecting the principles enshrined in international conventions to which our country is a party and European Union documents on environmental protection, national legal regulations have evolved from a utilitarian approach, of protection of the environment factors directly related to their economic value, with usefulness to humans up to the vision that puts above all the intrinsic value of the environment.
Keywords: Environmental protection, modern society, progress, pollution, regulations

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Introduction
The interdependence of environmental elements quality and people’s living conditions is confirmed by the causality relation between nature altering and altering of health [1].

Progress in science and technology, especially the explosion of computerization in almost all spheres of activity contribute to raising the living, but also economic development produces negative effects, which, if not properly managed, can significantly affect human rights on maintenance of Health and deployment of existence under normal environment conditions.

Thus, the development of industry, with massive exploitation, often by harmful processes, of existing resources in nature, without taking effective measures for environmental protection, adversely affect quality of life of the inhabitants of the planet, endangering often the health and even existence of human being.

At the same time, agricultural development through the use of toxic substances for crop protection with long-term negative effects on soil, affect product quality, and
thus the health of consumers, as well as obtaining varieties of genetically modified crops without a thorough test of the negative effects.

About pollution as a socio-medical problem of global concern, it says that both in civilized countries and in those at the beginning of the road of socio-economic development, a keen observer of human society development, Jonathan Raban, formulating on the subject a Maximum amazing truth: “In a poorly developed country is preferable not to drink water, and in a super-developed country would be better not to breathe” [2].

Each state has its legal regulations setting out its own law order, but at the same time, must obey international law order in its relations with various states or other subjects of public international law or on the regulation of activities with cross-border harmful effects such as environmental pollution, which requires transposition into national law of certain international regulations [3].

Not subject to a higher authority and having equal legal skills, states create their own order (including in the environmental protection area), but recognize international law as a coordinating element [4] because each state is interdependent of each other and not just independent.

In Romania, as in other countries, environmental concerns are put with acuity, following the amplifying ecological imbalances, especially in large urban areas – predominant causes affecting the environment are industry technology and chemical processing of agriculture, plus the cross-border pollution, all contributing to ecosystem disturbance and worsening living conditions of the people.

Therefore, it requires the formulation and implementation of effective policies in the field, which positively influence the activity of specialized administrative structures by adopting the best regulations and working methods for achieving the targets [5].

**Legislative and administrative measures to ensure environmental protection**

- In accordance with the rules contained in international conventions, with EU requirements – which recommend countries to have measures and sanctions to protect the environment [6] – and with international practice, our country adopted the Government Emergency Ordinance no. 195/2005 on environmental protection, as amended and supplemented (which establishes several categories of offenses and
crimes for the authorities of central and local government, the other legal entities and natural persons for breach of obligations on to: regulatory procedure, regime of dangerous substances and preparations, waste regime, the regime of chemical fertilizers etc.), Government Emergency Ordinance no. 68/2007 (relating to the prevention and remedying of environmental damage) and the Government Emergency Ordinance no. 58/2012 (which includes regulations concerning the operation of environmental and forests protection authorities, aiming at reducing the bureaucracy of institutions to streamline their work by getting closer to the citizens the environmental decision and the elimination of intermediate links of decision), etc.

- Environmental Administration can be defined as the assembly consisting of all persons (officials, contract agents) and state administrative structures and local authorities in fulfilling administrative functions relating to the environment [7].

Under the authority of the Ministry of Environment, Water and Forests work with environmental protection powers, the following public institution with legal personality:

- National Environmental Protection Agency (ANPM), whose tasks concern: strategic environmental planning, monitoring of environmental factors, authorization of activities with environmental impact, implementation of legislation and environmental policies, through its organizations at national and local level;

- National Environmental Guard (GNM), which is responsible for ensuring the control and implementation of government policies in the field of preventing, finding and sanctioning the acts that violate the law on environmental protection;

- “Danube Delta” Biosphere Reserve Authority – Tulcea (ARBDD), which has the following responsibilities: manages the natural heritage of the reserve, according to the legal status of public property, develops and implements ecological reconstruction programs of ecosystems of reserve meets function environmental authority under the law within the reserve, exercises control over fulfillment of requirements of environmental protection measures, develops and implements programs and projects of cooperation at cross border, regional and international levels;

- The National Meteorology Administration (ANM), as an autonomous administration of national public interest, being responsible for: developing programs for qualified and unified surveillance of air environment, participation in weather risk
prevention actions and to reduce the consequences of natural disasters, participation in domestic or international activities of their own or related to the fields of activity;

- National Administration of Forests “Romsilva” which aims at: sustainable and unified management – in accordance with the rules of forest arrangements and forest regime norms – of forests public property of state; coordination and implementation of the national program for genetic improvement of the horse; ensuring the conservation of biodiversity in protected areas;

- Environment Fund Administration (AFM), which provides financial support for projects and programs on environmental protection, established under the European principles “polluter pays” and “producer responsibility”;

- “Romanian Waters” National Administration, which aims for knowledge, protection, enhancement and sustainable use of water resources (natural monopoly of strategic interest), managing the national network of hydrological, hydrogeological measurements and of quality of water resources belonging to the public domain and implementation of national legislation (harmonized with EU directives) in the field of sustainable management of water resources, conservation of aquatic ecosystems and wetlands.

To prevent, limit and control the negative effects of human activities on the environment, these specialized institutions and other bodies have imposed development of specific administrative techniques, classic or new, and establishment of a system of permits, agreements and authorizations, to determine and establish environmental tolerance limits in achieving certain tasks.

Also, restrictions have been established (different in nature and content), and the imposition of conditions for activities with possible negative impact on the environment, bringing it some limitations in the exercise of certain fundamental rights such as the right to property, free enterprise or right of use of certain common goods, etc., on behalf of superiors public interest on environmental protection and respect for fundamental human right to a healthy environment [8].
Environmental protection through administrative sanctions

In environmental law, it is often resorted to administrative responsibility (contravention), to prevent and combat acts of non-compliance with specific regulations, as a rule, harm to the environment are relatively low, most not realizing the seriousness of the social danger specific to the offense.

According to the criterion of applicable fines in art.96 of Government Emergency Ordinance no. 195/2005 are provided three categories of offenses.

The first group includes 27 contraventions (less serious) consisting of violations of legal provisions on environmental protection, such as obligations of legal entities to perform self-monitoring systems and report their results to the competent authorities, as well as accidents affecting the environment or incidents that can create accident hazards; obligations to keep strict records of dangerous substances and preparations, identify and prevent risks they may pose to human health and the environment; the obligation of individuals and legal entities authorized to apply through their own systems, surveillance programs for radioactive contamination of the environment; the obligation to keep running local environmental monitoring capacity; obligation of landowners with title or no title, to maintain forest belts and protection alignments etc.

The second category (with 34 offenses) refers to violations of legal requirements, such as obligations of local authorities to improve urban microclimate to inform the public about the dangers of the operation or the existence of goals with average risk; obligations of individuals and legal entities to adopt measures and special facilities for isolation and sound insulation of noise and vibration generating sources, etc.

The third category of environmental protection related offenses (considered the most serious) comprises of 15 violations, which illustrate: the obligation of individuals and legal entities to reduce, modify or terminate the activities generating pollution, upon reasoned request of the competent authorities, to carry out fully and timely measures imposed in accordance with regulatory acts and legal provisions following environmental inspections; obligations of individuals and legal entities to bear the cost to repair environmental damage and to remove the consequences of it, restoring the previous conditions of the damage, according to the principle "polluter pays", etc.
The sanctions that apply to facts considered contraventions main and complementary.

The main contravention sanctions are: warning, contravention fine and providing community service activities (art.5 par. 2 of Government Ordinance no. 2/2001), and those complementary are:
- Confiscation of goods intended for, used or resulted from contraventions;
- Suspension or cancellation, as appropriate, of permit, approval or authorization to exercise an activity;
- The closure of the facility;
- Freezing the bank account;
- Suspend the activity of the entity;
- Withdrawal of the license or approval for certain transactions or for foreign trade activities temporarily or permanently;
- Dismantling works and bringing the land to its original state (art.5 par. 3 of the Government Ordinance no. 2/2001).

It can be sanctioned according to the law, any person guilty of altering the environment, regardless of nationality or residence.

The legal entity is responsible for certain facts affecting the environment in the cases and conditions provided by law (art.3 par. 2 of Government Ordinance no. 2/2001).

For other facts affecting environmental offenses are regulated in various laws relating to certain industries, such as waters, the hunting, forestry, nuclear activities, etc.

**Conclusions and proposals**

Increased degradation of natural ecosystems, along with the interaction between trade and environmental issues bring environmental issues to the forefront of government and international concerns.

International bodies have not yet managed to promote comprehensive regulations and policies able to contribute to the defense of the environment in the long term, though natural resources are limited, and some major damage cannot be repaired.
Preservation of biosphere required to maintain health, but also ensuring at the same time prosperity of people through increasing production of goods constitute the ideals achievable only by building a new economic, social and ecological order.

The globalization of environmental problems and increased globalization process, primarily economic, mark the public and environmental policies of the states, amplifying the developments in standardization and universalisation meaning of objectives and instruments to achieve them [9].

Due to the complexity and multitude of environmental factors, their protection is a very technical endeavor and in the context of the environmental crisis that manifests itself in the world, the effectiveness of the recommendation norms for environmental protection and of the regulations on legal liability is insufficient [10].

Thus, it is necessary to intervene in many types of situations can affect the environment, especially by way of judicial review of the various authorizations, environmental administrative documents in general, making that the most common sanctions imposed for environmental damage to be offenses for which finding and sanctioning are not necessary complex procedures that take time.

In the environmental strategies, constraining measures of regular order are the oldest, representing, in general, restrictions on arrangement of land, ban of potentially harmful activities and processes, establishment of protected areas etc., set by the minimum standards of protection.

By applying sanctions for contraventions regarding the environment it is aimed also to achieve certain goals: determining the pollutant to promote the technologies and techniques that protect the natural environment, creating an economic balance factor, so that those who pollute should not benefit from higher returns than units that comply with legal requirements in the field, obtaining funds to be used to fund anti-pollution investments, etc.

In the field of liability for harm to the environment a key role goes to preventive means and civil or administrative liability – the criminal one which have a predominantly repressive character, playing a secondary role and is governed by the principle of minimum intervention.
The spectacular evolution of environmental law under the pressure of widespread environmental crisis, on the one hand, and concerns of developed countries to protect the environment, on the other hand, revealed the inadequacy and ineffectiveness of recommendation rules for environmental protection and of the forms of civil and contravention liability.

Applying effective environmental policy and its institutionalization within existing administrative institutions is sometimes difficult, so it requires restructuring of some of these organs.

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The use of force in international law- justification or abuse?

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Abstract:
This article aims to treat one of the most controversial and debated subjects in the international community of states- the use of force- both from the theoretical and practical point of view. Thus the study is divided in two parts, the first one approaching the international instruments and the customary law, while the second part is presenting the situation in Ukraine with regard to this topic. The question we are trying to provide an answer to, is- when is the use of force justified and when it constitutes an abuse, how do we draw the line?

Keywords: use of force, self-defence, UN Charter, humanitarian intervention, Ukraine;

Introduction

Nowadays the use of force is an extremely debated subject. States tend to resort to the use of force in different situations invoking various reasons that most often prove themselves to lead to abuses. It is thus extremely difficult to draw the line between justification and abuse. When is the use of force justified and when it’s not? This is the question we will try to answer through this article.

The use of force by states is controlled by both customary international law and by treaty law. International law is created through the consent of states. States express this consent by two basic methods: treaties and custom. Treaties are written agreements between states; in effect, they are the international equivalent of contracts. Customary international law is different. Unlike treaties, customary international law is not created by what states put down in writing but, rather, by what states do in practice.

To begin with, we will first approach the provisions of treaties and the international case law, to further continue with the presentation of the situation in Ukraine, from the point of view of the use of force.

A. The use of force –provisions of international treaties and applicable case law

The United Nations Charter states in its Article 2(4) that “[a]ll members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with
the purposes of the United Nations”. In essence, the provision refers to the general rule that the threat or use of force is prohibited in international law.[1] Although the prohibition does not expressly give any reference to what constitutes force, some of the elements of the rule could help in identifying what is understood by force, taking into account the purpose of its use: against the territorial integrity of states, their political independence or in any manner that is inconsistent with the purposes of the United Nations.

Other provisions of the charter could also assist in determining what is covered by force. For example, the preamble of the United Nations Charter or its Article 51 specifically refer to “armed force” (emphasis added), which could lead to the conclusion that the element of force necessarily includes the use of arms.

Treaties previous to the United Nations Charter have been drafted around the same central purpose, that of creating a general rule on the prohibition on the threat or use of force, without leaving many clues as to what is exactly meant by “force” [2].

United Nations General Assembly Resolution 2625(XXV) [3], also known as the “Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations” recalls in its preamble “the duty of States to refrain in their international relations from military, political, economic or any other form of coercion” (emphasis added). Although this provision may seem to extend the meaning of force to other forms of “coercion”, it is in fact just a substantiation of the principle that states have a duty not to intervene in matters within the domestic jurisdiction of any State. This is made clear by the travaux préparatoires of the Resolution, when it was made clear that force does not “include all forms of pressure, including those of a political or economic character, which have the effect of threatening the territorial integrity or political independence of any state” [4].

Despite the above conclusion, the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations does provide a number of details on what is prohibited under the “The principle that States shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations”.
Another relevant instrument frequently used by the international community [5] in relation to the use of force is United Nations General Assembly Resolution 3314(XXIX) on the Definition of Aggression [6].

The definition is very much inspired from the two Conventions for the Definition of Aggression, however, the novelty resides in that Resolution 3314 focuses on the acts that constitute aggression rather than the perpetrator of the acts.

As to the case law, we appreciate that the most important decision on the use of force is represented by the Case concerning Military and Paramilitary Activities in and against Nicaragua, of the International Court of Justice.

Without going into detail on the various elements considered by the Court in relation to the prohibition and exceptions to the prohibition on the threat or use of force, the Court noted that “the laying of mines in Nicaraguan internal or territorial waters” [7] constitutes a breach of the principle, therefore laying mines can be considered a use of force.

The Court also concluded that the United States of America had “committed a prima facie violation of that principle by its assistance to the contras in Nicaragua, by “organizing or encouraging the organization of irregular forces or armed bands . . . for incursion into the territory of another State”, and “participating in acts of civil strife . . . in another State”, in the terms of General Assembly resolution 2625 (XXV)” [8]. The Court explained its assertion, showing that there was a breach of the principle as far as the assistance took the form of “arming and training of the contras”, while the supply of funds was not [9].

Another relevant jurisprudence worth mentioning here is represented by the conclusion taken by the International Criminal Tribunal for the former Yugoslavia. In Prosecutor v. Duško Tadić, the Appeals Chamber considered that “there undisputedly emerged a general consensus in the international community on the principle that the use of [chemical] weapons is also prohibited in internal armed conflicts”[10] . This is relevant in relation to possible assertions that “force” necessarily implies a kinetic effect. The Court’s most important decision regarding the status of threats in international law is the Nuclear Weapons advisory opinion of 1996, in which it considered whether the threat or use of nuclear weapons was “permitted” under international law. The ICJ
recognized that “states sometimes signal that they possess certain weapons to use in self-defense against any state violating their territorial integrity or political independence [11]”. One issue before the Court, therefore, was whether such a “signaled intention” constituted a threat within the ambit of Article 2(4): Whether a signaled intention to use force if certain events occur is or is not a “threat” within Article 2, paragraph 4, of the Charter depends upon various factors. If the envisaged use of force is itself unlawful, the stated readiness to use it would be a threat prohibited under Article 2, paragraph 4. . . . [equally] if it is to be lawful, the declared readiness of a State to use force must be a use of force that is in conformity with the Charter [12]. This statement clearly establishes that a threat to use force can constitute a lawful action, and, moreover, that the lawfulness of any threat of force is contingent upon the prospective lawfulness of the force threatened.

The use of force also poses problems nowadays, states trying to justify it by using different reasons such as self-defence or invitation to intervene. This was the case in Ukraine, in Crimea.

B. The use of force in Ukraine by the Russian Federation

On the 1st of March 2013 the President of the Russian Federation has submitted an appeal to the Council of the Russian Federation for authorization to use armed force in connection with the extraordinary situation that has developed in Ukraine and the threat to citizens of the Russian Federation. Thus, the personnel of the military contingent of the Russian Federation Armed Forces deployed on the territory of Ukraine. The same day the Council granted authorization to the Russian President to deploy forces in the Ukraine. In addition we will discuss two possibilities mentioned above that could be invoked to justify Russian deployment of force despite of the general prohibition to use force under Article 2 (4) of the Charter.

Self-defense exception according to the UN Charter

It is more than obvious that Russia lacks a UN Security Council mandate for her operations, but we ask ourselves if any of the other exceptions to the general prohibition on the use of force apply in this case.

One of the recognized exceptions to the prohibition of the use of force is the Art. 51 of the Charter, allowing a State to use force in response to an armed attack. “Nothing
in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations”.

Ukraine considered that Russian actions were acts of aggression against the Ukrainian state, a serious violation of international law, sovereignty and territorial integrity of Ukraine and an impairment of peace and stability in the region. In support of the above, Ukraine argued that the Russian Federation had not complied with its obligations under the Memorandum of Budapest, to refrain from the threat or use of force to undermine the territorial integrity of Ukraine and that in addition it breached the fundamental principles of the UN Charter.

The first question that has to be assessed is whether an armed attack has occurred against Russia. What is clear is that there has been no deployment of Ukrainian troops whatsoever on Russian territory. However, the Russian Federation seems to seek to legitimize its authorization of force on the concept of self-defense, invoking that Russian military personnel and Russian citizens on the Crimea were threatened. The legal question here is whether a state may refer to the concept of self-defense in order to protect its citizens and military personnel outside its proper territory.

The UNGA Resolution 3314 [13] on the Definition of Aggression that we mentioned earlier in our presentation, shows that the concept of armed attack is not exclusively linked to the territory of the attacked State. Art. 1(d) of UNGA Res. 3314 reveals that a state can be object of an armed attack occurring outside its proper territory – i.e. an ‘extra-territorial armed attack’, including as an ‘act of aggression’ “[a]n attack by the armed forces of a State on land, sea or air forces, or marine and air fleets of another State”.

Russia as the State invoking the right of self-defense bears the burden of proof here – as was rightly stated in the Oil Platform Case (para. 57) to show that Ukrainian acts against Russian military personnel are of such a gravity to constitute an ‘armed attack’. Bearing in mind that there are currently no reports whatsoever that the Russian fleet stationed in Crimea had been the object violent acts before the President of the Russian Federation was authorized to deploy force in the Ukraine [14], we appreciate that an armed attack against Russian military personnel in Crimea did not occur and cannot be invoked in order to justify the Russian resort to armed force.
Russia seems to be more concerned, however, about the safety of its citizens in Crimea. It is disputed in the international community whether there exists a right to invoke the concept of an armed attack regarding the protection of nationals residing extra-territorially. Sir Humphrey Waldock in his General Course at The Hague from 1952 on ‘The Regulation of the Use of Force by Individual States in International Law’ stated that States had a right to use force to protect their citizens abroad under three conditions: "There must be (1) an imminent threat of injury to nationals, (2) a failure or an inability on the part of the territorial sovereign to protect them and (3) measures of protection strictly confined to the object of protecting them against injury”.

We strongly believe that the existence of such a right since the security of the attacked state is not threatened when its citizens are attacked outside its borders, would have the potential of ‘blurring […] any contours of the right of self-defense [15]’ and would lead to similar state practice. Furthermore, Russian actions would also have to comply with the requirements of necessity and proportionality in order to be lawful under Article 51 of the Charter. One fails to understand, how actions like the surrounding of Ukrainian military bases in Crimea, should contribute protecting Russian nationals, given that there are no claims that they have been threatened by Ukrainian forces. Furthermore we find it important here to mention that the Russian troops are not merely evacuating Russian nationals back to Russia.

2. The exception of intervention upon Invitation

Another exception to the general prohibition of the use of force in international law is the so called ‘intervention upon invitation’. What does ‘intervention upon invitation’ mean? This expression is mostly used as a shorthand for military intervention by foreign troops in an internal armed conflict at the invitation of the government of the State concerned.

Thus we ask ourselves if the statement of the new Prime Minister of the autonomous region of Crimea requesting Russian assistance in order to restore peace and calm, could legitimize Russian action. We will therefore discuss whether Mr. Yanukovich or the Prime Minister of Crimea could validly invite Russia to intervene in the Ukraine and thereby justify Russian use of force.
Russian Federation stated that the legitimate authorities of the Autonomous Republic of Crimea, and more specifically the Prime Minister M. Aksyonov was the one who asked Russia to help restore peace in the Crimea, and such assistance is considered to be in conformity with Russian legislation, having view of the extraordinary situation in Ukraine and threats against the life of Russian citizens against the Russian fleet in the Black Sea. Russian Federation stressed out that his actions were taken only to protect citizens and that they did nothing else than to protect the most important human right, the right to life.

The ICJ has in the Nicaragua case also pointed out the importance of governmental consent to intervention by noting: “As the Court has stated, the principle of non-intervention derives from customary international law. It would certainly lose its effectiveness as a principle of law if intervention were to be justified by a mere request for assistance made by an opposition group in another State – supposing such a request to have actually been made by an opposition to the régime in Nicaragua in this instance.” (ICJ Nicaragua, para. 246)

Thus, the question at hand is whether Mr. Yanukovich still represents the Ukrainian government, given that the Ukrainian parliament adopted a resolution on the 22nd of February 2014 requesting Mr. Yanukovich to resign and elected Mr. Turchinov as his successor the next day. Despite this fact, the former President Yanukovych still claimed to be president of Ukraine and he has indeed issued an invitation. But as an ousted president by popular demand and therefore currently not in control of the government, his invitation should not recognized by international law as a valid invitation. In addition, the fact that the new government may have come to power in violation of the Ukrainian constitution does not suffice to have the ousted president authorize an intervention. We thus believe one might simply deny the validity of Mr. Yanukovich’s consent for the lack of effective control of the situation in the Ukraine. Effective authority would seem to be of primordial importance in determining who is entitled to validly speak out an invitation [16].

As for the Prime Minister of Crimea, the author of an invitation to intervene must be the highest state organ available. Or in this situation we cannot see how the head of a federal entity of a State could issue such a declaration. A valid invitation should have
emanated from the central government. Thus Russia cannot claim that use of force in Crimea can be justified by the invitation of the local government.

Therefore, we conclude that the Russian use of force in Crimea is illegal under international law. Even if we were to consider a Humanitarian Intervention, whose recognition by positive International Law remains doubtful [17], this would not change this result because Russia has so far not invoked this concept. In addition this only applies in situations where a civil population is subjected to crimes against humanity or genocide that a third state might be entitled to act on the behalf of the civilian population. In this case there is no evidence that such acts having been carried out against the Russian population in Crimea or elsewhere on the Ukrainian territory.

Conclusions

It results from those presented above that at the level of the international community there is a general prohibition of the use of force by different instruments binding or not, and like every rule has its exceptions, there are also some exceptions that allow states to justify the use of force, such as self-defense, invitation to intervene and the humanitarian intervention. The problem is that most of the times states tend to abuse and use these exceptions in unjustified situations and for the wrong reasons, like it was the case in the most recent intervention of Russia in Ukraine, which of course proved to be unlawful, taking into consideration that both the international instruments and customary law do not draw a precise line with regard to this aspect.

As for the annexation of the Crimea by the Russian Federation, we believe that the Declaration of Independence of the Republic of Crimea was the direct consequence of the use of force or threat of use of force by the Russian Federation against Ukraine and the propaganda campaign led by Russian Federation to discredit the legitimate authorities of Ukraine and to create false public opinion that Russian intervention is an operation designed to contribute to peace in the region and to protect citizens like claimed.

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Group of States against corruption, European standards and the reform of the financing of political parties and election campaigns

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Abstract
The recommendations on political financing made to Romania by the Group of States against corruption (GRECO) refer to the necessity of clarifying the modality used to account for the financial activity of the various types of structures related to political parties in the accounts of political parties (i.e. women organizations and youth organizations), the clarification of the legal situation of loans as a source of income for political parties, the increase of the transparency of contributions made by third parties (i.e. separate entities, interest groups) to political parties and candidates, the obligation of registering donations in the accounting documents at their market value, the obligation to make donations above a certain threshold through the banking system, the necessity to follow up on election campaign debts, the increase of sanctions and of their statute of limitation, as well as to the need to further enhance and consolidate the institutional capacity of the Permanent Electoral Authority as the only authority responsible of monitoring political financing.

The present paper evaluates the status of the implementation of GRECO recommendations after Law no. 113/2015 which amends and supplements the Law no. 334/2006 on the financing of the activity of political parties and election campaigns entered into force.

Keywords: political party, financing, election campaign, European standards, donations, loan, expenditure

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Group of States against Corruption and European standards on political funding

Group of States against Corruption (GRECO), established in 1999 by the Council of Europe is meant to improve the capacity of its members to fight corruption by ensuring the implementation of the commitments that they have taken in this area, through a dynamic process of mutual evaluation and pressure. [1]

In the matter of financing political parties and electoral campaigns, GRECO evaluates the compliance of the laws of the Member States with Recommendation (2003) 4 of the Committee of Ministers to member states of the Council of Europe on common rules against corruption in financing political parties and electoral campaigns
and 15 guiding principle regarding the enabling rules on financing political parties and election campaigns which deter corruption resolution of the Committee of Ministers to member states of the Council of Europe (97) 24 on the twenty guiding principles for the fight against corruption. [1]

Recommendation (2003) 4 contains provisions regarding the concept of donation, the general principles on donations, such as the principle of avoiding conflicts of interest, the principle of transparency, the principle of independence and the principle of limiting donations to political parties, rules on accounting donations from businesses and individuals, rules on transparency in relation to election campaign expenditure ceilings. In addition, this recommendation seeks the transparency of the revenue and expenditure of political parties as well as their independent monitoring by specialized staff. [2]

From 1 January 2007, when it started the third round of evaluation and funding of the policy so far, GRECO examined the legislation of 46 member states, including Romania. These assessments regard all aspects of financing political activities, including transparency of resources used by political parties and candidates, how to monitor the regulations and penalties. The analytical approach used is standard, based on answers to written questionnaires and discussions on the spot. [1]

The assessment procedure is followed, 18 months after the adoption of assessment report (if recommendations are necessary) for a conformity assessment procedure which shall review their implementation. In cases where recommendations were not respected, GRECO will review their implementation in an identical term. To this date 46 states, including Romania entered this procedure. For some countries, this procedure was repeated several times. [1]

After an evaluation carried out in 2010, GRECO has recommended Romania to:

i. i) to clarify how financial activity of various types of structures related to political parties must be registered in the accounts of political parties; ii) to examine how to increase the transparency of contributions "third parties" (i.e. separate entities, interest groups) to political parties and to candidates;

ii. to ensure that all entities under the control of political parties and county branches (including Bucharest districts) of political parties keep proper accounting records;
iii. to require political parties to submit financial statements centralized by Permanent Electoral Authority (PEA) and to publish appropriate summaries variants;

iv. take appropriate measures to i) ensure the identification and registration as donations, the market value of donations in kind to political parties and election campaigns by participants (other than voluntary work to non-professionals); ii) clarify the legal status of loans;

v. i) establish the legal requirement that all donations are, as a rule, recorded and included in the accounts of political parties and participants in election campaigns; ii) introduce legal requirement that all donations above a certain threshold have to be made through the banking system

vi. to provide clarification on the admitted funding generated by "internal services" and by organizing events in the manner of recording in the accounts of the revenues generated in this way;

vii. to amend the rules on submission of financial reports on election campaigns to the PEA so that PEA adequately pursue all legitimate claims and liabilities;

viii. require that the annual accounts of political parties, which will be presented to PEA as recommended above, to be independently audited prior to their submission;

ix. i) confer to PEA the entire responsibility for monitoring compliance with the Law. 334/2006 on the financing of political parties and election campaigns; ii) strengthen the efficiency of supervision PEA on financing political parties and elections, including the granting of PEA additional control tasks regarding the expenditures of political parties and other entities than these, and sufficient human and other resources to meet this task;

x. to strengthen cooperation and coordination at operational and executive level between PEA, the Court of Accounts, Tax Administration Office and the National Integrity Agency;

xi. to provide within the Law no. 334/2006 on financing political parties and electoral campaigns the PEA obligation to report suspicions of offenses to law enforcement authorities;
xii. to increase penalties according to Law no. 334/2006 on financing of political parties and election campaigns and thus ensure that all infringements are effectively punishable;
xiii. to extend the limitation period applicable to infringements of the Law no. 334/2006 on financing political parties and electoral campaigns. [3]

In the first compliance report, adopted on 7 December 2012, GRECO noted with satisfaction the modification process of the law on financing political parties and electoral campaigns, and the support expressed by Parliament for this process. However, GRECO considered that only recommendations ii, vi and x were implemented satisfactorily, a series of measures being adopted for their implementation. The other 10 recommendations (i, iii-v, vii-viii, xi-xii) were considered as partially implemented as the draft law amending Law no. 334/2006 on the financing of political parties and electoral campaigns initiated by the PEA was being approved, prior to its approval by the Government and adoption by Parliament. At the time, GRECO appreciated that if adopted, the amendments would remedy some gaps identified in the Evaluation Report. [4]

In the second compliance report, adopted in 2014, GRECO summarized the overall performance of Romania with less laudatory noting. It assessed that the evolution remained modest, without any substantial and tangible progress in comparison to the first report examined under two years ago (four years after the adoption of the Evaluation Report. [5]

On 21 May 2015, the Law no. 113/2015 amending and supplementing Law no. 334/2006 on financing of political parties and electoral campaigns targeting mainly the implementation of GRECO recommendations and the establishment of measures for the repayment of election campaign expenses from the state budget for political parties and independent candidates fulfilling a series of representativeness criteria established by law. [6] The transposition of each recommendation within the Romanian legal framework is analyzed below.
Clarifying the registering of revenues and expenses of structures related to political parties in accounting documents

Political parties and their territorial organizations, including those created in Bucharest districts, are obligated to organize their own accounts, according to the applicable accounting regulations. Political parties shall submit annual detailed reports on the PEA regarding revenue and expenditure from the previous year, which will include details on revenue and expenditure of their internal structures, of the persons having a direct or indirect link with political parties and of all forms of association covered by law. [6]

As the law does not clearly define the persons directly or indirectly connected with political parties we consider that, in the absence of further legislative clarification, this provision is applicable only in so far as it relates to people developing joint activities with political parties, respectively to details linked only to such joint activities.

Increasing transparency of contributions made by third parties to political parties and candidates

The bill drafted by the PEA which was the starting point of the current law contained a section on the election campaign carried out by third parties that has been completely eliminated. This section contained provisions on: the definition of third parties; definition of persons who were directly or indirectly connected with political parties (distinction between natural and legal persons); rules on donations to political parties and candidates made by third parties; rules on costs that third parties can make in election campaigns for different elections; a third party registration mechanism. [4]

Now it can be argued that the law establishes a true ban on campaigning for persons other than political parties and independent candidates in elections. This conclusion follows from article 29 paragraph (4) of the Law, according to which expenses relating to propaganda materials shall be borne solely by their beneficiaries - independent candidates, political parties or political alliances. Also, provisions of article 29 paragraph (5) of the same law established that the production and dissemination of propaganda materials under conditions other than those stipulated by law is prohibited.
In addition, the law establishes a new mechanism dedicated to financing election campaigns which entitles political parties and independent candidates who obtain a certain number of votes to be reimbursed the campaign expenditure. We consider that these subsidies will be a true factor of indirect pressure to reduce hidden costs of political parties, made through third parties.

**Presentation of the consolidated annual financial statements to the PEA and their publicity**

Political parties are required to submit to the PEA annual financial statements within 15 days of registration to the tax authorities. The PEA will publish on its website the annual financial statements and summaries variants within 5 days from the submission date.

**Identification and market value accounting of in kind donations to political parties and electoral participants**

Donations of goods and services provided free of charge will be reflected in the accounts of political parties at the market value of the time of donation. The market value of movable and immovable assets donated to the party and its provided services free of charge will be included in the value of donations. Evaluation of goods and services will be authorized by the evaluators according to Government Ordinance no. 24/2011 regarding certain measures in assessing goods, approved with amendments by Law no. 99/2013, as amended and supplemented.

The assessment, according to Government Ordinance no. 24/2011 regarding certain measures in assessing goods, means that the value estimation activity, registered in a document called evaluation report, is carried out in accordance with specific¹ standards and professional conduct of that activity by an authorized appraiser.

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¹ Judgment of the National Union of Certified Appraisers Romania no. 3 of 19 May 2012 approving the assessment standards mandatory for members of the National Association of Certified Appraisers in Romania. International Valuation Standards IVS (International Valuation Standards) approved in art. 1 letter a) are based on the concept of market value.
Clarifying the legal status of loans

The current regulation has a completely different approach from the previous one, in which the loans were not allowed as a source of financing for political parties. Political parties will be able to borrow money, using only authentic notarial acts, under penalty of nullity, accompanied by documents proving handover, the agreement providing the manner and timeframe of repayment. The maximum repayment period is 3 years. Cash loans and their repayment may be made only via bank transfer. Cash loans that are not repaid within the period of 3 years can become donations only with the agreement of parties unless that year’s ceiling for donations which is 0.025% of the state budget is reached, up to this ceiling. List of loans with a value greater than 100 minimum gross salaries per country will be published in the Official Gazette of Romania, Part I.

At the same time, lending by political parties, political or electoral alliances and independent candidates to natural or legal persons is prohibited. [6]

The current wording is such as to prevent natural or legal persons to make a loan for political parties exceeding the maximum set by this article through successive annual loans. For example, if an individual borrows in a year a political party with an amount of 200 minimum gross salaries per country, he is not allowed to give loans to the same political party until the original loan’s repayment. We consider that such a limitation resulting from a systematic interpretation of the law can be stated in the methodological norms.

The possibility of replacing loans by consent donations will be certainly one way that political parties will try to circumvent the legal provisions concerning limits on donations, in electoral years.

The text of the law also contains provisions on loans in the chapter on campaign financing. The campaign contributions that may be submitted by candidates or the financial agent may derive from loans from individuals or contracted with banking institutions. In this case, the methodological norms will require further details in order implement the principles of financing of political parties and electoral campaigns, respectively the principle of legality, the principle of equality, the principle of transparency of revenue and expenditure, the principle of independence of political
parties and candidates from the contributors and the principle of political and electoral competition integrity. One possible approach is provided by article 31 paragraph (4) of the Law, which states that the amounts received from candidates by a political party are considered donations and shall follow accordingly the rules established by law in this respect. Therefore, provisions of article 8 paragraph (1) of the same Law will become applicable, under which, all donations, including confidential donations, will be recorded and properly highlighted in the accounts, specifying the information that allows for the identification of financing source, or loan source in this case.

Registration of all donations in the accounts of political parties and participants in election campaigns

The new legal text establishes in a derogating manner from the general norms, that all donations, including confidential ones, will be recorded and properly highlighted in the accounts, indicating the date on which they were made and other information enabling the identification of funding sources and donors. Campaign financing will be done exclusively by using contributions from candidates and transfers of funds from the current accounts of political parties. Contributions made by candidates will be considered donations to political parties and, therefore, will have to observe the same rules on the registration in the accounting documents.

Making donations above a certain ceiling through the bank system

Donations over 10 minimum gross country salaries earmarked for the current activity of political parties shall be made only through bank accounts. Contributions from candidates will be considered donations to political parties and, therefore, will have to respect the same rule.

PEA’s following up on election campaign debts

Financial agents will submit to PEA detailed reports on income and expenditure of political parties, political alliances and electoral alliances, organizations of Romanian citizens belonging to national minorities and independent candidates within 15 days from the day of the election. At the same time, political parties and independent
candidates shall submit a list of their creditors regarding campaign financing and the amount of these debts. However, political parties and independent candidates will report quarterly to the PEA on the debt payment stage until it is fully paid.

In addition, to check the status of debt paying made by political parties, the PEA may request documents and information from natural and legal persons who have provided services, free or paid for political parties as well as from any public institution, which have the obligation to provide to the PEA the requested documents and information within 15 days of the request.

**Independent auditing of the accounts of political parties**

The annual financial statements drawn up by political parties that receive subsidies from the state budget will be subject to statutory audit, which is carried out by statutory auditors, natural or legal persons authorized by law. Also, within 60 days from the date of the audit, the political parties will transmit the PEA a copy of the audit report.

**The need to increase and strengthen the capacity of the PEA as the sole authority responsible of controlling financing of political parties and electoral campaigns**

Article 35 paragraph (2) of the law retains the previous overlapping competencies of the Court of Accounts and PEA, although according to article 41 of the same law, any penalties for violations of the law can only be imposed by PEA. The elimination of the Court of Accounts from Law no. 334/2006, republished, as amended and supplemented, would not have eliminated de plano its power to verify, according to its own law, the use of public subsidies allocated to political parties. Such a measure would have bene likely to bring the overlap at a reasonable level without compromising efficiency or financing of political parties’ management oversight done by PEA.

Unlike the previous form of the law, the PEA is explicitly empowered to control, in addition to the legality of the income of political parties, their expenditure. In addition, reports of political parties submitted to the PEA are multiplied exponentially, PEA now has access to the annual financial statements of political parties, annual detailed reports of political parties and campaign reports, other documents related to the activities of parties policy on generation of revenue or performance of expenses, audit reports on
the annual financial statements of political parties supporting documentation for the expenditure of election campaign of political parties and independent candidates.

Also, the new wording of the law indirectly makes accountable persons responsible of managing the funds of the political party at national and county level, as well as persons entitled to represent the political parties at national and county level, who will appear in a register held by PEA.

However, PEA still needs financial and human resources to both overcome a formal control that only concerns documents held by the political competitors and to address the financing done "under the counter" that benefits some of them.

**Notification of criminal prosecution authorities by PEA**

If during a control undertaken by PEA, there are suspicions on the commission of criminal acts regarding the financing of political parties and electoral campaigns, the PEA is obligated to notify the criminal prosecution authorities.

**Enforcing effective, proportionate and dissuasive sanctions**

Unlike the previous legal framework under which all violations were punishable by a fine of 5,000 up to 25,000 lei, the new regulation proposes a division into three categories of offenses, depending on their gravity, which will be sanctioned with fines between 10,000 and 25,000 lei, 50,000 lei and 15,000 lei and 100,000-200,000 lei. Also, the new law prescribed more contraventions than before. [6]

However non-compliance with some legal provisions is not punishable. Based on article 2 paragraph (1) of Government Ordinance no. 2/2001 regarding the legal regime of contraventions, approved by Law no. 180/2002, as amended and supplemented, the Government will be able to determine and punish offenses in the matter of political funding additional to those already provided by law. This solution will be used in case of violation of article 29 paragraph (5) of the law according to which the production and dissemination of propaganda materials under conditions other than those stipulated by law is prohibited, as well as in the case of non-compliance by the financial agent with the obligations stated in article 26.
The extension of the statute of limitation of fines

The statute of limitation provided by the law for fines imposed by PEA increased from 6 months to 3 years from the date of the violation. In case of continues contraventions, the limitation period of 3 years will flow from the date of cessation of the deed. [6] This extension of the limitation period gives the PEA sufficient time to carry out checks on political parties, while addressing both the financial activity of their central organizations and county organizations.

Conclusions

Law no. 113/2015 amending and supplementing Law no. 334/2006 on the financing of political parties and election campaigns is the most ambitious element of election reform developed by the Joint Commission of the Chamber of Deputies and Senate for drafting legislative proposals on electoral laws, legislative proposals on amending the Law on Political Parties and the Law on financing political and electoral campaigns.

We estimate that the degree of transposition within the Romanian legal framework of the GRECO recommendations is a satisfactory one that generally complies with European standards pursued in the initial evaluation report. On the other hand, the manner some recommendations were implemented, such as the clarification of the legal statute of loans or the increase of the transparency of contributions made by third parties to political parties and candidates does not follow the meaning of the GRECO recommendation.

Also, we consider that the implementation of the legal text and the realization of its principles depend on the content of the methodological norms to be adopted by the Government on the proposal of the PEA (mainly on how the discipline, rigor and transparency of financial operations of political competitors will be realized), as well as on the human and financial resources to be allocated to the PEA to perform the incumbent tasks.

References
Ensuring a uniform judicial practice by the provisions of the current criminal procedure code

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Abstract:
The current Criminal Procedure Code has brought substantial changes in the matter of judgment by reconfiguring the system of appeals against criminal judgments and by introduction of separate provisions for ensuring a uniform judicial practice: provisions governing the appeal on points of law and governing the new institution of referral to the High Court of Cassation and Justice in a ruling prior to unraveling some points of law.

Keywords: criminal trial; judgment; appeal; uniformity of judicial practice; legislative changes

1. Introduction

In the current Criminal Procedure Code [1], due to rethinking the system of review procedures, are regulated four exceptions to the principle of res judicata of final criminal judgments: the extraordinary appeal, an appeal in cassation, review and reopening of the criminal trial in case of judgement in the absence of the convicted person.

Regarding the appeal of the annulment, although initially adopted in 2010 in the form of the Code of Criminal Procedure has not been governed under review procedures (as in the Code of Criminal Procedure of 1968), but in a separate chapter of Title III - "Judgement" of Special Part of the Code, this inconsistency was corrected by Law no. 255/2013 for the implementation of the Code of Criminal Procedure [2], the appeal for annulment being reintroduced into the Chapter for review procedures.

A first difference from previous legislation (Criminal Procedure Code from 1968) consists of adding to the system of review procedures, two new institutions; appeal in cassation and reopening of criminal proceedings in case of judgment in the absence of the convicted person.

The appeal in cassation (designed by transforming the former appeal, regulated in the previous legislation as an ordinary appeal for the extraordinary remedy) aims to ensure a uniform practice throughout the country [3], through this extraordinary appeals,
the resolution of which is exclusively the jurisdiction of the High Court of Cassation and Justice, being analyzed the compliance of the contested final decisions with the rules of law, in relation to cases of cassation expressly and exhaustively provided by law.

Also, by Law no. 135 / 2010 it is introduced a new extraordinary remedy, to withdraw, in order to ensure the compatibility of the Romanian legislation with standards set by the European Court of Human Rights - the reopening of criminal proceedings in case of judgement in the absence of the convicted person. Thus, the European Court of Human Rights recognizes the right to reopen proceedings where judgment in default is not the consequence of voluntary renunciation of the right of the accused to be present in court to make defenses. In this regard, the current Romanian Criminal Procedure Code provides the possibility to the person sentenced who was judged in absentia, to request the reopening of criminal proceedings within one month from the day he was informed by any official notification, that was conducted a criminal trial against him.

Another difference from the Code of Criminal Procedure of 1968 is the removal from the system of review procedures, of the appeal on points of law and its rules in a separate chapter (Chapter VI – “Provisions of ensuring a uniform judicial practice”) from Title III of the Special Part of this Code. Moreover, although it was provided for in the Code of Criminal Procedure of 1968 in the chapter for review procedures, the appeal on points of law was not considered even then a proper remedy because the solution pronounced after its solution was not affecting the judgment examined or position of the parties in the trial. The reason for which the appeal on points of law was regulated, in previous legislation, along with extraordinary appeals was that, following its declaration, was being triggered the consideration of a final judgment.

So far, the appeal on points of law subject to different regulations in the Code of Criminal Procedure, under the rules of ensuring a uniform judicial practice (art. 471 - 477¹), together with the notification of the High Court of Cassation and Justice to issue a advance rulings for a dispensation of law issues.

2. An appeal on points of law

Regulated for the first time, in the Code of Criminal Procedure of 1936 (art. 497), as steering jurisprudence, the appeal on points of law was not initially taken in the Criminal Procedure Code adopted in 1968, being reintroduced later by Law no. 45 /

Subsequently, by Law no. 202 / 2010 on measures to accelerate the settlement of trials [4], foreshadowing the entry into force of the new Code of Criminal Procedure, have brought substantial changes to the institution’s appeal on points of law, in order to improve and boost its settlement, while the system was still regulated in review procedures system. Among the changes made in 2010, it is highlighted:
- broadening the categories of persons who could seize the High Court of Cassation and Justice;
- introduction of a requirement for admissibility, which involved proving that the issues of law forming the object of judgment have been resolved differently by final judgment, attached to the application;
- establishment of regulations detailing the procedure for resolving the appeal on points of law, concerning the composition of the court, at the appointment of judges rapporteurs, at the establishment of the mandatory consultation of relevant case law and doctrine in question, at the possibility of seeking the opinion of specialists in the field, at the preparation of the project report and the proposed solution to be given in the appeal on points of law, at the timely communication of the report to the judges of the High Court of Cassation and Justice and the obligation to motivate the decision in a short period of 30 days from the date of delivery.

Currently the appeal in the interest of law is regulated by the art. 471 – 474¹ Criminal Procedure Code.

As shown in the content of art. 471 Criminal Procedure Code, the purpose of the appeal on points of law is to ensure the unitary interpretation and application of the law by all courts.

Holders of the appeal on points of law are: the general prosecutor attached to the High Court of Cassation and Justice (ex officio or at the request of the Minister of Justice), the leading board of the High Court of Cassation and Justice, leading boards of the courts of appeal and the Ombudsman; they have the duty to ask the High Court of Cassation and Justice to rule on matters of law which have been resolved differently by the courts.
The court competent to hear the application is only the High Court of Cassation and Justice, and through appeal on points of law may trigger the examination of the judgments of any court.

An appeal on points of law must contain different solutions as problem data and motivate them, the Constitutional Court’s jurisprudence, of the High Court of Cassation and Justice, of the European Court of Human Rights or, where appropriate, of the Court of Justice of the European Union, the views expressed in relevant doctrine and the solution that is proposed to be rendered in the appeal on points of law.

The application must be accompanied, under the sanction of rejection as inadmissible, by the copies of final judgments to the effect that the legal issues that are subject of judgment were handled differently by the courts.

An appeal on points of law is admissible only if it is established that the legal issues that are subject of judgment have been resolved differently by final judgments, which are attached to the application (art. 472 Criminal Procedure Code).

Judging the appeal on points of law takes place in a panel whose composition is provided in art. 473 Criminal Procedure Code: President of the High Court of Cassation and Justice or, in his absence, Deputy of the High Court of Cassation and Justice, presidents of sections within it, a total of 14 judges from the section which is responsible for legal issue which was resolved differently by the courts and by 2 judges in the other sections. The president of the panel is the president of the High Court of Cassation and Justice or, in his absence, Deputy of the High Court of Cassation and Justice.

If the question of law presents interest to two or more sections, the president of the High Court of Cassation and Justice finds the sections from which judges will form the panel.

After notification of the High Court of Cassation and Justice, its president will take the necessary steps for the appointment of judges in the polling random in whose jurisdiction falls the point of law that has been resolved differently by the courts and judges in other sections falling within composition of the panel.

Upon receiving the request, the president of the panel will appoint a judge of the section in which is responsible in the point of law that has been resolved differently by the courts, to draw up a report on the appeal on points of law; if the question of law
presents interest to two or more sections, the president will appoint three judges in these sections to prepare the report. The law expressly provides that these rapporteurs are not incompatible, meaning that they do not become incompatible to hear the appeal on points of law.

However, in order to prepare the report, the president may ask the written opinion of recognized specialists on different points of law. The report will include different solutions given to the problem of law and arguments on which are based, relevant jurisprudence of the Constitutional Court, of the High Court of Cassation and Justice, of the European Court of Human Rights, of the Court of Justice of the European Union and the specialists’ opinion if appropriate and in doctrine.

Also, the judge or, where appropriate, judges rapporteurs will prepare and motivate the project that is proposed to be the solution to every appeal on points of law.

The meeting of the panel is convened by its Chairman at least 20 days before its deployment; with the convocation, each judge will receive a copy of the report and the proposed solution.

At the meeting in which is heared the appeal on points of law shall be required to attend all judges of the panel; if there are objective reasons, judges who are unable to attend may be replaced, but with the same rules for random designation.

An appeal on points of law is submitted to the panel, where appropriate, by the general prosecutor attached to the High Court of Cassation and Justice or the prosecutor appointed by him, by the judge appointed by the board of directors of the High Court of Cassation and Justice, respectively the Court of Appeals, or the Ombudsman or his representative.

An appeal on points of law shall be heard within 3 months from the date of referral to the court, and the solution adopted at least two thirds of the judges, without admitting abstentions from voting.

On the appeal on points of law, the panel of the High Court of Cassation and Justice is pronounced by decision, whose effects are set out in article 474 Criminal Procedure Code [5].

The decision rules only on points of law and has no effect on judgments examined or on the state of the parties from those proceedings.
The decision is motivated in no later than 30 days from the pronouncement and is published within 15 days of the motivation in the Official Gazette of Romania, Part I. The settlement of issues is mandatory for courts judged from the publication date of the decision in the Romanian Official Gazette.

According to article 474¹ Criminal Procedure Code [6], the effects of the decision lapse repeal or amend the legal provision unconstitutional finding that has generated the problem as solved, unless it remains in the new regulation.

Therefore, a number of decisions of the High Court of Cassation and Justice which were upheld appeals on points of law under the rule of the Criminal Procedure Code from 1968 and that have not stopped working since the entry into force of the present Code of Criminal Procedural, while solved the problem subsist in the new regulation. For instance, remain valid:

- Decision no. 1/2005 (published in the Official Gazette no. 503 of June 14th 2005) that "the insurance company participates in criminal proceedings as civil liability insurer";
- Decision no. 3/2010 (published in the Official Gazette no. 866 of December 23rd 2010) whereby the High Court of Cassation and Justice has held that "in criminal proceedings, Street Victims Protection Fund is a party civilly liable and can be ordered alone and not jointly with the defendant to pay civil damages to persons injured by uninsured vehicle accidents";
- Decision no. 9 / 2008 (published in the Official Gazette no. 831 of December 10th 2008) by which it was decided that "the indictment must contain the words «verified in terms of legality and merits», without this indication will attract irregularity of the act referral";
- Decision no. 57/2007 (published in the Official Gazette no. 283 of April 11th 2008) by which the Supreme Court upheld the appeal in the interest of law filed by the Attorney General's Office attached to the High Court of Cassation and Justice in connection with the problem if it is admissible, brought against other measures and acts of prosecutor than not to indict and determined that "the complaint against measures taken and acts performed by the prosecutor or on the basis of this data, other than not to indict solutions, is inadmissible";
- Decision no. 1/2009 (published in the Official Gazette no. 418 of June 18th 2009) by the High Court of Cassation and Justice has established that "the competent judicial body to settle the complaint against the prime prosecutor solution, by which was refuted the resolution or order of the public prosecutor not to indict and gave the same times not to indict another solution or for other reasons or for some of the reasons cited by the complainant, is the superior prosecutor"; 
- Decision no. 15/2009 (published in the Official Gazette no.735 of October 29th 2009) by which was upheld in the interest of law filed by the general prosecutor attached to the High Court of Cassation and Justice, provided that "within the 20 days in which must be made the complaint at the superior prosecutor, against the solution not to indict [7], is the limitation period";  
- Decision no. 13/2011 (published in the Official Gazette no.794 of October 09th 2011) by which the Supreme Court stated that "the National Integrity Agency has no locus standi to appeal the solutions not to prosecute or not to prosecute ordered by the prosecutor, made such complaints to be dismissed as inadmissible"; 
- Decision no. 82/2007 (published in the Official Gazette no.780 of November 21st 2008) that, admitting the appeal on points of law, the High Court of Cassation and Justice decided that "in case of rejection of the complaint, under article 278¹ Criminal Procedure Code. in 1968 [8] against the resolution or order of the prosecutor not to indict or not to indict the provision contained in the indictment, trial court expenses incurred would be met by the person to whom the complaint was dismissed";  
- Decision no. 17 / 2007 (published in the Official Gazette no. 542 of July 17th 2008) by which the High Court of Cassation and Justice has established that "the request for review against a final judgment rendered under art. 278¹ paragraph 8, letter a) and b) of the Criminal Procedure Code from 1968 [9] is inadmissible". Compared to the current regulation (art. 341 paragraph 6 and 7 of the Criminal Procedure Code.), the application for revision is inadmissible brought against the final decisions whereby both where the prosecution was conducted without the initiation of criminal proceedings, and where criminal proceedings were set in motion during the prosecution:
  o the complaint was rejected as belated, inadmissible or, if appropriate, unfounded;
it was ordered the admission of a complaint, the abolition of the solution reasoned appeal and refer the file to the prosecutor to begin or complete the criminal investigation or, where appropriate, to bring criminal action and full prosecution [10].

3. Referral to the High Court of Cassation and Justice in a ruling prior to unraveling law issues

The current provisions of the Criminal Procedure Code introduce a new institution – referral to the High Court of Cassation and Justice in a ruling prior to unraveling some points of law. Along with the appeal on points of law, by this institution it is wanted to be ensured the unification of the judicial practice and to be created a predictable jurisprudence, leading to shortened trial [11].

According to article 475 Criminal Procedure Code, if, during the trial, a panel of judges of the High Court of Cassation and Justice, of the court of appeal or the court, hearing the case ultimately, finding that there is an issue of law, the settlement of which depends the explanation of the cause in question and on which the High Court of Cassation and Justice has ruled in a judgment prior or through an appeal on points of law and not subject to appeal on points of law in pending, may request the High Court of Cassation and Justice to give a ruling by which to be given principle solving of the issue of law brought before it.

Referral to the High Court of Cassation and Justice is done by the panel after adversarial proceedings, by conclusion which is not subject to appeal.

By closing referral, the cause may be suspended until judgment prior to unraveling the question of law; if not ordering the suspension with referral and judicial investigation is completed before the High Court of Cassation and Justice to rule on the complaint, the court suspends the debate to the decision.

After registering the case to the High Court of Cassation and Justice, closing referral is published on the website of this court. Similar cases pending before courts may be suspended pending resolution of the referral.

The appeal shall be heard by a panel formed by the president of the corresponding section of the High Court of Cassation and Justice or a judge designated by him and eight judges from the respective section.
The president of the panel will designate a judge to report back on the issue of law subject to judgment; Judge appointed rapporteur does not become incompatible.

When the question of law concerns the activity of several sections of the High Court of Cassation and Justice, the President or, in his absence, one of the Vice Presidents of the High Court of Cassation and Justice departments concerned will send notification to presidents in resolving the issue of law; In this case, the panel will be composed of the Chairman or, in his absence, the Vice President of the High Court of Cassation and Justice, who will chair the panel, from the presidents interested in resolving the issue of law and by 5 judges from the respective sections, randomly assigned by the president; after compiling the panel for drafting the report, the president of the panel will appoint one judge at each section (rapporteurs are not incompatible).

The report will be communicated to the parties, who, within 15 days from the communication may, in writing, by attorney or, if necessary, through legal counsel, present their views on the question of law subject to judgment.

The appeal shall be judged without summoning the parties, within 3 months from the date of investment, and the solution adopted at least two thirds of the judges; not allowed abstentions from voting.

Upon notification, the panel unraveling of points of law is pronounced by the decision, only on the question of law subject to absolution.

Unravelling the points of law is binding for courts from the decision of its publication in the Official Gazette of Romania, Part I. Therefore, to ensure the effectiveness of this new mechanism, the decision of the High Court of Cassation and Justice, published in the Official Gazette, will be binding both requesting court rulings that addressed the issue of law and for all other courts [12].

As in the appeal on points of law, the effects of the decision lapse in repeal, finding unconstitutionality or amend the legal provision that generated the problem as solved, unless it remain in the new regulation (art. 477¹ Criminal Procedure Code [13]).

It can be said that, unlike the appeal on points of law, the referral institution of the High Court of Cassation and Justice in a ruling prior to unraveling questions of law has a "preventive role" in the sense that the court (panel) invested with the proceedings, avoiding to give a solution which would conflict with different solutions given by other
courts on a question of law, it shall first obtain the High Court of Cassation and Justice to rule on that matters by an interpretation (dispensation) which becomes mandatory for all courts.

4. Conclusions

Although, in terms of legislative technique, some of the provisions of the actual Romanian Code of Criminal Procedure which ensure a uniform judicial practice are open to criticism, because of brevity and clarity do not meet the legal text (for instance, art. 475 on the subject of referral the High Court of Cassation and Justice in a ruling prior to unraveling questions of law), the new provisions represent real progress of our criminal procedural legislation to the previous regulation.

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[5] Although the marginal name of art. 474 Criminal Procedure Code. is “The judgment and its effects”, this article contains provisions only on the effects of motivation and publication of the decision.
[8] In the current Code of Criminal Procedure, this complaint is regulated by art. 340
[9] Judgments by which was being order the complaint late dismiss, inadmissible or unfounded and its admission to refer the case to the prosecutor to start criminal prosecution or reopening
[12] Ibidem
Overview of the Discussions in the Public Space regarding the New Territorial Organization of Romania

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Abstract:
Our paper summarizes the discussions from the public space on the new administrative organization of Romania. In this perspective, the existing counties may be dissolved, and, as a result of joining several counties into larger territorial divisions, they may constitute regions. Such large territorial units have existed before in the Romanian history, namely provinces during Charles II and regions, in the first stage of the communist regime (e.g. Stalin Region or the Autonomous Hungarian Mureş Region etc.). As they were not considered viable, county has been validated and acknowledged by our history as the most appropriate administrative territorial unit, both in size and name. For these reasons, we consider launching such discussions as being, at least, unfortunate.

Keywords: Romania, administrative and territorial reform

1. Introduction
Our work aims to make several reflections on the discussions that have been launched in the public space after the collapse of the communist regime about a new administrative territorial organization of the country. We shall make several considerations on the way the administrative territories of the country have developed over time, focusing mainly on the similarities between what is now proposed and what has existed before. In the end, we shall make our own conclusions.

2. Brief presentation of the Romanian administration evolution
In terms of administration, ever since their organization and state consolidation, Wallachia and Moldova were organized in counties. This organization is to be linked to the name of Mircea cel Bătrân and Alexandru cel Bun. The first mentioned county of Wallachia was Jaleșul from Oltenia (1385), and the first one in Moldova was Tutova (1432). The age of these territorial administrative units is however more impressive, they having their beginnings “probably early in the period before the formation of states, i.e. in the unions of rural communities, usually grouped along the valleys of rivers whose names they borrowed (Argeș, Dâmbovița, […] Prahova and Buzău etc)” [1]. This organization has survived in the Romanian Middle Ages and throughout history, even if...
the number or scope of these administrative units varied from one historical epoch to another [2].

Communes Law and that stipulating the establishment of the County Councils, adopted during the reign of Alexandru Ioan Cuza, in 1864, consecrated this traditional administrative division and subscribe it to modernity, Romania being then organized in counties and communes [3].

On 14th August 1938, King Charles II, as part of the complex actions to strengthen his personal power, abolished counties and divided the territory of “Great” Romania into 10 provinces. They had legal personality and were led by royal residents appointed by the king himself [4]. According to the same law, mayors were appointed for a six-year term of office [5]. Banishment of the King, in 1940, led to the removal of his entire legislation and, as a result, the country has returned to the traditional organization into counties.

The Communist regime during the period 1944-1947 imposed a new administrative territorial model of Soviet inspiration. Thus, in the period 1950 – 1968, Romania was reorganized several times (i.e. 1950, 1952, 1956 and 1960) in regions, districts and communes. The number of regions decreased from 28 (with 177 districts in 1950) to 16 (in 1956). In 1952, there was formed, based on ethnic criteria, the Hungarian Autonomous Region which was renamed in 1956 as the Autonomous Hungarian Mureş Region [6].

In 1968, by Law no. 2/16th February, they returned to the traditional territorial organization into counties and communes, regions and the districts being abolished. This form of administrative organization into counties is still in operation today.

3. Public discussions on a new territorial organization of Romania

After the collapse of communism in Romania, there was initiated a lively debate on the territorial administrative reorganization, debate that had numerous ups and downs. In 1998, as a result of joining county councils, there were created eight regions, without legal personality whose aim was to access PHARE funds allocated by the European Union and thus to implement regional development projects by attracting European funds. When Romania joined the European Union in 2007, these regions
became members of the Regions Committee. Discussions on possible reorganization of the country were launched once again in 2001, when a group of intellectuals from Cluj, coordinated by the political scientist Molnar Gusztv, proposed the regionalization of Romania by providing legal personality to these administrative structures. As a result, there emerged various opinions and variants of reorganization. The number of possible regions fluctuated from 8 to 16, as well as their names, being proposed the use of the cardinal points or the names of the historical provinces. In favour of regionalization, there were major parties and their representatives in the government or Parliament. In 2002, Adrian Năstase welcomed the idea of regionalization, but had reservations to the initiative of the group from Cluj. In 2010-2011, the Democratic Union of the Hungarians from Romania invoked the opportunity of including the counties populated predominantly by Hungarians in one region. In 2011 Traian Băsescu and the Liberal Democratic Party proposed the establishment of eight regions, or large counties; in 2013 - 2014 Victor Ponta, Liviu Dragnea and the Social Democratic Party also considered the possibility of founding eight regions, but by also maintaining the existing counties [7].

4. Overview of the public discussions on the new territorial organization of Romania

As far as we are concerned, we have our reservations against such proposals. We believe they come from public voices whose authority is almost exclusively in the political sphere. The Romanian political class has not convinced by their performance or management, as reflected in the economic developments and results after 1989. Referring to the profile of this post-December period class, academician Florin Constantiniu characterizes it as "the most incompetent, most greedy and the most arrogant in the history of the Romanian people" [8].

We appreciate that the proposals on the country's territorial administrative reorganization should come from specialists in the history of administration, in administrative law, in economics, geography, sociology etc. We strongly believe that, when designing a new administrative configuration of the country, it would vital to analyze economic outcomes and the psychological impact that prior administrative reforms had on the Romanian society.
The administrative organization of the country in large territorial units has failed. Both the provinces established by Charles II and the regions proposed in the early stage of communism were invalidated by the passage of time. Moreover, these administrative territorial units triggered resentment at the level of collective mind. In this respect, if we refer to the provinces established during the reign of Charles II, they are often assimilated to the authoritarian regime of the king, which was very much influenced by the Italian fascist model. In turn, the regions from the period 1950-1968, were reminiscent of the practices and of the Soviet model imposed to the Romanian authorities of that time, i.e. the name "Stalin" attributed to both Brașov city and the homonymous region in the center of the country. Regionalization also recalls the Autonomous Hungarian Mureș Region, and involuntarily the autonomist tendencies of today’s Hungarian community. Another reason against regionalization would be that the names of the previous divisions had no connection with the name Romanian tradition.

In the regions from the communist era, the economic, social and cultural development was focused almost exclusively on the capital city of the region and the other cities of the region, although they had a considerable history back-ground, remained in the shadows. We refer here to the former region of Ploiești, where Târgoviște, the former capital of Wallachia, or Buzău, former capital of the homonymous county and bishop center from the early 16th century, had only the rank of district residences. Therefore, we appreciate that a return to the administrative organization into large units, comprising between three and five counties, will inexorably generate a similar situation. In the collective mind, the proponents of such a decision will be exclusively inhabitants of the city that, rightfully or not, will become the capital of the region. For example, one can imagine the attitude of Prahova county residents in case such a proposal to regionalize the country becomes real and their county, with an uninterrupted existence from the medieval period, would dissolve, and Ploiești, capital of the „black gold”, the city of prominent cultural personalities such as Caragiale, Nichita Stănescu, Toma Caragiu etc., center of technical superior education, and leading “actor” of the contemporary economic life would lose face in front of another city, such as Călărași, for example. This theoretical exercise can be further practiced to imagine the disappearance of many villages. Therefore, we consider that one must not forget the
importance of tradition and local history in determining the attitudes and citizen involvement in public affairs.

Thus, if we analyze other past measures, we can also mention the decision of the administrative law from 1929 to settle large communes, of at least 10,000 people [9] and an average of 30-40 villages, which made local administration very heavy to manage. Proved to be unsustainable, this formula was dissolved after only two years [10].

Financial issues, often invoked when arguing the need for administrative territorial reorganization of the country, may be real, but they are not enough to start such an action leading to the overthrow of a traditional system which has proved its viability. We consider that in order to cope with such issues, a modern state can prosecute those mechanisms able to ensure a certain administrative “comfort” to its citizens. A modern state could not have allowed lack of public electricity or maintaining in communication isolation (roads, streets, railways, schools etc.) of small or isolated settlements, based on the principle of their economic efficiency. At this point of our discussion, we consider useful to recall the fact that the Romanian administrative law from 1864 provided, in the communes law (art. 5), the possibility that those rural communes which could not secure their financing may associate in order to satisfy this requirement. Subsequent administrative laws, i.e. Commune Law from 1887, the Law on the organization of rural communes from 1904, the law on administrative unification from 1925, maintained the same principle: “rural communes that do not have the means, can become associates in order to sustain the services they need and to jointly pay their administrative, technical, medical staff etc.” (Art. 3 of the 1925 Law for the Administrative Unification)”[11].

The opinions often expressed in the public space today that the Romanian state could not attract more EU funds because of the administrative organization seem unfounded. Romania has a traditional administrative organization, somehow similar to that of France, country that has no problems in attracting European funds and does not even think about a new territorial administrative configuration. When discussing the issue of attracting European funds, we strongly believe that the problems affecting this process are generated by the lack of interest from the Romanian state to achieve a
nationwide “school” and the necessary “training” to manage European projects, by the profile of the people invested by state’s institutions with the status of “project managers”, by diversion of funds or excessive bureaucracy etc. What is often presented as an argument pro regionalization, namely the small number of inhabitants of a county related to a large project, is irrelevant, since the association of two or three counties in achieving European projects seems to be very easy to accomplish and depends exclusively on the willingness of local authorities to associate in order to do something. On the other hand, the existence of eight regions passes as a compromise already accepted by the Romanian society.

Since the discussions and the issue of a potential territorial reorganization have their origin mainly in the political sphere, we consider necessary, if not vital, to involve specialists in this debate and to use a fundamental instrument of the social democracy, namely the referendum, in order to solve the problem of administrative reorganization.

5. Conclusions

From our brief analysis there results that large territorial units existed in the Romanian history. We refer to provinces settled during Charles II, to regions organized in the first stage of the communist regime and to “giant” communes from the period 1929-1931. Their existence has not proved viable and, moreover, was not well perceived in the collective consciousness.

The county represents the administrative territorial unit that, both in terms of size and name, has been validated and acknowledged by our history. In such circumstances, there, involuntarily, appears the question: If something goes well, why should anyone intervene to spoil it?

For these reasons, we consider launching such discussions (and especially the alternative of dissolving counties) as being, at least, unfortunate. Consulting and directly involving specialists are more than necessary, and I would even say a sine qua non of a success in this matter.

Any potential change in the territorial structure of the country, at such a scale, would require organizing a national consultation by referendum.
As witnesses to the public discussion, we believe that the debate on administrative reorganization is extremely necessary and that one should not have preconceptions, think of conditions or pre-conditions. Intolerance against a point of view or another is inadmissible and all the opinions which have been or will be expressed in connection with this topic are valuable in the process of making a decision. Our reflections, far from pretending to be something sententious, provide a specialist's point of view, adding to the portfolio of the already expressed opinions in the public space.

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Possible rights’ particularities

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Abstract
Possible rights are an extremely disputed subject, regarding which our doctrine has different opinions. While some specialists consider such rights not different from the rights affected by ways or the future rights, others consider them a separate category, showing the specific characteristics which individualize them. In this writing we will expose these different opinions, trying to clarify this type of rights.

Keywords: possible right, future right, right affected by ways.

General considerations. Definition. Constituents

It is important to start our presentation by informing the reader about the legal framework of this type of rights, namely the civil subjective rights.

The Romanian legislator apparently did not consider it necessary to specify a clear definition of the subjective rights as he did in the matter of real rights, where the property right, the most illustrative real right is regulated by Article 555, alin. (1) of the Civil Code.

In this context, the doctrine had this delegacy, the specialists giving several definitions of these rights in their writings. We think that the most relevant definition belongs to the twentieth century doctrine because it captures the essence that any novice needs to fully understand the fundamental characteristics of this type of right.

So, the Civil subjective right is defined as “the legal possibility of the right holder to exercise a certain conduct, guaranteed by law by the possibility to claim a certain behavior from the liable person, which may be imposed, if necessary, by the coercive force of the state” [1]. From this definition results, according to the doctrine, some theories about the Civil subjective rights like the natural law theory, denial theories, the theory of will or interest theory [2].
We believe that an appropriate place of this debated category would be around legal documents outright and those affected by the ways, reasons for these considerations is presented below.

In our opinion a possible right is certainly less than one affected by the ways (term or condition) and even less a than a conditional right, but it is without doubt more than a simple desire appeared in the consciousness of the subject.

**The differences between possible rights and other rights**

In order to understand the characters of this category of rights, in the following pages we present a comparison between the possible rights and other categories of rights, namely rights affected by the ways - possible rights; future rights - possible rights and the right of property – possible rights, referring to the views of the doctrine in this regard.

*Comparison between possible rights - rights affected by the ways*

This comparison is ambiguous, because the doctrine views on these categories of rights are divided. We will try to expose them objectively and in a clearer form to any person interested in this subject.

The right affected by the ways is defined by the doctrine as the right whose birth, exercise or extinction depends on future and uncertain events (term, condition) [3]. So, this category of civil subjective rights does not offer full safety to their holders, their existence or exercise depending on future circumstances, certain or uncertain [4].

Correlative rights and obligations contained by a legal act affected by the ways are conditional, in the matter of their existence and even their execution, by the fulfillment or discharge of those elements or circumstances. Legal documents affected by the ways are subject, as regards their birth, existence or termination, to one or more categories of ways, to a standstill or extinctive period, a standstill or extinctive condition [5].

Our legislation calls certain legal acts that cannot exist without being affected by the ways such as loan contract, annuity contract or maintenance contract [6] etc., acts that cannot be affected by any way as adoption or marriage, recognition of parentage, and others that are affected or not by the ways (the largest category of civil legal acts) [7].
We think that it is very important to present the definitions of the three ways established by the New Civil Code to see the differences between the possible rights and the rights affected by term or condition. The term is defined as "a future and certain event, which is deferred until either the start or termination of the exercise of subjective rights and enforcement of civil obligations" [8].

The condition is “a future and uncertain event, on which depends the existence (birth or termination) of the civil legal act” [9].

The last way, unfortunately, does not have a legal definition as well as the previous ones determined, so we will expose the regulation under the old Civil Code which states that "the task is an obligation to give, to do or not to do something imposed to the gratified in the case of acts of liberality." [10]

Although the doctrine treats lapidary this category of rights, we will try do give a relevant definition of the possible rights, considering the time they accomplish and their essence. The possible right is an incomplete right in terms of its intrinsic elements, as it will be the legal act whose object will be a possible right, missing one of the parties, one’s consent or even the object that will be the basis of a contract.

In order to exercise such rights it will be expected to occur the missing element to turn it into a full right or full legal act. Failure of the possibility does not lead to the annulment of the act validly concluded but, instead, it will entail the contractual liability of the guilty party (the debtor) in compliance with the regulations and whether the necessary conditions required by law for this type liability are fulfilled.

We think that it is necessary to emphasize a necessary fact for fulfilling the ad validitatem conditions which is that the missing element that will eventually lead to the birth of a right shall not constitute an essential element of the legal act in question.

Possible subjective rights are defined as rights under germ, because they lack either the object or the subject, so one of the necessary components of their existence, giving a lower level of safety than the rights affected by ways [11]. For example, the right to compensation for damage that might occur in the future, as opposed to the right to get monthly cash during the studies is an eventually right, while the second right is a right affected by an extinctive term.
As shown in the example above, this right can generate or not all its effects in the future (if an insured person will cause an injury through an accident to another person, the insurer is obliged to cover the equivalent of the injury).

So, this right exists, but its effects will occur in a given situation, there being even the possibility of not consuming its effects (for example – the person does not produce any injury of another person).

Even if this right does produce any effects, the parties shall not be bound to repay the benefits. Unlike possible rights, in the case of a conditional right, if the condition is fulfilled, the parties are released in the previous situation.

As confirmed by the case law, the ways allow the parties to achieve certain interests in relation to the types of documents where they are inserted, such as execution of certain terms of obligations, termination of contracts, elimination of certain contracts, the exercise of certain rights and so on [12], which is not possible in the case of possible rights.

The possible right need to be distinguished from the right under suspensive condition. The birth of the right under suspensive condition depends on a future and uncertain event, but, when fulfilling it operates retroactively, as we have shown above. The possible right will be achieved along with a future and certain event, without having a retroactive effect. The major difference is that in the case of possible rights, accomplishing the event does not automatically lead to the birth of the right. For example, the good that was the subject of the pact was alienated by the deceased, going out of his estate, so that the heirs will not have any rights to that good. The possible right need also to be distinguished from the right affected by a suspensive term, because in the latter situation, the right should be born immediately, postponing just its exercise.

Other specialists classifies rights affected by ways in provisional rights and possible rights. The concept of the provisional rights was first formulated in the doctrine by our late Professor George Beleiu, in an article published in 1989 within the Romanian Journal of Law. He defines these rights as the rights affected by a term (suspensive or extinctive) or a terminate condition, while the eventual rights are defined as rights affected by a suspensive condition.
The suspensive condition is considered by our doctrine, this being an unanimous opinion, also regulated by the Romanian Civil Code and asserted by the French authors, as expressed by the will of the creditor, and when it comes from the debtor this cannot be a valid condition [13]. When the suspensive condition is not a pure potestative condition (as with the right of access) it gives its holders the lowest level of security because there exists the possibility that it could never be exercised.

According to other specialists possible rights tend to become pure and simple: the right to a future succession is actually a possible property right; when the right to succession was exercised, it has been exhausted, being converted into a pure and simple right of property. Other categories of rights tend to become pure and simple rights such as the right of uzucapionem and the right of accession. The first category of rights, namely uzucapionem right, gives the recipient the opportunity to acquire the proper right, namely the right of property, through acquisitive prescription [14]. As regards the right of access, the example of the doctrine is the present case in which a certain X constructs a building on his land Y [15]. While Y does not use his right of access, his ownership of the building is under suspensive condition. When by an act of will Y manifests its intention to acquire the construction, the possible right of accession is exhausted and simply converted into a pure and simple right of property on the building.

Comparison between possible rights – future rights

To understand the opened debate, we will try a brief comparison of possible rights and future rights, referring to the doctrine opinion on these controversial type of rights. We start comparing these rights with their definition of DEX. According to the DEX “the possible right is a personal right which confers to its holder a low power and safety because it lacks either the object or the active subject, so one of the necessary components of its existence” (eg. the right to compensation for damage that might occur in the future).

As regards the future right, we do not find an express definition in the dictionary, but we can start to define this category of rights from the definition of the adjective "future". Thus, according to the dictionary, the word "future" defines something that will come, who will be there, will appear after the moment; designed in a time to come, a
situation, a condition which will exist. Given these definitions, it was expected that in our legal literature to emerge diametrically opposed views regarding these categories of rights. While some authors admit the existence of both categories of rights, other authors include future rights in the category of possible rights. The first category of authors consider that while the possible rights lack either the active subject or the object, the future rights lack either the active or passive subject, and among them is also M.N. Costin.

The second category of authors state that in both cases it lacks both the object and the subject, not knowing whether the object will exist in the future and if the right will belong to any subject. It should be noted that some authors who accept the existence of possible rights confuse them with expectations or hopes [16]. In the conception of professor George Beleiu the so-called possible rights or future rights are not civil subjective rights, meaning legal possibilities to take a certain conduct and to ask for a proper conduct from the passive subject, provided, if necessary, through coercive state’s force [17], but simple elements of capacity of use consisting of the abstract ability to become the holder of a genuine civil right which may be, where appropriate, or simply or affected the ways, opinion shared by other authors, too.

Professor George Beleiu also considers that the terms “possible right” or "future right" are only the abstract ability to become the holder of a genuine personal civil right [18]. According to the opinion of other specialists the difference between these two categories of rights is given by the certainty grade that the rights in discussion have. Thus, while the possible right lack the necessary components of its existence, with a low degree of certainty, the future rights lack both the object and the subject, and provide a lower level of safety than any type of right because it is not known if there will ever be the object of the right or even the subject, meaning the person to whom belongs that right. Among the examples mentioned: the right to compensation for a damage that might occur in the future is a possible right, while the right to a future inheritance is a future right.

As seen in the example mentioned above, it is difficult to make a distinction between the possible rights and future rights. This is due to the fact that the same
example is given by some authors as an example of future right and by other authors, for example as possible right.

Illustrative in this case is the opinion of Traian Ionașcu with regard to succession law, considering it as a future right, while M. Eliescu deems it as an eventually right [19]. Sharing the opinion of other authors, we consider that both the future right and the possible right are closer to the usage capacity than the civil subjective right. These rights arise, rather, like skills to become a holder of an individual right and not as legal possibilities to take a certain conduct and to demand from the passive subject a certain conduct, being able to call on the coercive force state.

In conclusion, regarding these rights, we support the opinion of professor Gh. Beleiu, a comparison between possible and future rights would be impossible and even unnecessary.

Comparasion between possible rights - real rights

Since Roman times, real right (jus in re) represents that patrimonial subjective right under which the holder may directly and immediately exercise his powers on something, without the participation of another person [2]. Real right is an absolute right, opposable erga omnes, which corresponds to the passive subject negative obligation of not to do, so to refrain from introducing any prejudice to that right [21]. It is accompanied by the tracking prerogative and preference prerogative. Tracking prerogative of the real right holder is the possibility to claim reimbursement from any person that would hold it and preference prerogative is the possibility of the real right holder to fulfill his right with priority over other rights holders.

After making a brief presentation of real rights and their defining elements, we can now compare them with any possible rights, namely property right or the right of succession.

Since Roman times, the property appears as the main real right, so opposable erga omnes. The property right shares its full effects, giving its holder the attributes of possession, use and disposal (ius possidendi, ius utendi, ius fruendi, ius abutendi), attributes that can be exercised absolutely, exclusively and perpetual. The property right is an interference between ius abutendi and the absolute character in terms of enforceability of this right. The Quiritar property perpetuity character in Roman times
was expressed by the adage "ad tempus proprietas constituted non potest" ("property cannot be determined by a deadline") while the exclusive nature is that no owner can be required to share the use of the work with another person [22].

These existing attributes in the Roman period endures till these days, property right remaining an absolute right, nobody may prejudice the beneficiary exercising this right without the participation of another person.

In respect of succession, since the Roman period it is classified as follows: testamentary and intestate (legitimate) [23]. In our view, the right to succession could be ranked prior property right, being an intermediate zone between legal vacuum and complet right. The two modes of inheritance are nothing but ways of acquiring property right. In this regard, art. 557 par. (1) of the Civil Code states that "the right of ownership may be acquired under the law by convention, legal or testamentary inheritance, access, adverse possession, as a result of good possession in the case of movable assets and fruits, by occupation, tradition, and by court order, when it is transferring the property by itself . "

Therefore, the right to succession could be, in our opinion, the main generator of the property right, the effect of its perpetual character, but not a guarantee of this absolute right.

In other words, while ownership is a real right, the right of succession is a possible future circumstances, "a transfer of a deceased person patrimony to a plurality of living persons" [24] as stated by the new Civil Code art. 953 para. (1), but it should be considered the definition of Article 954 para. (1) New Civil Code which states that "a person’s legacy opens at the time of his death." In Roman law there were forbidden the agreements towards an unopened succession, because pater familias had to be able to the last moment (usque ad supremum vitae exitum) to make disposition of property upon death, after his free will. The sucession of a living person was invalid because it was assumed that, first of all, he had no object, and secondly because it was considered immoral and it seems to wake up the votum mortis captandae. However, Justinian allowed these conventions if the deceased gave his consent to the conclusion of the act, under the condition of not withdrawing his consent before dying.
Art. 1034 of the Civil Code, establishes the principle that future things may be subject to an obligation (the will is a unilateral, personal and revocable act by which a person, called the testator, orders, in one of the forms required by law, for a time when he will not be alive). However, by art. 954 para. (1) "The legacy of a person opens at the time of his death," per a contrario it is prohibited any act towards an unopened succession, therefore we cannot give up the succession of a living person, nor may alienate any rights that might be acquired over the succession.

Because as long as he is alive, the deceased can dispose of his property as he wishes, the successors have only a possible right or a simple hope, not knowing whether the object will exist in the future and if the right will belong to an individual. This succesoral right will not strengthen until the death of the deceased, whether the thing or the right still exist in his heritage and whether the legal conditions regarding the succession conditions are met.

After we made a short presentation of the rights of succession, now we can expose the differences between this kind of right and the right of the property. The property right is a right existing under the Civil Code, the right of a person to enjoy and dispose of a thing exclusively and absolutely within the limits determined by law. The second right was not born yet, "its birth depends on a future event, that will occur with certainty: the death of the deceased "[25] . Achieving this future event does not provide the right’s birth. We give an example where the heir is unworthy to inherit, provided by art . 958 C. Civ . For a person to come to inherit under the law, besides the succession ability and inheritance vocation it requires that the person in question is unworthy of the heir to the deceased [26]. The property right provides its full effects, giving his holder the attributes of possession, use and disposal (jus possidendi, jus utendi, jus fruendi, jus abutendi), attributes that may be exercised absolutely, exclusively and perpetual, which we cannot find in the matter of possible rights.

While property right is an existing right, giving the holder the opportunity to have this right (eg. to dispose of it) the beneficiary of a possible right can have it as just a hope, not as a right itself.
Conclusion

In conclusion, after the comparison of this category of rights, the possible rights can be classified between a possible legal vacuum, where no one can talk about a real right, and a possibility born in the persons consciousness that anticipates the right in its fullness. So, a possible right is more than a hope and less than a real right, there being the possibility to materialize, or not in the future. A possible right does not ensure that the beneficiary will in the future acquire the full right - being relevant the example of a future succession. Unlike hope, which is something abstract, this type of rights may be a phase in the process of building a real right. We think this because, in our view, a right can be born and then be built in stages by successive assembly of various constituents which are not yet materialized at the moment of expressing the will for agreement between the parties. The possible right is a right that is able to materialize in the future, the beneficiary being unable, at this time, to dispose of it, so we cannot conclude legal acts based on this law.

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[9] Idem.
[10] Examples of liberalities could be the legate or the donation contract. For a wider view on this subject see G. Boroi, C. A. Anghelescu, op. cit., p. 115.
[14] Acquisitive prescription represents acquiring the right through the passed time.
[15] Accession is a way of acquiring property which consists in incorporating the material of a secondary good to a main one, the owner of the latter also acquiring the property of the secondary. Accession can be immovable when it occurs naturally (silt, avulsion, islands etc.) or artificially (plantations, constructions) and movable.
Pre-emption – A Discussion Vector regarding the Role and Importance of the Legal Professions in the Romanian Legal Background

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Abstract
Under the EU Accession Treaty, Romania pledged to liberalize the land market as of 1 January 2014, so that foreign citizens, natural persons from the European Community can unrestrictedly purchase farming land outside residential areas. With the provisions of Law no. 17/07.03.2014 (effective within 30 days of the publication in the Official Gazette of Romania, Part I, that is as of 12.03.2014, and within 7 days of the effective date of the law, methodological norms of application were to be issued), Romania proved it kept its promises assumed in this field, regulating the procedures necessary to the sale-purchase of the farming land located outside residential areas [1].
Nevertheless, the Constitutional Court, under Decision no.755/2014, published in the Official Gazette, Part I, no.101 of 9 February 2015, ruled that the provisions of art. 20, paragraph (1)of Law no.17/2014 regarding various measures of regulating the sale-purchase of farming land located outside residential areas were unconstitutional as they allow for the application of a different legal regime between the beneficiaries of the pre-contracts signed prior to the publication of the normative document, according to the way in which they had concluded the pre-contract either in an authenticated form or under private signature, exempting those that had concluded a pre-contract in an authenticated form from the procedure of exerting pre-emption.
Therefore, based on this decision, the possible privileges are cancelled and the holders of any pre-contracts concluded prior to the issuing are to be exempted from the prior procedure necessary to the sale-purchase of farming land located outside residential areas in respect of the exertion of the pre-emption right.

Keywords: pre-emption, lawyer, notary public, unconstitutionality, promise

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Law no. 17/07.03.2014 regarding various measures regulating the sale-purchase of the farming land located outside residential areas and amending Law no. 268/2001 regarding the privatization of the commercial companies that administer land from the public and private property of the state for farming purposes and the setting up of the
Agency of the State Domains – as revised, is the special law applicable in the field of selling the farming land located outside the residential areas.

**Concept**

According to DEX (Romanian Explanatory Dictionary) (1998), pre-emption right is “the privilege someone has under a contract or a law, in a sale-purchase, to be, under equal conditions, the preferred one of the several buyers”, its etymology being French, “préemption”, which in its turn comes from a Latin compound noun prae – beforehand, emptio–purchase [2].

**Concept delimitations**

Pre-emption right undoubtedly differs from the option pact which represents a variety of the unilateral promise to sell, namely a contract under which the offering party irrevocably allocates a term for the option’s beneficiary, within which the latter is entitled to accept or to refuse the promisor’s offer of concluding a future contract.

Pre-emption right also differs from the unilateral sale offer and from the unilateral sale promise, by the fact that the latter arise exclusively from a contract, not from the law, as the promisor undertakes conventionally to conclude a certain legal act in the future, within a definite or determinable timeframe, any failure to comply with the promise triggering not at all the nullity of the sale to a third party, which is a penalty specific to disregarding the pre-emption right, but the co-contractor’s right to damages or to have a court ruling in lieu of a consent to sell.

Also, pre-emption right is different from a sale required by the law [3], pre-emption representing a way by means of which the seller, who in principle may freely dispose of their asset, is bound to follow, the pre-emption consisting only in a limit to their absolute contractual freedom, limit applicable only if the owner decides to alienate the asset by means of sale! and only in respect of the contractor’s person, determined in abstract by the law and not at all in respect of the conditions of sale (except for the pre-emption in the field of expropriation, where the price of the sale is legally pre-determined – see below).

Pre-emption right represents a subjective right, consisting in an either legal or conventional privilege, granted to the holder of such right called pre-emptor, of buying a
movable or immovable asset or an assignable dismemberment of the ownership right with priority against other persons.

**The legal sources of pre-emption**

Therefore, pre-emption right may have as source the law or the will of the parties who, conventionally, have instated in favour of one contractor/some of the contractors a right of pre-emption/priority/preference.

From the perspective of the hierarchy of the legal norms and as a consequence of the applicability of the same, the provisions of the civil code regarding the pre-emption right represent the common norm in the field to be applied only if under a special law or the parties’ convention, it is not established otherwise.

Therefore, the provisions regarding the pre-emption right comprised by the special laws or conventions made after 1 October 2011 are complete with the provisions of art. 1.730 -1.740 of the Civil Code.

It is exactly in respect of this finding that the Constitutional Court has recently played an important part in the interpretation of the hierarchy of the legal norms as against the provisions of this special law, which therefore limiting the free circulation of goods, the principle of autonomy of will of the owner in the free sale of the owner's goods and by derogation from these fundamental civil liberties, should be analysed by a restrictive interpretation of the imperative legal texts in the field.

In respect of the way of exertion, the Romanian lawmaker has traditionally provided for the exertion of the pre-emption right prior to the conclusion of the sale contract. However, this traditional approach has been enriched with the perspective of exerting the pre-emption right subsequently to the conclusion of the sale contract, a modernist vision, grounded, maybe, on the celerity of the legal rapports required by the market and justified by mechanisms of saving imperfect legal rapports under this way of exerting the pre-emption right subsequently.

**Common law**

In accordance with common law, namely articles 1370-1340 of the Civil Code, the exertion of the pre-emption right will take place: either further to a sale offer (art. 1730, paragraph 3 of the Civil Code) sent by the seller, prior to the conclusion of the sale, or further to a notice (art. 1732 paragraph 1 of the Civil Code) sent by the seller or
the conditioned third party buyer of the asset, that is subsequently to the conclusion of
the sale to all pre-emptors, irrespective of their rank.

Both documents, irrespective of their legal form shall include the surname and
name of the seller, the description of the asset, the underlying liens, the terms and
conditions of the sale and the location of the asset.

The doctrine has raised the question whether the offer [4] or notice coming from
one of the selling spouses of the common asset, or from one of the third party buyers
has valid effects, or, in order to ensure that the offer or the notice is validly formulated
such instruments should be signed by both spouses. In our opinion, we appreciate that
these two instruments represent procedural means necessary to exerting the pre-
emption right and not ways of transferring the right and, as such, the acceptance of the
other spouse is presumed, as peer art. 345 paragraph 2 of the Civil Code, each spouse
may conclude by themselves acts of preservation, acts of administration regarding any
of the common goods, rights and obligations, as well as acts of acquiring common
goods.

The offer, as well as its acceptance shall be notified according to the procedures
provided for by art. 1200 of the Civil Code, corroborated with art. 1326 of the Civil Code
and the notices, including by means of court executors, securing the proof of sending
the content.

Mention must also be made that, according to art. 1187 of the Civil Code, the
offer and its acceptance must be issued in the form required by the law in order for the
contract to be validly concluded. Thus, if we deal with the notice served by the seller or
by the third party buyer under the suspension condition or not exerting the pre-emption
right of the immovable asset [5], therefore, subsequently to the sale, based on which the
pre-emptor may exert their pre-emption right by notifying the seller of the pre-emptor’s
consent regarding the purchase of the asset, accompanied by the payment of the price
to the seller’s account or putting the amount at the seller’s disposal, it would be
recommendable that both the initial notice and the notice of acceptance should be made
in authenticated form with the verification of the capacity, liens, liabilities and parts that
cannot be alienated and after obtaining the energy certificate required by the law
(implicitly, the land book excerpt for authentication and tax clearance certificate), which
should allow the conclusion of the contract further to the legal communication of the pre-emption in a valid manner.[6]

In both cases, the pre-emption right is exerted in case of sale of movable assets within 10 days of notifying the offer to the pre-emptor and within 30 days in case of sale of immovable assets.

Therefore, in respect of the procedure of instating conventional pre-emption, the lawmaker leaves to the parties the choice of the conventional way of instating it, but regulates a common manner, subsequent to the party’s will in respect of the exertion of the pre-emption right and the consequences of exerting or not exerting such right.

As we have pointed out above, the lawmaker has felt the need to expressly penalize the holder of the pre-emption right who has rejected a sale offer, by the fact that the latter can no longer exert this right regarding the contract proposed to them [7]. Therefore, in case of the sale of immovable assets, the offer is considered rejected if it has not been accepted within 30 days of its being notified to the pre-emptor, a term reduced by the lawmaker to no more than 10 days, in case of a sale of movable assets. Nothing prevents the parties, however, to set a conventional term different from the one instated by the lawmaker that should ensure a better exertion of the offer by the pre-emptor.

The doctrine has appreciated [8], given the terms for exertion of the pre-emption right, that the sale offer is irrevocable, by corroboration with the provisions of art. 1191 of the Civil Code, which stipulates the irrevocable character of the offer, as soon as its author undertakes to maintain a certain deadline. However, in our opinion, the term is defined by the law and is not subject to the offering party’s choice, being stated as a statute of limitation for the pre-emptor, such as, at any time, the owner may withdraw their offer or amend it, the sale being their option, their absolute faculty, whereas the pre-emption is a mere limit to such faculty, which does not change the contract into a forced one.

In case where the offered asset, which is governed by the legal or conventional pre-emption, is sold within the term of exerting the option by the pre-emptor to a third party, in order to save the sale, the lawmaker has stated that the sale made within this term is under the suspension condition of not exerting the pre-emption right by the pre-
emptor. Therefore, the pre-emptor may exert their pre-emption right by notifying the seller of the former’s consent of purchasing the asset, as the case may be, accompanied by the payment of the price to the seller’s account or by making the amount available to the latter, or may refuse the sale offer, but expressly and tacitly by not accepting the offer within 10 days of the date of notification of the offer to the pre-emptor, in case of sale of movable assets, or within 30 days in case of sale of immovable assets.

**Special derogatory norms**

In respect of the special right expressed under the provisions of Law no. 17/07.03.2014 regarding various measures of regulating the sale purchase of farming land located outside residential areas and amending Law no. 268/2001 regarding the privatization of the commercial companies that administer land in the public and private property of the state for farming purposes and the setting up of the Romanian Agency of State Domains (law becoming effective within 30 days of the date of publication in the Official Gazette of Romania, Part I, that is as of 12.03.2014 and the methodological norms of application were to be issued within 7 days of the effective date of the law), Romania has proven that it kept its promises assumed in this field, regulating the procedures necessary to the sale purchase of the farming land located outside the residential areas, instating, however, a pre-emption right distinct from the common law, in favour of the co-owners, lessees, neighbouring owners, as well as of the Romanian State, through the Agency of the State Domains, in this order, at the same price and under the same conditions.

From the point of view of the object [9] of pre-emption Law no. 17/2014 implements measures regarding the regulation of the sale-purchase of the farming land located outside the residential areas. From the point of view of the legal acts involved, Law no.17/2014 regulates in principle the alienation by sale, of the farming land located outside the residential areas.

However, according to the law, the provisions of Law no. 17/2014 are not applicable to pre-contracts and option pacts that were authenticated prior to 12.04.2014, and if the immovable asset contemplated by the pre-contract is registered with the tax roll and land book.
Mention must be made that this requirement has been introduced by Law no. 68/2014 amending Law no. 17/2014, amending art. 5 of the Law in the sense that the land for which an authenticated pre-contract has been concluded is registered with the tax roll and land book.

The lawmaker has excluded only these two types of legal documents from the scope of the law, justified by the circumstance that the solemn notarial act, besides the essential quality of having a certain date, also enjoys the presumption of legality, thus the choice of such titles of legal acts subject to authentication remove the possibility of faking a date prior to the effective date of the law, for promises/pre-contracts/option pacts, which should artificially and illegally remove from the scope of the law an important category of immovable assets.

Nevertheless, in practice there is a diverse series of issues triggered by this dichotomy of legal reason and criticism, based on various arguments: the law give preference to a legal form of decision regarding a legal act, a preference not known to the recipients of the legal norm as at the time of concluding the legal act, which change the legal norm in an unconstitutional one, the non-retroactivity principle in civil matter being a fundamental one, guarantor under the provisions of art. 15 paragraph (2) of the Constitution for any legal form, citizen or law order, this theory being also supported by the provisions of art. 16, paragraph (1) of the same Constitution, regarding equality of rights.

Justifications have gone so far that there have been compared the legal effects of the acts instrumented by various forms of organization of the legal professions, considering almost similar the form of the sale pre-contracts concluded as a document under private signature with the pre-contract attested by a lawyer, although the latter has also lesser power than the one authenticated by a notary public and although such parallelism was forced, as the reason of the lawmaker was only interested in the proving power, validity and authenticity of the legal rapport and not at all in the executant of the legal procedures.

It was also appreciated that this prevalence runs counter to constitutional norms which provide for guaranteeing and protecting in an equal manner the private property right.
Undoubtedly, irrespective of the form chosen, the parties to the authenticated act under private signature called pre-contract, promise, as well as the parties of the authentic act bearing the same name pursued the same thing: to obtain the synallagmatic promise of the other contracting party that the latter will conclude in the future a sale act, respectively, of purchase of arable land located outside residential areas, the legal nature of the act, as the legal effects are regulated by the lawmaker at the time of concluding the legal act, the same, irrespective of the legal form of the act concluded.

With regard to the relevance of art. 16 paragraph (1) of the Constitution, the Court noted that “according to its jurisprudence, the principle of equality in rights involves an equal treatment for cases that, according to the goal pursued, are not different (Decision no. 1 of 8 February 1994, published in the Official Gazette of Romania, Part I, no. 69 of 16 March 1994)”.

Also, the Constitutional Court pointed out that “the cases in which certain categories of persons are must be different in essence, in order to justify the difference of legal treatment and this difference must be based on an objective and rational criterion (see in this respect, as a matter of example, Decision no. 86 of 27 February 2003, published in the Official Gazette of Romania, Part I, no. 207 of 31 March 2003)”.

However, in our opinion, the Court’s conclusions fundamentally depart from the lawmaker’s vision reaching the tennis court dedicated to the match between the competing legal professions, the Court finding that “disregarding the principle of equality in rights has as consequence the unconstitutionality of the privilege or of the discrimination which has determined, from a normative point of view, the violation of the principle”.

Thus, the Court appreciated that the solution of Law 17 which gave legitimacy only to the contracts with certain date given by the procedure of notarial authentication is based on the discrimination of excluding somebody from a right [11]. It has also been proposed for the annihilation of this situation “granting or access to the benefit of the right” [12]

Based on the immediate effect of the promise represented by the occurrence of the receivable right, the Court eventually based its theory and decision on the provisions
of art. 16 paragraph (01) of the Constitution regarding the banning of privileges, corroborated with the provisions of art. 44 paragraph (2) of the Constitution, regarding the guaranteeing and equal protection of all natural and legal persons of private law stating that as the effects of the legal documents irrespective of name or instrumenting agent (lawyer or notary public) must generally be the same, there was no justification for the different legal treatment given by the provisions of Law 17/2014.

In our opinion, the different treatment of the pre-contracts according to the form of concluding the legal act has an important legal utility, as it is exactly for the legal application of the legal norms and for the prevention of unorthodox methods of bypassing the restrictive provisions of the normative act, so it allows for the application of the normative act and not for its being deprived of effects and, furthermore, such a consideration of the treatment on “subjective and random criteria” in the Court’s opinion will not prevent “a different legal treatment between persons that have concluded pre-contracts of sale regarding farming land located outside residential areas”, as long as the law does not qualify the competences of the natural or legal persons, does not confer legal treatment, but makes sure that the third parties entitled to the purchase of land outside residential areas are not impeded on in their rights by fake legal documents – an aspect disregarded by the concerns of the magistrates of the Constitutional Court.

The goal of the law is not at all to confer the receivable right arisen from the promise “a distinct, differentiated and more advantageous position than that of the persons who have concluded a pre-contract under private signature”, but to avoid the privileges of the counterfeit acts, which the lack of legal rigour and monthly publicity of the acts recorded may cause.

**Conclusions**

The decision of the Constitutional Court is final and generally mandatory, however, mention must be made that according to the Constitution, the normative provisions in force found unconstitutional, such as 20 paragraph 1 of Law 17/2014 lose their legal effects after 45 days of the publication of the decision of the Constitutional Court, if in this timeframe, the Parliament or the Government, as the case may be, do not put in agreement the unconstitutional provisions with the provisions of the Constitution.
References:
[1] In respect of this procedure, the recent doctrine is rather rich, the author herself having published an article on this topic entitled “Pre-emption Right in the Romanian Legislation between Restriction and Liberalization” - Curierul Judiciar (The Judicial Courier) no 6/2014, Editura C.H.Beck, 2014 Bucureşti, ISSN 1582-7526, pg. 314- 328;

[2] The institution should not be regarded as being a new one, as it has been known, according to historians, from a Byzantium document from mid XV-th century, under the name of protimis, respectively a real right to be preferred in acquiring the master’s wealth by paying the alienation price. In respect of the definition of the institution, this has various and non-unitary approaches in the doctrine, which may be justified by the evolution of the institution, the evolution of the effects of this right, its extent and scope of application. Thus, there are authors who deny the pre-emption right the quality of being subjective law, appreciating that “it is a mere mandatory procedure regarding the publication of the decision to sell”, and the sale contract thus made can be included in the category of forced contracts; in this respect, see: Pop L. - “Dreptul de proprietate şi dezmembrămintele sale (Ownership Right and Its Dismemberments) ”, Ed. Lumina Lex, Bucureşti, p. 112. In respect of the asset subject to the pre-emption right, mention must be made that there are opinions according to which only the purchase of an asset may fall under the scope of pre-emption and not at all the purchase of a share of the asset, but there are also contrary opinions, grounded on the circumstance that a share of an asset represent also a right, for details see Moise M. – “Dreptul de preempţiune reglementat de Codul civil, din perspectiva practicii notariale (Pre-emption Right Regulated by the Civil Code from a Notarial Perspective)”, Buletinul Notarilor Publici nr. 2/2012.

[3] It has been appreciated in the doctrine that a sale that the owner of the land has to conclude with the holder of the pre-emption right, for the price proposed by the offering party may be included in the category of forced contracts: Pop L. - “Dreptul de proprietate şi dezmembrămintele sale (Ownership Right and Its Dismemberments) ”, Ed. Lumina Lex, Bucureşti, p. 112. In respect of this procedure, the recent doctrine is rather rich, the author herself having published an article on this topic entitled “Pre-emption Right in the Romanian Legislation between Restriction and Liberalization” - Curierul Judiciar (The Judicial Courier) no 6/2014, Editura C.H.Beck, 2014 Bucureşti, ISSN 1582-7526, pg. 314-328;

[4] In this respect, see Foltiș A., op cit. p. 93

[5] We appreciate that the expressis verbis stipulation in the sale contract of the suspension condition is not necessary, as the mechanism described by the lawmaker in case of the notice served by the seller to the pre-emptor post rem venditam involves sine quan non the existence of such a condition. As a contrary opinion, advocating the stipulation of the suspension condition, which has the legal nature of a validity condition of the convention, see Flavius-Antoniu Baias, Eugen Chelaru, Rodica Constantinovici, Ioan Macovei – “Noul Cod civil (The New Civil Code)”, Editura C.H.Beck, București, 2012, p. 1782. Also, it is appreciated in the doctrine that the mechanism of substitution has a penalizing character in case of a mere sale to the third party buyer, followed by the exertion of the procedures necessary to exerting the pre-emptor’s right, so that such contract will be annulled retroactively, in this regard see Foltiș A. – “Dreptul de preempţiune(Pre-emption Right)”, Ed. Hamangiu, 2011, p 67.

[6] In this regard, for supplementary details and suggestions in the field of the notarial procedure, see Moise M. – “Dreptul de preempţiune reglementat de Codul civil, din perspectiva practicii notariale (The Pre-emption Right Regulated by the Civil Code, from a Notarial Perspective)”, Buletinul Notarilor Publici nr. 2/2012, p. 15.
The terms of 30 days and of 10 days, respectively, are both the terms indicated by the lawmaker for the mandatory maintaining of the offer by the seller and terms set as statute of limitation for the exertion of the pre-emption by the pre-emptor, statute of limitation terms, which, as different from the old regulation, may be suspended in case of force majeure, as well as in case of a lawsuit, a case where the term is suspended as of the date of filing the request with the court. Mention must also be made that in this field it operates the institution of waiving by the owner of the benefit of the term set as statute of limitation, which translates into the possibility of the owner to nevertheless conclude, subsequently to the expiry of this term, the document of alienation regarding the immovable asset free of any liens and encumbrances of pre-emption to the very pre-emptor, who has legally lost their pre-emption right.


In the broad sense lato sensu.

In this respect (The Decision of the Constitutional Court no. 62 of 21 October 1993, published in the Official Gazette of Romania, Part I, no. 49 of 25 February 1994)

The problem with the scope of application of the fundamental right to good administration as it was established at the Union’s level, and mentioned within the case law of the Constitutional Court of Romania

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Abstract
The purpose of this paper is to analyze the ways through which the right to good administration – a general principle of EU law but also a fundamental rights expressly mentioned within article 41 of the EU Charter – was invoked in front of the Constitutional Court, while wishing not only to underline the existing difference in relation to the scope of application but also to point out the ways in which such a difference was first established and developed by the Court of Justice of the European Union.

Keywords: the fundamental right to good administration, Constitutional Court of Romania, Court of Justice of the European Union, Charter of Fundamental Rights of the European Union, constitutional review

Introduction

The right to good administration is a fundamental right established at the EU level and applicable at the national level within the field of EU law. This fundamental right was established in the 1980s through praetorian action, namely through the interpretative activity of the Court of Justice.

The coming into force of the Charter of Fundamental Rights of the European Union (‘EU Charter’) mentioned the right to good administration within the content of its article 41. Such a written foundation provided also a limitation in relation to the scope of application as article 41 of the EU Charter specifies that the right to good administration is opposable only in relation to institutions, bodies, offices and agencies of the Union, and thus not covering within its normative field the administrative authorities of the EU Member States. There was therefore the need for the Court of Justice’s intervention in order to establish that in cases involving national administrative authorities, - and after the entering into force of the EU Charter, the national courts will have to apply not the fundamental right to good administration, but the general principle of good administration. Even so, in front of the Constitutional Court of Romania, the parties
ignored such a difference, requesting, in an erroneous manner, still the application of article 41 of the EU Charter.

Having in mind the need to discuss the problem in relation to the scope of application of the right to good administration, we shall point out the coming into being of this right at the Union’s level (I) in order to further underline the incident case law of the Constitutional Court (II). Short conclusions will follow.

Section I: Good administration – a fundamental right at the EU level

In this first section we shall describe the normative content of the right to good administration together with the additional interpretive case-law of the Court of Justice (I.1) while underlining, afterwards, the fundamental difference between the right to good administration and the principle of good administration, taking into account the way in which those two were to be relied on in front of the national courts (I.2).

I.1. The right to good administration and its normative content

Article 41 of the EU Charter is called “Right to good administration” and stipulates within the content of its four paragraphs – the following components – rights and guarantees:

- the right of any person to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
- the right of any person to have made good any damage caused by the EU institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States
- the right to write to the institutions of the Union in one of the languages of the Treaties and the additional right to receive an answer in the same language

The right to have your personal affairs handled impartially, fairly and within a reasonable time contains expressly the following additional rights [1]:

- the right to be heard, before any individual measure which would affect you adversely is taken
- the right to have access to your file while respecting the legitimate interests of confidentiality and of professional and business secrecy
the right that any administrative decision is being motivated and the correlative obligation of giving reasons.

As it concerns the case law of the Court of Justice and the foundations of the right to good administration through praetorian ways [2], the Explanation in relation to the article 41 of the Charter [3] point out the fact that “[a]rticle 41 is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case-law [4] which enshrined inter alia good administration as a general principle of law” but that also “[t]he wording for that right [to good administration] in the first two paragraphs results from the case-law [5] and the wording regarding the obligation to give reasons comes from Article 296 of the Treaty on the Functioning of the European Union”.

Thus, it can be observed that before being expressly inserted as a fundamental right within the written content of the EU Charter, “the bouquet of rights” that form the right to good administration was first “connected” and consolidated through praetorian ways, being first proclaimed as a fundamental general principle of EU law and therefore especially opposable to the Member States’ administrative authorities.

As it concerns the main referring decision of the Court of Justice in relation to the right to good administration, the mentioned case law differs depending on the specific right invoked – part of the “bouquet of rights” that form the right to good administration – the oldest case being Heylens from 1987, where the Court of Justice established the obligation of the administrative authorities to tell and show in front of the courts – where the legality control was to be carried out – the reasons based on which the contested administrative act was adopted [6].

Consequently, from the substantial point of view, the right to good administration is born from the general principle of good administration, having therefore same normative content.

I.2. The difference between the fundamental right of good administration and the good administration as a general principle – the scope of application

The Court of Justice had on many occasions the possibility to underline the difference between the right to good administration contained within article 51 of the EU Charter and the general principle of good administration as a general principle of EU
law, and thus underlining that the provisions of article 41 are not opposable to the Member States and, implicitly, to the administrative authorities of those Member States.

Therefore, in Cicala [7] the Court established that article 41(2) of the Charter is not applicable to the EU Member States. This ratio decidendi was then confirmed in cases such as YS and others [8] or Boudjlida [9].

Consequently, the fundamental right to good administration contained within article 41 of the EU Charter is to be considered an exception to the general provisions contained in article 51(1) of the EU Charter because the normative content of article 41 – in contrast with all the other rights and principles contained within the Charter – it is not applicable to Member States when implementing EU law, but only to the EU’s institutions, organs and agencies.[10]

Such a difference in relation to the field of application is devoiding of relevance the reliance in front of the national courts on article 41 of the EU Charter, at least in those cases in which the claimant understands to oppose this right to good administration to the national administrative authorities. Nevertheless, and in order to obtain the same legal effect like the reliance on article 41 of the Charter, any person has the possibility to rely on the variety of fundamental rights that form the components of the principle of good administration, such as the right to be listened by a public authority – as this right is not only a part of the right of defense – an autonomous general principle of EU law-, but also an integrated part of the principle of good administration – general principle of EU law.[11] Exempli gratia, the Advocate general Mengozzi has mentioned, within the field of public procurement, the fact that the obligation on the administrative authorities of the member states to hear the potential buyer must be recognized as a right irrespective of the fact that article 41 of the Charter is or not applicable, and this based on the autonomous reason conferred by the existence of the right to good administration as a general principle of EU law.[12]

Furthermore, the difference in relation to the scope of application is also underlined by the French Government in Boudjlida by mentioning the fact that although Mr. Boudjlida could not rely on the provisions of article 41 of the EU Charter “observance of the right to be heard is required not only of the EU institutions, by virtue of Article 41 of the Charter, but also — because it constitutes a general principle of EU
law — of the authorities of each of the Member States when they adopt decisions falling within the scope of EU law, even when the applicable legislation does not expressly provide for such a procedural requirement.”[13]

For all the above, the intermediary conclusion is that every time a claimant will wish to rely on a fundamental right – part of the good administration principle, he shall be able to rely on the same rights in front of the national courts, but not based on article 41 of the EU Charter, but on article 6(3) TEU that is to be read together with the Court of Justice’s interpretative case law and, eventually, with the different provisions of EU secondary law sending to the same principle of good administration.[14]

We shall now point out the way in which the Constitutional Court of Romania has noticed this difference, ensuring therefore a “silent” and indirect transposition of the Court of Justice’s case law in relation to the scope of application of article 41 of the EU Charter.

Section II: The case law of the Constitutional Court in relation to the scope of application

Article 41 of the EU Charter was for the first time mentioned in front of the Constitutional Court back in 2012 in a case that provided the decision no. 590/2012 [15] and concerned a case sent by the Criminal Division of the Supreme Court of Romania. The national legal provisions at issue were the ones establishing the communication procedure when a criminal case is demanded to be relocated, the Constitutional Court having the opportunity to observe that, on the other hand, the pending case in front of the Supreme Court was in relation to an appeal on points of law formulated against a criminal decision belonging to a court of appeal. As a consequence, the Constitutional Court escapes from analyzing the issue of constitutionality in relation to article 41 of the Charter, declaring therefore the action for constitutional review as inadmissible in totum.

In 2013, article 41 of the Charter was again to be relied on in front of the Constitutional Court of Romania. In Decision no.12/2013 [16], the Constitutional Court pointed out that although the author of the constitutional complaint could demand to the Constitutional Court to operate a constitutional review in which it should integrate also the provisions of the EU Charter and this based on article 148 of the Constitution [17], however, article 41 is inapplicable in the case at hand "because in conformity with the
provisions of article 41 of the Charter, the right to good administration is to be considered the right of any person – European Union’s citizen – to have their affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.” (Emphasis added). Therefore, the Constitutional Court underlined that “the right to good administration, as it is stipulated by the Charter, can only be relied on within a legal dispute between the citizens of the European Union and the institutions, bodies, offices and agencies of the Union, in relation with the activity of the latter ones” [18](emphasis added). The same ratio was restated in Decision No 394/2013 [19] but in relation to the constitutionality review of certain provisions belonging to OUG No 51/2008 (Ordonanță de Urgență) in relation to the procurement of legal aid in civil matters. Also in this case, the Constitutionat Court reinstated the fact that article 41 of the EU Charter is inapplicable in cases such as those, the arguments relying on article 41 becoming de facto inadmissible ones.

In 2014, article 41 of the EU Charter was no longer to be relied on in front of the Constitutional Court. In addition, the authors of constitutional complaints did not choose to invoke, alternatively, the EU general principle of good administration - like it was also mentioned in the Court of Justice’s preliminary rulings.

In consequence, because of the confusion in relation to the scope of application of article 41 of the EU Charter, the Constitutional Court of Romania did not have the occasion to give a ruling in relation to the application of the right to good administration as a general principle of EU law within a constitutional review [20] although, on the other hand, the Court of Justice not only has “authorized” the national ordinary courts to nullify any administrative decision or act belonging to the national administrative authorities that would run counter to the general principle of good administration, but it also acted ex officio, replacing in preliminary ruling cases, the eventual erroneous reliance on article 41 of the EU Charter with the analogous EU general principle of good administration.

**Conclusions:**

If in the first section of this paper we could observe the difference between the scope of application of the general principle of good administration vis à vis the fundamental right to good administration, in the second part we underlined the fact that
the Constitutional Court of Romania refuses to apply article 41 of the EU Charter outside its specific scope of application and that, in the same time, it does not replace it ex officio with the analogous general principle of good administration, - the claimants failing to observe also this specificity in application.

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- [2] Legal scholars have claimed that the primary source of the right to good administration is to be found in the case law of the Court of Justice of the European Union (See P. Craig, Article 41 – Right to Good Administration, in: S. Peers, T. Hervey, J. Kenner, A. Ward (eds.), The EU Charter of Fundamental Rights: A Commentary, Hart/Beck, 2014, at 1071).
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[6] Case 222/86, Heylens, Rec. 1987, p. 4097, paragraph 15: Consequently, in such circumstances the competent national authority is under a duty to inform them of the reasons on which its refusal is based, either in the decision itself or in a subsequent communication made at their request.


[10] For an opinion that goes even against the case law of the Court of Justice, see the Opinion of the Advocate Generale Wathelet presented in Mukarubega (C 166/13, EU:C:2014:2031, point 56) to which it sends the Advocate General Mengozzi in the Opinion presented in CO Sociedad de Gestion y Participación and Others (C-18/14, EU:C:2015:95, footnote 48).

[11] This type of principle is opposable to the Member State – and consequently to all its authorities – when the case facts fall within the area of EU law.


[15] Published in the Official Journal of Romania, part I, no. 436/2012, from 30th June 2012..


[17] See also the considerations of principle adopted by the Constitutional Court in relation to the application of the EU Charter within the constitutional review, developed for the first time in decision no. 1.479 from 8th of November 2011, in Official Journal of Romania, part I, no. 59 from 25th of January 2012: “the Charter’s provisions are applicable within the constitutional review as long as it assures, guarantees and develops the constitutional provisions in the field of fundamental rights, in other words, as long as the level of protection is at least the same with the one ensured by the constitutional norms in the realm of fundamental rights”. These general conditions of EU Charter’s application are also analysed in M. Mazilu-Babel, Aplicarea dispozițiilor Cartei Drepturilor Fundamentale a Uniunii Europene ca norme de valoare constituțională în cadrul controlului de constituționalitate, RNSJ, 23rd of December 2013, http://www.juridice.ro/300016/aplicarea-dispozitiilor-cartei-drepturilor-fundamentale-a-uniunii-europene-ca-norme-de-valoare-constitutionala-in-cadrul-controlului-de-constitutionale.html (last accessed: 3rd of June 2015)


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Valorification of the potential of liberal foreign trade policy for Republic of Moldova

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Abstract
The work refers to the issue of valorification of the potential of liberal foreign trade policy via the prism of achievement the benefits for entrepreneurship development, engaged in external economic activity. The study emphasis is on the analysis of trade policy instruments used in the post-accession period to the World Trade Organization. In this analysis we should state that our country has used external trade advantages offered by the liberal trade, after the accession to the WTO insufficiently, as well as the European economic integration. The implementation of reforms in the foreign trade sector, which began with accession to the WTO, was not supported by reformation of other economic sectors. Among the main obstacles are the following: the weakness of state institutions, inconsistency and non completing the reforms started, the lack of political will, the high level of corruption etc.

Keywords: liberal trade policy, advantages, entrepreneurship development, economic reforms.

Introduction
The Government of the Republic of Moldova has started the process of accession to the World Trade Organization (WTO) yet in 1993, in the period of economic reformation and the integration of the economy of the Republic of Moldova in the world economic system. At that time the legislative framework and the economic situation has been such that our country was unprepared to join this organization. The process of accession to the WTO required a scrupulous preparation and it was a long and complicated issue that ended in 2001, when Moldova became a full member of the WTO.

For more than 10 years the Republic of Moldova is in compliance with and in a implementation phase of the obligations, when it was possible to gain from the advantages obtained from the process of accession.

From that time, both the Government and producers are placed in front of new requirements, which are to a large extent compliance with laws that do not allow an arbitrary attitude with respect to the rules laid down by the organization. In this context, the valorification of the potential of the WTO member country directly depends on the
existence of ongoing cooperation between the Government and entrepreneurs who are engaged first of all in foreign economic activity.

The purpose of this paper is to assess the extent to which the country has used the advantages of liberal foreign trade after WTO accession and further European economic integration.

1. Two trends in external trade

Moldova as a country with small and open economy is highly influenced by the imbalances that are recorded in the world economy, such as global and regional economic crises, increasing competition in the international market, disrupting the balance of payments, external debt increasing, economical and political instability of Central and Eastern European countries and, first of all, the Commonwealth of Independent States (CIS) countries. These problems have been intensified last time for Republic of Moldova, taken into account the vulnerability and fragility of the country's economy under the weight of external economic shocks, the latest of which took place in 2009-2010, caused by decreasing demand at Moldavian export from developed markets and key partners (such as the EU, Russia). Currently the country is going through the economical and political regional crisis under the pressure of Russian and Ukrainian economies decrease of 3.8% and 5.5% respectively, according to IMF estimates for 2015. [1]

In turn, these problems generate a stable interaction between two contradictory tendencies in the foreign trade: protectionism and liberalism. These trends reflect both countries' reaction to the processes occurring in the global economy and changes in the international division of labor.

Over the past decades Moldova practice a liberal foreign trade policy. In its choice the country considered the following global trends that influence economic development.

Protectionism is a defense policy of the internal market from external competition. Adepts of protectionism considered appropriate to limit imports in order to support local producers, preserve jobs, which would ensure sustainable social stability. Reducing import would also contribute to increased demand in the country for
production of local entrepreneurs, stimulating simultaneously the rise in production and utilization of labor.

At the same time, limiting competition, market protectionism creates conditions for decreasing the efficiency of production, the increase in prices on the domestic market, leading to adverse effects. Protectionism followers also believe that young industries need time to affirm and strengthen the market position, therefore require support and defense. It is assumed that, during the development of these branches, the protectionism would fall gradually. In reality, however, protectionism reduces incentives to increase effectiveness of market and, consequently, the process of formation of the industry may take longer. The practice shows that the protectionism application requires careful examination and a thorough check in advance.

The policy of liberalization, contrary to that of protectionism, supports the opening of the internal market for goods, capital and foreign work force, which contributes to the enhancement of competition in the internal market. Free trade requires placing the technological and technical innovation and provides consumers with a wider choice of goods at affordable prices and offers entrepreneurs the opportunity to use fully the advantages from international labor division (low-costs of raw material and work force, etc.).

Moreover, free trade sets up dynamic forces that accelerate the pace of growth of the economy due to improvements and innovations.

Market protectionism hampers the development of these forces.

To be mentioned that the advantages of the application of liberal foreign trade regime are felt only in the case when trading partners follow the same principles.

In this context we shall notice, that the world economy started on the path to a more free trade after World War II.

In 1948 under the auspices of the United Nations was created the General Agreement on Tariffs and Trade (GATT), whose mission was to put into question the issues of world trade, and to contribute to the reduction of customs taxes. In 1995 GATT is reformed and transformed into the WTO, the latter serving as the basis for all other multilateral agreements concluded under the GATT.
The significance of the agreement establishing the WTO lies in creating a system of contract law on the regulation of trade between member countries. This agreement substantially broadened the field of GATT, and extends its action on the trade in services and the commercial aspects of intellectual property rights. Over 90% of world trade in goods and services shall be governed by the rules and regulations of WTO.

2. The advantages of a liberal trade policy for the Republic of Moldova

The compliance with the WTO rules, as well as intensifying European economic integration open new possibilities for the development of foreign trade of the Republic of Moldova.

These possibilities are related to obtain potential advantages, the most important being the following:
- Strengthening of national economic policy and institutions responsible for foreign trade in goods and services;
- Ensuring greater access to the markets of member countries;
- Ensuring access to international mechanisms for resolving of trade disputes.

2.1. Strengthening of national economic policy and institutions responsible for the promotion of foreign trade

At the date of application for membership to the WTO, the policy and the national institutes responsible for the development of international trade were not yet market-oriented. The State had a dominant role in foreign trade. National institutions managing intellectual property rights, technical standards, phytosanitary measures, and the Government procurement were considerably different from those international. Some of the necessary legal acts were totally absent. The WTO membership requires that national policies and institutions, which manage the trade in goods (GATT), services (GATS) and the related aspects of intellectual property rights (TRIPS), should be brought into line with the basic international agreements. The need for such action is related to ensuring the country's external trade performance in line with the principles of the market. It is a fundamental condition for the ability of the institutions concerned, to fulfill their obligations assumed by country during the accession.
It should be emphasized that in the sphere of activity of the WTO are numerous problems related to economic development. In this context, economic reform, generated by the external trade sector, can have a multiplier effect in reforming other sectors of the economy. In turn, all these phenomena contribute to sustainable economic policy and to the improvement of the methods of economic management of the country.

By the time of accession of Moldova to the WTO the country reached significant progress in bringing national economic policy in line with the main WTO agreements.

Norms and legal acts are pertaining to the custom assessment of goods, using of sanitary and phytosanitary measures, standardization, certification, protection of intellectual property, and other issues impacting directly or indirectly on trade have been modified in accordance with the international rules.

Since 1994 has been enabled the free trade of goods, except for goods subjected to quotas for export which was necessary to obtain licenses. Later these quotas were excluded. The registration of economic operators for the right to participate in foreign economic activities has been canceled.

At present, there are low customs duties applied in the country. Non-tariff barriers in the trade, such as sanitary rules which go beyond the limits of necessity and safety of public health, the conditions of production certification, and the specific technical standards are not imposing. These measures and actions have been introduced in accordance with the requirements of the WTO within the framework of the liberalization of foreign trade and speeding up customs operations. External trade liberal regime, introduced in the country beginning with conclusion of the negotiations on the accession of the Republic of Moldova to the WTO, should be followed. At the same time, membership in the WTO provides new opportunities for economic development. The need of compliance with obligations of the process of accession to the WTO and further alignment with the EU are accelerating the process of reforming the economy.

The WTO membership offers to the Government an opportunity to defend itself from local protectionist pressures which persist and have a greater or less then extent in all market economies. However, not all protectionist tendencies in Moldova are related to a desire to avoid intensifying competition in the domestic market of the
country, as happens in some developed countries. In Moldova they are conditioned, first of all, by the general economic crisis and the inability of the country’s power to pull out the country from this state.

From the moment of obtaining independency Moldova has been going through period of systemic social-economic and political crisis, related with transformations of transitional period. Also, the Republic of Moldova is very vulnerable to the global economic and regional crisis, displaying a poor resistance, as there were in period of 2009-2010 crises and the current crisis and the insufficient capacity of the governance of crisis situation.

In the study elaborated by the OECD is indicated that economic instability and weakness of the institutions are regarded as some of the dimensions of a fragile state which raises obstacles to fulfilling the agenda of further economic development (after 2015) [2].

However, belonging to the WTO contributes to the development of entrepreneurship because it involves bringing the work's regulatory system in line with international practice. Since independence entrepreneurial environment is always in attention of the State. In the last decade, during the post-accession to the WTO, in the country was carried out regulatory reform of the entrepreneurial activity, recording some steps: "Guillotine 1" included the detection and cancellation of unnecessary regulations"; "Guillotine 2" was dedicated to the reviewing the regulatory framework of the level of laws; "Guillotine 2+" focused at the analysis of regulatory impact assessment to establish a more rational system for rule makers). Currently is implementing the step of reform involving the creation of a regulatory system more intelligent, determined by clear criteria for competitiveness, which will generate social and environmental benefits, while improving the conditions for transition to a knowledge economy. [3] In the field of small and medium enterprises over the past few years has been applied the mechanism savings to boost investment in business development by implementing of the EU program to attract remittances into the economy "PARE 1 + 1".

However more than half a decade after the global financial and economic crisis, entrepreneurs continue to face challenges in obtaining funding as a key element for their development. The access to finances will be lower both for the real sector and for
carrying out planned reforms in the public sector, as a result of doubtful loans granted by three banks placed under special administration in the period from the end of November – middle December (Bank of Economies, Unibank and Social Bank) amounted to 13.3 billion MDL.[4] This amount constitutes over 30% of the loan portfolio throughout the banking sector, according to data from the month of March 2015.

Moreover, in times of economic crisis, the responsible institutions implemented a restrictive fiscal policy for entrepreneurial activity by increasing four times the basic interest rate in the period from January to February (from 4.5% to 13.5%), motivating its decision by the need to stabilize the quotation for the major currencies. In consequence, the loan portfolio throughout the banking sector in March has been reduced with over 857 million MDL, representing 41.97 billion MDL, according to the National Bank. The reduction of the loan portfolio occurred in all commercial banks in the country except a bank.

Trade liberalization does not exclude the protection of domestic producers. WTO member countries may resort to protective measures creating barriers to a excessive import if it causes or may cause harm to specific branches of the national economy. The same measures can be applied in the case of new branches, of perspective, passing through temporary difficulties of development. Their implementation must be transparent and have to work as long and in so far as it is necessary for the prevention or removal of a serious damage. The use of protective measures against imports, which is an object of dumping or subsidized by the country of origin of goods, as well against imports the amount and conditions of supply of which harms or may harm domestic producers, is governed by the law of the Republic of Moldova "On the measures of anti-dumping, compensation and safeguard", which entered into force when ratified documents Moldova's accession to the WTO. So far, the government did not have such possibilities prescribed by law to protect domestic producers. The provisions of this law were implemented only in order to protect domestic producers of sugar industry by introducing special safeguarding measures. Since August 1, 2003 was introduced an exceptional charge of 40% on imports of cane sugar, that costed on the market with about 50% less than domestic product, initially for 200 days in order to protect domestic
production of sugar. During the following years, for instance, in 2008, the measures to safeguard domestic production of sugar were extended still to four years. [5]

The protection of the domestic market (both consumers and producers) against the importation of goods of poor quality, dangerous or counterfeit is guaranteed by the Law "On Technical Barriers to Trade", which provides for the possibility to use some non-tariff measures to this end. Since the approval of this law, the Moldovan authorities used this instrument of trade policy to imports of products packaged in plastic or tetra pack, collecting an ecological tax. The eco fee is introduced from 2008, in the amount of 0.8 to 3 lei per package, depending on the volume of containers. The main trading partners considered discriminatory the procedure of collecting this tax only from importers of listed products. Accepting the domestic producers from it could cause similar steps, on their part, in respect of domestic sensitive products. In early 2011 Ukraine has started a legal action against the Republic of Moldova within the World Trade Organization demanding to stop the environmental tax [6], but the dispute was then left to the discretion of parties. All the major partners of Moldova, the WTO members, confirmed the need to introduce the tax in accordance with international obligations of the Republic of Moldova.

Simultaneously appeared some other problems related to the imperious necessity to raise competitiveness and quality of domestic products, reduce production costs and administrative burdens, modernization of production processes.

It is appropriate here to note that so far are not used yet all the possibilities to apply fully tariff measures for the protection against imports from abroad. During the years after joining the WTO, the average tariff applied on imports of goods did not exceed 5%, while consolidated average tariff negotiated with WTO is 12.5%. Given the bonds on customs tariff, there is the possibility of fixing the perspective of higher taxes at this position.

The stability and predictability of WTO rules and the provisions of the association agreement with the EU in general create favorable conditions for the development of local entrepreneurship. So, since joining the WTO and EU alignment, some consensus on bringing foreign trade to market rules and principles may be attested in the country,
but the institutions involved in foreign trade activities still do not reach the required standards, which has a negative effect on stage to use the given advantages.

The formation of an appropriate institutional structure of the market, including one tangentially as is that of foreign trade for both Moldova and other countries in transition, is a complicated and lengthy process which practically has no precedents. In developed countries such institutional structures are formed over years or even generations. The countries with economies in transition found themselves face to face with the need for the formation of such institutional structures in a very short period. That is why a simple copy or direct loan experience from developed countries in creating institutional structures are not always suitable for countries with economies in transition.

In fact, compliance with WTO law in the sphere of national policy and institutional activity related to the conduct of foreign trade should encourage economic reform in the country and accelerate its integration into the international economic system. The membership of the WTO provides a beneficial opportunity to defend the interests of entrepreneurs in the markets of member countries of this organization, what was missing until WTO accession.

2.2. Change in market access

After joining the WTO two significant changes regarding the access to the markets of WTO members took place.

The first concerns the establishment of a permanent and non conditional status of a country favored in its trade with other member countries of this organization. Before joining the WTO, Moldova benefited from a preferential trade regime in its relations with some developed countries only in accordance with the General System Preference (GSP), including: the European Union, the USA, Sweden, Japan and Canada. GSP is a special regime customs-tariff regulation, the essence of which is to grant unilaterally, on behalf of developed countries, certain customs-tariff incentives on imports of some goods from developing countries and CIS. This scheme, however, besides being limited to certain goods can be stopped at any moment, even canceled in case of any difficulties of local producers in these countries. Some GSP beneficiary
countries risk to be excluded from the list of beneficiaries of preferential trade arrangements from certain economic or political considerations. Similarly, there is no guarantee that the developed countries will continue to provide this regime further, because there is not a specific legislative framework obliging them to do likewise.

After joining the WTO Moldovan exporters obtained stable preferential access expressed by setting lower duties taxes than previous ones, on markets of member countries of this organization, which currently represent 161 countries. During Moldova's accession to WTO many markets were absolutely new for Moldovan goods. Further, this preference will be set for all kinds of goods exported from Moldova on the markets of member countries of the WTO. During the years after the joining of the Republic the WTO and other CIS main trading partners have achieved this status. At the moment the country's trade is developed mainly with WTO members. In 2013 the foreign trade of the Republic of Moldova increased 5.4 times, including export over 4 times in comparison 2001.[7] Obviously, the accession to the WTO is a prerequisite for its complete integration into the world economy and first of all in that of the European Union.

Moldova's WTO accession has already contributed to strengthening economic relations with the countries of the European Community. Almost every point of the Partnership and Cooperation Agreement between Moldova and the EU and that of the Association Agreement with the EU is based on GATT / WTO legislation what simplifies considerably the process of EU alignment.

The appearance of enhancing export opportunities will create in turn favorable incentives to increase volume of production and modernization of the industrial potential of the country.

The second change relates to the acquisition of qualifier of country with market economy principles, with the accession to the WTO.

The qualifier that the market economy is missing is often used for applications to another type of anti-dumping measures than those of market-based economy principles, namely of protectionist procedures, non-transparent and potentially discriminatory, as well as of some technical barriers to trade barriers introduced by developed countries against imports from CIS countries that are not WTO members. In
accordance with Article VI of GATT / WTO anti-dumping measures can be applied to imported items whose export price is lower than the "normal price". Moreover, for the WTO member countries under the "regular price" is understanding the cost of domestic goods on the market of exporting country, when for the countries that are not members of this organization is using cost on the internal market of importing country.

Such comparisons are often not in favor of transition countries that are not WTO members. In these countries the cost of labor resources is substantially lower than in countries with developed economy. Ultimately the phenomenon reflects on a lower price of goods in these countries compared with those WTO countries. The countries that are not WTO members do not have sufficient arguments to demonstrate the presence of competitive advantages such as lower cost of labor resources.

In line with WTO practice, the award of the qualifier of market economy country is achieved de facto as part of a system of control levers in the accession process.

2.3 Access to the mechanism of resolving commercial disputes

In line with WTO law each member has equal access to the mechanism of resolving commercial disputes. Most countries in transition are relatively small and highly dependent on international trade. These countries need access to an impartial and binding mechanism for resolving trade disputes. Since obtaining the status of country-member of the WTO in 2011 Moldova initiated the trade dispute against Ukraine in connection with application of a duty tax on imports of alcoholic beverages that has been considered discriminatory in respect with drinks of Ukrainian origin [8]. The measure has affected distilled spirits exports from Moldova to Ukraine.

It seems that achieving the above advantages will enable Moldova to increase exports to WTO countries, what will have a positive influence will posse the negative balance of trade with these countries and enable it to become an active participant to the mechanism of resolving commercial disputes.

3. Conclusions

The country’s membership to the WTO and the signing of the Association Agreement with EU offer favorable conditions for promotion Moldovan goods and increase the volume of exports to the markets of states concerned. Also, this status
opens new possibilities to the Moldovan government protect the interests of exporters to the markets of member countries of this organization and access to the mechanism for resolving international commercial disputes. So, liberal foreign trade policy regime has created favorable conditions for economic entities involved in foreign economic activity. However, our country has used insufficiently the liberal trade policy instruments after accession. In this context, it can be detected two groups of specific and general issues.

The first one is related to the lack of collaboration between the government and business on screening to problems both domestic and on the external markets and the existence of sufficient analytical capacities in the formulation and argumentation positions in commercial litigation and enforcement trade policy instruments in order to protect domestic producers. Today, as during Moldova's accession to the WTO, many entrepreneurs are worried about the effects that could occur domestically in the European integration process, not knowing the benefits of liberalized trade. They were not and are not able to accurately estimate the impact of accession and identify new opportunities to assert themselves on markets recently opened. In context, it should be resolve some issues related to the need to raise competitiveness and quality of local products and modernizing production processes.

General issues related to the need to reform the economy. Reform of sphere of foreign economic relations, which began with accession to the WTO, should accelerate the economic and other fields contributing to sustainable economic policy and improving methods of managing the country's economy in general. However, reforming foreign economic policy it has not occurred together with the reform of the financial sector, of the implementation of fiscal policy stimulating economic development, reforming the benefits of entrepreneurial activity still have to be valued, etc. Frequent changes of governments in recent years, high levels of corruption brought upon stopping initiated reforms. The external economic relations remains one of the most developed in all sectors of national economy. Boosting of economic reforms under the Association Agreement between Moldova and the EU is vital for the development of the state.

The weakness of state institutions, associated with fragile state, can create almost insurmountable obstacles in the way of fulfilling the country's economic development agenda in the future.
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International Criminal Law

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Abstract
The current system of international criminal law works through international ad hoc tribunals, internationalized or mixed tribunals, the International Criminal Court as well as national courts (military tribunals and ordinary courts). One of the legal consequences of framing an act as an international crime is that it may give rise to what is called universal jurisdiction, which allows any state to try alleged perpetrators, even in the absence of any link between the accused and the state exercising jurisdiction. The principle that individuals are and can be held criminally accountable for violations of the laws of war dates back to many years. However, it was only after World War II and the Nuremberg and Tokyo trials, set up to judge those German and Japanese military leaders accused of serious crimes during the war, that the idea of individual criminal responsibility for serious breaches of international law gained ground.

Keywords: “international”, “criminal law”, „ad-hoc tribunals”, „responsability”

International criminal law is a subset of public international law, and is the main subject of these materials. While international law typically concerns inter-state relations, international criminal law concerns individuals. In particular, international criminal law places responsibility on individual persons—not states or organizations—and proscribes and punishes acts that are defined as crimes by international law.

International criminal law is a relatively new body of law, and aspects of it are neither uniform nor universal. For example, some aspects of the law of the ICTY are unique to that jurisdiction, do not reflect customary international law and also differ from the law of the ICC. Although there are various interpretations of the categories of international crimes (1), these materials deal with crimes falling within the jurisdiction of international and hybrid courts, including the ICTY, ICTR, SCSL, ECCC, and the ICC. These crimes comprise genocide, crimes against humanity, war crimes and the crime of aggression.(2) They do not include piracy, terrorism, slavery, drug trafficking, or other international crimes (whether or not also criminalized in the national laws of Bi H, Croatia, and Serbia) that do not amount to genocide, crimes against humanity, or war crimes.
International criminal law also includes laws, procedures and principles relating to modes of liability, defenses, evidence, court procedure, sentencing, victim participation, witness protection, mutual legal assistance and cooperation issues. Each of these topics will be addressed in these materials.

International criminal law is a body of international law designed to prohibit certain categories of conduct commonly viewed as serious atrocities and to make perpetrators of such conduct criminally accountable for their perpetration. Principally, it deals with genocide, war crimes, crimes against humanity, as well as the crime of aggression. This article also discusses crimes against international law, which may not be part of the body of international criminal law.

"Classical" international law governs the relationships, rights, and responsibilities of states. Criminal law generally deals with prohibitions addressed to individuals, and penal sanctions for violation of those prohibition imposed by individual states. International criminal law comprises elements of both in that although its sources are those of international law, its consequences are penal sanctions imposed on individuals.

An international crime has been broadly defined as “an act universally recognized as criminal, which is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the state that would have control over it under ordinary circumstances”. (3) Today, international criminal liability exists at least in respect of war crimes, crimes against humanity, genocide and torture. Other crimes such as terrorism-related crimes, enforced disappearances and extrajudicial killings can arguably also be considered international crimes but will not be dealt with here.

War crimes refer to “grave breaches”, as specified in the 1949 Geneva Conventions and Additional Protocol I, along with other serious violations of international humanitarian norms applicable in international and non-international armed conflict (see Qualification of armed conflict paper). Despite the criminalization of acts committed in non-international armed conflicts, important differences remain between the laws applicable in such conflicts and those applicable to international armed conflict, as evidenced by the shorter list of war crimes that the ICC can prosecute in the context of non-international armed conflicts (see Article 8 of the 1998 Statute of the ICC).
Crimes against humanity encompass serious attacks on human dignity or a grave humiliation or degradation of human beings, the Rome Statute requires that they be committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Such crimes can be committed in time of peace as well as during an armed conflict (see article 7 of the 1998 Statute of the ICC). Genocide covers acts such as murder or serious bodily or mental harm, committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.

Torture is generally considered to be an aggravated form of inhuman treatment. Torture is not only prohibited as a war crime or when it is part of a widespread or systematic practice amounting to a crime against humanity but is also prohibited as a single act.

Under common Article 3 of the 1949 Geneva Conventions and the 1998 ICC Statute, torture is outlawed as a war crime or a crime against humanity with regard to both state actors and non-state armed groups.

Following World War II, early efforts to establish a permanent international criminal court to ensure individual accountability for international crimes did not go far as a result of Cold War tensions. Moreover, the system instituted by the 1949 Geneva Conventions to punish ("repress") grave breaches of international humanitarian law through national courts was not put in practice. A breakthrough came in 1993 and 1994 with the establishment by the UN Security Council of two ad hoc international criminal tribunals: for the former Yugoslavia and Rwanda.

Other criminal tribunals with diverse international dimensions have since been set up in Cambodia, East Timor, Kosovo and Sierra Leone, though these courts have also included national legal elements in their establishment and implementation. These "internationalized" or "mixed" tribunals are established with the consent of the state on whose territory the atrocities were committed.

A further landmark in the international justice system occurred in 1998 with the adoption of the 1998 Rome Statute for an International Criminal Court. The ICC, which began to operate in 2002, has a mandate to try cases involving war crimes, crimes against humanity, and genocide. The Court is intended to complement existing national
judicial systems and can exercise its jurisdiction only if national courts are genuinely unwilling or unable to investigate or prosecute such crimes. (Article 17 of the 1998 Rome Statute of the ICC)

The notion of transitional justice comprises a range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses in order to ensure accountability, serve justice, and achieve reconciliation. It implies that the role of justice in situations of transition is different from its role at other times. Transitional justice can take many forms. However the importance of justice as a means of transition to peace and reconciliation takes centre stage, whether the means used are punitive such as criminal trials or restorative such as truth and reconciliation commissions. This concept emerged in the mid-1990s and seems to have originated in a desire to return elements of justice to the centre of the transition process, as a precondition for true peace.

As international criminal law is a subset of public international law, the sources of ICL are largely the same as those of public international law. The five sources of ICL used by international and hybrid criminal courts generally are:

1) treaty law;
2) customary international law (custom, customary law);
3) general principles of law;
4) judicial decisions (subsidiary source); and
5) learned writings (subsidiary source).

The sources of law can sometimes overlap and have a dynamic relationship. For example, a treaty can reflect, become or influence the development of customary international law and vice versa. A judgement of an international court may influence the development of treaty and customary international law. Generally, international and hybrid courts use treaties and custom as the main sources of international criminal law, in addition to their own governing instruments (which may include treaties).

The five sources of ICL roughly correlate with the classic expression of the sources of international law contained in Article 38(1) of the Statute of the International Court of Justice (ICJ):
a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
b) international custom, as evidence of a general practice accepted as law;
c) the general principles of law recognized by civilized nations;
d) [...] judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.(7)

The relevance and importance of these sources in national criminal jurisdictions differ between countries. For example, in some jurisdictions, the direct source of international criminal law is national legislation incorporating ICL. In this instance, treaty and customary international law cannot be used as a direct source. Conversely, some courts can apply treaty law but not customary international law, while in others, custom can be applied as well. Moreover, even if national legislation is the direct source of the applicable law, international criminal law treaties, commentaries on them and international judicial decisions are often used as aids to interpret the national law and are sometimes considered persuasive (not binding) precedent.(8)

Different courts may apply these sources in different ways. For example:
• National courts may not find it necessary to refer directly to international law sources when the content and meaning of the applicable national laws (including incorporated or otherwise applicable international law) are unambiguous.
• National legislation and judicial decisions can be evidence of customary international law—but they are not directly applied by international courts. Indeed, the ICTY Appeals Chamber has held that "domestic judicial views or approaches should be handled with the greatest caution at the international level, lest one should fail to make due allowance for the unique characteristics of international criminal proceedings".

At the ICC, the Rome Statute, Elements of Crimes, and Rules of Procedure and Evidence provide the primary sources of law.(9) Treaties and principles and rules of international law are applied once the primary sources have been utilised, and finally, general principles of law, including relevant and appropriate national laws are considered.(10)

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[7] CRYER, supra note 1, at 64-84.
Administrative reform in Romania and Europa. Between wishes and possibilities

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Abstract
The real administrative reform is certainly linked with the idea of local good governance and administrative or financial decentralization, both consisting in a big and real problem for our actual authorities. In Romania, the fundamental objectives underlying the administration reform are the following: the approximation of the national administration to the citizen, decentralization of public services, the increasing efficiency of public administration. Approach of national government to the romanian citizen is achieved only through a real anchoration of the authorities in socio-economic life of all citizens, in maximizing the transparency of decision-making, restructuration of methods of communication with the population that might be affected by its decisions and administrative acts.

Keywords: administrative reform, efficiency, decentralization, public authorities, European Council

1. Introduction

In October 2012 it took place the 23rd Session of the Congress of Local and Regional Authorities of the Council of Europe that saw not only the renewal of the Congress membership for a longer term of four years and the election of the new Congress leadership, but also the adoption of its priorities for 2013-2016. The Congress is the Council of Europe’s assembly of local and regional representatives. It speaks on behalf of over 200 000 local and regional authorities and ensures the participation of their elected representatives and the citizens in building a Europe that respects democracy, the rule of law and human right.. [1]

In many Council of Europe Member States, the crisis has increased the commitment to reform and restructuring of the different levels of local and regional authorities. While such reforms may in some cases prove to be necessary or useful, they should always be carried out in the interests of local inhabitants and in compliance with the commitments entered into by States under the European Charter of Local Self Government- [1, Ibidem].
2. Public administration in post communist countries and its image in European Council view

As on the ongoing political and economical transition in the Central and Eastern Europe countries CEE moves into the new century the most advanced countries in the region are preparing to deal with their prospective entry into the European Union. More a process than an event join the EU is likely to place heightened demands on public administrations throughout the region. Indeed, in the past the multiple phases of EU accession—prenegotiation, negotiation and membership have called for strong administrative capacity on the part of acceeding governments. [2,1].

For many countries—Romania, Bulgaria, Lithuania, Latvia, not to mention Serbia, Ukraine, Moldova, and so on—the insistence on standards that most of these countries can hardly afford to implement creates a danger that the European Union will not be seen as supportive of reform at all, but as holding party governments to account for a raft of policies that they cannot achieve. It is also worth noting that as the economic situation in countries such as Romania remains ill reformed, their political elites find themselves torn not only between their domestic and their international constituency but also between the International Monetary Fund (IMF) and EU. The costs and scope of the Union’s acquis communautaire are huge, requiring the buildup of state administration and its capacity to process these laws [3, 68].

Development administration has therefore suffered from the chronic ailments of dependency instability and policy confusion. To reform an organize their administrative systems for both development and service delivery many less developed nations need to break the chains of dependency on exogenous determinants establish a stable political system that can sustain the courses of reform and formulate clear policies that will steer actions toward desired goals. [4,2].

The real administrative reform is certainly linked with the idea of local good governance and administrative or financial decentralization, both consisting in a big and real problem for the actual authorities. Good local governance is not just a matter of creating the right legal political and institutional framework. It is also about actively building local authority capacity – particularly the understanding and skills and the ability and desire to learn. Framework and capacity – these are the two sides of a coin.
Effective local government requires good leadership and strategic management, good service provision, good community participation. Local self government denotes the right and the ability of local authorities within the limits of the law to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population. [5].

In Romania, government capacity to formulate policies and implement them has direct impact on citizens. The relationship between government and the population becomes increasingly complicated, political decisions go through several levels of government, the political problems must solved in an environment in constant change which needs cooperation and coordination, both locally, nationally and internationally. Citizens face this process and feel that they have less and less influence on decisions that are taken at local and national level, considering that there is a democratic deficit [6,17].

Guy Peters – author of the article Government without Government-Rethinking Public Administration, published in 1998 in Journal of Public Administration, Research and Theory, classifies most of the theoretical literature into three broad perspectives on administrative reform and reorganization - purposive models, environmental models, institutional models. In the political science and public administration approaches to this set of models governments and political/administrative elites detect innovations or pressures in the environment that requires government response. [4,4].

In Romania, the fundamental objectives underlying the administration reform are – the approach of the national administration to the citizen, decentralization of public services, the increasing efficiency of public administration.

Approximation of national government to the citizen is achieved only through a real anchoring of the authorities in socio-economic life of all citizens, in maximizing the transparency of decision-making, restructuring of methods of communication with the citizen that might be affected by its decisions and administrative acts. Unfortunately, although in recent years the political class has struggled theoretically to accelerate the reform of the administration in Romania, for example by initiating a project on sharp decentralization and regionalization of our country all these initiatives remained only at the design stage, which is ultimately the result of a deficient managing.
of direct communication with all citizens, of its actual involvement in political and administrative decisions and also a warning shot glanced continually to the local or regional authorities that seem to have forgotten that their main role is to be "in service" to their citizens and to bring out the best collective interests.

Social collectivities constituted in territorial administrative units have specific needs that make their cause a common one to all their members and so all local interests are better known and accomplished by local authorities, which increases the spirit of individual initiative and emphasize the spirit of freedom. [7,98-99].

To solve the distribution of powers between central and local administrative authorities, the governments increasingly invoke the subsidiarity principle as a goal of effective political action in achieving this option, subsidiarity having dual nature, both political and legal. The principle of subsidiarity is a political principle, aims to approximate as closely as possible to the citizen, being presumed that the most effective settlement or realization of their interests is ensured to those faced with managing their local problems by themselves, through the means available. Also, according to this principle, the ineffectiveness of local action in achieving local needs, justifies state interference in local issues. [7,Ibidem].

In fact, subsidiarity became the leitmotif of EU decision making after the political crisis over The Maastricht Treaty in the early 1990s. By the end of the decade it was firmly established as a norm that all EU decisions had to respect. In particular German, British and French preferences had converged as never before in the Union history around a model in which as many decisions as possible were taken at the national or sub national level. [9,11].

Even the concept is extended to include subnational public entities subsidiarity remains a division of competences within the public sphere. While vertical subsidiarity concern the distribution of powers among different layers of public sphere horizontal subsidiarity could be concieved like a sort of division of labour between public sector and civil society [9, 16].

Civic Engagement and Citizenship Leadership Building suppose a democratic culture Empowerment. So they develop a culture of respect and respect for diversity, promote civic responsibility among local people, make best use of use public hearings,
citizens’ forums, consultations and surveys; - use referendums on important issues requiring choices, use conflict mediation mechanisms where necessary; use law to protect the rights and entitlements of all groups, ensure women’s participation; give special support to marginal groups. [10].

In our country, given the scale and importance of decentralization process in 2013, the Ministry of Regional Development and Public Administration coordinated the draft law on the establishment of measures to decentralize the powers exercised by some ministries and specialized bodies of public administration central and measures on public administration reform.

Incidentally, in the substantiation of Government Decision approving the general decentralization strategy between 2015-2016 it was indicated that increasing local autonomy is a necessary step to bring public services closer to citizens and to use more existing resources judiciously. Romanian Government proposed through this strategy to help modernize public administration and to offer more efficiency to the allocation of competencies came from central government.

In fact, each level of government maximizes the welfare of its constituency. This implies that different layers of government always act benevolently. They do not pursue their own interest or fall victims of different lobby groups. Moreover, the implementation of policies may be more or less costly but policy design involves no transaction costs nor are there costs of policy learning. [11, 21].

In some countries, important changes in basic laws on local government fall short of implementation or remain ineffective because there is insufficient will at national level and because there are inconsistencies in the legal framework. We consider as being specific objectives: conduct an in-depth analysis of the local government legal framework to identify possible internal inconsistencies and point to changes required in basic and sectoral legislation, and plan legislative reforms in a rational and comprehensive manner and introduce them with timely implementation measures. [12].

The influence of EU enlargement and accession process has also led to a parallel policy interest in regionalization and the establishment of EU regional divisions mainly for statistical purposes [13, 4].
In terms of decentralization and its effects on administration reform assuming new responsibilities through decentralization involves planning, technical management, finance, human resources development of new service operating in this program. It appears as a complex phenomenon involving various geographical entities, stakeholders, governments, private sector, civil society, social sectors represented by all forms of governance: political, social, the cultural, environment. [14, 90].

Thus seen, decentralization appears as a mixture of administrative, fiscal, functions, relationships. We should not see decentralization as an end in itself but as a means of creating an open and effective local governance, as a state of affairs based on principles of freedom, respect and participation. And, above all, it appears as representing the trust of citizens by recognizing their business management capacity in fullfilment of local interest- [14, Ibidem].

The importance of decentralization in the success of public sector reform is an almost universally accepted element. In many countries central governments have resorted to decentralization and have adopted either the European Charter of Local Autonomy or the equivalent thereof global, World Declaration of Local Autonomy of the International Union of Cities and Local Authorities (IULA). [15,13].

As reflected in contemporary doctrine the benefits of decentralization and boosting administrative reform by implementing these benefits to local authorities are evident, they involve, inter alia that the measures and decisions can be made quicker by local authorities as they do not longer need to wait for permission to do so from the center, material and financial resources and even manpower can be used more efficiently and meet priority needs, which local authorities know and feel" even better than the central government, citizens participation (by elections)to designation of local authorities that emphasize their sense of responsibility and initiative in the public life of "city" and leads them to find solutions to the problems facing [16, 337].

Decentralisation is closely related to the transformation of public services. Redefining responsibilities refromarea services is the first step in reformation of public sector [17, 17.]
Decentralization of public services is, in fact, in recognition of a certain autonomy and granting legal personality of some public service institutions organized in administrative-territorial units [18,202].

In the Romanian doctrine, greatly influenced by the French one, it was considered that government represents all public services and that public service is the mean by which the administration operates. Therefore, the public service is done either by state or private structures, and so, the State is free to sustain free enterprise. [19,193].

Although not covered in negotiating chapters distinct, local public services can be found through their problems in chapters as: environment, energy, transport, internal market, budgetary policies. Advancing decentralization in most European Union countries created a favorable context for the development of local enterprises. On the one hand, increased responsibilities entrusted to local and suppression guardianship explains recourse to such enterprises, designed as a mean to the local authorities (in Germany, Belgium, Sweden, Italy, Spain, for example). [29, 17].

In his attempt to make even a step further on decentralization Romanian Government has assumed responsibility for the Act establishing measures to decentralize the powers exercised by some ministries and specialized agencies of the central government, as well as some measures to reform public administration, law, however, was declared unconstitutional by Decision. 1/2014 of the Constitutional Court of Romania, criticisms made this text regarding both internal and external.

In its criticism, the Government, however, said there could not be detained alleged violation of art. 120-122 of the Constitution invoked by the parliamentar group that raised the objection of unconstitutionality, since the principle of subsidiarity, which requires that decisions affecting the community are taken by representatives of the closest community members, is added another criterion, cumulatively, named the existence of administrative capacity of the authority. Therefore "it is obvious that strategic planning should aim, at least in the first phase, one area larger as that of a county level, allowing coordination, coherence and harmonization of local interests in order to achieve objectives joint development-
The Court invoked that the transfer of powers to the local authorities must have regard to their administrative capacity to manage such powers transferred and noted that according to art. 2 letter l) of the Framework Law no. 195/2006, decentralization is the transfer of administrative and financial competence of the central government level to the local government or the private sector. In other words, decentralization must be based on recognition of local interest, distinct from the national one, as territorial administrative units have organizational structure, functional and also their own patrimony, affected to the local interest [21, para 159].

The admission of the exceptions by the Constitutional Court showed a realistic portrait of the Romanian actual society and it meant, in fact, a big step backward in terms of administrative reform and which were the gaps of central government were gaps in the implementation of the new measures at local government level (foundation skills transfer in the decentralization process had to be realized based on some impact analysis and its realization is also based on a specific methodology). Or just the failure of the relevant impact studies demonstrated once again the break in the communication between the governed and the governing, between central and local authorities.

In terms regarding administration reform and implicitly public function reform in Romania and Europe it is obvious that most governments have to deal with a changing governance environment and have to create new institutional mechanism or adapt and develop existing ones to support this new situation. The number of public service reform programmes undertaken in recent decades bears witness to the fact that capacity development is by no means exclusively an issue for developing countries [22,4].

Good governance—the base of the administrative reform is an ideal which is difficult to achieve in its totality. However, to ensure sustainable human development, actions must be taken to work towards this ideal with the aim of making it a reality[12]. Offering public sector reform policies might be off heavily in the short run. At the same time, when public sector reform processes enter a garbage can stage the risk for the participative politicians are considerably increased as the electorate will ask questions about the outcomes at least in the long run.. [23, 13].

IN EU post-comunist states there are moves to strengthen democratic controls over state administration to increase its accountability to democratically elected bodies.
Efforts are underway which aim at the desconcentration and descentralization of the bureaucratic apparatus. Anyway, it is universally accepted that public efficiency, effectiveness and flexibility must be increased. [24, 114], [23, 4].

Administrative reform suffered all these years from a chronic lack of strategic vision at central governmental levels. It is still clear the lack of clear criteria that should have a decisive influence upon the medium and long-term evolution of administrative institutions and practices. [25, 57].

Concern with the new role of the state and the kind of public service required to discharge this role has brought the service under the spotlight in countries over a wide economic range. Reform provisions affect persons and organizations. They are almost of necessity threatening to some often those least able to deal with threat or with least opportunity for change of career. [22,4].

Key Management Issues have been classified in the following manner – institutional environment, triggers for reform initiatives, explicit political support, a clearly defined goal and strategy, a lead agency with sufficient credibility prestige and access to power, effective communication, consult between all actos and stakeholders, full involvement of the ministries. [22,10].

The indifference with regard to the public, arrogant behaviour and servile attitudes, and slowness that were common during the communist era are still often met in the activity of public servants in the region. A bureaucratic attitude and an individualist culture are the main threats to the public interest. Frequent changes of ministers have led to unstable working conditions and the result is a lack of motivation and indifference from public servants side towards results of their activity. Despite these features, some progress in public service ethos is evident. Changes have mainly occurred as a result of external pressures, in particular the EU enlargement process, and increasing demands from the public [25].

The quality of democracy also depends on the trust that citizens place in their institutions and on their participation in the democratic process. As local authorities are closest to the grassroots, they are best placed to take positive action and encourage participatory democracy. The involvement of citizens and the development of dialogue with their elected representatives are vital at all levels of governance. This dialogue
must include all local residents without exception, in particular groups which currently feel excluded – young people, migrants, foreign nationals, minorities, Roma, etc.- in the best interests of both the majority and the minority of the population. [26].

2. Conclusions

Obviously, the lack of proper use for human resource had negative consequences like: maintenance of negative values, based upon rigidity and lack of initiative specific to the communist regimes, problems related to the professionalization of public service, major communication issues both at internal (inside the organization) and external (towards the citizens) level, the low quality of the service provided in the public administration structures, lack of corporative spirit at the level of the civil servants body [25, 69].

Therefore, through their efforts, both EU and local authorities should work towards transforming civil service reform and local government from the former communist states in a priority axis of their work. It is certain that in terms of public functions will have taken into account the numbers of officials in each state, the rights and obligations to local, predictable demographic change [27,167].

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European maritime policy implementation in local and central administration

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Abstract
Since ancient times, the mastery of the seas was a condition for obtaining power and influence. Although this concept was set out in the late nineteenth century, it continues to be applicable to current geopolitical realities under which a state positioning near a sea continues to be an advantage for both its development and the neighboring region.

The Europe's maritime interests are mainly related to the welfare, prosperity and security of its citizens and communities. About 90% of the EU's external trade and 40% of its internal trade relies on maritime transport. The EU is the third largest importer and fifth largest producer of fishery and aquaculture worldwide. More than 400 million passengers pass through EU ports every year.

At the same time, the EU must assume and vulnerabilities in the area, such as bad economies, trafficking in arms, drugs and persons, illegal immigration or frozen conflicts and thus to try to help stabilize the region.

The EU is based on open and secure seas and oceans in order to be able to operate free trade, transport, tourism and ensure ecological diversity and economic development. In the absence of protection against a wide range of threats and risks, maritime, seas and oceans can become arenas for international conflicts, terrorism or organized crime.

In practical terms the European Union needs the Black Sea area as a stable area where the “balance of power” be a priority. We must not forget that the Black Sea is home to the interests of the Russian Federation (with historical and contemporary meanings), and Turkey (whose attitude is not always predictable, but are between certain parameters of the system). In this context Romania as a EU member state, can create projections and interests of the European Forum closer to the Black Sea and beyond.

Unfortunately Romania does not lead an active foreign policy bilaterally with countries in the region, relying only on major schemes at European level. An ideal case would be continued support for European Union ideas and projections on the Black Sea and at the same time proactive in bilateral relations in the Black Sea. The European Union has provided a framework and Romania should use this important resource.

Keywords: maritime interests, maritime security, common security and defense policy, threats, piracy, flag, maritime security strategy, CBC (cross border cooperation).

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1. Introduction

The marine environment decisive influence social development of all states and nations. Over 70% of Earth’s surface is covered by water, the source of wealth of biological, chemical, mineral, energy and raw materials. The oceans have remained a huge field of action, business, diplomatic and military, opened the stronger and bolder.
Undoubtedly, this beginning of the millennium, the radical changes it own, is not quiet for no country in the world. During this period, many countries are reviewing their military doctrines, defense laws and concepts of military art content yet and its legislation to European principles and norms.

Romania is reflected in its turn in these countries and with the development of new normative acts of central and local administration is reconsidering its contemporary military phenomenon, it addresses based on tradition, some current concepts of military science, reads some terms of strategy, operational art, and tactics of the armies terminology consistent with NATO.

Through the decision to EU enlargement taken at Helsinki, Europe has opened a new development model based not on a country's potential, but that of an entire geographic regions.

The enlargements of the past decade NATO and the European Union have turned the Black Sea into a "limes" of Western safety and security space.

For the EU Black Sea region represents a distinct area of implementation of the European Neighbourhood Policy (ENP), which aims to establish its borders a., circle of friends, "as he called Romano Prodi, the contents of which should be respected and promoted, a greater or lesser extent, principles, values and its modes of governance. If we accept that the latest enlargement eastwards has meant imposing control on Union neighbors marked by instability and poverty, implementation of the ENP means extending this process.

In the Black Sea are a few "key positions", which customizes, would give special value, especially decisively contribute to the overall value and importance of this area. These "key positions" are: system Straits (the Bosporus, Dardanelles - linked by Marmara Sea); Crimea; mouth of the Danube (Danube estuary) and the continental shelf in front of the Romanian seaside.

Since 1 January 2007, with the accession of Bulgaria and Romania, the EU's borders have reached the Black Sea and therefore, "the time has come for greater involvement of the European Union" in the region. Therefore, once the Black Sea riparian states became EU members, thus increased and pressure for a European
approach to relations in the region so as to establish a comprehensive framework conducive to proactive initiatives and to open the way to achieve them.

2. Security and maritime insecurity of the European Union

   The reality of current European geopolitical and geostrategic environment and its development trend highlights at least three alternatives:
   - achieve full integration, while the gradual inclusion of the Eastern and Central European structures pan-Euro-with the objective of developing a united Europe, with likely beneficial consequences on security and stability of the Black Sea area;
   - instability westward expansion by emphasizing economic differences, technological amplify risks and threats to security and stability, with possible objective, even resuming arms race or the division of the continent (through the possible disintegration of the EU);
   - intensifying control of areas of interest through energy blackmail, along with the diversification of research and taking possession of the energy deposits in the Black Sea.

   On these three alternatives are reflected:
   - the current economic crisis (ie its effects) if is extended, can generate a division of the European continent, despite the efforts of the motor of Europe, Germany and France;
   - the unpredictable effects of natural processes on a global (warming, desertization, natural disasters, floods, earthquakes, natural resource depletion, etc.).

In terms of the maritime security, the EU's major strategic interests are:
- protecting the EU's global supply chain, freedom of navigation, the right of innocent passage of ships flying the flags of EU Member States and the safety and security of seafarers and their passengers;
- the EU protection against threats to maritime security, including protection of critical maritime infrastructure such as ports and terminals, offshore installations, underwater pipelines, telecommunications cables, scientific research and innovation projects and other economic activities at sea;
- conflict prevention, peace-keeping and strengthening international security through cooperation with international partners. They promote international maritime
cooperation and rule of law, facilitate maritime trade and contributing to sustainable development;

- combat illegal, unreported and unregulated (IUU);
- effective control of the Union’s external sea borders to prevent illegal activities.

Maritime security threats pose a risk to European citizens and are detrimental to the EU's strategic interests. Threats effects are felt in many policy areas. The phenomena of social, economic and environmental, such as climate change, degradation of marine ecosystems and natural resource depletion affecting coastal areas of EU Member States and other countries, seas and oceans, have direct and indirect consequences on maritime security.

They were identified following maritime security threats:

- maritime territorial disputes, acts of aggression and armed conflict between states;
- proliferation of weapons of mass destruction, including threats of chemical, biological, radiological and nuclear;
- cross-border crime and organized crime, including trafficking in arms, drugs and human trafficking by sea and illegal, unreported and unregulated fishing;
- potential environmental consequences of illegal discharges and accidental marine pollution;
- maritime piracy and armed robbery at sea;
- the potential effects of natural disasters, extreme weather and climate change on maritime transport system and in particular the maritime infrastructure;
- terrorism and other deliberate unlawful acts against ships, goods and passengers, ports and port facilities, and critical maritime infrastructure, including cyber attacks against information systems;
- conditions at sea and in coastal, lowering potential growth and create jobs in the marine and maritime sectors.

To respond to the risks and threats arising in the course of time, the EU has initiated a number of measures to achieve better maritime governance based on increased Member States cooperation.
3. The EU Strategy for the Danube Region (SUERD)

The EU Strategy for the Danube Region (SUERD) is a Community mechanism of cooperation of the countries of the Danube basin for economic and social development of the Danube macro-region by strengthening the implementation of policies and legislation in the EU region. SUERD is the second EU macro-regional strategy, taking the cooperation model developed by the EU Baltic Sea Strategy (adopted in 2009) with adaptation to the specific Danube region.

SUERD is a political initiative of Romania and Austria, promoted by a joint letter to Prime Minister level (June 2008) and to the President of the European Commission. The European Commission issued a Communication on the EU Strategy for the Danube Region and Action Plan, presented on 8 December 2010 and adopted by the EU General Affairs Council (foreign ministers) on 13 April 2011. The European Council (heads of State or government) Danube strategy endorsed on 24 June 2011.

The documents discussed and agreed at EU level and which form the core of regional cooperation in the Danube is making concerted efforts of the littoral states. These, together with the European Commission analyzed and assessed the real needs of the Danube region and proposed a document agreed at political and technical. The Danube Strategy is a project of the European Union are invited to participate and non-EU countries in the Danube basin.

The governance ensures Danube Strategy:

a) at European level by:

- The Council of the European Union and the Group of high-level officials of the EU Council, which provides general policy orientation;
- European Commission (DG Regional Policy and Urban - DG Regio), which serves as policy coordination, monitoring, reporting and evaluation;
- The national coordinators, who, on the one hand, ensure national coordination and propose practical aspects, and on the other hand shall consult and coordinate among themselves to macro-regional level to promote consistency between the priorities and governance models participating states ;
- The coordinators of priority areas and groups directories that ensures the identification of projects that implement the Strategy Action Plan.
b) at national level - the national enforcement structure, developed by the Ministry of Foreign Affairs as the national coordinator, National esteForumul and include, according to the matrix for the implementation of the Danube Strategy following levels:

- Ministerial Steering Committee - chaired by the Foreign Minister, who is also executive president of the National Forum, and composed of ministers who coordinates the priority areas of the strategy (vice-presidents: Minister of Regional Development and Public Administration and the Minister for European funds);
- National Coordinator and Office SUERD Danube Strategy MFA - horizontal coordinating role;
- The interministerial working group - chaired by the National Coordinator SUERD, consisting of representatives of ministries at director general or director, shall meet regularly seeks work internally and implementing the priorities in guiding groups abroad;
- The Advisory Board which includes representatives of the actors involved (central and local government, business, academia and universities, civil society);
- thematic working groups of the Consultative Council.

4. The Maritime Security Strategy U.E. (EUMSS) - for a global maritime domain and safe

An EU strategy on maritime security whose "Action Plan" was adopted in Brussels on 16 December 2014 by the General Affairs Council, facilitates strategic approach, cross-sectoral maritime security. The cornerstone of this strategy is the United Nations Convention on the Law of the Sea (UNCLOS) and existing treaties and laws is the starting point for EU coordination and development of additional synergies with Member States and between them and cooperating with partners international.

The cooperation with existing international and intergovernmental initiatives must be reinforced and developing a coordinated approach on maritime security also increases the potential for growth and jobs as foreseen in the EU strategy for growth - Europe 2020.

The objective of the strategy is to facilitate cross-sectoral approach on maritime security. This could be achieved by pursuing the following four strategic objectives:

- optimal use of existing capacities at national and European level.
promotion of effective and credible partnerships in global sea.

• use cost effective.

• strengthening solidarity statelelor States.

A strategy that aims to achieve better maritime governance should contain four fundamental principles:

• a cross-sectoral approach: all partners from civil and military authorities (law enforcement authorities, ensuring border control authorities, customs authorities, the authorities responsible for fisheries inspection, environmental authorities, supervisors transport maritime authorities responsible for research and innovation, naval forces) from industry (shipping, private security, communications technology, supporting capacity building, social partners) need to work better together;

• functional integrity: predictability with regard to the mandate, responsibilities and powers of each. Emphasis should be placed instead on identifying specific functions or tasks that can be better achieved through cooperation with other stakeholders;

• maritime multilateralism: The EU is stronger and its interests are best protected when international partners with one voice.

• compliance with the rules and principles: promoting respect for international law, human rights and democracy, as well as full compliance with the UN Convention on the Law of the Sea and the objectives enshrined therein, considering them a key to improved maritime governance based the rules.

For better cooperation, the aforementioned principles are applied to five lines of action, as follows:

• external action.

• maritime situational awareness, surveillance and exchange of information.

• capability development and capacity building.

• managing risks, protecting critical maritime infrastructure and crisis response.

• research and innovation, education and training in maritime security.

A maritime security strategy needs global partners in research and development. Horizon 2020 is open to international partners. Joint Research Centre (JRC) has established cooperative relationships with international partners in research and development for specific research activities related to maritime surveillance.
All the measures presented in the form of strategies or action plans are intended to facilitate a cross-border and maritime security of the spiritual respect for international law, human rights and democracy, all having as a starting point the UN Convention on law of the Sea, which means better governance based on rules.

5. Maritime security in Romania

Unlike maritime surveillance sovereign territory of Romania, which is the responsibility of the Border Police, surveillance of airspace sovereignty in the territory of Romania (including sovereignty over the maritime space of Romania) is by law the responsibility of the Ministry of National Defense.

The following three are of particular importance for this area:

- maritime - surveillance essential for safe and secure use of marine space;
- spatial planning maritim - a key planning tool for sustainable decision-making;
- source of comprehensive and accessible data and information.

From a legal perspective, there are a number of normative acts regulating reference to activities related to maritime domain awareness.

Successful execution of missions the Navy is definitely conditioned maritime situational awareness, but that is not addressed in terms of doctrine.

A certain equivalence of the concept of maritime domain knowledge is provided by naval surveillance, which is mentioned as one way of action for ensuring the security of Romania’s contribution Naval Forces in peacetime. In addition, for the mission to promote regional and global stability, Navy mutual information on the situation will change naval naval forces of other countries.

For the exchange of maritime information at national, industry data and information may be held by a wide range of institutions, agencies or private companies.

I present below some government institutions, civil, military and private functions, responsibilities or interests in supervising maritime:

- a) Ministry of Defence (The military of Romania)
- b) Ministry Administration and Internal Affairs (Border Police) [1]
c) Ministry of Transport and Infrastructure (Romanian Naval Authority [2], Maritime Rescue Coordination Center at Sea [3],[4], National Company Maritime Ports Administration);
d) Ministry of Environment (National Committee of the coastal zone, with responsibilities in providing integrated coastal zone management [5] and environmental protection);
e) Ministry of Public Health;
f) Ministry of Justice and civil liberties;
g) Ministry of Economy;
h) Ministry of public finances;
i) Romanian Intelligence
j) Romanian Foreign intelligence
k) National Customs Authority ; [6]
l) The National Agency for Fisheries and Aquaculture ;[7]
m) National Agency for Mineral Resources;
n) Private companies: port operators, ship owners, shipping companies, crewing.

In order to achieve maritime domain knowledge is intended to ensure sufficient information exchange between all actors in the maritime domain, respecting both the need-to-know (need to know) and on the need for dissemination of information (need to share).

In terms of the legal and doctrinal knowledge of the maritime domain is not clearly substantiated nor addressed in legislative and doctrinally. The issue of maritime surveillance and maritime domain knowledge in Romania is on the agenda of the institutions with responsibilities in the management of the maritime domain, both conceptually and technologically impossible to create a comprehensive knowledge of the maritime domain without cooperation between all actors playing a role in the field, be they military or civilian, government or private, national or international.

CONCLUSIONS

Despite having a well developed framework with regard to international standards of safety at sea and protection of the marine environment - most of the conventions listed in the International Maritime Organisation (IMO) and the International
Labour Organization (ILO) - More countries and shipowners continue to break the rules, thus endangering the crew and the environment and benefiting from unfair competition.

Therefore many states, including organizations such as the European Union, have adopted special policies in maritime safety, aimed at ensuring that all vessels flying their flags national or enters one of its ports comply with international safety standards.

Improving maritime security cooperation EU action is large, but extremely important. The EU needs to strengthen cross-sectoral cooperation response to maritime security threats. In this cooperation involved numerous and diverse partners at national, EU and international level. It is a long term process, based on existing working methods and achievements, which will be an evolution rather than a revolution.

I retained national approaches, especially international ones on international maritime law as the main tool for regulating legal order for the seas and maritime transport securing implementation techniques. These can be grouped into legislative initiatives whose importance is crucial to the security of ships to transport, trade routes and ports. Whatever the chosen approach, international maritime law remains the main legal instrument that reveals the rights and obligations of States bordering seas and oceans, but also in countries that have not landlocked.

Due to its geostrategic and important reserves of oil and gas, the Black Sea littoral states is a land of opportunity waiting to be exploited: energy, transport corridors that cross the region from east to west and from north to south, all they provide scope for economic growth countries in the region, and vital connections to the economic centers of Europe.

The Black Sea region is important for the European Union and increase maritime security solutions are often compared with union policies manifested in other areas, the Mediterranean or the Baltic. Those models, however, had other approaches and other regional conditions of application. On the Black Sea security cooperation has developed slowly after the Cold War. Magnitude taken by asymmetric threats in recent years, with particular reference to maritime space, imposed with the Black Sea countries need to take concerted action to counter it.
All the measures presented in the form of strategies or action plans are intended to facilitate a cross-border and maritime security of the spiritul respect for international law, human rights and democracy, all having as a starting point the UN Convention on law of the Sea, which means better governance based on rules.

At the same time, it has expedited the national legislation harmonization with international maritime and river, specific EU and NATO. Due to its Danubian-Pontic region, unique in Europe, Romania has a special geographical situation. Danube Road linking Central and Eastern Europe with the planetary ocean through the Black Sea, of Romania gives special responsibilities so requires a common action strategy, sea and river, to be able to permanently fulfill our role turntable between Europe and Asia.

The beneficiaries of such security strategy encompassing all regional and regional initiatives will be: public administration at both the central and the local level through pilot projects and regional development through the CBC; Civil society organizations (NGOs) and some of SMEs that can devein benefiaiare Management consulting services and development and institutions of public order, security and defense of Romania.

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[6] Decision no. 532 of 30 May 2007 on the organization and functioning of the National Customs Authority

[7] Decision no. 865 of 28 July 2005 on the organization and functioning of the National Agency for Fisheries and Aquaculture
Analysis of Directive 2013/40/EU on attacks against information systems in the context of approximation of law at the European level

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Abstract:
In this article is carried out an analysis of one of the most important legal instruments at the level of the European Union in the field of fight against cybercrime: Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA. This legal instrument in the fight against cybercrime has as subject matter to establish minimum rules concerning the definition of criminal offences and sanctions in the area of attacks against information systems. Also, Directive 2013/40/EU aims to develop a legal framework to prevent such offences and to improve cooperation between law enforcement bodies. The article presents and analyzes the five categories of offences committed against information systems which are stipulated in Directive 2013/40/EU on attacks against information systems.

Keywords: information system; computer data; attacks; cybercrime; Directive 2013/40/EU.

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1. Introduction

European Union has a limited ability to legislate in the area of criminal law, which has always been seen as a symbol of national sovereignty. Although European Union is, first of all, an organization of commercial policies, it has limited competencies in regulating criminal law. This situation is due to the fact that offence is an obstacle to trade between the Member States of the European Union, while for a stable economic and social development it is needed a more effective judicial cooperation in criminal matters.

The provisions of Article 83 paragraph 1 of the Treaty on the Functioning of the European Union [1] allow the Member States of the European Union to adopt directives that establish the „minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis”. The offences of particularly seriousness, with a cross-border
dimension are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. The European Union Council unanimously decide, after the approval of the European Parliament, whether other offences may be added to the list of offences mentioned above, taking into account the evolution of crime.

Another possibility is stipulated in Article 83 paragraph 2 of the Treaty on the Functioning of the European Union concerning offences which are not particularly serious:

„If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76”.


In conformity with the provisions of Article 1 of Directive 2013/40/EU [5] of the European Parliament and of the Council of 12 August 2013 on attacks against information systems, the subject matter of this legal instrument is to establish minimum rules concerning the definition of criminal offences and sanctions in the area of attacks
against information systems. Also, this Directive aims to develop a legal framework to prevent such offences and to improve cooperation between law enforcement bodies.

In Article 2 of the Directive are presented several definitions, such as the notions of information system and computer data. Information system is defined as being a „device of inter-connected or related devices, one or more of which, pursuant to a programme, automatically processes computer data, as well as computer data stored, processed, retrieved or transmitted by that device or group of devices for the purposes of its or their operation, use, protection and maintenance“. Also, computer data refers to „a representation of facts, information or concepts in a form suitable for processing in an information system, including a programme suitable for causing an information system to perform a function“.

2. Analysis of offences stipulated by Directive 2013/40/EU on attacks against information systems

Directive 2013/40/EU on attacks against information systems comprises five categories of offences committed against information systems.

Thus, the first category of offence, stipulated by Article 3 of the Directive, refers to illegal access to information systems. This category of offence comprises a series of computer attacks, also known in the literature as hacking. The offence consists in committing intentionally the access without right to the whole or to any part of an information system, by infringing a security measure. The offence of illegal access to information systems must not be a minor case. In conformity with ground no.11 of the Directive, a case may be considered minor, „where the damage caused by the offence and/or the risk to public or private interests, such as to the integrity of a computer system or to computer data, or to the integrity, rights or other interests of a person, is insignificant or is of such a nature that the imposition o a criminal penalty within the legal threshold or the imposition of criminal liability is not necessary”.

Offender in the area of IT illegally accesses information system by infringing a security measure. The most commonly encountered security measures used against illegal access to an information system are the following: passwords, access codes and encryption codes.
The second type of offence refers to illegal system interference. The offence of illegal system interference is stipulated by Article 4 of the Directive 2013/40/EU and consists in seriously hindering or interrupting the functioning of an information system by inputting computer data, by transmitting, damaging, deleting, deteriorating, altering or suppressing such data, or by rendering such data inaccessible. The offence of illegal system interference is committed intentionally and without right. Like in the previous article, the offence of illegal access to information system must not be a minor case.

The most known attack against an information system affecting the information system interference is Denial of Service-DOS- attack. In this form of attack, the offender tries to deny to authorized users the access to specific information, information systems and the network itself. DOS attack is in fact an attempt of the offender to make information resources unavailable for legitimate users. The purpose of such attack may be simply the prevention of access to target information system or the attack may be used with other actions in order to obtain unauthorized access to an information system or computer network.

Other attacks against an information system affecting the information system interference are the attacks based on malicious programs having as purpose to infect the information system, such as viruses. Usually, a virus installs a malicious code which may have different purposes, starting from the deterioration of user’s information system and continuing with the extraction of valuable personal data, such as bank accounts, credit card accounts, etc.

The third type of offence refers to illegal data interference. Thus, the offence of illegal data interference stipulated by Article 5 of the Directive consists in deleting, damaging, deteriorating, altering or suppressing computer data on an information system, or rendering such data inaccessible. The offence of illegal data interference is committed intentionally and without right. Like in previous articles, the offence of illegal data interference must not be a minor case.

Between the offence referred to in Article 4 and the offence referred to in Article 5 of the Directive, I consider that there is a difference between these two offences, in relation to their purpose. Article 4 of the Directive comprises the offence of illegal system interference, by manipulation of computer data on the information system. On
the other hand, the provisions of article 5 refer to computer attack having as target only
the computer data. Considering that most of the offences committed in cyberspace
need illegal access to an information system and illegal system interference and illegal
data interference, I think that the two offences referred to in Articles 4 and 5 are
practically inseparable.

The fourth category of offence refers to illegal interception. Article 6 of the
Directive contains the provisions relating to illegal interception, consisting in
intercepting, by technical means, non-public transmissions of computer data to, from or
within an information system, including electromagnetic emissions from an information
system carrying such computer data. The offence of illegal interception is committed
intentionally and without right. Like in previous offences of the Directive, the offence of
illegal interception must not be a minor case. The activity of interception by technical
means, requires listening, supervising of the content of communications, procurement of
computer data either directly, by accessing and using the information system, or
indirectly, by using some listening and/or recording electronic devices. The technical
means are devices fixed on communication lines or devices designed to collect and
record wireless communications [6].

The fifth category of offence, contained in Article 7 of the Directive refers to tools
used for committing offences mentioned at articles 3 to 6. Thus, according to Article 7 of
the Directive, the Member States are required to adopt the necessary measures to
ensure that the intentional production, sale, procurement for use, import, distribution or
otherwise making available, of one of the following tools, without right and with the
intention that it be used to commit any of the offences referred to in Articles 3 to 6, is
punishable as a criminal offence, at least for cases which are not minor:
" (a) a computer programme, designed or adapted primarily for the purpose of
committing any of the offences referred to in Articles 3 to 6;
(b) a computer password, access code, or similar data by which the whole or any part of
an information system is capable of being accessed".

In the Article 8 of the Directive are stipulated the provisions relating to incitement,
aiding and abetting and attempt. Thus, in the Directive are criminalised incitement,
aiding and abetting to commit any of the offences referred to in Articles 3 to 7 of the
Directive 2013/40/EU on attacks against information systems. Also, the attempt to commit an offence referred to in Articles 4 and 5 of the Directive is punishable as a criminal offence. We notice that the attempt is not criminalized in the Directive at Articles 3, 6 and 7, although that it is possible for these offences.

Member State are obligated, according to the provisions of Article 9 paragraph 1 of the Directive, to introduce to offences referred to in Articles 3 to 8 effective, proportionate and dissuasive criminal penalties. In particular, offences referred to in Articles 3 to 7 are punishable by a maximum term of imprisonment of at least two years, at least for cases which are not minor.

Offences referred to in Articles 4 and 5, when committed intentionally, are punishable by a maximum term of imprisonment of at least three years where a significant number of information systems have been affected through the use of a tool referred to in Article 7, designed and adapted primarily for that purpose. Also, in compliance with Article 9 paragraph 4 of the Directive, offences referred to in Articles 4 and 5 are punishable by a maximum term of imprisonment of at least five years where: they are committed within the framework of a criminal organization, as defined in the Framework Decision 2008/841/JHA on the fight against organised crime, irrespective of the penalty provided for therein; they cause serious damages; they are committed against a critical infrastructure information system.

According to Article 9 paragraph 5 of the Directive, the Member States shall take the necessary measures to ensure that when the offence of illegal system interference (Article 4) and the offence of illegal data interference (Article 5) are committed by misusing the personal data of another person, with the aim of gaining the trust of a third party, thereby causing prejudice to the rightful identity owner, this may, in accordance with national law, be regarded as aggravating circumstances, unless those circumstances are already covered by another offence, punishable under national law. Taking into consideration the penalties applied for committing the offences referred to in Articles 3 to 7, I notice the existence of a national policy of the European Union, which sends a clear message about the seriousness of the way of approaching the phenomenon of cybercrime at the level of the European Union.
An important provision is the text of Article 10 paragraph 1 of the Directive, which ensures that legal persons can be held liable for offences referred to in Articles 3 to 8, committed for their benefit by any person, acting either individually or as a part of the legal person. In both situations, the person must have a leading position within that legal person, based on one of the following: a power of representation of the legal person, an authority to take decisions on behalf of the legal person and an authority to exercise control within the legal person.

Also, in Article 10 of the Directive, specifically in paragraph 2, the Member States are required to adopt the necessary measures to ensure that legal persons can be held liable where the lack of supervision or control by a person referred to in paragraph 1, allowed the commission, by a person under its authority, of any of the offences referred to in Articles 3 to 8, for the benefit of that legal person. Finally, the liability of legal persons shall not exclude criminal proceedings against natural persons who are perpetrators or inciters of, or accessories to, any of the offences referred to in Articles 3 to 8 of the Directive.

In accordance with the provisions of article 11 of the Directive, sanctions against legal persons include criminal or non-criminal fines and other sanctions, such as: exclusion from entitlement to public benefits or aid; temporary or permanent disqualification from the practice of commercial activities; placing under judicial supervision; judicial winding-up; temporary or permanent closure of establishments which have been used for committing the offence.

Problems relating to establishing of criminal jurisdiction in case of committing the offences mentioned in the Directive 2013/40/EU on the attacks against information systems are referred to in Article 12. Establishment of jurisdiction with regard to the offences referred to in Articles 3 to 8 is carried out in case the offence has been committed: [7] "a) in whole or in part within their territory; or b) by one of their nationals, at least in cases where the act is an offence where it was committed”.

In accordance with Article 12 paragraph 2 of the Directive, when establishing jurisdiction in accordance with point (a) of paragraph 1 of the Directive, a Member State shall ensure that it has jurisdiction where:
"(a) the offender commits the offence when physically present on its territory, whether or not the offence is against an information system on its territory; or
(b) the offence is against an information system on its territory, whether or not the offender commits the offence when physically present on its territory”.

Paragraph 3 of Article 12 stipulates the fact that the Member States may decide to establish jurisdiction over an offence referred to in Articles 3 to 8, committed outside its territory including where:
"(a) the offender has his or her habitual residence in its territory; or
(b) the offence is committed for the benefit of a legal person established in its territory”.

According to the provisions of Article 13 of the Directive, for the purpose of exchanging information relating to the offences referred to in Articles 3 to 8, Member States shall ensure that they have an operational national point of contact and that they make use of the existing network of operational points of contact available 24 hours a day and seven days a week. Member States shall also ensure that they have procedures in place so that for urgent requests for assistance, the competent authority can indicate, within eight hours of receipt, at least whether the request will be answered, and the form and estimated time of such an answer.

Also, paragraph 2 of Article 13 stipulates that the Member States shall inform the European Commission of their appointed point of contact. European Commission shall forward that information to the other Member States and competent specialised European Union agencies and bodies.

According to paragraph 3 of Article 13, Member States must take the necessary measures to ensure the appropriate reporting channels are made available in order to facilitate the reporting of the offences referred to in Articles 3 to 6 of the Directive to the competent national authorities without undue delay.

3. Conclusions

Having regard to the provisions of Directive 2013/40/EU on attacks against information systems and those of the Council of Europe Convention on cybercrime, which is the most important legal instrument at international and European level in the field of the fight against cybercrime, I have to make several comments. First of all, I notice the fact that the Directive 2013/40/EU on attacks against information systems
does not define one of the most important notions which is used still from its title: the notion of attack against an information system. I appreciate that the legislators of the Directive had to define the notion of attack on an information system, to better explain the steps to perform it and the offences committed as result of these steps. In the literature [8] there are some approaches in relation to the definition of the notion of attack against an information system and the stages through which the attack is performed.

Secondly, there are some differences between the two legal instruments in the field of fight against cybercrime. Thus, the provisions of Article 2 of the Council of Europe Convention on cybercrime criminalises the offence of illegal access to information system by infringing a security measure with the intention to get computer data and the offence of illegal access of a system connected to the network. I also notice that the provision relating to illegal access to information system connected to the network is not comprised in Directive 2013/40/EU on attacks against information systems. Having regard to the importance of computer networks in committing cybercrimes, we believe that the legislators of the Directive had to take into consideration this aspect too when they elaborated this regulatory act.

Third, following the carried out analysis, it was found that Directive 2013/40/EU on attacks against information systems, as well as the Convention, do not refer to the new types of offences, such as identity theft, spam, use of Internet in relation to terrorist activities.

Fourth, I noticed the fact that all offences in the Directive, as well as other definitions and procedural institutions are also contained in the Council of Europe Convention on cybercrime, as it follows: illegal access to information systems (Article 3 Directive) - illegal access (Article 2 Convention); illegal system interference (Article 4 Directive) – system interference (Article 5 Convention); illegal data interference (Article 5 Directive) – data interference (Article 4 Convention); illegal interception (Article 6 Directive) – illegal interception (Article 3 Convention); tools used for committing offences (Article 7 Directive) – misuse of devices (Article 6 Convention); the definition of the terms information system and information data (Article 2 Directive) - the definition of the terms information system and information data (Article 1 Convention); exchange of
information (Article 13 Directive) - 24/7 Network (Article 35 Convention) and mutual assistance regarding accessing of stored computer data (Article 31 Convention); jurisdiction (Article 12 Directive) – jurisdiction (Article 22 Convention).

Also, I noticed the fact that in the Directive are absent some very important procedural law instruments, such as computer search and conservation of computer data.

On the matter of the offence of illegal system interference referred to in Article 4 of the Directive, I noticed the fact that the legislators of the Directive did not make, in the text of this article, a clear delimitation between serious offences determining a serious illegal system interference, such as DOS attacks prepared through organised crime for the purpose of extortion and attacks prepared by different natural persons for political purposes.

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[8] Moise, A.C. (2011). Metodologia investigării criminalistice a infracţiunilor informatice. Bucharest: Universul Juridic Publishing House, pp.141-142, where the following notions are used: “Attack is an action brought against a target, by using a tool, exploiting vulnerability, for the purpose of getting an unauthorised result. An attack against an information system is performed according to the following steps: 1. Research of information system for the purpose of getting information; 2. Entering the information system; 3. Modification of the information system settings; 4. Communication with other systems; 5. Networks and devices interference”.
Periodic property administrative and legal issues

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Abstract
In the conditions of an increasingly pronounced openings of Romania towards civilization and Western markets due to the accession to the European Union with all its correlative elements—in particular, the process of approximation for the implementation of the Community acquis—the Romanian legal system has known and still know a series of transformations to the regulatory level. Such trends were manifested in recent times, among others, and by importing previously unknown legal institutions or which, although widely known, could not be implemented purely for technical reasons. Updating the internal regulations were required and because the European normative acts regulates new types of contracts, adapted to the evolution of the market and new products available, providing an effective consumer protection in such cases, taking into consideration the fact that, in the absence of immediate requirements of these types of contracts, consumers would not benefit from the rights provided for by the European normative acts mentioned above. However the transposition in national law of European norms and importing European law institutions, without strict rules and an adaptation of their national law, can give birth to problem situations both in administration and in the judiciary.

Keywords: property periodic, way, legal nature.

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INTRODUCTION
How Romanian market in timeshare or time sharing is in an early stage has been useful takeover, adaptation and the experience of the largest users in the field, the US and the European Union, where laws and consecration of the concept of timeshare ownership is unmatched. Timeshare concept of English origin, was imported in juridical sciences in the IT field, having originally meaning a technology that allows multiple users simultaneous access to a central computer through separate terminals.

According to a definition enshrined in the American system, timeshare is a form of property right attributes are invested in more people, each of which is entitled to use that property for a period of time, such as one or more weeks. The institution is also defined as a form of property divided, which normally has as its object or recreational
vacation properties in condominium regime and the corresponding rights belong to several people, each having the right to use the property for predetermined periods a year.

Although normally covered under timeshare property is represented by a residential complex under a condominium, those who develop this type of business (developers) have applied the concept to other types of timeshare properties such as yachts, campgrounds or car parks recreation ("recreational vehicle parks"). In fact, the United States, the concept of timeshare is represented by any facility or property for holiday or leisure.

SECTION I - Type periodic legal ownership compared to other ways of property-rights legal and administrative aspects.

Interesting aspects can be observed in analyzing periodical ownership as a right of ownership in which each holder exercises his right credentials during a period determined successively repeated at regular intervals, in terms of similarities and differences they present it way reported in other ways property rights and even a proprietary simply.

Ownership is simply when its mere existence and when belonging to a single owner, which carries all three attributes of property: usus, fructus and abusus. If unquestionable existence of the right to property is also found periodic, but its essence is precisely the lack of exclusive character, that ownership is not a right periodic simply property, so we can conclude that we are in the presence of a right affected property of ways.

The doctrine, cvasiunitary opinion is that of ownership arrangements are: property resonable, canceled its forms joint (the interest in ordinary or temporary on forced and perpetual interest in and condominium) and the provisions of the new code Civil (article 687-692) Periodical property is regulated as a way of ownership. So, to better understand the ownership Periodicals believe it is of interest comparison with other ways of property rights, and other institutions of civil law are in staransa connection with the exercise of ownership.

The property is revocable legal way of expressing the situation of ownership of this right temporal uncertainty, threatened with its loss if meeting a condition for
admission rezolutorii or action for annulment. This legal tool comprises two forms: property and property reasonable year, when ownership was acquired under an act annulled, invalid relative.

Property periodic property resembles revocable by the fact that among both cases, the powers shall be exercised on the whole good, and very right remains subject unfractionated.

The essential difference is that periodic property has a mere existence, while revocable property is uncertain terms its existence is at risk of extinction.

If the joint property right holders exercise their powers together and simultaneously, but if time-sharing site every exercise alone and exclusively the property right. The major differences are the property report or temporary interest in common: the essence of this type of property temporarily keep its character, one not being forced to remain in joint possession, whereas if the property right holders are not regular question of giving up joint for the simple reason that they are not in ownership; if the co-ownership interest in ordinary or temporary share is stretching far right of each co-owner of the asset, while for regular property consists of basic operational concept slice of time each holder exercises his right credentials; if not understood in terms of use of property, co-owners according to our law, are not shared use, single solution with the volunteer division (paragraph 3 art.671 NCC) on the other hand, co-owners exercised a continual and perpetual, while ownership is neither periodic continuous but periodically or perpetually. (Contract, according to OG 14/2011, ends "for a minimum period of 1 year ... - in the absence of a provision maximum under the general rules of civil law, we can say that the duration of the contract may be determined or determinable.)

Shares in property on forced and perpetual aims universality of property or goods which by their nature are common to all co-owners for the use can not be divided in nature, without this legal operation not become unfit for the use to which they were originally intended. Unlike property periodical that covers any kind of goods, divisible and indivisible.

Another difference is that while interest in the property has forced and perpetual, as the name implies, a forced character (constituting itself and preserving beyond the
control of the co-owners) property consists in a periodical manifestation of will (contract randomly, as if Golden Villa jackpot).

There is one final difference between the two types of property. While the first is incidental and therefore can not be sold, alienated or mortgaged only with the principal right, the property is a right periodic independently, not depending on any other law.

Also, the periodic nature of property, only use good common property is that which is repeated periodically and successively exerted by co-owners, but only in determined time interval that lies everyone. However, in literature and the opinion was expressed that each co-owner alone shall exercise all the attributes of entering the contents of the legal or.

And to joint ownership in condominium differences are manifold. An important aspect to be considered is that this way of ownership is applicable only in respect of goods Community regime of spouses, legal regime, whereas in the case of ownership Periodicals this is achieved by the expression of will the purchasers, who may be physical persons and / or legal minimum of two (not more than two, as in the case of spouses).

Also, another difference is that the condominium common property is born under the law, regardless of the will of the spouses, while property incurred through periodical manifestation of the will of acquirer, as I said in a previous paragraph. It should be clarified that, if timeshare property, the owner has the exclusive right to property, while, if common property condominium owners can not dispose of their right only with the consent of the other, which often involves there.

One last difference is that if the condominium common property holders know neither their right nor the extent of the property in their materiality, which is not true in the case of periodic property.

Given these differences of substance, it is argued that ownership Periodicals is a new way of ownership, regulated by the new code under the name of periodic property in which "each holder exercises its prerogatives name in interest law its proprietary period, repeating perpetual succession and at regular intervals, assuming at least two owners, who may be individuals or legal entities (including the state), between which there is no legal relationship."
As regards the alleged property Periodicals this way is analyzed only temporary transmission and use of goods does not seem to be the issue that made use of the right object may be temporary, but the right itself is not going to appear as regular. This should be taken into account more so as it provides that property owned periodical may be sold, leased, mortgaged, subject to an exchange contract between owners of property periodically on buildings or different time periods or transmitted by inheritance, so that the right can be achieved by legal acts but also by legal acts, such as acquisitive prescription, and being equally applicable requirements of the land register.

Property can bring periodical was still critical, namely that while the sharing of the usage may be more advantageous in terms of defending the rights legally acquired than the situation itself would share ownership, operation would not bring any additional benefit to those interested. Indeed, between right holders are born legal relations (poses no problem unanimity rule, mandate management tacitly or business as if co-owners), they are each others parties to the contracts signed by each of them with the seller. If one of purchasers would prejudice the rights of others, it could not defend in court than by the seller, having no direct action against the acquirer having abused his right.

Article 646 of the NCC give a regular property ownership forced the new regulation undefined property periodically, but in art. 687 NCC, referring to the characteristic considered essential for this way of ownership, namely the existence of several holders who exercised successively and repetitive use of the asset, specific attribute ownership of a movable or immovable., In timed intervals, equal or unequal.

Hence it can be concluded that, in fact, the legislature sees this form of property as a common property-quota parties forced. Also in NCC, in Article 688 is scheduled periodic manner of acquisition of the property ie only through a legal act, excluding any other mode of acquisition. All the current regulation conferred by NCC when the subject is the periodic property immovable property, acquiring the contract is subject to registration in the Land Registry.

Statements practical use of property regular and arid ways in regulation of this law may lead to future purchasers of Acetic kind of property, a number of practical difficulties and inconveniences.
Thus, if we consider the acquisition of ownership by sale purchase periodical. This mode of acquiring them are incidents tax code provisions in force concerning building tax that is calculated by applying a rate of 0.1% of the property value and indices by area, type of building, its facilities, year of construction, Tier village and the area where the property is located. For owners who have several buildings outside the home, tax payable increased by 65% for the second, 150% for the third and is three times higher if it includes more property.

The question in these situations is that it will evolve and how the distribution of local taxes because at this time there special tax provisions applicable to such property, for which most likely will apply the classical rules of co-ownership; increase the tax payable by individuals who own several buildings raises a further problem because current tax law does not distinguish on the ownership periodic, so that the increase will be applicable even if the package is limited to one week vacation and Society commercial, local taxes related to these properties are even more burdensome.

The birth of this problem because, as it knows the essence of property is that each holder regular exercise and repetitive sequence specific attribute ownership of the use of movable or immovable property in timed intervals, equal or unequal.

Regarding the legal documents relating to the ownership Periodicals result of the civil code beside each co-owner has the right to make all acts of preservation of the common good and the related obligation to make such acts. Of these the ones that are the responsibility of the joint proprietor exclusive, as are the small acts conservation repairs due to normal use of the asset. In terms of record keeping regarding asset structure or major repairs, they must be incurred by each co-owner in respect of its temporal fraction of the ownership right. This entitles the co-owner who advanced the expenses necessary to carry out these acts of conservation to receive damages from the other.

NCC is apparent from reading Article 689 can not be concluded no doubt that acts on good management, by co-owners, even with observance of the majority required by art. 642 paragraph 1 of the NCC.

Legal documents can be signed by the joint owners are those relating to its share, so will only be able to sell or mortgage its temporal fraction (art. 2379, paragraph
1, letter c NCC). In case of concluding acts of management or disposal which infringes other co-owners, co-owner injured shares may exercise against the third party owners who took possession of the common good, after concluding act.

SECTION II Conclusions.

In conclusion, based on internal regulations for intellectual property rights remain unfractionated periodic materiality not shared the shares, but the time slots in which each holder exercising his right credentials. Regarding the length of time she returns, each co-owner may conclude, under the law, acts such as signing, selling, mortgaging etc.

In conclusion, based on internal regulations for intellectual property rights remain unfractionated periodic materiality not shared the shares, but the time slots in which each holder exercising his right credentials. Regarding the length of time she returns, each co-owner may conclude, under the law, acts such as signing, selling, mortgaging etc.

From art economy. 687 of the NCC, which includes the definition of this new legal ways of existence of private property right, easily deduce what are the conditions of this method, namely: sequential, repetitive exercise prerogatives of ownership, on a movable or immovable, in intervals determined time, equal or unequal, by individuals or legal entities between which there are no legal relations.

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The rights of the citizens in Islam

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Abstract
Rights and fundamental freedoms have always been a psychological subject, hard to avoid and impossible to ignore in a public debate. The explanation is that no human in this world can be indifferent, consciously or unconsciously, to the manner his rights and freedoms are protected. The concept of “human’s right” crystallized with the evolution of human’s public freedoms which involved not only their proclamation, but also their guarantee and legal protection. Koran is the main source instituting Islamic law, moral and theology. When we talk about human’s rights in Islam, we refer to those rights guaranteed by God.

Keywords: human’s rights, fundamental freedoms, Islam, citizen.

Mid XVIIIth century, the French philosopher Jean-Jacques Rousseau began his dissertation “The Social Contract” with the famous formula “Human being was born free, but is chained everywhere”. Rousseau analyzed the relation between individual and collective freedom inside the society. He admitted that individuals have certain economical freedoms: what to buy, where to work and how to invest their income; but these freedoms are exercised in a system of laws restraining and limiting them.

Almost every newspaper, radio or TV broadcasting relate about Islam. Many of these reports are accompanied by violent images, as in Kashmir, Bosnia, Algeria or Palestine. Islam’s image, as displayed in the newspapers or on TV is that of a harsh, intransigent religion, whose followers would use violence to defend their principles or to impose their will over others [1]. Nevertheless, for the ones who are more familiar with the Moslems and their traditions, the image of a militant Islam is not fit for a religion regarded by many of its followers as no less peaceful, as far as the temper is concerned, than Buddhism or Christianity [2].

Human being’s and citizen’s rights and freedoms are not just a reality, but also a purposefulness of the entire human activity, the democratic and progressive one, obviously. Hence, the proper care shown almost everywhere in nowadays world to the theoretical and practical problems concerning human rights, protection and respect of the human’s fundamental freedoms. We consider that democracy and constitutional
guarantees are two essential coordinates for positioning of the social offer. The social structures are complex and huge resources consumers to fulfill the role of increasing the level of attractiveness through society’s instant action but also through permanent recreating situated on a spiral of temporal development of the democracy’s mechanisms and constitutional texts [3].

Koran is the main source instituting Islamic law, moral and theology [4]. When we talk about human’s rights in Islam, we refer to those rights guaranteed by God [5]. It is true that the majority of the European societies are multicultural, multiethnic and multi-confessional but the special importance of those who generally support the functioning of the heavy mechanism – the modern state, can’t be neglected [6].

Security of life and prosperity

Islam forbids all killings except the ones serving the law. During wars or insurrections, only a lawful and fair government, following sharia, can decide if taking a life is justified. This hard decision can’t be left in the hands of a court which became indifferent to God’s will and is under the influence of administration.

Protecting the honor

The second important right is citizens’ right to protection of the honor. The Prophet did not forbid the Moslems only taking the life or the property of other Moslems, but also violating their honor, dignity and chastity. Koran says: “You, believer, don’t allow a group of people to mock at one another. Don’t denigrate one another. Don’t talk bad words behind your backs about each other [7]”.

Personal life sanctity and safety

Islam acknowledges each citizen’s right in an Islamic state to have the privacy of his life not violated in an inappropriate manner. Koran commanded: “Don’t spy on each other [8]”. The Prophet even instructed His followers not to barge in or sneak in their own homes. One must somehow let the ones inside know he came home so to prevent seeing his mother, sister or daughter in an undesirable circumstance to them or to him.

Peeking in other’s home was also strictly forbidden to the extent where the Prophet says that if a person finds another one secretly peeking into his home and removes one of his eyes as a punishment, he would not be held responsible. The Prophet forbade people to read the letters addressed to others.
Personal freedom safety

Islam stipulated the principle according to which no man can be imprisoned unless his guilt was proved in a court house. Arresting a person based on suspicions and throwing him in jail without following the proper legal procedures or giving him the right to defend himself is not allowed in Islam. Koran’s command is very clear in this respect: “When you judge people, you must do it with the sense of justice [9].”

The right to protest against tyranny

Amongst the rights given by Islam to the people, there is also the right to protest against government’s tyranny. Koran says: “God doesn’t love public disparaging, unless committed by an offended person [10].” This means that God disapproves the abusive language and harsh condemning words, but that the person, victim of the tyranny or injustice, has the right to protest strongly against the harm done to him.

Freedom of expression

Islam grants freedom of thinking and expression to all the citizens of an Islamic state, provided this right to be used for spreading the good and not the evil.

Freedom of association

Islam granted the freedom of association and founding a party and organizations. This right is subordinated to certain general rules. It should be exercised to spread virtue and justice and under no circumstances to spread evil and discord in the world.

It is ironic that in a Moslem country, the assembly and the association founded in order to spread evil and discord has even the right to rule the country while the association and the party founded in order to spread virtue and justice lives in a constant fear of being harassed and declared illegal.

Freedom of conscience and beliefs

Islam grants the citizens of an Islamic state the freedom of conscience and opinions. Koran provides the command: “There must not be any constraint regarding matters related to religion [11].”

The Moslems must respect the decision of those who do not accept Islam; no moral, social or political pressure should be exercised upon them in order to determine them to change their minds.
Protecting the religious feelings

Along protecting the freedom of beliefs and conscience, Islam guarantees the individuals the proper respect for their religious feelings and that nothing potentially violating this right would be said or done. God says in Koran: “Do not abuse of those who turn to someone different than God [12]”. These instructions are not limited to gods and idols, they include also leaders or national heroes of the people. Islam doesn’t forbid the people to debate decently.

Protection against arbitrarily imprisoning

Islam grants the right to not be arrested or imprisoned for felonies committed by others. Koran draws this principle: “No burden-bearer will be asked to carry another’s burden [13]”. Islam believes in personal responsibility.

The right to satisfying life’s basic needs

Islam acknowledges the right of the ones in need to get help. “And their wealth is an acknowledged right for the needy and the poor [14]”. In this verse, Koran didn’t only grant a right to the wealth of a Moslem for any human asking for help, but also ascertained that, if a Moslem finds out that a man lacks the basic needs, regardless his asking for help or not, it is the Moslem’s duty to provide all the help he can give.

Equality under the law

Islam grants the citizens the right to absolute freedom in the eyes of the law. Regarding the Moslems, the Koran and the Hadith have clear instructions about people being equal in their rights and freedoms: “Believers are brothers [15]”

Leaders are not above the law

Islam insists and claims that all authorities in an Islamic state, from the highest to the lowest, to be equal in the eyes of the law. None can ask for immunity. The most humble of the citizens has the right to file a complaint against the person with the highest rank in the country.

The right to avoid sin

Islam grants every citizen the right to refuse to commit a sin or a crime; if a government or a leader commands an individual to do something bad, he can refuse to obey. Not only that his refusal is not an offence, but to command a subordinate to
commit a sin or do something bad is an offence itself, that serious that the commanding officer, regardless of his rank, is liable of immediate dismissal.

The right to be a part of the state’s affairs

According to Islam, governments are representatives of the universal Creator; this responsibility is not given to an individual, a family, a class or a certain group of people, but to the whole Moslem community.

The rights of the enemies in a war

Before Islam’s birth, humankind did not know the concept of human, decent rules of the war. The West began developing this concept with the works of the XVIIth thinker, Grotius. Before that, all forms of ferocity and wildness had been committed and the rights of the people at war were not even acknowledged, not to mention respected.

The laws promoted along the XIXth century or the following period up to present time can’t bear the name of laws considering the appropriate meaning of the word. They are but conventions and agreements because the nations don’t consider them compulsory unless their enemies agree to comply too.

The rights of the elders

In the Islamic world there are few elders’ homes because Islamic religion obliges the Moslems to support their families and the older relatives [16]. Koran recommends for us to be good with our parents, respect them, treat them gently and respectful, help them, not reproaching anything. Good relations are a must also with the older people who are not part of the family. The person who is violent or impolite with an older person is despicable. One of the major sins is not obeying the parents.

Conclusions

The fundamental rights and freedoms signify those subjective rights and freedoms belonging to the citizens. These fundamental rights and freedoms – guaranteed by the Constitution and national and international laws- are essential for their life, freedom and dignity and ipso facto for the free development of the human personality.

The subject of these rights and freedoms is the human being. This is why it is rightfully stated that human rights derive from human being’s dignity and inherent value that should be the main beneficiary and actively participate to their fulfillment.
As already shown, Islam began dealing with the relation between individual and collective freedom twelve centuries ago. Muhammad himself expressed the principle of general will by the often quoted formula “my community will never agree with an error”. In those times there was no popular electing system in the empires or other big countries.

Citizens, in Islam, have the following rights: security of life and prosperity, protecting the honor, personal life sanctity and safety, personal freedom safety, the right to protest against tyranny, freedom of expression, freedom of association, freedom of conscience and beliefs, protecting the religious feelings, protection against arbitrarily imprisoning, the right to satisfying life’s basic needs, equality under the law, leaders are not above the law, the right to avoid sin, the right to be a part of the state’s affairs, the rights of the enemies in a war, the rights of the elders and so on.

The Moslem woman, if subordinated during certain stages of history was subordinated due to the abandoning and non-complying to the commandments of Koran and not because of the Islamic religion itself. We are prone to judge according to our own history of ideas and ideologies and to presume that the other cultures calk the Western model; in the West, woman regained the essential rights and freedoms from a laic ground, following the process of secularism and the separation between the laic and the religious.

The Moslem woman doesn’t need complicated philosophical constructions, rules made up by people to have her rights enacted and to be plenary valued in harmony with acknowledging her belonging to humanity. All these – and even more – were confirmed by absolute divine decree more than 1400 years ago in Koran.

As a conclusion, using the Koran verses, Allah talks with the whole mankind, no matter the sex, race, nationality or religion. A strictly linguistic mention: the words man and woman are equally mentioned, each 24 times in Koran. Men and women have the same origin, the same nature and the same spiritual goal in this life. They are both vulnerable to temptations, they have the same responsibilities and moral and religious debts and the rewards and punishing methods are equally split, based on the same criteria, regardless the sex.
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Field of exclusion of Regulation (EC) no. 593/2008 in the matter of the status and capacity of individuals, family relationships and property aspects of matrimonial regimes.

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Abstracts
Conflicting rules regarding contractual obligations are settled by the Member States of the European Union through Regulation (EC) no. 593/2008 (Rome I). In Romanian law, the European norm is the common law in the matter, in this respect the Civil Code refers directly to the Regulation by the provisions of Art. No. 2640 par. (1) Civil Code.
In terms of material domain, the Regulation does not have global application. In addition to matters of public law, wholly removed from the application of the Regulation, Art. no. 1 par. (2) a) - j) and par. (3) expressly excludes certain matters of private law, restrainedly listed, among which including those relating to the status and legal capacity of natural persons, family relationships and property matters of matrimonial regimes.

Keywords: contractual obligations, conflict of laws, questions involving the status or legal capacity of natural persons, obligations arising out of family relationships, maintenance obligation, obligations arising out of matrimonial property regimes, property regimes, relationships to have comparable effects to marriage.

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Introduction
Regulation (EC) no. 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I) excludes from its domain of application certain matters of private law, which expressly refers to in Art. no. 1 par. (2) a) - j) and par. (3). The enumeration is restrained and impose a restrictive interpretation as an it is an exception to the application of the Regulation. In these matters, are also identified those on the status and capacity of natural persons, family relationships and aspects of matrimonial property regimes. These exclusions present a special problem for the European legislator who uses concepts that do not match perfectly, or even at all, to those apparently similar in national law and which inevitably raise questions of interpretation. This article aims to conduct a brief analysis, from both theoretical and
practical perspective, of the most relevant aspects of these three areas of exclusion of the Regulation listed in Art. no.1 par. (2) a) - c).

1. **Status and capacity of natural persons**

   The first exclusion from the domain of application of Regulation Rome I refers to matters involving the status or capacity of natural persons, without prejudice to Art. no. 13. According to Art. no.13:

   "In a contract concluded between persons who are in the same country, a natural person who would have capacity under the law of that country may invoke his incapacity resulting from the law of another country, only if the other party to the contract was aware of that incapacity at the time of the conclusion of the contract or was not aware thereof as a result of negligence."

   Exclusion from the domain of application of the Regulation on state issues or capacity of natural persons is explained by the fact that, in most legal systems of the Member States, they are not traditionally considered as having a purely contractual nature[1]. As a result, the ability of a natural person to conclude a contract besides the domain of application of the Regulation, following to be determined in accordance with the legal system identified through private international law norms of the forum, subject to Art. no. 13 of the Regulation. Thus, for example, in our legal system, the capacity of a natural person is governed according to Art. No. 2572 Civil Code by its national law, unless special provisions provide otherwise, and special incapacities relating to a particular legal relationship, by the law governing that legal relationship.

   It is noted that the Regulation does not define the phrase "aspects involving the status or legal capacity of natural persons" meaning that it would be useful to refer to the provisions of Art. 1 par. (1) pt. 2 lit. a) of the former Regulation (EC) no. 44/2001 [2] (preceded by the Brussels Convention and now replaced by Regulation (EU) no. 1215/2012, but still retains largely similar provisions), and has an exclusion in identical terms.

   Art. no.13 of the Regulation brings under regulation an institution known in the specialized literature as "the theory of national interest".[3] The norm is an exception, meaning that application of the law to persons fully competent on the capacity of the natural person can be removed only if the following conditions are cumulatively met:
the contract should have been concluded between persons who are in the same country;
at least one party should be a natural person;
the person should have the legal capacity necessary to conclude the contract according to the law of the place of its conclusion (lex loci contractus) but have incapacity according to his country of residence law (lex patriae);
the contracting party should have acted in good faith "at the time the contract was concluded" by failing to known or could not reasonably know (without negligence) the cause of the lack of validity of the contract consisting in incapacity of the foreigner, according to his country law.

The provisions of Art. no.13 of the Regulation are aimed to minimize the risk that a contract may be declared invalid by invoking the failure of capacity of one of the contracting parties, natural person. The statement of the Community legislature in matters of incapacity, reflecting its traditional concern for the safety of cross-border commercial relations, which might be compromised if a natural person, in incapacity according to his country law (national law or the law of domicile or residence, where appropriate, whatever it may be), were permitted to take advantage of his own incapacity and invalidity of the contract that would ensure from, to the detriment of his contractual partner, who did not know that he was in incapacity. In Giuliano and Lagarde Report[4], interpreting similar provisions of the Rome Convention [5], it is highlighted that the requirement to protect the party that concluded a contract in good faith with a person in incapacity, against the risk that the respective contract may be invalidated under a law, other than that in force, in the place where it was concluded, is seen in both legal systems which subordinate the capacity of natural persons to their national law and in those subordinated to the law of domicile (such as English law). The report also points out that that provision is applicable only on a contract that may be assimilable to one of the types of contracts covered by the Convention.

Worthy to notice is that Art. no. 13 applies only to natural persons. The proposal for the adoption of similar provisions on the capacity of legal persons has been considered too complex an issue to be placed in the Regulation, although the activities of companies raised more issues on recognition of the capacity. Therefore, the question
whether a similar rule in Art. no. 13 may be applied on the capacity of a legal person depends on the rules of Private International Law of each Member State [6].

Returning to the analysis of the provisions of Art. no. 13 of the Regulation, it appears contractor’s good - faith is assessed by "date of conclusion", being irrelevant that, after this time, he got to know the state of incapacity of his contractual partner, natural person.

One of the conditions is that the Contracting Parties should be in the same country at the time of conclusion, though not necessarily in the same place. It is noticed that the Regulation did not intend to eliminate the protection offered to the person in incapacity by his own country law when he concluded a distance contract with a person in another country, even if the law applicable to the contract - determined under criteria of Art. No. 3 and 4 of the Regulation - should consider that contract as completed in the state where the contractual partner in capacity is. In such cases, the Community legislature considered it reasonable to expect that a person who enters into a distance contract with a natural person in another state, to exercise caution and diligence in verifying the condition of the other party capacity.

The natural person who has the quality of party may invoke his incapacity resulting from the law of another country (lex patriae or lex residences), only when the norm of private international law of the State of the forum indicates as the law applicable to the person in incapacity, a law other than that of the state where the contract is concluded. Specifically, for instance, a Romanian court may apply the provision in analysis only when the contract was not concluded in the State whose nationality the contractual partner in incapacity has.

To invoke Art. no. 13 of the Regulation, the Contracting Party who invokes his own incapacity should be considered in capacity according to the law of the state where he is when the contract is concluded. In the event that the law of lex loci contractus considers in turn that person in incapacity, there should not be any impediments to support and demonstrate the state of incapacity, and as a result application of Art. 13 is no longer is useful.

Worthy to notice is also the fact that to admit that the person in incapacity may invoke his own incapacity towards the other contractor, there should be a further
requirement, namely, the person in incapacity should be able to demonstrate that when the contract was concluded, his contractor was aware of that incapacity or did not know as a result of his negligence.

Article no. 13 is also applicable where contractors are fellow citizens or are domiciled or resident in the same State. In these cases, failure derived from the common personal law (the State of nationality, domicile or residence law) is known and will be relatively easy for the person in incapacity to provide proof of this knowledge by his contractual partner. A similar situation is encountered with those doing businesses in the vicinity of a border area when their customers are also people (citizens, domiciled or residents) from the bordering state, under age according to the laws of the neighboring state, but already in capacity under the law of the country in which the business operates.

2. Family relationships

Letter b) of Art. no.1 par. (2) of the Regulation excludes from its domain of application "obligations arising out of family relationships and relationships deemed by the law applicable to such relationships to have comparable effects, including maintenance obligations". (Exclusion of these matters from the domain of application of the Regulation are justified either by uniform conflict rules EU [such as for example Council Decision 2009/941 / EC of 30 November 2009, where was approved on behalf of European Union (excluding the United Kingdom, Ireland and Denmark) the Hague Protocol of 23 November 2007 on the law applicable to maintenance obligations, Regulation (EU) no. 1259/2010 of 20 December 2010 implementing enhanced cooperation in an area of the law applicable to divorce and legal separation, the Hague Convention of 23 November 2007 on the alimony abroad for children and other members of family and Council Decision no. 2011/432/EU of 9 June 2011 concerning the approval on behalf of the EU to this Convention, Regulation no. 4/2009 of 18.12.2009 on jurisdiction, applicable law and recognition and enforcement of decisions and cooperation in matters relating to maintenance obligation, Convention on the Rights of the Child, adopted by the UN General Assembly on 29 November 1989, entered into force on 2 September 1990, Convention on July 17, 2006 on personal relationships concerning children, Convention Hague dated 25 October 1980 on the Civil Aspects of

We may find accurate information on family relationships in recital 8 of the preamble to the Regulation, which states that "family relationships should cover parentage, marriage, affinity and collateral relatives. The reference in Article 1(2) to relationships having comparable effects to marriage and other family relationships should be interpreted in accordance with the law of the Member State in which the court is seised."

The Regulation has a rather broad approach in terms of relationships which, "in accordance with the law applicable to them," have effects "comparable to those of marriage" meant to include any legal relationships with effects similar to marriage (registered partnerships, same sex marriages, etc). It was considered that, in general, states have inhomogeneous regulations in this regard, even in the presence of the common element, to provide the couple an intermediary "status" between marriage and free consent union. In general, legal rules on personal and patrimonial effects of international couples are complex and difficult to interpret. For example, in some legal systems, legal partnerships have a much closer nature to the regime of marriage, where the partners lose their freedom to unite with a third party in a marriage or a new partnership and the specific rules of the matrimonial regime are, at least in part, applicable. Meanwhile, in other states, partnerships have either a purely contractual - autonomous forms of expression of the will of the parties - or are treated as sui generis institutions.

The exclusion of such legal relations from the domain of application of the Regulation [solution that is also found in Regulation No. 864/2007 on the law applicable to non-contractual obligations Art. no. 1.2 lit. a) and b) leads to the conclusion that they are governed by the law determined under lex fori, depending on the specific qualification (family law relationship, legally binding contract or contractual legal
relationship arising from the law or ex-law). The issue of qualification is very important, whereas only legal relationships that produce "comparable effects to marriage and other family relationships" are excluded from the domain of application of the Regulation. As outlined in paragraph 8, the qualification should be done "in accordance with the law of the Member State in which the court is sised", by way of derogation from the principle that the terms used in the Regulation have uniform and autonomous character. Interpretation of the provisions of Art. No. 1 par. (2) b) of the Regulation, however, could also lead to another solution, according to which the qualification of legal relationship shall be achieved under the law of the State where the partnership was formed. It is assumed that the law of the place the partnership set is most suitable to indicate whether that produces or not effects comparable to a marriage or any other family relationship (the proper law).

The notion of obligations arising from marriage relationships or relationships having comparable effects thereof - referred to in Art. no.1 para. (2) b) - includes specific obligations without patrimonial content, such as: establishing common habitual residence, moral obligation of reciprocal support, fidelity, etc. In this category shall also be included agreements between the spouses, on the date or - when necessary - pending the marriage or separation in fact.

Article no. 1 par. (2) b) last sentence, excludes from the domain of application of the Regulation maintenance obligations. For a correct interpretation of the categories of obligations subject to such exclusion it is required to report to specific, uniforms, applicable regulations in the matter of maintenance at regional level - the European Union - and international one, and not to the domestic legal provisions of the Member States.

Thus, according to the 2007 Hague Convention, maintenance obligations fall into the category of child support obligations regardless of the marital status of parents and the maintenance obligations between former spouses without excluding other forms maintenance, such as maintenance obligations arising of kinship, affinity, alliance or maintenance obligations for vulnerable persons, as defined by the Convention.

In turn, the Hague Protocol of 23 November 2007, states that decision on the law applicable shall be achieved for the same categories of maintenance obligations,
specifically those arising from a family relationship, parentage, marriage or affinity and obligations maintenance to children regardless of the marital status of their parents.

Regulation (EC) no. 4/2009 of 18.12.2009 applicable to maintenance obligations arising from a family relationship, parentage, marriage or affinity (Art. no. 1) in recital no. 11 states that the term "maintenance obligation" should be interpreted autonomously under Regulation. Interestingly, the Regulation does not offer a definition of maintenance obligation, which means that the responsibility on the interpretation rests in all cases to the EU Court of Justice.

A special problem is raised by "maintenance agreements" concluded between people - even family members between whom there is no legal obligation of maintenance. With respect to these conventions - in interpreting Art. no. 1 par. (2) (b) of the Rome Convention, which also excluded from its domain of application maintenance obligations - Giuliano - Lagarde report decided that they should not be excluded from the application of the Convention, as long as it is not about obligations imposed by law or by public authorities. We consider that the solution remains current interest, the Regulation shall be applied to maintenance obligations, even for a family member, whenever it does not result from the law or from an order issued by a public authority, but have a purely contractual nature. Thus, by setting an example, if based on legal provisions an agreement on how to implement a legal obligation of maintenance between a husband and child of the other spouse, is concluded, that agreement is excluded from the domain of application of the Regulation. Conversely, if the husband reaches an agreement with the obligation to continue to provide maintenance for the child of the other spouse, although such maintenance is not due under law, the agreement remains within the domain of application of the Regulation. In this case, the maintenance obligation has its source neither in parent - child relation nor in the family relationship between spouses, but is simply an option of one spouse to provide child maintenance to the other spouse's child, manifested on contractual realm.

3. **Patrimonial issues of matrimonial regimes**

Article no. 1 par. (2) c) of the Regulation excludes "obligations arising from patrimonial aspects of matrimonial regimes" (listed under Art. no. 1 par. (2) b) and among the exclusions in the Rome Convention) and "obligations under the patrimonial
aspects of relationships regarded under the law applicable to them, as having comparable effects to marriage”.

The reasons for the European legislator to conclude to the exclusions listed in Art. no.1 par. (2) c) are different. Among them should be the particularism of such patrimonial relationships that would not allow their inclusion in legislation covering contracts in civil and commercial matters in general [7], intention to avoid duplication with other internationally agreed regulations or the guiding line followed until recently by EU legislative policy, characterized by a certain reluctance to fully extend its regulatory power broadly in family law, area traditionally considered a bastion of national sovereignty. This last argument is no longer topical compared to current EU legislative framework in which we find two proposals for a regulation submitted by the Commission, that proposal [COM (2011) 126 final] for the adoption of a Regulation on jurisdiction, applicable law, recognition and enforcement of decisions in matters of matrimonial property regimes and the Proposal COM [2011] 127/2) of Council Regulation on jurisdiction, applicable law, recognition and enforcement of legal decisions in registered partnerships matter.

In terms of norm content, it should be noted that Art. no.1 par. (2) c) does not lead to a qualification under national law of the state court, but always should be referred to the interpretation given by the European legislator, or where appropriate, by the Court of Justice of the European Union. In this purpose, it appears useful the interpretation performed over time, on certain terms and similar concepts used in the Rome Convention [Art. no. 1 par. (2) b)], the Brussels Convention [Art. no. 1], Regulation (EC) No. 44/2001 [Art. no. 1], and more recently in the proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of legal decisions in matrimonial regimes matter [COM (2011) 126 final]. For example, in the interpretation of the term "property rights arising from matrimonial relationship" used by Art. no.1 of the Brussels Convention, the European Court of Justice has stated that this includes not only "property arrangements envisaged specifically and exclusively by certain national legal systems in case of marriage, but also any proprietary relationships resulting directly from the matrimonial report or its dissolution "[8]. On the same line, according to the Commission's point of view expressed in 2011, "the concept of
matrimonial regime must be interpreted independently and must cover both aspects of administration of the property of spouses, as well as those related to their liquidation, as a result of the couple’s separation or the death of one of its members "[9]. We speak therefore of an independent Community concept, very extensive, clarified by case law, especially in order to achieve a clear distinction from other types of obligations defined by the European legislator, such as maintenance obligations [10].

Article no.1 par. (2) c) should be interpreted as not referring only to property relations occurred between spouses during marriage exclusively. This also includes agreements concluded before perfecting marriage (so-called prenuptial agreements concerning the choice of the matrimonial regime) and those which concern the regulation of relations between spouses when in fact separation, divorce or the death of one spouse.

The concept of "patrimonial aspects of matrimonial regimes" fall into "donation agreements concluded between spouses" when they have as objects goods having a close connection with marriage and matrimonial regime. Donation contracts, regarded as unilateral commitments freely undertaken by the parties, are included in the domain of application of Regulation Rome I, framing confirmed by the Commission, when formulating the proposal for regulation on the law applicable to matrimonial property regimes where Art. no. 1 par. (2) states that "matters already covered by the regulations in force of the Union, such as [...] aspects concerning the validity and effects of liberalities (regulated by Regulation (EC) no. 593/2008 (OJ L 177 of 4.7.2008, p .6) shall not be part of the domain of application of the Regulation." In the domain of application of the regulation Rome I cannot be included donations that are a direct result of obligations imposed by marriage (for example, a contract between spouses, whereby one gives the other an exclusive property good in order to resolve certain issues connected to liquidation of matrimonial regime by divorce).

The Regulation is excluded from application when if it came into conflict with the norms of family law in the broad sense, respectively with the right to inheritance (for example the norms regarding donations report) [11].
Conclusion

As I emphasized throughout the study, the terms and concepts used in delimitation of the matters excluded from the domain of application of Regulation (EC) no. 593/2008 should be interpreted and understood autonomously and independently of any national concept to ensure uniform application of its provisions. In order to clarify certain aspects, the present work was limited to a brief analysis of three of the matters excluded from the domain of application of Regulation (EC) no. 593/2008, however, as shown in the introduction, the exclusion domain is broader, the provisions of Art. no. 1 par. (2) a) - j) and par. (3) enumerating also other matters, including: negotiable instruments; arbitration and choice of court; company law, etc.

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[11] Court decision from 27 February 1997 given in Cause C-220/95 Antonius van den Boogaard versus Paula Laumen it was considered that the transfer of goods or a sum of money from a spouse to the other spouse, with the purpose of satisfy personal necessities, comes into the category of relations that have as object maintenance, whereas the agreement between spouses regarding only sharing matrimonial property as such, shall be framed in the category of propriety rights, which arise from matrimonial regimes. The European Court decision was given to interpret similar decisions from Brussels Convention where such distinction was necessary, taking into consideration that, unlike maintenance obligations, propriety rights were off the domain of application of the Convention. E
Judges - Legislative Authority in the Anglo-Saxon System

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Abstract
The independence of the justice was ensured in Great Britain by the Act of Settlement 1700 [1], which transferred the power to sack judges from the Crown to the Parliament. As a consequence, judges should theoretically base their decisions only on the logical deductions of the precedent, uninfluenced by the political considerations or by the chance of advancing in career.

Keywords: judge, legislative authority, common law, judicial precedent

William Blackstone, the XVIIIth century theorist, introduced the declarative theory of law, stating that the judges do not create law, but only, based on the rules of the precedent, discover and declare the law that has always existed: "(the judge) swearing to decide not according to his feelings...or his own judgement, but according to the known laws and the customs: he is not appointed to create a new law, but to keep and preserve the old law [2]". Blackstone doesn't accept that the precedent offers a choice between two or more interpretations of law: when sentenced wrong, he says, the new sentence annuling or changing the old one neither creates a new law nor does it state that the previous sentence was wrong but it simply declares the fact that the previous sentence wasn't "law". His approach involves the existence of a right sentence, which can be identified following an objective study of the precedent.

Nowadays though, this position is considered somewhat unrealistic. If the precedent is the exact science that Blackstone is talking about, many cases for the superior courts would never be filed. Lawyers could simply look for the relevant case and anticipate the court’s sentence and as a consequence to advise the petitioner who would obviously lose, not to file or to argue the case anymore [3].

In fact, judges’ sentences could be not as neutral as Blackstone’s declarative theory suggests. They must rule without any link to precedents. Still, instead of stating openly that they choose among two or more equally relevant precedents, the courts find ways to avoid the difficult ones, which gives the impression that the precedents they
choose to follow are the only option. There are more options for the judges to avoid the difficult precedents which at first sight might seem compulsory:

1. Distinguishing the difficult precedents relying on facts – arguing that the facts of the case in question are relevantly different from the previous case’s that being the reason for the rule not to be observed. Since it is unlikely for the facts to be identical, this is the simplest way to avoid a difficult precedent and the courts made some extremely limited distinctions in this regard.

2. Distinguishing the judicial matter – arguing that the legal issue of the precedent is not the same with the one of the case in question.

3. Stating that the precedent was replaced by recent decisions this being the reason for not observing it.

4. Assigning a very limited ratio deciden
di to the precedent. The only part of a sentence composing the compulsory precedent is ratio, the legal principle on which the decision is based. As long as the judges never state “this is ratio deciden
di” certain debates are possible concerning the parts of the decision which in fact constitute ratio and as a consequence they bind the courts for the future cases. The judges wishing to avoid an inappropriate precedent can argue that the parts of the decision proper for their case, are not part of the ratio, but only obiter dicta, that they are not bound to follow.

5. Arguing that the precedent doesn’t have a clear ratio deciden
di. When each judge of a panel had a different reason to reach the same sentence in a previous case, it can be argued that there is no clear ratio deciden
di.

6. Arguing that the precedent is inconstant due to a following decision of a superior court which annulled it.

7. Stating that the previous decision was per incuriam, meaning the court made an error, disregarding a Parliamentary Actor a relevant precedent. This method is rarely used because it definitely undermines the position of the lower court.

8. Arguing that the precedent is outdated, not according to the modern thinking anymore.

One can easily observe that there is enough space to maneuver in the doctrine of the precedent, so the question would be which are the factors guiding judges’ decisions and to what extent? Here are some possible answers.
Ronald Dworkin states that the judges do not really have the freedom to create jurisprudence. He sees law as a network of impeccable principles offering a right answer – and only one – for any possible problem. Dworkin argues by the fact that even the legal rules might be „outdated“ (not directly applicable to a new case) the legal principles stay always the same and that is why the judges never need to use their freedom to act. The state, through its authorities must act in an unified, concerted manner regarding both the separation of the powers and their limitation to a greater extent, as well as their interference, “the separation of powers” being a fundamental principle for the democratic state [4]

In his book Law’s Empire, professor Dworkin [5] states that the judges appeal first to the old cases and get the principles applicable to the case in question. Then, they relate to their own sense of justice and consider also what the point of view of the community would be regarding justice. When judge’s point of view concurs with that of the community there is no problem, but if they completely disagree then the judges have a dilemma: would it be fair for them to impose their point of view disregarding the community’s? Dworkin defines this as interpretative approach and although it seems to request a series of choices, he believes that the legal principles on which decisions are based imply that in the end there can be only one result in any situation.

Dworkin’s approach was severely criticized as unrealistic: his opponents think that the judges do not consider the legal principles but the facts of the case, having a more empirical approach.

Critical legal theorists as David Kairys [6] have a different point of view. They state that the judges are free in the precedent doctrine. Kairys suggests that there is no judicial reasoning such as a logical method, separated from determining the rules and the results of previous cases. He says that the decisions are actually based on a “complex mixture of social, political, institutional, personal factors” and they are justified by referring to the previous cases. Law offers “a generous and conflicting variety” of such justifications, “from which courts choose”.

The process is not as cynical as it appears. Kairys underlines the fact that he is not stating that the judges rule prior to determining which precedents they can choose to justify it. More likely it is their own personal opinions and bias determining them to
consider the precedents supporting these points of view. For the critical legal theorists though, all decisions of this kind may be regarded as reflecting social and political decisions rather than objective, purely logical deductions.

Similarly, Griffith [7] states in his book The Politics of the Judiciary that the judges found their decisions on what they consider to be public interest, but their point of view concerning this interest is influenced by their past and the status they have in the society. He suggests that a limited social past – usually public schooling – of the superior judges [8], combined with their position as part of the established authority, lead them to the conclusion that it is for the public interest to maintain the order; in other words that those who have the power – country or office level – should stay there and that traditional values should be preserved. This leads them to “an affection for private property and antipathy for the unions, a powerful adhesion for maintaining the order, antipathy for the minority opinions, demonstrations and protests, avoiding the conflicts with the Government policy even when it’s obviously oppressive for the vulnerable ones, supporting the governmental secret, preoccupying for preserving the moral and social behavior they are accustomed with.”

As Griffith reveals, judges’ point of view concerning public interest assumes all society members’ interests are approximately the same, ignoring the fact that different groups – employers and employees, men and women, rich and poor – might have diametrically opposite interests. What is called public interest will usually mean favoring a group over the other so it can’t be regarded as neutral.

In his book, The Law, Waldron [9] agrees with the fact that judges exercise their discretion and their choices are influenced by political and ideological decisions, but doesn’t see it as an ominous aspect. Waldron claims that while it would be wrong for the judges to be biased or to rule based on political factors hoping to be promoted, it is unrealistic to expect them to be “neutral from a political of view- lacking all main values and commitments”.

Waldron points out the fact that being a judge means first and foremost a commitment to the values surrounding the legal system: acknowledging Parliament’s supremacy, the importance of precedent, objectivity, public safety and interest. He argues that this means by itself a political choice and the choices to follow are made
when judges are forced to balance these values when they conflict with each other. The responsible thing to be done, according to Waldron, is anticipating these conflicts and establishing the priority order of the above mentioned values. These will inevitably be political and ideological decisions. Waldron argues that since these decisions must be made, “what must be done is not to hide them but to try to be as explicitly as possible”. Instead of hiding such decisions behind “some smoky windows of legal mystery….if judges conceived particular theories on morals, politics and society, they should state it openly and consider these theories in making decisions.”

Waldron suggests that whenever judges have second thoughts related to the decision, it could be a sign that they should reexamine their bias and conclude if it is an appropriate thinking to be influenced by. Moreover, if the public knows the motivation which is the base for judges’ decisions, “we could evaluate them and conclude if we want to rely on such motivations in the future.”

The existence of a code of laws with constitutional value represents an essential condition for the democratic state functioning, for settling the conflicts of laws and especially for limiting the powers. The privileged position held by the constitution is justified, besides the already mentioned aspects, also by a practical necessity, because every legal system needs a law of supreme legal force to protect a minimal number of essential values, to ensure a strong organization of the main state authorities and a clear limitation of powers [10].

Conclusions:

Do judges really create law? Although judges consider they represent an authority that rather declares and identifies law than creates it and often state that the Parliament has the prerogative of enacting the law, there are certain domains in which they obviously create law.

First, from a historical perspective, most part of the law is and has always been the jurisprudence made up by judges’ decisions. Contractual and prejudice law are mostly the result of judges’ decisions and most of the very important progress had a deep impact. Though Parliament’s acts have been lately enacted in these domains and occasionally the Parliament tried to incorporate whole areas of the common law in the statute form, they still embody the original principles created by the judges.
Second, judges have been allowed to define their own role as well as the role of the courts. For example, they took the power of reviewing the decisions of a public authority even when the Parliament decided they can’t be revised. And in spite of their frequent assertions claiming they have no authority to intervene in Parliament’s role of a legislative body, judges made it very clear that they won’t interpret statutes as infringing upon the rights of the common law or the law created by them, unless obliged by a very explicit wording.

Whenever the precedent is not clear about what should be done in a particular case, judges must still rule. They can’t decide only that the law is not clear enough and send it to the Parliament, though in certain cases they point out that it would be more appropriate for the decision – that they should make- to be made by the appointed authority to decide the changes of laws.

Third, enforcing the law – jurisprudence or statues- to a particular case is not usually an automatic matter. The terminology might be vague or ambiguous, new dynamics of the social life must be adapted and the procedure requires both interpretation and enforcement. As already suggested, judicial precedent does not always bring along a certain obvious and compulsory ruling – there may be conflicting precedents, their implications may be unclear and there are ways of avoiding a precedent that could otherwise lead to undesirable decision.

If it is accepted that Blackstone’s declarative theory can’t be applied, then judges clearly create law, they don’t just explain the existing law. Kairys’s, Griffith’ and Waldron’s theories all accept the fact that judges have the freedom to act and this is why they create the law to a certain extent.

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Permissive and restrictive in administration

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Abstract
This article aims to answer a series of interrogations arising amid the deviations manifested in the relationship between the public servant and the professional obligations and restrictions. The thematic development aims to cover the relationship between man and morals, which will bring conceptual clarification on the concepts of moral, deontology, moral value and norm. The central topic of the analysis will be the public servant with the intention of noting its importance in the dynamics of a community. The acts that violate public interest, the deviations from professional deontology with serious deeds for the community environment, in terms of the entire society, outline a certain behavioral national profile.

Keywords: moral, deontology, moral norms and values, public servant.

The relationship between human and moral
At social level, happiness appears as a moral issue, a hope of the individual that makes one’s destiny bearable. No one wants to move towards the evil, just as everyone would like to look beautiful.

“Every art and every inquiry, as any action and any decision seem to aim at some good; therefore, it was rightly stated that the good is that towards which all aspire.” [1] This is the Aristotelic impulse that guides us in our analysis of the good, a fundamental moral value that influences “the life” of all public institutions from the Romanian landscape in European context.

That is why the proposed theme brings together administration, justice, all institutional factors that could not function in the absence of norms, values and rules. The main subject of the analysis is the person engaged in multiple relationships when living alongside others. Society represents an organizational background within which human beings seek happiness, to experience maximum satisfactions and to be in maximum safety. “Happiness, in precise proportion to the morality of rational beings, through which they are worthy of happiness, constitutes itself the sovereign good of a world where we must transpose altogether, according to the norms of pure but practical reason, and which undoubtedly is only an intelligible world, (...)”, [2] “that is moral” (regnum gratiae). The whole conditioning between practical reason and speculative
reason occurs because the sensitive world is the systemic unit of goals based, in turn, on the idea of the sovereign good. Kant develops the idea of moral order as a unit “based on the existence of freedom” beyond the “random” order based on external commands.

Man, through his existential status, is an ephemeral being and his manifestation is contradictory: he desires individual freedom and articulates it on the basis of collective freedom; but, in many cases, his freedom of expression restricts the range of collective freedoms. Acknowledging his position, he externalizes a series of tensions with his peers, with the inner dramas, with the restrictions imposed by social norms. Many of the moral rules and commandments which are conveyed to us represent the pattern of a normal “man” in a community/society. The moral norm is a generalization of the collective experience and falls into the category of those accepted by people. They become models according to which behavior, action, events are assessed. Unlike legal norms, moral ones give freedom of objectifying in the manifestation of inter-human behaviors and rapports. More and more formulations comprised in moral norms describe permissiveness and restrictiveness in concrete situations of life. All morality comprises a set of rules of conduct which are dynamic and establish the norms valid for regulating a historical period. “So, in fact, human justice, prosecution and punishment of the guilty are deeds of virtue; but it is a fact of necessity; that is to say it is good only because it is necessary; however it would be better for people and the State to be exempt from punishment.” [3] Therefore, punishment is only the establishment of virtue at social level or the doing of good. Citizens who are part of the government must provide the model of virtue for others, who in turn, take part in perfecting the governance. “Moderation in affections and passions, self-control and healthy prudence are not only good in many respects, but they appear to even be part of the internal value of a person; but there is still much needed to declare them good without restriction (...).” [4]

As a social being, man needs laws and norms to regulate his relations with his fellow beings. This need is settled and functions through understanding, laws and norms being accepted by those who understand their usefulness, at the same time leaving response or causing contrary reaction to those ignorant. In this respect, Aristotle
argued that in any legal step, “the collections of laws and constitutions can be useful, of course, to those able to study and judge what is good or bad in themselves, and whose case can be adapted to each; but those who go through them without the necessary training, do not have the capacity to properly judge them, only incidentally, at most, the understanding of these issues could thus be somewhat facilitated.” [5] In other words, everyone will understand permissiveness as appropriated and applied in all situations that need regulation. Therefore, a country, whatever its size, is represented by the legal-political system through which the relations with citizens are performed and which ensures a standard of living for them.

To these details we add some conceptual clarifications that help us understand the distinction between the terms that will be employed when addressing the topic. Deontology is the science of the duty, its contents comprising a series of obligations belonging to a profession, certain coordinates of behavior considered exemplary in the exercise of a profession. Deontology has a theoretical and normative character, including moral norms, principles and values by analyzing practical and theoretical issues of morality. Moral consists of a series of standards, resulting in the categories of good, bad, duty, honor, acting through public opinion. As a result, moral is the one that marks the everyday behavior of people, whereas ethics remains at theoretical level, highlighting the general elements of practical morals. From this conceptual delimitation results the fact that deontology examines the ethical norms of a profession and contains certain moral norms that are adapted to the respective profession.

The deviation from the moral norm is not sanctioned through coercion; the critical reaction is inscribed in the public space, showing the degree of maturation of public opinion. This type of sanction penetrates the structure of human beings where the juridical has no power of coercion: the experiences and feelings of the person sanctioned, with reverberation on the community in which he or she lives. Whatever the area of activity within which the person acts, the moral good operates and serves to guide human behavior in the interpersonal relationships. Moral values express preferential, rational and emotional rapports of individuals, social groups or, in some cases, the reaction of the entire society with regard to the realization of public and private actions, following the moral appreciative criteria. Moral norm allows the
deciphering of relations with moral value. Another concept necessary for the understanding of morality, the moral principles, coordinates moral norms and allows the assignment of traits to human behavior: moral, immoral or amoral. Human behaviors are objectified in human experience which, in turn, knows the following referential: the temptation of obtaining valuable satisfactions, the tendency towards natural joys and fulfillment of pleasures. Any excess determines the violation of moral norm and produces dysfunctional states for individuals, groups or communities. The result is described by the close or remote area in relation to moral norms. If the behavior contradicts the moral norms, it falls in the immoral area, when it is neutral in relation to the sphere of morality we are in the amoral area. These evaluations belong to those who support, understand and internalize moral values, considering them indicators of their own behavior. Without assuming this type of values which belong to the sphere of morality, any external penalty has no effect on the wrongdoers. They will not understand why emotional experiences are sanctioned, why their support is viewed as immoral by those who assess it. This leads to a situation where, considered not guilty or misunderstood, they keep the public stand and consider themselves victims. In this case there another aspect is involved, emphasizing the lack of moral norm at community level: the family that takes advantage of the public office appears as the “savior”, carrying the entire series of favors for which it was an accomplice. From the immorality of the wrongdoer, the guilt of the group is reached, with the complicity of those who took advantage of the public office. It is specific for consequence-ism a behavior based on the consequences resulting from the loss of public office. Good is that which produces “the happiness” of those around me. The value of the aid given is proportional to the advantage of those receiving it. The loss of privileges coming from a public office correlated to failure to comply with moral norms can not be understood, even if the deeds fall into a series of criminal matters. Blame is placed beyond one’s self and comprises a momentary misunderstanding that, to the perpetrator’s mind, will be forgotten with time. It is impossible to imagine the distance installed between persons involved in an action that exceeds the sphere of morality. Full responsibility is directed beyond the self. In fact, it is the stranger inside each one. The translation of this state would be objectified in the formula: It is not my fault! It is the moment when any opening
ceases and any attempt to take the deed upon oneself is doomed to failure. Furthermore, the action appears to be a minor fact, especially when the action is attached to emotional background.

Now intervenes something that is considered minor by the Romanian society: the deontology of the public servant, journalist, magistrate, doctor, or teacher. All these professions impacting the life of the public space, where ethics is the one governing human behavior, seem to not find their role and purpose in relation to the Romanian community. The motto is: My behavioral freedom belongs to me and the others have their own sphere of manifestation for their freedom. “Freedom is a curse and the only source of human greatness” (Sartre). My freedom has no boundaries, it is absolute. But, in the field of public office, there emerges a new manifestation of freedom, increasing the degree of freedoms also implies the responsibilities afferent to them. The public office also implies restrictions concerning what produces pleasure, any personal satisfaction being inserted in the living circumstances of fellow beings. And this is because freedom should not be mistaken for libertinism or moral chaos.

Aspects of ethics applied in administration

“...The benefits that the power and administration of general interests inspires all people with the desire to perpetuate in operation; and as if they were ill and only the possession of power could bring them health, they are obstinately tending to retain authority, once they have owned it.” [6] Aristotle describes a state of fact of the human condition; its actuality seems to overcome any space-time barrier.

Power corrupts and attracts in an absolute manner. It is a kind of disease that we wish to cure, in theory, but practically we make every effort to acquire it. People “proceed in different ways to achieve the goal set by each - glory and wealth. Some proceed carefully, others - heady; some violently, others - with skilled crafts; some patiently, others - contrarily; everyone can achieve their goal, following one of these different paths.” [7] The different ways of covering the road to power include all sorts of means, some venial, others developing tensions and imbalance within social life.

The deontology of a profession traces the obligations and behavioral restrictions imposed in a field of activity. For the public servant, deontology is concerned with the rights for accomplishing the job duties and the conditions that allow the realization, in
good conditions, of the duties, including professional competence and the quality of the public service conduct. The focus is on the general interest, the public official being the one serving the community, being “its servant”. The important aspects of the public office relate to moral obligations enshrined in the content of the professional sphere. Permissive and restrictive, which appear in the title, refer to the rules under which the profession of public servant is exercised in relation to citizens, their manifestation in the public space. The regulations are also applied in the relations between officials, intra-institutionally, thus limiting any moral abuse. The rights and obligations of civil servants in Romania are integrated in the status of the European public servant. [8]

The deontology of the public office brings together morality and law, moral norms and principles and legal norms specific to the public position. Any manifestation of abuse or corruption violates the rights and freedoms of citizens, or intra-organizationally, affects relations with superiors or subordinates, causing dysfunction in the realization of job tasks. At the same time, there appears a state of conflict with repercussions on the way in which the administrative institution is perceived in the public space, lowering the level of trust and openness of the citizen with respect to the decisions they take. The moral dimension does not aim at a fragment of community life; it aims at all decisions, the normative acts, actions, relationships that generally make society work. If some moral deviations are sanctioned by the coercive force of the state, others are part of the public reaction. They become concrete in the manifestation of the civic spirit of citizens. Therefore, abuse, corruption, unprincipled relations are reflected on the perception of the entire society. Deviations from morality entail complicity from those who hide them. One can not be considered honest as long as one accepts moral deviation. Moral value is pursued in itself, without any reward. The reward of good cancels it. The moral gesture and action can not be held amid fear or positive awards. Moral good is similar to artistic beauty - disinterested.

The public servant has a dual responsibility: in relation to the higher authority and the public interest. A public servant manifests administrative neutrality and is obliged to apply the best type of management to meet the requests/needs of citizens. Responsibility and accountability are two professional standards involved in public office. Responsibility can be subject to accountability when the action takes into account
the fulfillment of public interest. It attracts the interrelation of multifaceted ethical, philanthropic and legal issues. “Corporate social responsibility includes what the society expects from an organization in terms of economic, legal, ethical and philanthropic aspects in a given moment”. [9]Ethical responsibility manifests itself in the public office, covering the needs and interests (desirability) of citizens through a series of precisely defined public services. We will not address the economic aspects, our focus being moral behavior manifested in the fulfillment of statutory duties.

The basis of the analysis was Law no. 188/1999, updated in 2014 and the analysis will be solely centered on the issues concerning Chapter V, Section 2: Duties of public servants, a section explicitly defining the obligations of service duties, compulsory when improving the activity of the public authority or institution “that respects the provided rules of professional and civic conduct”. The legislator draws attention to the conduct and accomplishment of the duties by the term “obligation”, meaning an inclusion of the ethical dimension in the sphere of professional duties (Article 43) [10]. The following article of the law, Article 44, sets interdictions to public servants with regard to political interests, clearly distinguishing the public sphere from the political one. This neutrality stated in the law confirms the morality that must be displayed by the public official, which is associated with impartiality in relation to the political forces in power. It is further proof that public interest should not be subservient politically and it does not favor anyone from the political area [11]. Reality has shown that deviations from legal norms take place with the complicity of local and central administration representatives, and, moreover, proved that they involve representatives of the legislature. In such a combination of forces representing local or central authorities, there is the recent effect acting with the support of the perpetrator’s public authority.

Article 47 [12] of Law no. 188/1999 brings important provisions on the behavior of public officials concerning benefits of any kind, declaration of assets, and its annual update. Most offenses are committed in this area, generated by receiving undue benefits. The temptation of the advantage at any price is nothing new; Aristotle recorded a concern among chiefs of state: “it must be done so, by law, or any other means with similar force, so that public offices never bring wealth to those who hold them.” [13] As
for the transparency of public spending, Aristotle states: “to avoid misappropriation of public funds, it should be decided for one to be accountable before all gathered citizens, and display copies of them in brotherhoods, cantons and tribes; for magistrates to be honest, rewards should be brought to those who distinguish themselves by their good administration.” [14] We find that rewards do not constitute a method of disposal for the misappropriation of public funds for the Romanian society, and other forms of reaction would be situated on the level of public opinion, which would pull the alarm for deviation manifested in public space.

Legislative regulation for the conduct of public servants will work when moral norms will be applied in everyday practice. The legislator will never comprise psychological aspects with no legal coverage in the law. The emotional and volitional level of community members remains a territory belonging to social psychology and can only be “judged” by moral values and principles. Individual good has representation as long as it is correlated with the social good. In the area of social good, the guiding factors are those entrusted with political power. In the collective mind, there are preserved the behaviors of those deciding upon the history of the community. Any deviation from moral norms, resulting in criminal matters allowed for decision makers, usually becomes the rule for the other citizens. The moral norms and principles within permissiveness can only act through internalization, assuming them as own life aspirations. Thus is assumed the action inscribed in the immoral area and its repetition avoided. When morality becomes one of the criteria for assessing the profile of an individual, then we shall distinguish between the spiritual beauty and the silliness of undue income or the situational political power. Wisdom remains an individual act and “beauty subsists in the soul through wisdom”, just as “foolish souls are ugly”. [15]

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[10] Law no. 188/1999, Art.43 (1) Public officials are obliged to perform their job duties with professionalism, impartiality and according to the law, and to restrain from any deed that could bring prejudice to the natural or legal persons or to the prestige of the body of public officials.
(2) Public officials in charge are obliged to support the motivated proposals and initiatives of their subordinates in order to improve the activity of the public authority or institution in which they carry out their activity, as well as the quality of the public services offered to citizens.
(3) Public officials have the duty to follow the norms of professional and civic conduct provided by law.

[11] Law no. 188/1999, Article 44(1) Public officials are forbidden to hold management positions, elected or appointed, in the management structures and bodies of political parties, defined in conformity with their status, for the organizations with the same legal regime as the political parties, foundations or associations functioning alongside political parties.
(2) The superiors of public officials are forbidden to be part of political parties or organizations with the same political regime as the political parties, foundations or associations functioning alongside political parties.

[12] Law no. 188/1999, Article 47. (1) Public officials are forbidden by law to request or accept, directly or indirectly, for them or for others, considering their public position, gifts or other advantages.
(2) When appointed in a public position, as well as when terminating the work rapport, public officials are obliged, under the law, to present to the manager of the public authority or institution the declaration of assets. The declaration of assets is annually updated, according to the law.

The impact of control in public administration

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Abstract
After the revolution in 1989, the Romanian society is trying to find a suitable structure to develop in. This was seen in the legislation adopted during this period. After decades in which the rights and liberties of citizens were violated, the moment came for the resettlement of real values and the search for the necessary leverage to adapt to new international and, in particular, European requirements. Romania is forced to make changes at legislative level, not only regarding institutional structures, but also as a reform of the entire society. It is an ongoing process. This paper aims to consider, as a whole, the impact of control and the need for changes in legislation on the functioning of public administration system.

Keywords: control, public administration, global social system

Introduction
Society operates in accordance with the rules in force. This is a principle of functionality, a guarantee of the existence of the global social system in the long-term. This does not necessarily imply lack of attention for the operating mode of the entire system, of all factors involved. Since the foundations of a modern state, one shall bring to question the attitude, the powers, the functions, etc, which decision-makers, as well as govern representatives should have. It's all about the politics, as it is most likely to set the tone of the respective society. Niccolo Machiavelli, considered a theoretician of the modern state, brought into discussion a series of realities that exist in contemporary society. He takes an antagonistic position to the classical philosophy of political thinking: "Machiavelli did not deny that people are compelled to live virtuous live in accordance with Aristotle's teachings. Instead, he tried to demonstrate that there is not a necessary connection between virtue and good governance. Criticizing the moral theory of politics, Machiavelli defines political activity and governance in terms of power - power whose legitimacy has nothing to do, as he says, with the good character of those who are governing. The right of a person to control others stems from power itself and not from its virtues. To be virtuous does not mean having more authority." [1]

Therefore, how do
we make sure there are no abuses, that imposing justice is legitimate? Who is to decide this, and how do we make sure that society is operational? "A rule is always compulsory and only when failure to follow it justifies certain disqualifying measures against the ones who violate it ... if it is possible to assume that citizens of a society have established its laws, or that they tacitly acknowledged them, by the fact that they remained part of it, even though they might have left to live in another society, then we indeed found a contract or a consensus for the obligatoriness of the rules of justice." [2]

The need for the enforcement of the rules was therefore established. How is this done? By creating structures and certain mechanisms through which these regulations, containing behavioral standards, but also promises for a normal society. These structures, collectively referred to as the administrative apparatus, have as their objective law enforcement. Public administration is called upon to ensure the citizens' interests, to be the glue between them and the governance factors through compliance with the rules. The activity of public administration is done through government control. Control of the activity of administrative structures must not interfere with their proper functioning; it must establish that objectives are achieved, work methods are fair and that there's compliance with the law.

Types of control

In current literature there are a number of approaches related to control. Before identifying control forms, we should determine its specific terminology. "The term comes from the French word contre-rolle where this means only accounting audit; subsequently, the concept has expanded, being used for the purposes of verifying the results of an activity. Form of assessing the effectiveness of the administration, of correction and/or punishment whose primary purpose leads to the intensification of executive activity to carry out the functions of public administration." [3]

Time is also a factor in the approach of control types. There are controls which shall be exercised after the adoption of an administrative decision and controls to be carried out before such a decision is taken. Time is important because when control is exercised in good time and whenever deemed appropriate it can prevent a series of undesirable effects.
So, we can say that there has been a change in perspective with regard to the scope of control: "If for a long period of time there were no inspectors interfering in the act of administration, as they were only providing an a posteriori activity, now they are increasingly urged to take part in the action of public administration. An a priori control means that the controlling agent can influence the decisions of the controlled authority, especially when it is authorized to assess the opportunity of all actions (acts and facts) of that authority" [4]

The literature circulates an opinion according to which there are three criteria according to which controls can be classified: according to the nature of the controlling body, there is a parliamentary control, an administrative control; judicial control; control carried out by other public authorities without the prerogatives of the three classic state forces; depending on the objective, there is a general control and a specialized control; from the point of view of the applicable procedure, we have a judicial control and a non-judicial one. [5]

By analyzing the control forms presented above we can say many things related to each form of control, each with their importance and specific needs.

The parliament can and must perform controls on government activity by addressing questions and interpellations, adopting simple motions and censure motions as well as through its commissions. This results from the fact that the Government is politically responsible only in front of Parliament. The parliament can address questions, interpellations; it may adopt any simple or censure motion or can control government activity by various committees.

The question implies requesting a response concerning the accuracy/ reality of a fact or some documents that the government and other executive agencies must communicate about, etc. Questions may be addressed in writing or orally, and in case they are written, answers may be oral or written as well. [6]

Interpellation is a request usually addressed to the government/ministers by a member of Parliament asking for explanations on a given activity/measure adopted. [7] Interpellations are addressed only in writing.

A special type of control is accomplished by censure motions which are adopted by the Chamber of Deputies and the Senate in the presence of the majority of
members. Usually a censure motion is initiated if a part of the members of parliament are not satisfied with the activity of the government or when the government assumes responsibility for a bill. If the censure motion is adopted by vote by the majority of deputies and senators, the result is the dismissal of the government.

Parliamentary Committees are established by each Chamber in part or in common and may be permanent or special. Their role is to inform the parliament in an exact manner with respect to a particular problem. The result of the commission's findings do not produce legal effects per se, but may represent a point of departure, a political foundation in respect to a specific legislative initiative, censure motion, government reshuffle or the initiation of a judicial inquiry. [8]

The control of the government and other public authorities' activity can also be achieved by means of the Ombudsman, the Court of Auditors, etc., because they are autonomous authorities which focus on compliance with the fundamental rights and freedoms of citizens.

Administrative control can be internal and external: "Internal administrative control shall be exercised by civil servants with managerial responsibilities, from inside the respective administrative body on their subordinates, whereas external control shall be exercised by responsible persons from outside the controlled public administration body and which don't necessarily belong to the same system." [9]

Judicial control is a special type of control carried out by the courts of law. This form of control has special features, because it also involves a specific procedure. As a general rule, this form of control is a way for the citizens to defend their individual rights and freedoms.

This form of control has its constitutional and legal provisions as follows: [10] article 52 is the main constitutional ground for judicial control, well-known in literature as administrative court. This Article enshrines a fundamental right of Romanian citizens, namely: the right of a person aggrieved by a public authority. Article 21 lays down the general framework of all values defended by justice, i.e. legitimate rights and interests. Article 53, to be known as restriction on the exercise of certain rights or freedoms, lays down the principles to be observed when carrying out a restriction of any nature of the pursuit of a right or freedom. Article 123, paragraph 5 regulates an important legal
institution, that of administrative oversight, which means the right of the Prefect to control the legality of acts adopted by local public authorities elected by citizens. Article 126, paragraph 6 establishes judicial control of administrative acts issued/adopted by public authorities through the intermediary of administrative litigation, with the exception of those in connection with the Parliament or acts of military command. Article 73, paragraph 3, letter k refers to the regulation of the organic law, which is also the institution of administrative litigation. On the other hand, Article 154, paragraph 1, lays down the rules of decrees based on fundamental law, establishing that they shall remain in force in so far as they do not contravene to the provisions of the constitution in force.

As specified by an author: [11]"administrative litigation represents the whole of the administrative disputes between public authorities, on the one hand, and those whose legitimate rights and interests were injured, on the other hand, that shall be deducted from typical or similar administrative acts considered illegal by the power of the administrative court, governed by a predominant legal regime of public law."

It lays down a general rule according to which, in principle, disputes in the administrative court, according to the power vested in them by competent courts or courts of appeal. [12]

Subjects that can notify the administrative court shall be established by law, [13]as follows:
- Any person who considers being aggrieved in a right or a legitimate interest of theirs, by a public authority, by an administrative act or failure to receive a solution to a request within the lawful term;
- Any person aggrieved in his right or legitimate interest by an administrative act with individual character, addressed to another subject of law.
- The Ombudsman, as a result of the controls carried out according to its organization law, if it considers that the illegality of the act or refusal of the administrative authority to fulfill its legal obligations may be removed only by the court of law;
- The Public Ministry, when, in the exercise of its functions under an organic law, it is of the opinion that breaching the rights, freedoms and legitimate interests of persons is due to the existence of unilateral administrative acts of public authorities issued with
excess of power or where it considers that an administrative act injures a public legitimate interest;
- The Prefect, when performing the control of administrative oversight;
- National Agency of Civil Servants when they consider the statute of civil servants has been breached.

The law of administrative litigation identifies the acts subject to judicial control, including the exceptions concerned, laying down a series of conditions which must be complied with for the action to be accepted with the administrative court: [14]
- the act thus challenged to be an administrative act, either typical or assimilated;
- the act in question to be the result of a public authority's will;
- the act subject to dispute injures a right recognized by law or a legitimate interest;
- compliance with prior administrative procedure in the form of disciplinary complaints and (or) a hierarchical administrative appeal;
- under the condition of time limit, the law imposing time limits for the exercise of both prior complaint, as well as of the action.

A public authority not concerned directly in carrying out a prerogative of the three powers of the state is the Ombudsman, as it is appointed for the protection of the rights and freedoms of natural persons for a term of five years.

The Ombudsman focuses on finding and combating phenomena which may be in breach of citizen rights and liberties. This authority does not replace the action of competent authorities to recognize rights or to resolve conflicts. Its power results from the recommendations he makes, by bringing to attention the abuse and in some systems of law (this authority, as one of European influence is found in most systems of law) even has the option to engage in legal proceedings. [15]

"The main job of an Ombudsman is to seek amicable settlement, therefore a mission of mediation or to plead the case of the citizen in front of administration more clearly, more intelligible. Therefore, a means of resolving a potential dispute by finding solutions within the range of available legal possibilities at the hand of public administration." [16]

Another important public authority in compliance with the principles of the rule of law is Constitutional Court - a self-contained authority whose main purpose is to check
constitutionality of laws, being the guarantor of Constitution supremacy. Its purpose is to ensure consistency in the laws with the Constitution in force. At the same time it can work out certain disputes arising between the Powers in the state, and unfortunately, in the past few years, it seems that the Court's role was more to resolve these pseudo-conflicts, showing in fact the immaturity of some political factors which are holding public offices.

When it is desirable to implement some public policies or certain measures, the necessary financial framework is also secured. To prevent any form of deviation there is the Court of Auditors, which shall exercise control on the acquiring, administration and use of the financial resources of the state and the public sector - as specified in the Romanian Constitution.

In other words, one should not ignore the control civil society holds on the activity of public administration; it is increasingly more actively involved in monitoring missions of the state and its institutions. The pressure exercised by civil society in recent years is notorious in the field of environment protection, campaigning in particular, for the purpose of combating illegal deforestation which was carried out in the last decades. In this "fight" a part of the press has been involved as well, signaling the abuses in a series of press reports and surveys; as a result, competent bodies took notice, a few criminal claims filed, but still insufficient compared to the realities in the territory.

Conclusions:

The activity of the State and its institutions must be monitored constantly. This can be done by several means and with the help of several authorities. Control is not meant to block the activity of administration but to correct and prevent breaches of the law or of the purpose set by legislature. There are a number of criteria for the classification of control, proof of the complexity of the phenomenon, which involves a lot of attention and a continuing adaptation to changes inherent in society.

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Role of administrative bodies in protecting the rights of refugees

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Abstract
Each Member State on whose territory are refugees is responsible for their protection and the Office of the United Nations High Commissioner for Refugees have the task of ensuring that governments take all actions necessary to respect their rights.

Romania has begun to build its own refugee protection system in 1991, when it joined the specific international legal instruments and the further development of the national asylum system led to the harmonization of legislation according to standards set by European Union regulations and obligations under the adherence to various international human rights instruments.

Keywords: refugees, protection of rights, regulation, administrative bodies

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Introduction

As a legal concept, “human rights” refers to the subjective rights of individuals [1], in relation to public power and other people, but it constitutes also a veritable legal institution consisting of a set of domestic and international rules that concern the recognition and protection of human rights against abuses of states and their abuse by peers [2].

Human rights protection is primarily of domestic jurisdiction of states, but it belongs also to international jurisdiction, regarding that, in principle, issues of promotion and protection of rights remain the responsibility of states and international mechanisms for protection only intervene when countries themselves do not respect or do not have the necessary measures in the event of violations of the rights enshrined in the Convention (to which they are parties) or by jus cogens norms, thus affecting the international legal order [3].

According to the doctrine [4], the refugee is the person that after some well-founded fear of being persecuted for reasons of race, religion, nationality, membership
of a particular social group or political opinion, has left the country of origin and because of these fears, is unable or unwilling to return to that country.

Unlike other people who leave their home countries due to their decisions, refugees have no other way to escape the persecutions that threaten their rights as human beings.

Refugees are a distinct category of foreigners, existing at a given time in a State from which they seek asylum, while they escape some actual situations or conduct of the factors responsible in their home country, which they consider unbearable [5].

Aspects of the current situation of refugees

Armed conflicts taking place in some countries for ethnic, religious reasons, power struggle, but the struggle for democracy of other groups, lead to refuge in other countries of millions of civilians, adults or minors.

More dangerous is that, in the name of fundamentalist religious precepts, hundreds of thousands of people have to flee from the occupied territories, such as the so-called “Islamic State”.

The outbreak of internal conflicts generated by ethical reasons or the struggle for democracy lead to serious human rights violations. For example, in Syria, government troops used machine guns against the people protesting for obtaining political and social freedoms, violating thus the rights to physical integrity and security of the persons concerned, contrary to the UN Human Rights Council resolution adopted on 23 March 2012 on ceasefire [6].

Around 2.8 million Syrian refugees have fled to neighboring countries and North Africa, according to the latest statistics, Lebanon is the country with the largest number of Syrian refugees (1.100.486), followed by Turkey (773.935), Jordan (597.328), Iraq (225.409), Egypt (137.734) and North Africa (23.367). Of Syrian refugees, 85% live outside official camps and 62% of their children of school age are not enrolled in some form of education.

In this context, the UN made an emergency appeal for additional support of half a million refugees, Germany supplementing the humanitarian program intake for them [7].
By the end of June 2014 in a UN report indicated that 110,000 Ukrainians took refuge in Russia, Poland, Belarus and Romania and 54,000 people were displaced within Ukraine.

Ukraine faced turmoil emerged after the previous regime in Kiev’s refusal to sign the end of 2013 a trade agreement with the European Union, the former pro-Russian Ukrainian President Viktor Yanukovych preferring to turn to Russia to get economic aid, Ukraine (a former Soviet republic) being in recession for over two years. This turnaround has caused a pro-European national movement of challenge which led to Yanukovich’s order to give up power followed by the annexation of Crimea to Russia and then by a pro-Russian separatist insurrection in the East of the Country [8].

A report by the Office of the United Nations High Commissioner for Refugees, released in Geneva on March 21, 2014, shows a sharp increase in asylum applications during 2013 for 44 industrialized countries. Thus, it states that 612,700 people applied for asylum in Europe, North America, East Asia and the Pacific – this being the largest cumulative number compared to previous years.

The largest growth on regions of asylum applications was registered in the 38 European countries that have received 484,600 applications together – representing an increase of one third compared to 2012. Germany was the most requested, with 109,600 new asylum applications. France (60,100 requests) and Sweden (54,300 requests) were also major receivers [9].

North America ranks second by number of asylum applications, amassing in 2013 a total of nearly 98,800 applications.

In East Asia and Pacific, both Japan (3,300 applications) and Republic of Korea (1,600 applications) received a record number of applications for granting asylum, compared to previous years. Australia (24,300 applications) also registered a significant increase compared to 2012 (15,800 applications), which places it almost on par with the level in Italy [10].

The European Union acts increasingly more in migrants matter for Member States to ensure a proper system.

Data released in June 2014 by Eurostat [11], shows that in 2013, EU countries have provided protection for 135,700 asylum seekers, almost 20,000 more than in 2012.
Of these, 64,500 were granted refugee status and almost 51,000 have received so-called subsidiary protection, since they did not meet the conditions for the granting of refugee status, but were about to suffer an injury to rights when returning to their countries of home. More than 20,000 people have received, according to Eurostat, the EU residence permit for humanitarian reasons.

The largest group of beneficiaries of protection status have represented Syrian citizens (almost 36,000, i.e. double compared to 2012, in percentage 26% of those who were received into the EU), followed by citizens of Afghanistan – 16,400 (almost 12% of the total) and those in Somalia – 9,700 (7%).

Among European Union countries where asylum seekers received positive decision, the first places is Sweden, with 26,600 applications accepted and Germany with 26,100 applications approved.

In Romania, according to the European Statistics Office, Syrian citizens are the beneficiaries of the largest number (1580) of positive decisions.

**Regulations, bodies and procedures designed to protect the rights of refugees**

Currently, the main international instruments that form the legal foundation of the system of protection for this category of people is the: Refugee Convention, dated July 28, 1951; Protocol adopted on 31 January 1967 in New York; Declaration on Territorial Asylum, adopted in 1965 at the UN; European Union Council Resolution on minimum guarantees for asylum procedures adopted in 1995.

Due to its geostrategic position and politico-economic system, Romania was and continues to be since the existence of the great empires, an area favorable to freedom of movement, which is exploited to the maximum by refugees.

Since the early twentieth century were imposed a series of regulations on the status and problems of refugees in Romania, the first being the 1915 Aliens Control Act and Implementing regulation, which provided that “political refugees are granted residence in Romania by the Ministry of Interior”, receiving in this regard a “free pass”. Currently, the protection of the rights of refugees is governed generally by Law no. 122/2006 on asylum in Romania, as amended and supplemented, which adopted based on the recommendations of the Council of Europe, the minimum guarantees for asylum procedures, and by Law no. 118/2012 on approving Government Emergency Ordinance
no. 18/2012 amending Government Emergency Ordinance no. 30/2007 on the organization and functioning of the Ministry of Interior, by which was established the General Inspectorate for Immigration (IGI), with competencies in the area of migration and asylum on national level by repealing the Romanian Immigration Office, which operated previously.

Internationally, the first organization that founded refugee rights protection mechanisms were: the International Committee of the Red Cross [12], and the League of Nations and later the United Nations.

On December 14, 1950 was established by the United Nations General Assembly the United Nations High Commissioner for Refugees (UNHCR), which replaced the United Nations on Refugee Issues, which was established in 1947. High Commissioner is mandated to lead and coordinate different international operations for refugee protection, its primary purpose being to protect the rights of refugees and to ensure the possibility of migrants to exercise their right to seek asylum and find a safe place in another State, with the option to return home voluntarily, integrate locally or to settle in another country.

According to paragraphs 1 and 8 letters a and d of the Statute of the Office of the United Nations High Commissioner for Refugees, UNHCR is responsible, under UN auspices, to provide international protection to people fleeing persecution in the countries where they lived before [13].

UNHCR is present in Romania since September 1989, since the beginning offering assistance to the Romanian Government to improve the asylum system, but also to implement coherent programs to integrate people who are granted a form of protection.

In achieving its goals, UNHCR is working with relevant government institutions (eg, the General Inspectorate for Immigration, Border Police General Inspectorate of the Ministry of Internal Affairs, Ministry of Foreign Affairs and other ministries).

General Inspectorate for Immigration, which is organized and operates as a public institution of central public administration, with legal personality, under the authority of Ministry of the Internal Affairs, implements policies and relevant legislation of Romania on migration, asylum and integration of foreigners. It also provides regional
and international cooperation on migration and asylum, contributing to the development of functional asylum systems in Southeast Europe.

Since the second half of the twentieth century international refugee protection procedures have seen a significant development under a system created and supervised by the UN, in close correlation with the development of human rights.

The main components of refugee rights protection procedures carried out by the United Nations High Commissioner for Refugees are: reception of asylum seekers and refugees; intervention with the authorities, when required; ensuring the physical integrity of applicants; protection of women, children and the elderly; improving national legislation and asylum procedures; participation in the development of procedural rules in the receiving States; taking protection provisions in the text; promoting specific legal advice.

UNHCR monitors granting the status of refugees, will take contact with asylum seekers (including those in detention), informing them about their rights, monitors the personal security of applicants and takes the necessary measures to prevent or to remove any form of violence directed against them [14].

Detailed rules for the implementation of procedures to protect the rights of refugees begin with admission to a State territory, asylum and protection of human rights, including ensuring that the principle of non-refoulement (without which the safety and even survival of applicants would not be possible) and ends by achievement by refugee of a sustainable nature status, which ideally should be done by restoring protection in the country of origin of refugee.

In order to improve specific procedures, UNHCR maintains a constant dialogue with state administration bodies, NGOs and academic institutions to fill legislative gaps and to provide the most appropriate tools for protecting refugees.

In Romania, to achieve protection of the rights of refugees and their integration, the General Inspectorate for Immigration cooperates with the structures of the Ministry of Internal Affairs and other state institutions, collaborates with nongovernmental organizations active in the field of migration and humanitarian protection, concludes agreements with similar foreign institutions and international organizations under the law.
Conclusions and proposals

Generated by certain forms of discrimination, to some extent, is also the migration phenomena so that to eliminate shortcomings specific to the situation in which they are, the refugees should receive more support from the state's administrative bodies of reception and international organizations.

Both at universal level and regional-European they act to ensure proper conditions to refugees, but it requires normative and procedural measures to continuously improve on the complex evolution of this field, generated by the widening of the likely causes of migration, to better meet the needs of protection.

Accession of Romania to the European Union has led in recent years, to substantial changes of the internal rules of law which states the regime of foreigners and citizens of EU Member States and the rules of law governing asylum in our country in order to ensure compliance with European legislation and international legal instruments to which the Romanian state is a party.

Involvement of European Union in a larger extent on resettlement of refugees is necessary in the context that neighboring countries to Syria host three million refugees versus 100.000 who were resettled in 28 EU countries. Moreover, it requires the commitment of all Member States to rescue refugees, knowing that in October 2014, several days after the death of 366 migrants off the island of Lampedusa, Italy launched operation “Mare Nostrum”, the Italian Navy saving, for one alone, about 50.000 immigrants, mostly coming from Syria and Sub-Saharan Africa [15].

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Perceptions of good governance in Romania through statistical indicators

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Abstract
Good governance represents one of the current and critical issues of the central and local government. Over the last 15 years, concerns for the definition and characterization in statistical terms of the concept of good governance, both in terms of quantity but especially quality, have increased. After a brief introduction of the concept of good governance and of the key statistical indicators used at global and European level to characterize it, we performed an analysis of one of the most common sets of indicators in this respect, namely good governance indicators within the system of indicators of sustainable development of EUROSTAT. Thus, we presented good governance indicators for Romania, highlighting our country’s position towards the European Union and the other member states, as well as trends recorded over the years.

Keywords: good governance, concept, public administration, statistical indicators, qualitative indicators, quantitative indicators, tendencies.

1. Introduction

Good governance is a concept widely accepted today in this formulation, which in the last 15 years has been the subject of numerous studies, researches, debates, both nationally and globally. Concerns were aimed at the most clearer, accurate, comprehensive defining of this concept and at identifying the quantitative and qualitative statistical indicators that characterize it and highlight the recorded level and progress from different perspectives.

Although there have been approaches of the relationship between governance and economic development since the 80’s, emphasizing this issue in the most relevant manner, especially in terms of quality, represents today a current topic, widely discussed and approached [1].

Over time, it turned out that a good governance doesn't just mean economic development; this concept is more complex, directly targeting many more fields than the economic one.
Moreover, good governance represents now one of the major current issues of local and public central administration, as it is basically the key to the smooth functioning of society and the governmental bodies are directly involved in this process, at least in terms of public governance.

In the following we shall define in terms as succinct as possible the concept of good governance and what are the global and European guidelines in terms of statistical characterization of this concept.

2. Defining good governance and its statistical approaches

As mentioned above, the concept of good governance is a particularly complex one, which does not only point to the obvious relationship between governance and economic development, but also to the relationship between governance and the environment, and between government and society.

Discussing in terms of public administration, of government, good governance refers to public governance. Otherwise, in this paper we will approach good governance issues from this perspective.

Specifically, there is no actual dedicated definition of good governance, it can be defined by its characteristic traits. Based on these features, various systems of indicators were outlined for assessing good governance, indicators that consider approaching issues from all involved and concerned sectors: civil society, political society, government, bureaucracy, economic society, judiciary system, etc.

Statistically, several systems of indicators were outlined on a global level, aiming towards good governance from different perspectives.[2] In the following, we will briefly present a few statistical approaches of good governance in terms of punctual indicators and not of synthetic, aggregate indicators.

Therefore, we can discuss about the system of indicators of the United Nations, presented in the Human Development Report 2003, Millennium Development Goals, in which, referring to a good governance, in the context of sustainable development, the focus is on:

- participation;
- transparency;
consensus;
- efficiency and effectiveness;
- equitability and inclusiveness;
- responsibility;
- capacity of response;
- rule of law.

Organization for Economic Cooperation and Development (OECD) also uses a system of statistical indicators that includes the indicators of good governance, covering the following aspects:
- public incomes and expenditures;
- innovation in public system;
- e-government;
- combating corruption in public system;
- public finances;
- regional management;
- legislation;
- management of the risk.

The European system of indicators of good governance, included by EUROSTAT in the set of sustainable development indicators, refers to the following categories [3]:
- effectiveness and policy coherence;
- openness and participation;
- economic instruments.

Specifically, there is a total of six indicators that are concordant with the principles of Sustainable Development Strategy of the European Union (EU SDS), a strategy that aims to promote coherence between actions undertaken locally, regionally, nationally and globally, to enhance their contribution to the sustainable development.

By detail, the set of indicators of good governance of EUROSTAT are as follows:
- effectiveness and policy coherence:
  - New infringement cases;
  - Transposition deficit;
  - Level of citizens’ confidence in EU institutions.
• openness and participation:
  - Voter turnout in national and EU parliamentary elections;
  - E-government usage by individuals.
• economic instruments:
  - Shares of environmental and labour taxes in total tax revenues from taxes and social contributions.

The EUROSTAT indicators, which will be further detailed and presented, provide an assessment and monitoring of changes in good governance, both at EU level and at the level of each Member State.

3. Trends in the development of statistical indicators for assessing good governance in Romania

As previously mentioned, the activity of the Government, of all local and public central administration authorities, can be statistically assessed through a set of indicators that fall within the principles and objectives of the Sustainable Development Strategy of the European Union [4], in Theme 10, "Good Governance".

These were designed to characterize coherent and effective public policies, the opening of citizens towards the authorities and their participation in government, as well as the economic instruments used by authorities for proper management of environmental and taxation issues.

There are three indicators in the set of indicators that refer to the coherence and efficiency of public policies, namely New infringement cases, Transposition deficit and Level of citizens’ confidence in EU institutions.

The first indicator, New infringement cases, illustrates new cases of infringement brought before the European Court of Justice, in the event that a State has not reached the established deadline for implementing of EU laws.

For Romania, in the period 2007 - 2012 there was a single penalty registered in this respect, in 2009, counting us among the countries with the fewest penalties.

The second indicator, Transposition deficit illustrates the percentage of Directives that have not been notified to the European Commission, from the total of the Single Market Directives that had to be notified within a certain period (Table 1).
Transposition deficit is an indicator that illustrates the coherence of EU policies with those of Member States.

In most cases, Romania was below the level of the European Union and more importantly, below 1%, set as target in 2007 by the European Council.

Table no.1
The evolution of indicator “Transposition deficit” in Romania and European Union between 2007 and 2012

<table>
<thead>
<tr>
<th></th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU (27 countries)</td>
<td>1.2</td>
<td>1.0</td>
<td>0.7</td>
<td>0.9</td>
<td>1.2</td>
<td>0.6</td>
</tr>
<tr>
<td>Romania</td>
<td>0.8</td>
<td>0.4</td>
<td>0.3</td>
<td>0.5</td>
<td>1.2</td>
<td>0.4</td>
</tr>
</tbody>
</table>

Data source: http://ec.europa.eu/eurostat/web/sdi/indicators/good-governance

Regarding the third indicator, Level of citizens’ confidence in EU institutions, this represents a contextual indicator, designed to characterize, along with the other two indicators presented above, the coherence and effectiveness of the public policies. The benchmark of this indicator is achieved within the Eurobarometer research that has been bi-annually carried out since 1973, to monitor public opinion in EU member states.

Table no.2
The evolution of indicator “Level of citizens' confidence in EU institutions in Romania and European Union, between 2004 and 2013

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>EU (changing composition)</td>
<td>57</td>
<td>51</td>
<td>52</td>
<td>55</td>
<td>51</td>
<td>50</td>
<td>48</td>
<td>41</td>
<td>44</td>
<td>39</td>
</tr>
<tr>
<td>Romania</td>
<td>65</td>
<td>68</td>
<td>64</td>
<td>72</td>
<td>63</td>
<td>65</td>
<td>60</td>
<td>61</td>
<td>55</td>
<td>49</td>
</tr>
</tbody>
</table>

Data source: http://ec.europa.eu/eurostat/web/sdi/indicators/good-governance
The data reveals two important aspects: on one hand, the trend of decreasing of the citizens’ confidence in EU institutions, both at EU level and at Romania’s level, and on the other hand, the higher level of confidence in Romania compared to the European level.

**Figure no.1**

**The evolution of indicator “Level of citizens’ confidence in EU institutions in Romania and European Union, between 2004 and 2013 (%)**

![Graph showing the evolution of citizens' confidence in EU institutions in Romania and European Union between 2004 and 2013.](image)

Data source: [http://ec.europa.eu/eurostat/web/sdi/indicators/good-governance](http://ec.europa.eu/eurostat/web/sdi/indicators/good-governance)

The citizens of Denmark (60%) and Hungary (58%) possess the highest confidence in EU institutions, while the citizens of Great Britain have the lowest confidence (20%).

In the set of indicators that refer to the openness and participation of citizens in the decision-making process, there are two indicators, namely the **Voter turnout in national and EU parliamentary elections** and **E-government usage by individuals**.

The **Voter turnout** indicator refers to the presence of citizens who have the right to vote in national, parliamentary, presidential and European parliament elections.
Table no.3

The evolution of indicator “Voter turnout in national and EU parliamentary elections” in Romania and European Union, between 1992 and 2012

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>EU (28 countries)</td>
<td>76.4</td>
<td>74.0</td>
<td>71.5</td>
<td>71.3</td>
<td>70.2</td>
<td>70.3</td>
<td>68.0</td>
</tr>
<tr>
<td>Romania</td>
<td>76.3</td>
<td>76.0</td>
<td>65.3</td>
<td>58.5</td>
<td>39.2</td>
<td>58.0</td>
<td>41.8</td>
</tr>
</tbody>
</table>

Data source: http://ec.europa.eu/eurostat/web/sdi/indicators/good-governance

The data presents a negative trend of the citizens’ presence to vote, both at EU level and in the case of Romania, which raises questions related to good governance and the reasons why, especially in Romania, voter turnout is drastically and alertly reduced, ranking us among the countries with the lowest turnout, along with Lithuania (35.9% in the last election) and Switzerland (41.8%).

Figure no.2

The evolution of indicator “Voter turnout in national and EU parliamentary elections” in Romania and European Union, between 1992 and 2012 (%)
Throughout the analysed period (figure no. 2), the lowest turnout for Romania was recorded in 2008 (39.2%).

Regarding the other indicator *E-government usage by individuals*, which characterizes the use of Internet by citizens in interacting with public authorities, the situation in the European Union and Romania for the period 2006 - 2010 is presented in table 4:

<table>
<thead>
<tr>
<th></th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EU (28 countries)</strong></td>
<td>:</td>
<td>29</td>
<td>28</td>
<td>29</td>
<td>31</td>
</tr>
<tr>
<td><strong>Romania</strong></td>
<td>3</td>
<td>5</td>
<td>9</td>
<td>6</td>
<td>7</td>
</tr>
</tbody>
</table>

Data source: http://ec.europa.eu/eurostat/web/sdi/indicators/good-governance

: not available

Data presented in table 4 highlight not only the extremely low percentage of individuals aged between 16 and 74 who use the Internet to interact with public authorities in Romania, compared to the level registered in the European Union, but also the inappropriate evolution.

Unfortunately, Romania is ranked last in this regard, within the EU member states.

From the point of view of economic instruments used by authorities to ensure economic stability, good governance is assessed through the Shares of environmental and labour taxes in total tax revenues from taxes and social contributions (Table no. 5).

Environmental taxes, according to EUROSTAT [5] methodology, have a physical unit as taxation base, which has a negative impact on the environment and comprise the energy fees (which represent 75% of the total), the transport fees (15%) and the pollution and resources fees (about 4%).
Labour taxes are personal income taxes, social contributions of employees and employers, of people who live from work, whether employed or not.

Table no.5

The evolution of indicator “Shares of environmental and labour taxes in total tax revenues from taxes and social contributions” in Romania and European Union, between 2006 and 2010

<table>
<thead>
<tr>
<th></th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU (28 countries)</td>
<td>6.00</td>
<td>6.32</td>
<td>6.34</td>
<td>6.35</td>
<td>6.31</td>
<td>:</td>
</tr>
<tr>
<td>Romania</td>
<td>6.33</td>
<td>6.97</td>
<td>7.50</td>
<td>6.77</td>
<td>6.83</td>
<td>7.14</td>
</tr>
</tbody>
</table>

Data source: http://ec.europa.eu/eurostat/web/sdi/indicators/good-governance

: not available

The share of environmental and labour taxes and the total revenue from environmental taxes and social contributions in Romania is very close to the average level of the European Union. The highest share is recorded in Bulgaria (10.21% in 2013) and the lowest rate in France (4.47%).

4. Conclusions

Although the number of EUROSTAT indicators used to characterize good governance from the sustainable development’s point of view is small, their relevance to this topic is very high. Basically, the most significant indicators that refer directly to good governance and its impact on citizens were chosen.

Through these indicators analysed in this paper, a series of different positive and negative aspects on good governance in Romania have resulted.

Thus, in terms of new infringement cases brought before the European Court of Justice and of the Single Market Directives that have not been notified on time within the European Commission, things went in a good direction for Romania, both as evolution and as comparison to other countries.

Voter turnout, however, registered a steady decline, today Romania finds itself among the countries with the lowest turnout, which demonstrates that Romanians distrust in political parties and public authorities. Romanians’ mistrust is also signalled in
regarding the EU institutions. Even if, in comparison to other EU countries, Romanians have a higher level of trust in the EU institutions, it has declined in the last years.

Neither in terms of Internet usage by citizens in relations with public authorities, Romania does not have a good situation and although there was recorded a very slight increase in time, we are still last, compared to other Member States.

In conclusion, although our country has made some progress in terms of good governance, the impact on citizens and their perception are far from the possibility to really discuss about good governance in Romania, at least today.

Bibliography:
http://ec.europa.eu/eurostat/web/sdi/indicators/good-governance


References:
A look upon regulations on the Romanian accounting profession

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Abstract:
Romania passed the last two and a half recent decades through economic, political and social transformations. The accounting profession also had to face every day more and more challenges. Therefore, many changes occurred. We can say today that the accounting profession became an important one. Its mission changed its shape and it has adapted itself to the new conditions.

Keywords: accounting profession, accounting regulations

1. ROMANIA FACING SOME MAJOR TRANSFORMATIONS

We all know that each historical period may seem more or less clear and linear. Like the other former communist countries in the south-eastern European territory, our country passed through major transformation in the last more then two decades. We changed our economy and our political system. We also faced some social transformation.

1.1 Synthetic coordinates

We believe that some of all these changes are concerning a large field of interest and we only mention a few of them. Their apparition and action seem to be well known.

In the table below we showed the main dimensions that we identified, as: the way of planning and orienting the economy, the property form, the structure of the national economy and of the trading and monetary international relations, the main characteristics of the credit, the importance of the market or that of the school, the employment level, the main characteristics of the taxation system or of the research activity.

Table 1. CHANGES – SYNTHETIC COORDINATES

<table>
<thead>
<tr>
<th>Field</th>
<th>Former shape</th>
<th>Present way</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Way of economic planning</td>
<td>Central directed</td>
<td>Independent</td>
</tr>
<tr>
<td>-------------------------</td>
<td>------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Property in the economy</td>
<td>Mainly national property on the assets</td>
<td>Increasing of private property</td>
</tr>
<tr>
<td>Structure of the national economy</td>
<td>Central coordinated</td>
<td>Free oriented, a minor intervention of the state in order to encourage some economic activities</td>
</tr>
<tr>
<td>Position of the market in the economy</td>
<td>Unimportant</td>
<td>Principal adjuster of the economy</td>
</tr>
<tr>
<td>International economic relations</td>
<td>Traditional, mainly oriented to the former communist countries and to the Arabian partners</td>
<td>Free and worldwide open</td>
</tr>
<tr>
<td>Monetary exchange regulations</td>
<td>Fixed exchange rates</td>
<td>Commercial transactions are gradually based on the free exchange rates</td>
</tr>
<tr>
<td>The population revenues</td>
<td>Low level</td>
<td>Low level for minimum and medium wage</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1</th>
<th>2</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest rate</td>
<td>Low level</td>
<td>Variable level (higher)</td>
</tr>
<tr>
<td>Inflation</td>
<td>Reduced</td>
<td>Huge in the ‘90s, now low</td>
</tr>
<tr>
<td>Employment</td>
<td>High level</td>
<td>Diminished level</td>
</tr>
<tr>
<td>Prices</td>
<td>Low level, strictly coordinated</td>
<td>High level</td>
</tr>
<tr>
<td>Education</td>
<td>Easy access, low costs, a high level of school population</td>
<td>Discontinuous structure – more people that abandon the school, but also a higher number of students</td>
</tr>
</tbody>
</table>
All this time, all the economic activities had to be quantified. The data had to be reported through financial statements and fiscal situations.

These changes must have influenced both the entire economic and social life, but also the other dimensions of the Romanian society.

1.2 Specific coordinates

We believe also that some of evolutions are strongly connected to the accounting profession and mission, our field of interest, due to their influence upon it. Like before, we tried to identify them in the table below.

<table>
<thead>
<tr>
<th>Field</th>
<th>Past</th>
<th>Today</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
<td>3</td>
</tr>
<tr>
<td>Companies (ownership)</td>
<td>State-owned</td>
<td>Company law, private investment growth</td>
</tr>
<tr>
<td>Ownership in the banking system</td>
<td>cooperative</td>
<td>mixed banking system, gradually privatized</td>
</tr>
<tr>
<td>Taxation</td>
<td>State</td>
<td>Mixed banking system, gradually privatized</td>
</tr>
<tr>
<td>– number of taxes</td>
<td>Reduced</td>
<td>High</td>
</tr>
<tr>
<td>- level of taxation</td>
<td>Low (but we must again see the main form of the property, the living standard and the level of wages)</td>
<td>High</td>
</tr>
<tr>
<td>- stability / fluctuation</td>
<td>Stabile, manageable</td>
<td>Changing, complicated methodology</td>
</tr>
</tbody>
</table>
It was not the case - Romania had only economic cooperation agreements, mainly with neighbour countries, former communist states. Since 2007 – with impacts on the economic, financial-accounting and fiscal regulations.

Media

1. Modest, poorly evolved: printing, mail, telegraph, telephone
2. Fax, mobile, Internet
3. (Internet reduces the transmission time of the information and makes easier the access to the regulations, to the fiscal assistance)

Financial risks

1. Low level
2. High level

(The author’s selection)

We should expect from now to see also some changes and a few new challenges for our professional coordinates. And so it happened.

2 CHANGES AND CHALLENGES IN REGULATIONS OF THE ACCOUNTING PROFESSION

Before 1989 the accounting profession was identified mainly with the accounting mission.

All tasks of this mission were made by the economists and the other economic employees, medium qualified.
The mission of accounting expertise was accomplished by members of the professional body, which was managed by the Ministry of Justice. Body members were required graduates of specialization Finance – Accounting and had experience and seniority in accounting.

The internal financial control work was performed by qualified personnel employed in the companies.

The external financial and fiscal control was attributed to the specialized employees of the banking system or those of the Ministry of Finance.

The adapting to the new economic realities and the new needs of information and of economic and financial analysis makes natural the occurrence in the early ’90s of AGER – General Association of Economists from Romania.

The association aims to defend the economic professions, to discuss the problems of economic theory and practice, issuing specialized publications. [1]

Association helped to diffuse knowledge of economics, accounting, auditing and taxes, all of it being so necessary in the process of adapting to a market economy.

The Ordinance no. 65/1994 regarding the organizing of the accounting expertise activity and chartered accountants establishes the foundation and the activity of CECCAR – the Body of Accounting Experts and Chartered Accountants. [2]

It is also regulating the access to the accounting profession. CECCAR is a member of IFAC – International Federation of Accountants. [3]

Members of CECCAR were authorised to provide accounting services, financial and tax advisory, censorship, accounting expertise, evaluation.

Their field of services today is reduced.

Established in 1992, ANEVAR – National Association (later, Union) of Romanian Valuers, plays now an important role in the professional environment, its members performing valuations of goods or assets and companies. [4]

Technical experts of Ministry of Justice also provide assessment services for the courts.

The Urgency Ordinance no.75/1999 establishes CAFR – Chamber of Financial Auditors of Romania, which organizes and coordinates the activity of financial audit in our country. [5]
CAFR is also a member of IFAC and others professional organizations. [6]

The law 672/2002 regulates the public internal audit, activity performed either by the internal audit services of public entities, or by specialized external providers. [7]

This task was then partially transferred to the CAFR. [8]

2.1 Changes in the regulation of the accounting mission

One of the questions that arise, maybe the first, is *who*?

The mission of the accounting was done strictly by the employees of the enterprises, institutions, banks. They had economic studies at university or at least college level.

To advance the profession (new skills and higher wages) the age and the accounting experience was a prerequisite.

The creation of the first private companies in 1990 generated a significant increase in demand for accounting services.

Adequate staff at that time was often available to provide such services by part time work contracts.

In 1991 appears the Accounting Law, which sets for this field some important coordinates. [9]

Today the administrators of the entities are obliged to organize their accounting and they can choose between:
- to hire qualified personnel in a specialized department;
- to use the external services of a person which is certified or a company which is member of CECCAR.

The second question relates to *what* to do, what does this mission consist in?

The accounting means in the proper sense the chronological and systematic processing of primary records, making the inventory of the assets, liabilities and equity, keeping the accounting records and journal that the law requires, the preparation of the annual financial statements, but it also means to make the required reporting for the fiscal entities: statements, reports.

If before 1989 the calculations on taxes and social contributions were simple, today they became a significant part of the accountant’s workload. They have been complicated day by day. Also making the fiscal reports is today harder and more
difficult. The importance of the influence of taxes and fiscal responsibilities on this profession results also from the regulation of the material sanctions in this matter.

We may observe also that the cost of accounting grows by adding more and more fiscal reporting work.

As a consequence, it gradually emerged the tendency of separating the tax component of the accounting profession, so that a part of the chartered accountant tasks migrate to the area of activity that is now reserved to a new specialist - the tax consultant, a profession that recently appeared in Romania.[10]

The other components were: the censorship, balance sheet certification, the financial control, the financial audit. We can see that the range of skills assigned to the accountants is different according to their qualifications – certified accountants have limited powers compared to accounting experts. After the preparing of the annual financial statements, another work comes: somebody checks and certifies the statements before they are released.

**The third question is how?**

The adequate accounting referential for each company or entity is different, according to its type, dimensions and volume of the activity, its range of users of the information that quantifies the financial position and the performance.

The approach of this matter, the selection of the procedures, standards and accounting rules we consider suitable for Romania also changed in this last two decades.

At first we adapted and adopted as they were the French accounting (and financial) regulations in the early of first half of the ‘90s.

At the middle of the last decade we changed direction toward the international standards. In 2007 we became a member of EU.

As a consequence it seemed adequate the orientation toward the EU Directives destined to set the rules we needed for the fields of accounting and statutory audit.

An emerging activity in the market of accounting services is that of the new foreign companies. Their requirements are tailored to their own special information needs. They have both to accomplish Romanian rules and the regulations accorded to the investor’s country.
We will also ask ourselves by what means?

The use of computers led to consistent improved quality of the information we can find in the financial statements. It also led to shorten the data processing.

If in the past, before 1989, they used software only for the recording of wages, today the companies benefits of improved software, new data systems, even an integrate accounting technique.[11]

The computer is the always present partner in our work today, shortening the processing and reporting time and increasing the data accuracy.

Maybe not the last question to clarify is that of the liability, of responsibility.

It is better to show the fact that the Romanian accounting regulations led in our day toward an increased responsibility of the accountants for the financial data they include in the financial and fiscal statements.

In the same direction the international standards and regulations moved themselves after the worst financial incident we sow in the world at the end of the last decade.

2.2 Changes in regulations for the other related professions

The financial and accounting control that is performed by people who have not participated in preparing of the financial statements becomes censorship, after that it changes into financial audit and now into statutory audit.

CAFR appearance in 1999 led to the cleavage of the accounting profession, no matter how many of the CAFR members are the same time registered as accountants.

Even if we do not know relevant information on the numbers, we can assume that, at that time, some consistent part of the members of this chamber (CAFR), were also chartered accountants. Take a look at the Figure 1, below, this illustrates the matter:
It could be useful to mention the fact that the same image of a coincidence area as in this figure we should obtain by drawing the picture of domains of skills and tasks that they presume to be appropriate for the members of these two different professional chambers.

Let’s see other interesting information: each professional association made its own similar set of accounting and financial regulations, by translation of the international standards for accounting, financial reporting and audit. Also, each of these chambers became an IFAC member.

It is quite funny to observe the importance of the colour they put on the cover of standards and other materials they issue.

Tax consulting work is today organized and gradually separated in the new CCF – Chamber of Fiscal Consultants, according to new regulations. [12] This leads toward a new strange situation, as we show in the Figure 2.

CCF is member of CFE – Confederation Fiscale Europeene. We can still hear until now some voices that require the legitimacy for the access of the accounting experts in this market segment. [13]

On the other hand, it is settled that the accountants can perform fiscal consultancy only if they are registered in the CCF member evidence.

But we still can not deny the necessity for the accountants to have their access at all the newest information upon fiscal regulations, as long as they have to make
financial and fiscal reports. So they need training and have to update their knowledge in this field.

Figure 2. Members of chambers of CECCAR, CAFR and CCF

The valuation of enterprises was also unclearly set, so that it was performed simultaneously by the members of ANEVAR and CECCAR. Persons in the first case could make properties or companies assessment. Persons in the second category could mainly do companies assessment. A new field of activity is the valuation of financial assets. This is also a relative new market for the valuators.

In this field they had a similar evolution on what concerns the regulation: European and inter-national valuation standards were translated in Romanian. ANEVAR is member of TEGoVA- The European Group of Valuers Associations, an European association of professional bodies.[14]

ANEVAR has an impressive research activity through IROVAL – the Romanian Valuation Research Institute.
In 2011 it is founded the National Union of Valuers of Romania, a professional organization that will bring together the specialists in valuation from the both associations we mentioned above. This new chamber could clarify at least this area of professional work.

The business and financial advisory work is the least normalized and still generally accessible. It does not require yet an authorization or certification of the specialists who practice it.

Apparently, the only task still reserved to the CECCAR members remains currently the accounting expertise. CECCAR provides an assurance of the quality of this work through the annual selection of the members of the body entitled to offer legal accounting expertise. These seem important works.

An interference zone is also that of the insolvency assistance, were specialists coming from juridical profession and those from accounting profession came together. They could not properly work one without the other.

It is today more necessary than it was a few years ago, to develop another field, the audit of the system and of the software they are used by the companies and the other entities for their financial and accounting activity.

3 Conclusions

We can now see how much this day doesn't look like those in the past. This transformation occurred during a short period, since 1989.

What to do?

What do we have to do?

At first the accounting profession should find its own place after this 20 years long journey. For the accountant, for the economist it is difficult to find a proper orientation.

For us, the Romanians, it could be a peculiar attraction that of the horizontal development.

So we shouldn’t be surprised while observing that fact: many of us try, harder and harder to acquire qualifications and to enrol in the different professional associations, organisms and chambers.

This choice could not be the best. It is costly and inefficient.
The others of us prefer to improve themselves in a certain professional direction. This could be a more appropriate choice because it provides the premise of assuring a high quality services. This would increase costumer confidence.

*What do they have to do?*

The regulation issuers always have a difficult mission. In our days it is harder and harder also for them. They have to face all new problems of the adapting of our economy to a market based system.

Financial and economic crisis bring new matters. Investors need more financial data, fiscal organisms change their policies and so on.

Many of these problems may be solved. For example, we think that a reasonable measure should be a sole regulation of a professional body for the economic specialists, no matter the mission we refer to.

This would simplify the acquiring of a professional status and should reduce the costs of membership.

At least we should see a better and a simplified structure of the range of competence in professional services.

We do not necessary militate for a forced union of the accounting profession, but rather we want to have a more accurate image upon this matter.

We should like to find a simple way for the registration as a member of a professional organization.

We think that the mutual recognition between the various professional associations of the trainings for specific area should also be improved.

We need to mention that the profession also changes in the rest of the world. It is visible the concerning of all the bodies we mentioned before for improving professional standards.

We have to find an Esperanto, an international language in order to improve our work. The financial data becomes more relevant if we can easy translate it from a language to another

The professional bodies could define general or similar rules for the main accounting policies on assets and liabilities recognition and valuation, for depreciation and for tax calculation.
A nearly similar fiscal policy in the whole Europe or the whole world should also simplify the accounting work.

At school we’d prefer to be able to assure our students that another day they have the chance to apply all the information they found, to use all their skills, without being necessary a daily review of their knowledge.

References:

A comparative analysis of the sustainable development indicators in case of Romania, Poland and Bulgaria, 2007-2012

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Abstract
The European Union strategy in permanent development shows coherent actions that make UE keep in mind the economical development requests by the actual and future governments’ assurance of a quality life and an education dedicated to durability. This way, we have to be able to use our resources efficiently, to see the social and ecological impact of the innovations in economy so that our actions would lead to well being, social cohesion and environmental care. For that matter, EOROSTAT takes into account a number of indicators that show the UE strategy of permanent development. These indicators are presented in ten themes that have social, economical and environmental indicators. In order to highlight better Romanian's situation regarding the indicators' modifications in sustainable development according to EUROSTAT, the aim of this work is to show a comparative analysis of the indicators of sustainable development for Romania, Poland and Bulgaria. The analysis is made on ten themes comparing our country’s position with the other two countries.

Keywords: sustainable development, sustainable development indicators, socio-economic development, social inclusion, strategies, competitiveness.

1. Introduction
Outlining a new type of economical development of mankind focused around sustainable development and identifying effective tools for achieving all of its dimensions, which became the "core" discussions of all issues on economic growth and the environment. We can say that sustainable development is understood as a type of growth the opposite type of growth that prevailed nineteenth century and twentieth century and which revolved around the idea of "using the planet's natural resources, forms of conventional energy and unconventional ones while protecting and preserving our environment" [1].

Sustainability has different meanings for each of us depending on many factors, and we refer here to: level of education, lifestyle, personal development level. The best known definition of sustainable development appears in the Brundtland Report, according to which sustainable development is the kind of development that involves
"meeting the needs of present generations without compromising the ability of future generations to meet their own needs." [2] But there are experts who believe that this definition is too vague, in leaving room for questions like: "Does anyone want a vulnerable development or the high lifestyle standards we enjoy today not to be transmitted to the next generations? Who can say exactly how unstable is the current development model? Or could someone provide the needs of future generations? [3]

The definition does not respond to these conceptual and methodological problems thus the sustainable development has been complemented with the requirement of reducing adverse environmental impacts in order to obtain more goods and services with less consumption of natural capital [4].

In fact, it is quite easy to identify the importance of sustainable development as it offers a new way to organize society. In the past years concerns for implementing the principles of economic sustainability have grown so a number of strategies for sustainable development at national and European level but also worldwide were built. In the European Union now there is the Europe 2020 strategy, which aims to increase the competitiveness and innovation of member states as a solution to increasing GDP. The U.E. number one priority is to find ways and identify measures to be taken, to shape a viable strategy to reform the financial system, to ensure budgetary consolidation, to determine a sustained raise. In the desire to be successful, the Europe 2020 Strategy is based on the thematic approaches referring to objectives and priorities and preparation of country reports, allowing Member States to develop their own strategies tailored to the specific and targeted to achieve economic growth since 2007 - 2008.

2. Sustainable development indicators calculated by Eurostat

Eurostat calculates and monitors indicators that EU Strategy sustainable development presenting coherent actions that make the EU take into account the economic requirements of sustainability and has the overall objective to achieve a quality life by present and future governments, being directed toward people who must be educated in the spirit of sustainability. We must become able to effectively use resources, to pursue social and environmental impact of innovations implemented in the economy, should that through our actions to reach prosperity, social cohesion and
environmental protection. Indicators are presented as a pyramid consisting of 3 levels - level 1 represents the general objectives, level 2 and level 3 operational objectives actions, complemented with contextual indicators derived from information in the base of the pyramid (Figure 1), but are not directly monitored by SDS.

Figure 5. Levels of sustainable development indicators

Source: adapted from Eurostat 2009

Sustainable development indicators presented by Eurostat examine all dimensions of sustainable development, but their classification is based on the same criteria [5]. These indicators are presented in the ten themes that are composed of both indicators of social, economic and environmental indicators of economic size indicators not being separated from other dimensions. Each theme takes place on the three levels above.

3. Sustainable Development of Romania, Poland and Bulgaria in 2007 and 2012

In this paper I wish to analyze Romania's suggestions regarding the changes of the sustainable development indicators calculated according to EUROSTAT compared to the same indicators for Poland and Bulgaria. The analysis is made for the ten themes, comparing the position of our country with the position of the other two countries.

Regarding the first issue under review "socio-economic development" it appears that the three countries are situated in the second part of the ranking. In 2007 Romania and Poland had the same position and Bulgaria the 18th position, ie a lower level than
the other two countries. Romania is the only country of the three, which registered a worsening situation during the time under review. The highest ranking was held by Poland which was ranked 17 in 2007 and 15 in 2012. In 2007, Romania was best positioned according to the indicator "Investment by institutional sectors", ahead of the other two states. In 2012 "The dispersion of GDP acquis" the indicator that Romania had the best situation, although Bulgaria was ranked two in 2007 and one in 2012.

"Household saving rate" is a measure that both our country and Bulgaria occupied places in the last part of the league in both years, Romania occupies the last position, and Bulgaria, position number 24. The situation of Poland is a little better, but it got worse because it fell three places in the rankings from 17th position in 2007 to 20 in 2012. The unemployment rate is an indicator where Romania and Poland have seen a worsening of situation in 2012 compared to the first year of analysis. If in 2007, Romania ranked eight, in 2012 ranked 16, and Poland 3rd position in 2007 and 13th in 2012, while the situation in Bulgaria has improved, climbing 6 places in the rankings to 16-10.

The second theme to be analysed is "Sustainable production and consumption" In this case, Romania is situated as the worst of the three countries analyzed, ranked 20 in 2007 and 19 in 2012. The best situation was registered both in Bulgaria 2007 and 2012, and the highest increase from one year to the other analysis. Thus, if in 2007 ranked 17 in 2012 ranked 14, while Romania has climbed from 20 to 19, and Poland from 19-17.

In Romania, the biggest increase is in the licensing of eco-labeling, which climbed 10 places in the ranking done and "Rate Monitoring" which has climbed 4 positions. It is noted increasing emission of nitrogen oxides and worsening situation regarding waste generation and treatment types.

As Poland is concerned, the biggest improvement, is to the indicator "per capita consumption of food" where it advanced ten positions. Also, we see a reduction in waste generation except major mineral waste, where in 2012 dealing in ranking of seven positions ahead, thus worsening the situation, there is an 11th place and just two indicators have changed their stance analysis the previous year with a place.
For Bulgaria, the highest growth indicator registers "Rate Monitoring" followed by "per capita consumption of food." The only indicator where Bulgaria registered a worsening of situation in 2012 than in 2007 is "the area of Eco agriculture".

Both Romania and Bulgaria, occupied 2nd place in 2007 in terms of generation of hazardous waste, while in 2012 it maintained the same position Bulgaria and Romania ranked 3rd, Poland occupied the places 23 and 24.

Following this analysis, we find that once again our country ranks last of the three in terms of "social inclusion". Romania's situation has improved considerably since the first year of the analysis, moving up one position, and the situation has improved noticeably, Poland, occupying position 14 in 2012 up to 16 in 2007, while Bulgaria's position remains unchanged (the 23rd place). Of the three countries, Poland occupies the best position, Bulgaria and Romania having places in the last part of the ranking.

For Poland there is a decrease in the number of people in poverty with low labor intensity, but also there is an improvement in the gap of paying by gender. "The level of secondary education by age" is the indicator for which Poland experienced a worsening of situation last year of the analysis.

For Bulgaria we see an improvement indicator "people living in poverty with poor labor intensity," which ranked from 21 in 2012 to 26 in 2007.

It should be noted that our country occupies the last position in many of the indicators analyzed, and the substantial improvement that Romania and Poland have recorded the indicator "people living in poverty with low intensity work", advancing in the rankings in 2012 against 2007 with 21 seats and 16 seats.

In the ranking of "demographic changes" we see that there are not considerable differences between the three countries. Thus, in 2007, both Romania and Poland had position 17, while Bulgaria ranked 18. In 2012, Romania and Bulgaria's situation has improved by one place, and Poland with three positions. Romania is well positioned in terms of "employment rate for older people" occupying position 7 in both years of analysis, while Poland ranked 27th and Bulgaria at 16th.

In 2007, Poland and Bulgaria held the positions 17 and 18, and in the second year of analysis to the positions 14 and 17. We observe an improvement for Poland, which has climbed three places and a sensible evolution of the situation of Bulgaria. In
2012, Poland has made the best progress in the indicator "average of life expectance to 65". For Bulgaria, the most important development is the reduction of the risk of poverty among young people.

After analyzing the indicators that form the theme of 'public health' we notice that Romania has a worrying situation, with 25th place in 2012 with 9 places lower than Poland and 13 than Bulgaria. The health system in Romania still consists of inefficient health problems. Romanian current healthcare model focuses mainly on curative care instead of ambulatory or the hospital and primary care.

About half of the population lives in rural areas where there are no hospitals and often no medical centers, leading to major problems in terms of access to basic health services. In addition to this reality, the medical system in Romania continues to be underfunded and funds are often inappropriately used. According to the specialists in the healthcare system, in Romania there are no benefit-cost tests that would lead to an efficient allocation of resources [6]. Following this analysis, we find substantial worsening of situation of our country in terms of "Life expectancy at birth" and "healthy life years and life expectancy at 65 years".

Poland's situation has improved in 2012, it changes position from 12 to 19 in the first year of analysis. And Bulgaria has climbed three places in the ranking on that theme. For Poland we see consistent improvements in several indicators, and here we refer to the "Life expectancy at birth" which has climbed 18 places in the range of analysis and 'healthy life years and life expectancy at 65 years "for which there is an increase of 19 positions.”

Concerning Bulgaria, we can say that it had a growth of seven units for the indicator “Healthy life years and life expectancy at age 65”. Regarding the indicators “Unmet demand for medical consultations and treatments” and “The share of people living in sound polluted households”, the country stagnated. Even if Bulgaria had a decrease of one place in 2012, it is remarkable that it is still in the first part of the ranking.

“Power and climate changes” is the first topic analyzed by Eurostat and for which Romania occupies a ranking place in front of the other two countries that were
analyzed. The position held by our country in this case is a good one and it stagnated during the two years, occupying the 13th place both in 2012 and in 2007.

The other indicators analyzed did not record substantial changes. It is remarkable that our country had a leading position for the indicator showing Emissions of greenhouse gases. In the last two years, Romania not only reached, but also exceeded the target of an 8% decrease for emissions of greenhouse gases, established by the Kyoto protocol. This substantial decrease for emission of greenhouse gases is more the result of the local industry’s decline, after 1989, than it is of the economic agents concern. By exceeding the level established by the Kyoto protocol, Romania has earned a transmission right, available to the government, that can be sold and the money obtained can be used in environmental projects [7].

Both Bulgaria and Poland had received the 16th place, in 2007 regarding “Power and climate changes”. The best ranking for Poland was the 5th place for “Energy dependence”, and the worst was 24th for “Electricity from renewable sources”. We find a significant increase for using renewable sources of energy in 2012 compared to 2007, when Poland has climbed nine places, but overall, Poland’s situations remained the same for the two years of analysis.

After this analysis we find a slight improvement for Bulgaria regarding the indicators results, the country climbing just one place. The most important change was for the indicator “Thermal energy and combined energy”, for which it climbed nine places.

The next topic subject to analysis is “Sustainable transport”. In this case our country is ranked similar to Bulgaria, which improved ranking by one place in 2012. Concerning Poland we don’t find any improvement, but a slight decrease in 2012 when it received 20th place compared to 2007 when it was ranked 19th. Bulgaria hasn’t seen any decrease nor a remarkable increase, as in 2012 it was ranked 15th and in 2007 16th.

The sustainable transport is another topic for which Romania stagnated, being ranked 16th in the two years of analysis. Nevertheless, there are a few indicators for which we’ve seen more consistent changes and those are “Passenger transport”, “Freight transport”, “CO₂ Emissions per km generated by new cars”. 
Poland has a serious situation regarding “The relative power consumption for transport”, because in 2007 it was ranked 28th, and in 2012 27th. Also, Poland hasn’t improved the situation regarding “Freight transport volume, share of GDP”, “Passenger transport volume, share of GDP”, “CO$_2$ emissions per km generated by new cars”.

Bulgaria has improved “The energy consumption depending on the ways of transport”, climbing nine places in 2012 compared to 2007, but the situation got worse regarding the indicators “The relative power consumption for transport”, “Freight transport volume, share of GDP”, “CO$_2$ emissions per km generated by new cars”.

Regarding “Natural resources” in 2012 both Romania and Poland had the same place, and Bulgaria was ranked 16th, which is two places below. Romania’s position for the indicator “Water resources exploitation index” is worth mentioning, as it gained 5th place compared to the 18th and 23rd place for other two countries.

We find for Romania an improvement for connecting the people to drinkable water and exploiting water resources. In 2012 the amount of drinkable water distributed to Romanian people was 1035429 thousand cm, 13067 thousands more than in 2011, from which 67% is household water. The length of the sewerage network was 24789,8 km, from which 19600,7 km in urban areas and 1140,3 km in rural areas. 44,2% of the Romania people where connected to the sewerage network in 2012, which is a 93 799 people increase compared to 2011 [8].

Poland’s situation has improved, as it climbed three places in 2012 compared to 2007 when it was ranked 17th. Bulgaria’s situation also improved, as it occupies 16th place in 2012 compared to 2007 when it was 20th. We find that the most important increase both for Poland and Bulgaria is for the indicator “People connected to the drinkable water network”, with 13th and 14th place in the ranking made for this topic.

The new topic “Global relations” hasn’t seen any change in 2012 compared to 2007, as the situation is the same for all indicators. Romania’s position in 2012 and 2007 was 15th, Poland’s 18th, and Bulgaria’s 21st in 2007 and 22nd in 2012.

It is worth mentioning that for this topic there are many indicators for which analyzed countries do not report. We find that the situation is worse for the indicator that measures the CO$_2$ emissions per capita in EU and in developing countries for Poland and Bulgaria, Poland dropping five places compared to the first year of analysis, and
Bulgaria three. It is worth mentioning that our country has a leading position for this indicator, and the situation improved in 2012 compared to 2007.

“Good governance” is another topic subject to analysis which, at least for Poland hasn’t recorded any improvement for the overall situation. Poland occupied the 20th place both in 2007 and 2012, and we witness a serious worsening for the indicator “New cases of violation of the law”, for which in 2007 it was ranked 16th, and in 2012 27th.

Regarding Bulgaria, the situation is more difficult because it dropped three places compared to 2007 when it was ranked 16th. We find an increase of new cases of violation of the law, as Bulgaria is 18 places away from the rank received in 2007 for the same indicator.

Both for Bulgaria and Poland we find an improvement of the situation for the confidentiality level in EU institutions. Bulgaria is ranked ten places ahead, and Poland four, in 2012 compared to 2007.

The indicator for “The transposition deficit” for which Romania has seen a certain improvement can be considered political coherence measure between EU and member countries. In 2007 the European Council adopted a target of 1%. The transposition deficit is a scoreboard indicator of EU internal market and is updated twice a year, in May and November. This ranking was made having as basis the data from November for every year that was analyzed.

The share of environmental and labor taxes in total tax revenues is another indicator that had a five places increase in 2012 compared to 2007. The environmental taxes are defined as taxes whose tax base is a physical unit that has a proven negative impact on the environment. There are four types of environmental taxes collected as tax revenue: energy taxes (contributing around three quarters of total), transport taxes (approximately one fifth of the total) and pollution and resource taxes (approximately 4%). The labor taxes are generally defined as all income taxes, payroll taxes and social contributions of employees and employers that are levied on income from work.

4. Conclusions

After the analysis made we find that both in 2007 and in 2010, Romania occupied the lowest position from the three countries that were analyzed. Also, the differences between the three countries are of only one place and all the three countries are
situated in the second part of the ranking. In 2012, the three countries climbed one position and in the last year of analysis Romania held 18\textsuperscript{th} place, Poland 17\textsuperscript{th}, and Bulgaria 16th. (Table 1).

Table 1 Romania, Poland and Bulgaria’s position-sustainable development indicators
2007 and 2012

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Romania is the best positioned for the indicators “Energy and climate changes” for which it exceeded the other two countries with three, respectively four positions and “Global relations” where it holds three positions ahead of Poland and seven ahead of Bulgaria. Public health is the most problematic topic for our country, as the situation got worse in 2012 compared to 2007 and the indicator showing Social inclusion is also painful. Romania’s best situation is for “Energy and climate changes”, where it is ranked 13th and we had an improvement in the second year of analysis for “Natural resources” and “good governance”.

Poland has ten spots on the list in front of Romania and nine ahead of Bulgaria regarding “Social inclusion”, and for “Demographic changes” it has two, respectively three spots ahead of the other two countries subject to the analysis. It is best ranked for the topics “Social inclusion”, “Demographic changes” and “Natural resources”, and the lowest rank is for “Sustainable transport” and “Good governance”. We find that Poland has climbed a few positions in the ranking in 2012 compared to 2007 for the topics “Demographic changes”, “Public health” and “Natural resources”.

Bulgaria is ranked higher than Romania and Poland for the indicators “Social and economic development”, “Sustainable consumption and production”, “Public health”. This country climbed at “Sustainable consumption and production” and “Good governance” three places in 2012 and four places at “Natural resources”. Also for the indicators “Sustainable transport” and “Demographic changes” Bulgaria had slightly increased with one position. Regarding “Energy and climate changes”, “Public health” and “Global relations” while regarding “Good governance” Bulgaria dropped three places.
Acknowledgement

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Challenges of the financial crisis – a learning lesson for rethinking financial control and verification instruments and mechanisms in Romania

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Abstract
The lack of an information system allowing process control within organizations can lead to low efficiency levels of operations, poor management decisions and inadequate budgeting. In the last two decades we have been witnesses of a steady reduction of this fact, since the role of public audit and mechanisms for evaluating or controlling has significantly changed at in public entities, as a reaction to the economic and financial crisis. The accumulated experience has proven that the implementation of mechanisms and instruments to deliver real time results and contain the negative effects of risks and/or uncertain events is vital for organizations to reach their objectives.
Taking into account the fact that, the control mechanisms and instruments are not just a statement of government finance, but rather the link between the mobilization of funds and attainment of public policies goals and objectives, the main goal of this paper is to undertake an empirical analysis the importance of evaluation mechanism in public entities in Romania.
Specific methodological instruments as well as the existing theoretical support which are at the disposal of stakeholders involved in public administration development processes, contribute to the fulfillment of public administration objectives, but also of objectives stated in the Europa 2020 Strategy. Especially the objectives referring to future intelligent and sustainable economic growth processes and mechanisms, policy consolidation mainly concerning research, development and innovation and other priority policies and instruments.
Keywords: financial control instruments and mechanisms, public administration, Europa 2020 Strategy, sustainable growth.

PRELIMINARIES
After 1990 one of the priorities of the Romanian Government was the creation of a modern and efficient public administration system [1], by modernization and adaptation to economic realities, increasing the coherence of the administrative act, management perfection and strengthening the control over public fund spending. Thus current reforms of the Romanian Public Administration, as stated in the Government Program for 2013-2016 [2] are a continuation of this 25 year long process. Public administration reforms will concentrate on autonomy growth for local collectivities by starting real decentralization processes, and introduction of a evaluation system to
assess the functioning of all organisms of the public administration, at local and central level as well.

Also, the Government strategy for 2013-2016 seeks a better integration of the Europa 2020 strategy objectives. European funds management and accessing and spending mechanisms are being correlated with the European Union’s financing priorities and the thematic objectives of the Union's policy for European cohesion.

THE CONTEXT OF MODERN PUBLIC INSTITUTIONS

Public administration is according to its purpose a system acting responsibly from a social point of view. Public administrations social responsibility acts on five different levels [3]:

- Legal level: Public administration must propose legal projects to create a proper environment for economic, social and most of all human development;
- Economic and social level: one of the duties of public administration is to ensure the necessary framework for improving the quality of life;
- Ecologic level: it is essential that public administration actively and decisively implicates in environment protection, allocation and use of natural resources and reduction of gashouse emissions;
- Technological level: Public administration must promote by any rational means the exploitation advantages offered by technological progress;
- Political level: public administration must take all effort to uphold human rights and liberties, separation of powers and performance optimization of public policies [4].

In order to be able to act on all these levels, organizations of the public sector must make use of all tools and instruments of modern management, thus adapting to the modern environment and meeting today’s challenges. However, it is also a matter of society’s trust in public administration’s capacity to reach their objectives, as will be shown later.

Modern management starts from an open organizational culture based on communication and transparency. Modern organizations rely on new values, which are substantially different from the ones of organizations from the past. However, these new values are more of a completion and development of already well established values,
such as the quality of offered services. Among these we mention regarding stakeholders as valuable partners of the organization, interest for protecting the environment, fair and ethical behavior in the economic environment or the organization, and the implication in the employee’s professional and personal development [5]. Modern organizations acknowledge their employees the main creative factor, just as it acknowledges the indissolubility of the employee’s creative potential from the potential to commit errors. That is why organizations go to extensive lengths to prevent the errors of their employees, or, should errors still occur, that the organization learns as much as possible from them and draw the best conclusions from them. Thus organizational values, which are aimed at the well being of the employee, affectively link him to the organization because they feel supported and acknowledged by the organization [5].

THE NEED FOR CONTROL IN PUBLIC ADMINISTRATION

Fund spending in the public administration is also a matter of controlling processes and activities in order to attain best values of performance and economy. Since society (including here persons and organizations) is the main source for funding public administration organisms, it is imperative to have efficient control mechanisms and/or systems, to oversee and optimize allocation and spending processes. On the other hand, global studies show, that less than half of the population all over the world relies on public institutions, so the matter of trust is essential. Trust in public administration is a question of many facets:

- Trust in the capacity to fulfill its scope – meaning, the capacity of public institutions to deliver the public service it is supposed to deliver;
- Trust in the financial capacity – meaning trust that taxes are used for the well being of the community;
- Trust in the human capacity of the public system – meaning the capacity of the public administration to understand the problems and needs of the society, and to find the best solutions for these.

Meeting these levels of trust is a question of good and modern management but also of a complex control and verification, in order to establish the right levels of performance are achieved. This is why special organisms like the Court of Accounts or the Control Corps of the District Councils have been formed, in order to exert control
over the state’s public institutions. The need for control and verification is justified by these levels of trust. It is because this trust at all levels that society is entitled to verify and demand justification for the way that funds are spent and public service is delivered.

The activity of these organisms is one of discovery and sanction of infringements in public institutions, regardless of their cause or premeditation. Also, the verifications and actions of these organisms are mostly limited to the financial aspects of the activity.

**THE AUDIT CULTURE IN THE PUBLIC SECTOR**

Modern management in public institutions addresses the issue of prevention versus verification by the internal audit activity; modern management tendencies prefer to prevent rather than punish. Also, through internal public audit, the issue of measuring performance regarding all three levels of trust described above is addressed in a systematic manner. In this regard, the main difference between prevention and verification is the following [6]:

- Prevention aims at avoiding errors, improving activities in organizations;
- Verification aims at finding errors and punishing those that cause them.

In the sense of the present paper, control should be understood in its larger meaning, including both internal audit activities (prevention) and external audit activities (verification), designating an activity which lies at the basis of management decisions, adding value to both the organization and internal processes [7]. Figures 1 and 2 show how control is organized and how it works.

Figure 1. Structure of control mechanisms
Control mechanisms are according to figure 1 information systems which feed management with relevant data for both strategic and operational decisions regarding the organization and its internal processes. Figure 2 shows the information flow of the control mechanism within the organization.

Figure 2. Organizational process control

As it is visible, the control system information flow is actually a feedback loop, feeding information to both strategic and operational management, thus supporting and substantiating its decisions.

**CONCLUSIONS**

Since the trust of the Romanian society in the public system is low, increasing this trust should be a matter of general national interest, although it is very hard to define [8]. Control mechanisms and instruments are in this regard a vital tool for reaching this goal and fulfilling the national interest. Another facet of raising society’s levels of trust is corroborating the efforts of the control system with efforts of public marketing, bringing the changes and the attention of the public.

Also, a consolidation of the control of the role and position of the control mechanism [9] is necessary. Although changes in the legal framework governing
internal public audit and control mechanisms are taking place, a change in the general perception of the role of these activities must also take place.

Future research possibilities of this paper are oriented towards the evolution of control mechanisms, especially regarding internal public audit facing new and changing challenges for public administration.

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Religious pluralism and democratic society. Unsuccessful attempts of modernizing national legislation in the field of gender. Examples from the case-law of the European Court of Human Rights

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Abstract
Religious pluralism is an essential prerequisite of a democratic society as religious liberty is an essential prerequisite of expressing religious pluralism. Article 9 of the European Convention on Human Rights and Fundamental Freedoms, states freedom of thought, conscience and religion and lays down, in both its paragraphs, the rule that must be respected and also the exceptions that may be allowed by referring to the general rule. Article 9 of the European Convention is the bearer of a powerful juridical symbolism as it does not only resume to enunciating the general aspects that relate to human conscience but it also extends its content to those features that are connected to culture and to the definition of cultural identity.

In the present paper we aim to prove, by means of a hermeneutics methodology, two main hypothesis : (1) the margin of appreciation that States possess with regard to religious freedom cannot breach the European desiderata that establish the cultural and religious integration and harmonization between Peoples; (2) the gender issue mustn’t be neglected in the endeavour of ensuring religious pluralism; in this sense, we must resort to a non-partizan and non-stereotypical analysis of the manner in which religious symbols approach gender roles within society.

Keywords : gender, religious pluralism, margin of appreciation, freedom of thought, conscience and religion.

Study prerequisites

One of the most important European desideratum resides in ensuring a common space of the Peoples within which the different cultural collective and individual identities would be harmonized. Religious freedom enshrined in article 9 of the European Convention on Human Rights and Fundamental Freedoms upholds this objective because it establishes the premises of co-existence between various religions thus promoting religious pluralism. If in theory religious pluralism entails the celebration of various cultural identities, in practice, religious pluralism is more likely to act as a fragmentation factor than as a unifying factor. The idea of segregating the European community as a consequence of promoting religious pluralism comes from the cultural
perspective; the promotion of a religious idea that is applied within a certain community upon the dogma that exists within another community is an aspect that creates conflict between Peoples because it defies the cultural identity of a certain community and, at a peculiar level, it defies the cultural identity of the individuals. Within the legal framework, the situation is merely nuanced but it is not different. The European Convention on Human Rights and Fundamental Freedoms ensures the freedom of the religious component along with the freedom of conscience and the freedom of thought-nevertheless, if we analyse the decisions of the European Court of Human Rights, it is obvious the interest manifested towards respecting the legal national context and respecting the principles of secularism. In the cases Şahin, Dahlab or Dogru, the European Court of Human Rights has opted for granting preeminence to the secular principles that are endorsed by means of national politics to the detriment of religious freedom stated in article 9 of the European Convention. The aforementioned aspect brings into discussion both a problem of non-synchronization between national and European politics in the field of ensuring religious pluralism and also a problem of law that is build upon article 9, paragraph 2 of the Convention and upon the doctrine of the State’s margin of appreciation.

As we have already foreseen in the lines above, religious freedom enshrined in article 9 of the European Convention is not absolute as it is submitted to the limits that are expressly stated in paragraph 2: Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. In another token, issues like religious liberty or the cultural identity of the individual are mostly placed in the decisional sphere of the States as the doctrine of the margin of appreciation has preeminence. We find natural this kind of attitude if we understand the fact that is rationally exposed in doctrinaire studies [1] according to which, the application of the European Convention on Human Rights and Fundamental Freedoms does not give an exclusive competence to the European Court of Human Rights but it represents a joint effort between the national and the European level. It is true that, the national law system cannot be excepted from the effort made for protecting religious
freedom and the individual cultural identity as the nation-State is the first actor that is directly involved if we take into account the fact that, the resort to the jurisdiction of the European Court is admissible only when all the domestic legal remedies are exhausted. In the same token, it is clear the fact that, nation-State is the most aware actor of the socio-cultural reality that is manifested within its community and the aspects that relate to the religious option and to cultural identity are even more clearly highlighted at the national level.

The juridical issue that is exposed in the lines above represents a genuine dilemma in the hypothesis of bringing into discussion gender. Combining the gender factor with the cultural factor entails a more complex approach that is expressed by means of another autonomous juridical doctrine – that of reasonable accommodation. More precisely, there is a juridical difficulty in reconciling the need of reasonable accommodation that exists at the European level in order to achieve cultural diversity and harmonization with the need of nation-States of preserving their national peculiarities and of maintaining the policy of religious neutrality. The latter is validated by the preference for standard-making, by banning religious symbols and by tendencies of assimilation.

A just argument implies, form our point of view, the explaining of the issues that are related to the margin of appreciation doctrine.

Some comments regarding the margin of appreciation of the States. Implications brought upon the gender factor and upon the religious factor through the lens of promoting laicity

The doctrine of the States’ margin of appreciation was built as a mechanism whose scope was to promote cultural and religious pluralism within the European space. The rationale that upheld this conception was the following: national minorities manifest their cultural peculiarities within nation-State so that, when there are legal issues connected to the implications brought upon the conflict between the right of minority communities to cultural identity, the right of nation-State to promote its secular politics and the European desideratum of ensuring cultural diversity, the nation-State will provide the most real answer. Scientific studies [2] have distinguished between two manners of understanding the doctrine of States’ margin of appreciation: (1) the
volunteer manner of understanding according to which the margin of appreciation of the States is based upon the idea that the European Court of Human Rights is an international body with subsidiar competence and with derived legitimacy by comparison to the legitimacy of nation States,- in this context, the European Court of Human Rights endorses granting normative power to the principle of subsidiarity; (2) the rational manner of understanding does not lay down an assumption in favor of the manner in which nation States approach the issue; the Court examines if the measure imposed by nation States ensures a fair balance between individual rights and democratic values. For a holistic approach of both manners of understanding, some additional explanations are in order. The volunteer manner of understanding the margin of appreciation of the States gives expression to the principle of State sovereignty and to the power that States have of assessing sensible social aspects like morals or religion. In the words of McGoldrick [3], the States’ margin of appreciation must be broadly construed because the optimal juridical solution adopted at the European level is the one that is legitimated by resorting to the trust that individuals put in it; when the interpretations of the European Court of Justice are different from the beliefs that individuals have that means that they will start to question the legitimacy of the decisions that were adopted. On the other hand, the rational understanding of the States’ margin of appreciation requires an exercice of proportionality. In this sense, State’s will of deciding upon specific issues exists but it is manifested in a limited manner and under the careful analysis of the Court. We deem that, between the two manners of understanding the margin of appreciation of the States, the rational manner corresponds more easily to the European idea of solidarity. Furthermore, form the legal point of view, the boundaries that are imposed in the process of guaranteeing the right to religious freedom, of freedom of conscience or thought are expressly mentioned within article 9, paragraph 2; they express proportionality. The European Court of Human Rights cannot establish a monolith interpretation on the theme of the rights comprised within the European Convention but it is necessary to accept a counterweight that comes from the part of the signatory States.

As we have observed from the case-law analysis of the causes Şahin, Dahlab and Dogru, nation-States have argumented the ban of the islamic veil for considerations
that refer to the politics of State laicity, - a policy which is highlighted in particular by resorting to the French legislation. Law number 228 of 15th of March 2004 is suggestive through its title: the law refers to the application of the laicity principle regarding the signs and clothing that manifest a certain religious belonging if they are worn in schools, colleges or public highschools. From our point of view, the simple statement of the laicity politics within the legal framework is not enough in order to impose an objective and coherent conduct upon law subjects. It is at least problematic to enunciate a lax principle (the principle of laicity) by relating to a complex problem (that of religion and culture) without offering some additional specifications. Doctrine has observed this shortcoming and has interpreted the idea of laicity in two divergent directions, following that a certain sense be accommodated depending of the concrete circumstances of each case. Thus, doctrine [4] has distinguished between neutral laicity and militant secularism. Between the two, the latter meaning of laicity corresponds to the formula of cultural diversity that is promoted at the European level. Neutral laicity represents the tolerance and the acceptance of different religious opinions so that the individuals that share them may live together meanwhile, militant laicity adopts an aggressive attitude in relation with expressing different religious opinions. [5]

In light of the information expressed above, it is clear that the margin of appreciation of the States and the doctrine of laicity are concepts that exert mutual influence one upon the other. As long as States acknowledge the idea of laicity in the sense of admitting religious symbols and in the sense of accepting religious manifestations in the dimension of forum externum then, their margin of appreciation will be exerted in compliance with the previously evoked manner of conceiving the problem. If religious freedom is construed in the domestic field as being granted as long as it is in compliance with the principles of laicity and those are conceived in a lax sense in compliance with neutrality then, the accommodation of achieving cultural diversity at the European level will be an achievable goal.

The pseudo-convergence between religious freedom mentioned in the European Convention on Human Rights and Fundamental Freedoms and neutrality promoted by the politics of nation-State. Implications upon gender
In France, the issue of laicity is of pressing importance as it is enshrined in the legal framework of the French Constitution of 1958, in Law of 15th of March 2004 and in the Educational Code – that was amended as a consequence of adopting the aforementioned law. Initially, the issue of laicity was formulated in a neutral and inclusive manner that concedes the possibility of free religious manifestation from the part of the individuals. The wearing of the islamic veil was formulated as an autonomous problem in November 1998 when the Minister of Education Lionel Jospin has requested to the French State Council to assess the compatibility of the islamic veil with the principles of laicity as they are established in the French legislation. Following the intimation through the report of Jospin, the French State Council has responded in the sense in which laicity- that is consecrated at the constitutional level- is compatible with the public wearing of religious signs, including with the wearing of the islamic veil. Furthermore, the French State Council has adopted and promoted through its answer, the neutral version of laicity, making a distinction between the public sphere and the private sphere as an area of manifesting religious freedom. In the understanding of the French State Council, in the public sphere, laicity is one of the essential principles of the State which translates into the neutrality of public services and that advances the idea that neutrality decomposes into (1) the respect for neutrality in the process of formulating school curricula and (2) the respect for neutrality in the activity of the professors; additionally, neutrality in the school environment includes the student’s freedom of conscience, banning discrimination regarding the accession to school services of students according to their religious beliefs. [6] Subsequently, the opinion of the French State Council regarding the issue of the islamic veil was shaded, including amid the adoption of Law no. 228 of 15th March 2004 that regulated the application of the laicity principle to those cases that concern the wearing of clothing symbols that attest the religious belonging of the individual in schools or in public institutions. The Educational Code, modified through the Laicity Law mentiones, in article L.141-5-1 the following resolution for the problem of religious clothing in public institutions : in schools, colleges or public institutions, the wearing of symbols or clothing that ostensibly manifest the religious belonging is forbidden. The interior regulation reminds us that, the application of a disciplinary punishment is preceded by a previous dialogue with the student. In order
to address directly the problem of wearing the islamic veil, it was later clarified by means of a report issued after the modification of the Educational Code that: the symbols that determine the immediate recognition of the religious belonging of the individual like the islamic veil – regardless of the denomination under which it is used, - are expressly forbidden thus being in compliance with the prohibition established through the Educational Code.

Approaching laicity in the manner that was worded and presented by Law of 15th March 2004 was an aspect that was applied at the national level in solving the Dogru case, subsequently this was reiterated at the European level, by means of the case-law of the European Court of Human Rights. [7] The ban of the wearing the islamic veil at national level by the students belonging to the Muslim minority during the hours of physical education was not assessed by the European Court of Human Rights as a violation of the principle of religious freedom nor as a violation of the principle of gender equity. On the contrary, the wandering away from the premises of religious pluralism was sustained by the non-absolute character of religious freedom provided in article 9 paragraph 1 of the European Convention and by means of justifying the limits of religious freedom by resorting to the hypothesis mentioned in paragraph 2 of the same article 9. In particular, it is deemed that, the ban of wearing the islamic veil is an imperative limitation of religious freedom, this foldens on the reason of necessity that is specific for a democratic society. We do not subscribe to the opinion expressed by the European Court of Human Rights because, if we admit as an undeniable truth the fact that, religious pluralism entails tolerance towards the exterior manifestation (forum externum) of the religious faith towards which the individual manifests its adhesion then, the ban on wearing the islamic veil would not be in consens with this undeniable truth. On the other hand, the European Court accepts, as an undeniable given, the idea according to which the wearing of the islamic veil represent a way of maintaining the fundamentalist islamic tendencies, the submission of woman and her removal from the public sphere. But, if we assess the effects of the ban of wearing the islamic veil in public learning institutions we will observe that, - the main effect has consisted in removing from the educational system of the girls that wear the islamic veil (followers of
the islamic religion), - thus, the decision does not have a visible effect upon men-

students. [8]

In the case Dahlab against Switzerland [9] the factual hypothesis is identical to

the one described in the Dogru case- the single difference (but of main importance)

consisted in changing the quality of the plaintiff. Mrs. Dahlab has the quality of a

professor who teaches at an institution of State education and, who has converted to

the Muslim religion thus wearing the islamic veil as a symbol that reminds her belonging

to the aforementioned religion. Subjected to the decision adopted by school authorities

– that was materialized in baning the professors to wear visible religious symbols, -Mrs.

Dahlab has resorted to national courts of justice invoking the violation of her religious

freedom as it is stated in article 9 paragraph 1 of the European Convention on Human

Rights and Fundamental Freedoms. After using all the domestic legal remedies, Mrs.

Dahlab has resorted to the European Court of Human Rights and the latter has

maintained the decision adopted by national court of justice – by virtue of which,

religious freedom in its outer manifestation (forum externum) is not and cannot be

thought in absolute terms as it is mandatory the compliance to the limits imposed by

paragraph 2 of article 9. The main idea sustained in the argument of the national court

of justice has brought into discussion religious pluralism and State neutrality as

principles enshrined in the Constitution of the Ginebra canton. The European Court has

assumed the argument exposed at the national level, integrating it within a more broad

paradigme – that of the necessity that exists within a democratic society. The correlation

between the limitation of religious freedom and the demandings of a democratic society

seems dilemmatic because, at the theoretical level, the two mutually reject each other.

Nevertheless, at the practical level, the European Court of Human Rights explains the

request of limiting the religious freedom in a democratic society by invoking two factual

states : (1) the quality of being a professor who teaches at the State primary education

system implies the adoption of a conduct that is ment to upheld the climate of religious

peace within schools; on the other hand, the wearing of islamic religious symbols
determines the creation of a tense atomosphere, violating the principles of neutrality and
pluralism; (2) the professional quality of the plaintiff cannot authorize her to show a

cultural (religious) conduct that would have effect upon young students as she
represents a model for them. From our point of view, both factual states start from the hypothesis that the European Court considers correct ex abrupto, without further demonstration. Exempli gratia, the arguments which endorses the violation of religious peace by means of wearing the islamic veil were not demonstrated; on the contrary, there were not records regarding any complaints coming from part of students or from part of the students’parents regarding the religious conduct of Mrs. Dahlab although her conversion to the islamic religion was made 5 years before the official banning of wearing the islamic veil. In another token, it is contradictory to discuss the problem of the manner in which the wearing of the islamic veil would affect the religious peace of Switzerland as long as Switzerland has highlighted the neutrality regime (including the religious neutrality) in the context of the wearing of the islamic veil that was practised before its banning in public schools. With regard to the argument refering to the manner in which the religious conduct of professor Dahlab influences the religious conduct of the students of primary school (as they are susceptible of indoctrination following the proselytism undertaken by professor through the wearing of the islamic veil), we can claim that, there are some differences between the religious manifestation of the individual in forum externum and the undertaking of actions with proselyte character. Consequently, we feel that, the argument according to which, the wearing of the islamic veil would have as effect the indoctrination of students, is vitiated because the action of indoctrination must be accompanied by the intention of converting the auditorium composed of students to the islamic religion; as long as the conduct of professor Dahlab is neutral, the wearing of the islamic veil becomes a symbol of in externum manifestation of her religious faith, without qualifying it as an act that unjustly interferes with the principles of Swiss secularism.

In the cause Şahin against Turkey [10] the ban of the islamic veil addressed the case of a medical student amid the desire of preserving the values of State neutrality and national laicity. Similar to the two cases presented above, the main argument of the university authorities for justifying the ban of wearing the islamic veil consists of protecting the secular background in universities. We must make the mention that, the manner of conceptualizing Turkish laicity presents some peculiarities by comparison to the conceptualization of Swiss or French laicity as the first one is in strict connection to
moving away from the remainings of teocracy and of the fundamentalist tendencies of Islam. Within this context, the sanctions imposed at the national level upon the student Leyla Şahin (we refer to her subjection to disciplinary procedures and to her removal from the written examinations as well as her suspension for a period of a semester) were accepted by the European Court of Human Rights by virtue of the mechanism of the margin of appreciation of the States and in compliance with the needs of the Turkish State of promoting the image of woman and the partnership between sexes.

In the lines above we pursued to demonstrate the incongruity between the manner in which the European Court conceptualizes religious freedom in article 9 and the manner in which nation States understand, by virtue of the margin of appreciation, to conceptualize State neutrality. We feel that, in order to produce just effects, State neutrality must be understood under the guise of State tolerance towards religious diversity as long as it does not violate public order or safety, public morals of health. This idea is reiterated by paragraph 2 of article 9 of the European Convention on Human Rights and Fundamental Freedoms: Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

If we would resume our reasoning to this argument it would mean that the logic of things would lead to a full convergence between the State manner of conceptualizing neutrality and the conventional manner of conceiving religious freedom. In the concrete reality, the factual and juridical situation bears some nuances. Laicity and its way of being conceived is the prerogative of nation State but, if the manner of conceptualizing laicity that is used at the domestic level proves to be contrary to respecting human rights and, in particular, proves to be contrary to respecting the right to identity of women belonging to the islamic culture, the case law intervention of European Court must be felt. In front of the decisions pronounced at the national level, the European Court intervenes, observing the violation of religious freedom guaranteed under its auspices but accepting it under the reserve of the necessity that exists in a democratic society. From our point of view, by its attitude, the European Court gives full power to nation State in exerting the control of the given situation by means of the mechanism of the margin of
appreciation but the European court of justice undertakes a pseudo-control, agreeing ab initio to the opinion that is expressed at the national level, without assessing the situation. The European Court accepts de plano the establishment of a direct causal link between the wearing of islamic veil and the situation of Muslim women, without taking into account the idea according to which, the wearing of the islamic veil may represent a symbol of manifesting the right to cultural identity of Muslim women. Form our point of view, an implicit connection may be established between the interdiction of wearing the islamic veil and indirect discrimination of Muslim women. Indirect discrimination may be explained by means of adopting, at the national level, of some apparently neutral measures (in the cited causes, the measure of banning the wearing of the islamic veil is apparently neutral because it is justified by upholding religious plurarlism and State neutrality) that, in concrete, produce negative effects by limiting the rights of a peculiar category of individuals (in the given causes it is restricted the right to cultural identity pertaining to Muslim women). [11]

On the other hand, the European Court leaves unquestioned the interpretation offered by national authorities according to which, the wearing of the islamic veil represents a symbol of women subordination and of violation of the principle of gender equality. In order to achieve the hypothesis expressed at the State level and to apply it, the hypothesis must be proven; on the contrary, we discuss the re-assessment of a stereotype that derives from the manner in which the western doctrine qualifies the religious manifestations undertaken by the islamic religion.

In the title of the present section of the paper we used the expression pseudo-convergence in order to show the manner in which nation States understand laicity is discordance with the manner in which religious freedom is applied by virtue of the spirit of the European Convention. We feel that State laicity – enshrined within the margin of appreciation of the States is improperly interpreted by nation States -is able to violate individual rights although there isn’t the danger of undermining national security, public order or public health nor of undermining the moral beliefs of society. On the other hand, the agreement of the European Court of Human Rights to the reasoning promoted by nation States is inexact given the fact that, the latter is not the product of an autonomous analysis – as we already have shown in the lines above.
Replacing conclusions: the failure of nation States in the process of modernizing national legislation in the context of promoting pluralism and a democratic society

The cases discussed in the lines above demonstrates the lack of conformism of nation States with the thesis of religious pluralism- as a condition of existence for democratic society. Establishing the fact that, wearing the islamic veil represents an act that is contrary to a democratic society is an idea that must be argumented for validity reasons by resorting to the objective and reasonable motives that are comprised in paragraph 2 of article 9 of the European Convention. Consequently, we feel that, the banning of the islamic veil is more likely to represent the expression of a peculiar interpretation that evokes the western stereotype conception concerning the treatment applicable to women in the islamic religion rather than a measure that was adopted for objective and reasonable reasons as endangering state’s safety, the rule of law or public morals or health. The policy that is applied at the level of nation States reminds of the restricted form of neutrality or the form of militant laicity according to which any manifestation of a religious belief that, in some circumstances, was assessed as a bringer of fundamentalism, must be removed, regardless if its followers are not practitioners of islamic fundamentalism and does not pursue the subversion of the public power of the State. Furthermore, by means of national politics of banning the islamic veil, gender inequity was implicitly promoted (as we have previously argued, the banning of the islamic veil may be construed as a peculiar case of indirect discrimination) and women’s right to cultural identity was violated (the conceptualization of the right to cultural identity was demonstrated in the present paper as being the prerogative of every woman to opt for some cultural values and to promote them by means of specific actions while respecting the legal provisions of the host-State).

Considering the analytical assertions made above, the arguments that we deem able to demonstrate the lack of adhesion of nation-Sattes to the values of religious pluralism and democracy may be resumed as follows: (1) the causes Dogru, Şahin and Dahlab highlight the replacement of the islamic stereotype concerning the manner of conceptualizing the female condition with a western stereotype; (2) State neutrality is
not the equivalent of the ban — that was adopted at the national level, - of all religious practices/symbols that are visible (per a contrario, as long as these do not touch fundamental values which exist within a democratic society, religious manifestations of any kind must be encouraged); (3) State’s attitude towards religious variety and its external manifestations is bound to be exerted in the sense of tolerance and acceptance within the functional democratic limits and not in the sense of banning them- in the absence of proving, beyond any reasonable doubt, the menacing character that this attitude may bring upon democratic values; (4) religious pluralism does not exclude rather it entails a open and tolerant State neutrality in relation to external religious manifestations; (5) likewise, the application of religious pluralism and State neutrality foresees the tensions that may appear between religious groups or between different cultural comunities but it promises their resolution through tolerance, respect for cultural diversity, without prioritising cultures/religious manifestations and without establishing the inferiority or superiority of one or the other; (6) nation States have not responded to the impulses given by religious pluralism and State neutrality, stating ab initio the fact that, the wearing of the islamic veil is contrary to a democratic society without engaging in a rigorous demonstration.

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[7] The case Dogru against France, the decision of 4th December 2008, no. 27058/05.

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Abstract:
Romania’s integration in the European Union called for a modern, flexible and effective public administration as a prerequisite for the structural transformation of central and local public authorities, undertaking a profound reform in all social and economic areas, as well as increasing the role of the citizen in the decision making process.

The reinforcement of local, administrative and financial autonomy, the need to remedy certain structural deficiencies in the functioning of public administration, together with the development of strategies to improve the long-term public administration capacity, and the improvement of the general legislative framework will represent a fundamental change in the relations between administration and citizens, placing greater emphasis on efficiency.

Keywords: Administrative law, Central and local public administration, Strategy for the reinforcement of public administration, Governmental programs.

In any society, be it classical or modern, public administration is essentially an instrument of the state, indispensable in achieving goals, certain major objectives determined by it, to reach the political values determined through various internal regulations, in order to meet the general interest, by the action of the political power.

Administrative law is, par excellence, a branch of the national legal system. Prestigious authors who studied this branch of law have brought important clarifications on the scope of administrative law. Thus, the late Professor Antonie Iorgovan, in his Treaty of administrative law, estimates that administrative law can be defined as “the branch of public law governing, concretely or in principle, the social relations from the sphere of public administration and those of a conflicting nature between public authorities or private structures, vested with public authority, on the one hand, and those violated in their rights through the administrative acts of these authorities, on the other hand [1]”.

In the French literature, the 2004 volume Administrative law, signed by Jean Rivero and Jean Waline, defines administrative law [2] as all the legal rules applicable to the administrative activity, whether they are private law rules or otherwise. The authors state that, in a narrow sense, the term administrative law is intended to include only rules of origin, i.e. that are distinct from private law.
Currently, it is commonly accepted that the administrative law includes the composition and scope of the bodies which carry out administrative work at central and local level, the proper activity of the administration, the principles on which it is based, as well as the administration control, whether it is exercised jurisdictionally or non-jurisdictionally.

The main concepts expressed in the legal doctrine of the European states have been numerous and have given expression to various interests and points of view. Thus, for example, the French doctrine of administrative law in the nineteenth century is based on the distinction between acts of authority and those of management, on the responsibility of the state for acts of public power and on the independence of the administration before the courts. In the French doctrine, the entire administrative law was particularly based on the theory of public order and the functioning of public services. Later, Professor Georges Vedel circumscribes the sphere of public administration to the sphere of the executive, believing that the administration provides the exercise of the executive power under a public authority. A broader conception is expressed by André de Laubadère, who includes in the concept of administration the assembly of authorities, agents and bodies responsible, under the impulse of political powers, for ensuring numerous interventions of the modern state. Finally, Jean Rivero appeals to the notions of public interest or general interest, revealing that, while the governance refers to the essential decisions for the future of the nation, the administration deals with everyday problems. In his view, public administration represents, essentially, the activity whereby public authorities ensure public needs, while administrative law represents a set of legal rules, different from those of private law, which would guide the administrative activity of public powers [3].

In the opinion of the German school, the administration, by vocation, performs the tasks of the state within the management, including here, unlike the French doctrine, the sphere of external relations. The conception of the German school does not differ from that of the French school when evoking the structural meaning of public administration, which represents - in both doctrines - all the services principally exercising an administrative activity.
In the various meanings of this notion conferred by the European papers on administrative law, the subordination to law is essential, the principle of legality is, in fact, the first recognized by all textbooks and works of administrative law, and the first governing the administrative activity [4].

The need for an initiative to reform the public administration system was determined by the moment December 1989, as one of the major objectives of the Romanian society, constantly found in the governmental programs of the various parties that have succeeded after that period.

During the affirmation of “constitutionalism” as an action and thinking mode, the place of the law as the supreme factor for assessing administrative activity was taken by the Constitution, as an expression of the general will and commands [5].

The highlight of the transformation of the Romanian state administration was the adoption by referendum of the Constitution of Romania in 1991 [6], having as a starting point the magnitude of the constitutional coordinates, reinterpreting the Romanian public administration system and the autonomous public administration branch, in the reconsideration of general interest, of national or local character. From the same point of view, i.e. constitutionalism, the revision of the fundamental law of the state in October 2003 [7] was meant to establish new constitutional provisions, which have either corrected some failures in the initial norms, or achieved their aims by the role and functions of certain structures of public administration.

Thus, internally, besides these imperatives of the Romanian society, we emphasize that the major objectives comprised in the idea of reforming and rethinking of public administration, have been largely achieved, reaching most of the areas of interest for the economic and social life of the Romanian state.

The need to satisfy the general interests of society, both at central and local level, has determined, from a functional perspective, the involvement of authorities in certain fields of activity, by granting the legal powers and the appropriate and necessary tools to achieve the established aims and objectives.

Despite these positive developments the Romanian administration, prior to the integration in the European Union, showed weakness, introducing new requirements and adaptations of public administration. Thus, the priority became to achieve a
profound process of public sector reform and to create an administration system that is modern, accountable, predictable, transparent and responsive to the needs of citizens and the business environment.

As the first reporting documents of the European Commission showed in 1999, up to the beginning of the accession negotiations the real progress in Romania regarding the organization and functioning of public administration proved modest, far from being considered to meet the EU requirements on the matter [8].

Consequently, a comprehensive process of administrative reform was imposed at the time - in 1999, so that, structurally and functionally, the public administration in Romania would gradually meet the European requirements. However, in light of the coordinates of the European Union, it is generally known that the organization and functioning of public administration is not subject to regulatory rigors binding on the member states, so that the issue in question is reserved for the national provisions and principles of law.

Professor Ioan Alexandru and his collaborators, in the volume Administrative law in the European Union, state that “European administrative law, or – more precisely – of the European Union, is closely linked to the notion of European public administration (...) The notion of European public administration is capable of two meanings: a material one and a formal one. The material approach involves analyzing the organization of the execution and the concrete execution of the communitary legislation (primary and secondary legislation), done by actions of disposition or actions of beneficial nature. The formal approach is based on the analysis of the system of European institutions and administrative structures carrying out this activity [9]”.

The European law is itself a specific branch of law, with an interdisciplinary character, incorporating many elements from the branches of public and private law, including administrative law. In this regard, ample references have been made in the literature concerning the implications of the acts issued by Community institutions, and the appeal procedure, the role of Euro-regions, the implementation of the Charter on local self-government and, especially, the concept of community public office [10].

We emphasize the fact that, if the public administration regulation in the member states is the exclusive competence of national authorities, as an attribute of sovereignty,
the issues of central public administration in 2000 were limited to the assessment of the political criteria, as well as Romania’s administrative capacity, necessary for the implementation of the acquis communautaire, in terms of our country’s accession to the European Union [11].

Furthermore, the onset of major reforms was the Government Program of 28 December 2000 for the period 2001-2004 [12], a policy document of the government at the time, frontally addressing the reform acceleration for central and local public administration, based on a critical evaluation of the European Commission of the respective situation. That framework sought to achieve the EU accession criteria, demonstrating that Romania could meet its obligations as future member state by reinforcing the administrative capacity.

The government program regarding central and local public administration established ten fundamental objectives, which included: the profound restructuring of the administration; substantive changes to the relations between administration and citizens; the decentralization of public services and strengthening the administrative and financial autonomy; the gradual demilitarization of some community services; the reconsideration of the administration in charge with child protection.

The stage of public administration reform process, beyond its sinuous evolution in the period 1999-2002, was eloquently highlighted by the European Commission Report, prepared for 2003 [13] as the reference period. The document was quite objective and provided a complete picture of Romania’s development stage, including the aspects concerning the organization and functioning of public administration [14].

If the positive assessments specifically concerned constitutional amendments, reducing the use of Government emergency ordinances, adopting the anti-corruption legislative package, demilitarization of the police, ensuring minority rights, antidiscrimination legislation, the critical elements covered three key areas, namely administrative capacity, reform in justice and corruption [15].

On the same lines, as a positive sign for public administration reforms, the review of the status of public servant was outlined [16].

Strictly referring to public administration, the European Commission Report monitoring Romania drafted in May 2006, showed that, since the previous report in
October 2005, there had been progress in this area, mentioning, in particular, the continuation of the decentralization process through the adoption, in Parliament, of two normative acts that promoted decentralization [17] and the reform of the prefect institution (noting that, by this emergency ordinance [18], it was regulated that the prefect be a senior public servant that could not have a political career at the same time).

As a negative finding, the same Commission report of 2006 revealed that, in the legislative process, the Romanian government continued to issue normative acts by way of emergency ordinances, noting in this regard that, during 30 September 2005 - March 15 2006 90 such emergency ordinances were issued. It shows that, in doing so, the power of Government strengthened to the detriment of the Parliament, which reduced transparency in the adoption of normative acts.

Summarizing these issues regarding the stage of the public administration reform contained in the periodic Reports of the European Commission [19], we consider that they are subordinated to the fundamental aim of the European Union, otherwise stated in the Treaties establishing the European Communities (ECSC, EAEC, EEC) reiterated in the Maastricht Treaty, and, respectively, in the Treaty of Amsterdam, namely: the uniform application of European law in Romania in the same way as in other member states of the Union.

The broad and highly varied range of these new European values, with a significant impact in the administrative legal order of each member state, demonstrates the scale of the administrative reform process, covering all essential points that are relevant to public administration. Like other types of reform undertaken in various fields, the public administration reform process should not be an end in itself; it must follow certain defined purposes; the functionality of the state depends on their implementation, through their proper and effective exercise. Prior to Romania’s accession to the European Union, considerable efforts have been made to increase the pace of reforms in various fields and there was political support to fulfill the criteria enabling the accession in 2007. Public administration was placed at the center of this process, benefiting from significant investments aimed at increasing its capacity, with efforts consistently distributed to closing the negotiation chapters.
In this context, the Romanian Government adopted two successive strategies regarding the public administration reform: the Strategy on the acceleration of public administration reform 2001-2003 and the updated Strategy of the Romanian Government on the acceleration of the public administration reform 2004-2006, which led to the implementation of reforms in key areas, namely: public policies, decentralization and public office.

Since 2007 there has not been any integrative strategy related to public administration [20], although the institutions of the central public administration had several initiatives that addressed aspects of its reform [21], but in a fragmented manner and without showing the root causes that affect the functioning of public institutions even in the presence of clear and adequate procedures and regulations.

Regarding the proposed reformative directions for Romania, changing the collective behavior of a society implies a long period of time. Becoming a full member of the European Union compels Romania, starting with 1 January 2007, to continue the administrative reforms in order to make public administration more efficient. This entails to firstly develop the strategies for achieving economic and social reform, which situates de facto the public administration system, defining its objectives, its means and ways of achieving them.

In this regard, Professor Ioan Alexandru, PhD stated that “justice or public administration reform must conclude in the regaining of state authority, the efficient management of public affairs, reflected by better serving the interests and needs of the population [22]”.

To achieve these objectives, a profound administrative reform with sustainable positive effects first requires a structural reconsideration of the public administration that operates vertically from top to bottom.

Therefore, the reform process in public administration in Romania must be based on the following major principles: a unified approach to the elements of functional, structural and organizational reform of public administration; a clear definition of the role and basic functions of central and local authorities; a reinforcement of the autonomy and acceleration of the decentralization of the administration system through the practical application of the subsidiarity principle, gradually shifting the center of gravity.
of the central state bodies’ activity from the management of economic and social life, towards the development of the appropriate legal framework, of the strategies for sustainable development at national and sectorial level, of the methodologies at national and sectorial level; an optimization of the management of public administration through the development of the market economy and the affirmation of representative civil society structures; provision of public services for the population, motivation of local authorities by giving decision-making powers aimed at promoting social interests in the process of sustainable development [23].

Strengthening the Romanian administration reforms constantly occupies an important place both in the legislation, and in government programs, in other words the dynamics of public administration is expressed in the dynamics of the reform.

On the legislative front, concerning the reform dynamics on the matter, there have been adopted a number of acts eliminating or reducing administrative system failings, their quintessence being the Romanian Constitution, republished in 2003. Article 120 represents the foundation of basic norms, outlining principles of constitutional law of local public administration from the administrative-territorial units, namely the principles of decentralization, local autonomy and devolution of public services.

Among the main results achieved during the period 2001-2013, we mention that a series of normative acts and relevant strategic documents in the field were adopted: Public Administration Law no. 215/2001; Decentralization framework law no. 195/2006 and its methodological norms of implementation; Local Public Finance Law no. 273/2006; Law no. 340/2004 on the prefect and the institution of the prefect, republished; Law on the status of local elected officials no. 393/2004; the Code of conduct for public servants no. 7/2004, republished, Government Decision no. 775/2005 approving the Regulation on the procedures for drafting, monitoring and evaluation of public policies at central level; Government Decision no. 870/2006 on the Strategy for improving the development, coordination and planning system for public policies at the level of central public administration; Law of public utilities community services no. 51/2006; the Strategy for an improved regulation at the level of central public administration 2008-2013 etc.
The status of public servants and the law on local public administration have also been revised and improved, and normative acts were developed to govern incompatibilities and conflicts of interest for the public sector, as well as the transparency of decisions.

To adapt and, therefore, to respond as effectively as possible to the needs of the current socio-economic context in Romania, public administration should focus its core mission, i.e. law enforcement and public service provision, towards a modern and innovative approach, centered on facilitating the socio-economic development of the country through public services, investment and quality regulations.

Accordingly, to achieve a thorough process of public sector reformation and creation of an accountable, predictable, transparent and incorruptible administration system, the Romanian Government adopted, in collaboration with the Ministry of Regional Development and Public Administration, Government Decision no. 909/2014 approving the Strategy for reinforcement of public administration 2014-2020 and establishment of the National Committee to coordinate the implementation of the Strategy for the reinforcement of public administration 2014-2020 [24].

In defining the strategic objectives for the period 2014 - 2020, the institutions involved have proposed to start from the recent analyses and from the strategy to strengthen public administration in 2007-2010 [25], trying to articulate a coherent vision that will generate, in its application, substantial improvement in the activity of the administration. To complete this action, a series of measures must be fulfilled:

- political commitment to support those measures meant to tackle the structural causes that contributed to limiting the effects of reform initiatives proposed in the past;
- establishment of a coordination mechanism to implement reform measures supported at the highest level, managed by the Prime Minister’s Office and the Ministry of Regional Development and Public Administration, accompanied by transparent procedures for monitoring and evaluation;
- setting up a mechanism for cooperation and consultation with the civil society and its responsibility in order to support the process of implementation, monitoring and evaluation of these reform initiatives.
Moreover, the document seeks to lay the foundations for shaping certain priority strategic projects to cross-sectorially address some initiatives for the reform of the decision-making process, of the public office and the public service management capacity, so as to ensure the uniform and standardized implementation, where appropriate, of the measures envisaged.

In order to ensure the conditions necessary for the fulfillment of the objectives set in the Europe 2020 Strategy, but also to help increase the impact of the use of European funds in public administration, the European Commission imposed a number of conditions in the Position of the Commission Services on the development of the Partnership Agreement and programs in Romania for the period 2014-2020, as well as in the EU Regulation no. 1303/2013 [26].

For the thematic objective “Reinforcement of the institutional capacity and an efficient public administration”, the ex-ante condition is defined as: the existence of a strategy to strengthen the administrative efficiency of the member states, including a public administration reform. Specifically, the criteria to be fulfilled by 2016 concern the following aspects: the analysis and strategic planning of the actions of legal, organizational and/or procedural reform; the development of quality management systems; integrated actions for the simplification and rationalization of administrative procedures; the development and implementation of strategies and policies concerning human resources to cover the recruitment plans and career paths of personnel, building of capacities and financing; the development of skills at all levels; the development of procedures and tools for monitoring and evaluation.

Moreover, at the level of basic local public administration, the fragmentation phenomenon generates, in many cases, operating costs that are unjustified in relation to the efficiency of fulfilling the responsibilities conferred by law, and, through the effects related to the scarcity of the self-financing means, require the implementation of the constitutional principle local autonomy.

In consequence, in the context of the administrative fragmentation, it becomes extremely difficult to correlate the strategies and policies at local level with those at central level.
However, the administrative capacity and force of the four associative structures of local public administration authorities are often insufficient to constitute a real negotiation partner for the central structures, in order to provide expert advice to member administrative-territorial units, to elaborate studies and analyses and to identify and promote best practices, useful to the members of associations and for policy making at the central level. Moreover, there is a tendency on the part of many central public institutions to consult more formally the associative structures and to avoid their involvement in the phase of substantiating the decisions concerning local authorities.

To these we add often pronounced inter and intra-regional development gaps, below the European average, as well as significant disparities in the socio-economic development in the administrative-territorial units.

As regards institutional issues, we note the existence of poor relations between ministries and the entities they coordinate, resulting in: overlapping of intra-sectorial responsibilities and difficulties in managing cross-sectorial issues at territorial level; excessive centralization and poor coordination; inefficient use of resources, coupled with administration fragmentation involving too many costly structures in the territory; overlapping competences in some cases, for the decentralized structures of central public authorities with those of local public authorities [27].

The process of public administration reform in Romania was, within the past 10 years, in the general lines imposed, on the one hand, by the political criteria for the accession to the European Union, on the other hand by the constant need to adapt to the country’s socio-economic changes. In both cases, the magnitude and rhythm of the transformation processes have fluctuated, with a direct impact on the substance and effects of the reform process.

In this regard, the key elements that should underpin the public administration reform in Romania, for its reinforcement during 2015-2020, for an actual improvement of the organization and functioning of the administration, in line with the major EU requirements, are as follows: public office reform, which should lead to the creation of a professional body of public servants, stable and politically neutral, in conjunction with the implementation of a unified and coherent legislative framework, and, respectively, with the development of the cohesion of the strategies regarding human resource
management and professional training [28]; local public administration reform by continuing the decentralization process, simultaneous [29] with the devolution of public services while ensuring the optimal framework for the allocation of powers between central and local public administration; improvement of the process of formulating public policies, by creating coordination and perfection systems for the management capacity of government structures [30].

The organizational framework necessary for the implementation of such a long-term strategy requires, in our opinion, the cooperation of all institutions involved and interested in implementing, in an effective manner, the measures under the action directives.

In order to achieve this goal, the establishment and operationalization of a National Committee to Coordinate the Implementation and Monitoring of the Strategy for the Reinforcement of Public Administration 2014-2020 (CNCIMS) represents a crucial first step in the process of implementation of public administration reform measures, proposed in the Strategy for the Reinforcement of the Public Administration Capacity. This opportunity lies in the necessity to ensure, at governmental level, a coherent and effective institutional framework that unitarily coordinates sectorial measures of public administration reform and that ensures the remedy of deficiencies reported when analyzing the structural causes.

Therefore, the idea of reform in administration, especially when it comes with a certain obstinacy and amplitude, represents the proof of a moment of crisis of the respective public administration [31].

The discussions on the public administration reform give rise to confusion on the meaning of the phrase. Reform means more than improving the administrative capacity. Thus, it is, in fact, a new settlement on a new basis and principles that are compatible with the political, social and economic situation in a particular moment in the evolution of a state. As a broad concept, it includes all aspects of the organization of the public sector, most notably being the overall architecture of ministries and agencies, organizations and local institutions, systems, structures, processes, as well as the way they are monitored and the system is periodically adjusted.
On the one hand, the administration refers to how it formally involves and organizes the coordination of activities from the public sector, and, on the other hand, the administrative capacity that is an assessment of the functioning of the hierarchical structure of public services personnel, being thus only one of the elements of the public administration reform.

Undergoing a reform of public administration that is justified and based on scientific studies and social requirements is beneficial for both general and local interest.

Irregardless of the contradictory trends or other subjective obstacles regarding the reinforcement and realization of reforms, this must be performed whenever it is justified by the social requirements as appropriate, based on the scientific study of the political and socio-economic realities.

In this regard, consistent decision-making processes are necessary, together with competent and well-managed human resources, an efficient and transparent management of public expenditure, a proper administrative institutional structure, clear, simple and predictable operating procedures, and a focused attitude and organizational culture centered on promoting public interest.

In conclusion, an administration must be able to make the most of the available resources in order to achieve the expected results, to adapt, anticipate and respond promptly to the increasingly diverse needs of society, to be accessible to beneficiaries and accountable before them. Only in this way will an administration be credible and able to implement public policies in the interest of citizens.

Bibliography:

References:
[8] Among other concerns of the European Commission in the field, in the same year, 1999, it was eloquent “to continue the reform of the governmental structures and to clarify the communication schemes, necessary for the improvement of the capacity of the executive power”, a recommendation with an immediate impact on the efficient coordination of governmental policies in Romania.
[11] The consolidation of local, administrative and financial autonomy, the development of the legislative framework, the harmonization of our legislation with the European regulations have represented a fundamental change in the relations between administration and citizen, with greater emphasis on efficiency, as a consequence of beginning the negotiation chapters of Romania with the European Union.
[14] It was also stated in the same Report of the Commission for 2003 that our country had a weak administrative capacity in terms of the implementation of the adopted legislation, and it could be viewed as having a functioning market economy if the satisfactory progress continued until then.
[15] As for the issue of administrative reform, analyzed in the context of the assessment of political criteria – Democracy and the rule of law – the European Commission highlighted the deficiencies found in the organizational and functional public administration, beginning with the structures of the executive power (the Government), continuing with the ministerial ones, and finalizing with the authorities of the autonomous local public administration. The monitoring process and, respectively, the evaluation of these administrative structures cover the whole range of issues raised by the administrative phenomenon: the aspect of competences, means, procedures, organization, as well as the principles governing them in terms of efficiency, transparency.
The role is to ensure the premises for an integrated approach to cooperation with the European Union policies. This has been achieved through a series of measures and decisions aimed at modernizing public services and the process of formulating public policies, domains engaged in following the Lisbon Agenda, relaunched, in 2000. Competent authorities or drafted during the period and currently under consultation, we can state that the accession process was long and complex. Following the negotiations conclusions, the European Union decided to continue monitoring these aims after the accession of 1 January 2007, respectively to draft annual reports on the progress of Romania after accession.

In the absence of a strategic vision aiming at the growth of the public sector capacity to formulate public policies and efficiently manage service provision during 2007–2013, the only documents with an impact on the field were Romania’s National Strategic Framework of Development, with the main role of supporting the process of financial programming, and The National Program of Reforms. In 2007-2013 there were approved by Government decisions or, according to case, normative acts of the regulation authorities, over 40 sectorial strategies. Other public policies documents are added (proposals of public policies, strategies or strategic programs) adopted as such, without including them among normative acts, issued by competent authorities or drafted during the period and currently under notice/notice/adoption. See Decision no. 909/2014 regarding the approval of the Strategy for the reinforcement of public administration 2014-2020 and establishing the National Committee coordinating the implementation of the Strategy for the reinforcement of public administration 2014-2020, adopted by the Romanian Government on 15 October 2014 and published in the Official Gazette issue 834 and 834 bis of 17 November 2014 (Annexes 1-3).

For details see I. Alexandru, Politică, administrație și justiție, All Beck Publishing, 2004, p.208. H. Kassim, The European administration: Between europeanization and domestication. Governing Europe, Ed. by J. Hayward, A Menon, Oxford University Press, 2003, pp.9-10. Government Decision no. 909/2014 was published in the Official Gazette issue 834 bis of 17 November 2014 and was initiated by the Ministry of Regional Development and Public Administration (MDRAP) that, together with the Office of the Prime Minister (CPM), defined the main strategic orientations. The two institutions are part of the structure responsible for coordinating the implementation of the present Strategy, detailed in Chapter XII. After 1 January 2007, Romania seriously engaged in following the Lisbon Agenda, relaunched, developing the National Program of Reform for 2007-2010, where an important element was the development of the administrative capacity to implement, evaluate and monitor the reforms assumed. Later, in 2011, the Program was replaced with the National Program of Reform for 2011-2013, following the coordinates of the Strategy Europe 2020, representing the framework for defining and implementing the policies for the economic development of the state, in conformity with the European Union policies.


As a consequence, three essential domains have been identified for public administration: decentralization and devolution of public services and the process of formulating public policies, domains that have been unitarily approached in a coherent strategy. See further: C. C. Manda, Elemente de știința administrației, University Course, Universul Juridic Publishing, Bucharest, 2012, p.296, F. Bondar, Politici publice și administrația publică, Polirom Publishing, Iași, 2007, pp.101-121. Among various other measures and priorities in this area, there is the establishment of a structure of human resources specialists (board) whose role is to ensure the premises for an integrated approach to human resources management in administration, without replacing the authorities on the areas of competence conferred by law or creating a parallel decision-making mechanism. This structure will be created and will operate as part of the National Committee for the Coordination of the Implementation and Monitoring of the Strategy for the Reinforcement of Public Administration 2014-2020, respectively, the Human Resources Subcommittee, and, in the long term, with the entry into force of the new legislative and institutional changes, as a permanent structure before the institution coming from the strengthening of the role and expansion of the competences of the National Agency of Public Servants.
By developing monitoring mechanisms on the exercise of powers by the devolved structures of ministries and other specialized bodies of central public administration, as well as assessing the effects and impact of devolution, and also by developing analyses on the opportunity to transfer competences from central to local public administration, so that the decision-making process on the transfer of skills become predictable, transparent and designed to provide optimum exercise of powers. See “The overall objective IV: Increasing local autonomy and strengthening the capacity of local public administration authorities to promote and support local development”, mentioned in the context of the Strategy to reinforce public administration 2014-2020.

Fulfilling the "objectives" of public policies specified in the strategic reform plans is not only a political task, but rather an administrative one, which requires a redefinition of the way in which responsibility is shared between the political management of a public administration organization representative and its administrative management. See F. Bondar, op. cit., p.119 ff.

The imperative of improving the pragmatic competence in elaboration of normative acts

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Abstract
The mechanisms by which social relationships are strengthened depend of the law maker's capacity to create an optimal juridical environment. Social function of juridical messages emitted by the Legislator compel to an accessible language.
The reason of being of Laws is the citizens to be obedient to the prescriptions of rules. This must be the major interest of the Legislator and justifies efforts to make as the language of communication is easily perceived.
Juridical pragmatics analyzes the legal language and its influence on human behavior.
To dissolve the apparent antagonism between technicality and accessibility featured in legislative texts, legal vision must be united with the techniques of language.
Accessibility impediments of a legislative text created by technical terms are removed with the frequent use and increasing level of legal culture of citizens.
Impenetrability to legislative measures that leave room for laxity and legislative inconsistency must increase. Also the number of simple concepts, where the first option is clarity, not its aesthetic form or scholarly expressions.
Increased knowledge of the law, applying of the simplification strategy, in particular by clarifying and improving legibility of legislation, are compulsory demands.
By simplified legislation, citizen’s level of accessibility to law is increased. The number of pieces of legislation does not equate to the level of general welfare. On the contrary, while the number of law has decreased, the power of understanding has risen. Protection against legislation's inflation is for certain what citizens ask from Legislator.

Keywords: Normative message; Communicative competence; Pragmatic purpose

Introduction
In the Romano-Germanic legal system’s space of action, law is the means by which States disciplines in its ample dimensions, the behavior of people who are organized and operate in their territories. For social relationships to develop plotted coordinates of a coherent legislative policy, it requires a predictable conduct of all social partners, conduct which can be established only through a well-defined legal framework.

As a sine qua non condition, prior to any other requirements of conformity to a will, including as a social partner state, it must exteriorize that will. And, in the circumstances, the only acceptable way to exteriorize it through legal rules which can
be complied with conviction and determination applied only if they are the product of expression consistent with a high potential for reception.

Legislative policy objectives, presumed to be superior in terms of conceptual translate into real imperative through normative acts that give expression to understand how the state superstructure construction to design complex society.

The mechanisms by which social relations are reinforced in the presence of an optimal regulatory structure needs to be managed early stage of the project, the Lawgiver, with the utmost vigilance, being the Architect of the society.

The beneficiaries of this major constructs are dependent on its durability, the consequences will Lawgiver assumed responsibility to find the most representative and including specific social indicator, the legal norm represented by welfare recipients, circumscribed legal certainty of a nation.

**Message regulations; conjugation legislative technique in legal language**

It is inconceivable incapacity of communicating the message normative legislature condemned the continued development of a language as close to perfection and depth of perception connected to the recipients.

Consummation of the law to higher value meaning, can, in turn, be conceived without total access in all aspects, rules that any State had anchored justice. How, with any great power comes a proportional responsibility, under these constraints noble, is acknowledged dependence on ability, intuition and knowledge editors normative acts, legislating not only a science but, to some extent, an art [1].

Genesis strictness in efforts to achieve a legislative expression sends us the third century AD, the Ulpian that the Laws 1 and 52 clarifications about the rules to formulate laws and the legal standards. This example is not an isolated and can be completed easily by adding monumental work of Justinian in the sixth century AD, in his Corpus Juris Civilis, Title XVI of the Digest, called The verborum signification, establish fair rules for drafting legal texts. Nevertheless deserves to be mentioned and regulations them belonging to Montesquieu, in his famous De l’Esprit des lois, published at the end of 1748, of which the XXIXth Book is even entitled representative About how to elaborate law [2]s.
In Romania, the content of his work from year 1907 Essai sur une theorie generale des droits eventuels, Nicolae Titulescu, one of the few pre-war authors concerned about legislative technique, emphasizes, in a manner very current, it, by trying to include specific procedures the realities of social life, in construction and likely to embrace the principles and statements as new needs of social life [3].

Currently, under the pressure of a legislative maze it becomes ever more pressing need to develop a legal language to evolve towards ensuring ownership, clarity and concision, given desideratum of unification, specialization and legislative modernization [4].

Multifunctional and multidimensional nature of legal language requires consideration of its various levels, each representing a particular type of speech: legislative (legal), judiciary (the courts), contractual (conventions), and doctrinal (jurisprudence) [5].

In light of the major importance of its social function, the legislature is necessarily normative message to be expressed in legal language that leaves no space to inaccessibility on any kind.

The monologue characteristic of normative legal type of communication, achieved through the legislative text, research legal language might make a future act, which would focus attention exclusively on pole coding issue and the action of the message [6]. Nothing could be more erroneous, given the primacy of the recipient's communications policy objective in the enactment of laws transposed issued [7].

The premises of any attempt to develop an appropriate legal language must substantiate a constant and stable balance between technicality and accessibility, without deviating from the transparency that go into the conflict with an excessive amount of laws and their ambiguity.

Opaque and body overabundance of laws leading to an insufficient force, unable appreciation, real acceptance of rules, resulting in a reduced desire of obedience to them.

And as the raison d'être of any legislation is its recipient to show obedience to the requirements of the standard, in the interest legislature to work as communication language to be the easiest perceived.
The quasi-unanimous opinion is that the dominant normative acts is very ubiquity obligation to respect, according to the legislature entails limiting communication within small of a speech with maximum practical purpose. Legislative texts must be seen as statements given as Truth, in the absence of this feature, the recipient norm allegedly being exonerated certain conduct, sometimes under threat of coercion.

It should be noted this time that unique trait (except as provided by article 115 of the Constitution and the Law nr.502 / 2006) to issue normative acts of the Parliament corresponds to a lack of homogeneity of the addressee, especially in light of differentiated capacity reception of the message of law.

**Legal pragmatic competence**

Elaboration of a consistent set of provisions outlining policy objectives legislative overlap simultaneously with the general interest of society, it is a precision operation and constant involvement with the more so as the various categories of acts, acting within a process characterized by an acute interference [8], as evidenced distinguished professor Nicolae Popa.

Legislative power exercises the role of issuing normative acts, is characterized by traits Authority and Competence, while standard recipients are obliged to conform to the provisions of the Authority [9].

Starting from the premise that this operation is a success prior, it was developed a legal framework based on acts which fall into dissonance with immutable values of the social fund, the legislature's task to disseminate its legislative creation in order to claim later compliance and its application.

With the general goal of avoiding complications message expressing normative legal language was analyzed and multidisciplinary scientific study, especially in terms of the general theory of state and law, deontic logic, argumentation theory and rhetoric, communication [10].

**Legal language is intolerant of narrative form of legislative texts.**

Prescriptions are given or issued by anybody. They "evolve" in or have their "source" in the will of a normative authority. They also address an agent or agents, whom we will call topics norm [...] . Issuing rule making authority expresses the will of
the subject (subjects) to behave in a certain way [...]. The intentional element (intention communication) is a factor of a pragmatic nature, with pole issuing role. At the same time, it also implies the receiver, to the extent that it recognizes, in addition to the information content of the message, pragmatic finality [11].

Communicative function of language is the natural consequence of highlighting the pragmatic, the precise role to strengthen the legislative, bond strength between linguistic and legal process that includes ambivalence of its specific regulatory text.

Pragmatics is defined in the Dictionary of Language Sciences, as a linguistic use - with multiple interdisciplinary implications - studying the effects of various components on the production and reception context statements, both in terms of structure and of their significance [12].

However, the literature that has been done and accurate legal pragmatic analyzes producers in terms of legal language and legal language handles influence on human behavior [13].

Ability of awareness and reporting the entirety context, in terms of communication intention of the legislature, outlines what together with language skills, constitutes communicative competence.

Exteriorizing will, embodied in legislative policy, represents a factor of pragmatic communication intention is also clearly a factor pragmatic, to the extent that the concept reflects the purpose of the speaker makes use of the language system [14].

It is essential and crucial to recognize that the recipient norm, besides legal normative content of the speech, and the consequences will materialize product issuer.

No study of normative legal discourse, given the profound social structure and its functionality is not really rigorous and exhaustive if not harnessed the following components of context, the communication situation [15]:

a. socio-cultural and historical context in which it was created and is functioning legal system;
b. situational context (including socio- and psycholinguistic issues concerning the status and roles participants communicative act, the relationship between them, the intentions and purpose of discursive action);
c. referential context (represented by the branch of law);
It is this social structure essentially social drives a thorough review of compliance with the normative legal discourse pragmatic standard. This analysis may be undertaken only under the auspices of the principles of legislative technique; Romania is among the few that have a framework law in this important area - Law no.24 / 2000 regarding the rules of legislative technique for drafting laws, republished.

Using procedures of legislative technique, combined with pragmatic purpose to closely follow the normative legal discourse will lead to increased effectiveness normative message. A landmark of the degree of competence achieved by the legislature will be pragmatic ability to transmit, in a condensed form, said message. The most commonly lacks the ability to simplify, the action should be more rapid identification of the sources of communication failures.

**Accessibility and technicality**

The predominance recipients unfamiliar with the subtleties of the legal language and scarcity, by comparison, of those who manage to decipher the message normative easy, combined with inflation legislative, juridical norms constrain issuer simplify legal language.

Numerous specialized terminologies in all languages have their origin in the general vocabulary of the language. Romanian Language and legal terminology no exception, we can identify a number of technical terms with a more pronounced degree of specialization or lower and therefore accessibility.

To dissolve the apparent antagonism between technicality and affordability, the specific features of legislative texts, legal vision must be united with the linguistics [16].

Put into light legislative technique, two essential requirements are as linguistically reflex coexistence within the legal vocabulary, lexical three distinct layers: specializing strictly legal terms; technical terms taken from other terminologies; general vocabulary words used by legal acceptation [17].

Spreading legal terms with the property of having a single direction is sufficiently rare to be able to extend their full requirement of precision beyond the scope of strict legal neologisms specialized and therefore it is found almost exclusively in niche acts.
Amplified by the existence of these legal terms, but not limited to this reason, legal language sometimes receives criticism in terms of accessibility of a difficult for the layman.

It recommends different reasons however, prevent these criticisms by official use sparingly, in its normative acts, both specialized monosemantic terms dogmatic and strict polysemantic terms which are compromising the rigor of legislative technique.

Exposure to similar risks may occur in the situation of an excess of Latin phrases, even with international circulation, commonly used in legal language.

Examination diachronic legal vocabulary reveals that high obstacles in the way of accessibility legislative text technicality terms, diluted shown that the use frequent, leading to increased legal culture of citizens, including progressive determinologisation strictly legal terms or shift from specialists language in the juridical language and then in literary language. [18]

With remarkable acuity was noted, however, that the judge, the legal text must be written in clear language, without misunderstandings, without words with several meanings or inappropriate, even if some of them would be difficult to understand for non-lawyers ... From legislative acts cannot be excluded all legal terms of movement limited to the circle of specialists. Their removal would require the lengthy expression, cumbersome, which should replace the content concise, fused remove terms. Such texts would wordy style more imprecise and therefore more likely to misinterpretation [19]. But the need for a specialized terminology is identified including the requirements of accuracy, brevity and stability, specific normative legal discourse.

Despite the availability and simplicity of legislative texts are preferred strictly specialized terminology, to which the recipient is not familiar rule has its role, impossible to ignore.

Certainly not recommended for adoption by the Romanian legislative body even for our legislative tradition’s reason [20], dissociation occurs between accessibility and economy specific German legislation which aims to be an extraordinary technicality. [21]

Constant, must be remedied precarious balance between simplification and precision given by technicality. Normative intention must be reduced to simple terms;
the main concern is clarity, not its aesthetics [22] or scholarly expression. It must also be increased imperviousness place legislative measures which are legal laxity or legislative inconsistency [23].

**The imperative to simplify**

Beyond any doubt, a system unresponsive to changes on social life which makes its way to the new inexorably, everywhere, is doomed sclerosis and certainly would not survive [24]. However, solutions and goals rule of law likely to succumb under an excessive technicality normative legal discourse [25], which cannot and must not impose unacceptable changes.

The meaning of terms, the institutions can be made intelligible not only through direct enunciation of definitions, but by how it is configured all the regulations, by the way they are drawn from the characteristic features of the institution in question. It is more than useful to use assimilation processes, including simplified form of expression, represented by the fiction of language [26].

It is a fallacy to say that not even lawyers cannot even know all the laws of a State.

Legislative political reasons imposed which apparently is a presumption but in reality constituted a legal fiction: Nemo censetur ignorare legem. Undoubtedly, the lack of adoption of this fiction, legality would not be achieved [27].

The risk of failure legislative policy of the state, in the absence of such a legal process is ubiquitous, placing the principle of law in the sphere of irrational knowledge.

The sad fact that more than a third of the normative acts have been repealed and, most other suffered one or more substantial changes or additions interventions, requires a spirit of caution major legislative act indispensable. Even the smallest legislative inconsistency erodes the authority of law [28].

This would transform knowledge into a law requiring unattainable ideal, with maximum urgency, rigorous application of the simplification strategy, in particular by clarifying and improving legibility of legislation as firmly established in the Community Lisbon Program [29].
The principle of accessibility and economy of means in elaboration of legislation, along with other principles of law-making, such as the scientific basis for development, that of ensuring a natural relation between dynamic and static correlation system of law and normative acts [30], should govern how Legal normative legislature conceive his message, within a linguistic expression corresponding to its true objective.

Unquestionably, the primary principle on the accessibility of the normative acts precedence over any other central ideas of legislative technique that creates an unclear legal norm disorder, controversy, litigation and regulatory texts obscurity is the last refuge of power [31].

The fact that unnecessary laws weaken the necessary laws [32], though it was reported by a maximum expression of accuracy, since the eighteenth century, is by no means lacking in actuality, drawing attention to legislative inflation can always trigger a crisis of law. The exponential growth in the number of regulations can only lead to a drop in their quality, the appearance soulless laws [33] or, worse, to an impending tyranny of government, in which the presence, laws are not the result of the general will and the determination becomes law ineffective [34].

Abuse of legal regulations causing an inevitable loss of their binding force, the principle of separation of powers is compromised; the case goes to contradict the law, ultimately the rule of law being atrophied administrative hypertrophy [35].

Conclusion

The imperative to simplify the normative legal discourse is in an inextricable link with the manner in which the legislator finds necessary means to increase its pragmatic competence, principle of efficiency in the transmission subsumed as comprehensible, the content of normative acts by those required to apply and respect.

Identify methods to counter the instability legislative remedy legislative inflation must be an ongoing effort. Finding solutions such as coding, according to a flowchart, although definitely enhances the understanding of the functioning of the legal system [36] must not give enough satisfaction.

On the contrary, attempts should be intensified, because only if they are harmonious, clear and reject the unfounded differences [37], legal rules may govern
society and their assimilation can reach the expected level. It remains, more than recommended by professionals support recipients law rules with advisory duties by exploiting their position of intermediaries in access to sources of law [38].

Access to legal norms is a fundamental right, accounting for the public authorities must organize access system so no cost of any nature, are not imputed citizen and do not constitute an obstacle to the realization of the law [39].

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Association of owners in the buildings with multiple apartments- a necessity, an obligation or a convenient management form of common property

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Abstract: The association of owners of privatized apartments represents a much-discussed issue in terms of compulsoriness of such association. The attempts to excessively democratize the decision for the establishment of the association has resulted in a continuous degradation of housing fund, while the owners are being scarcely involved in the maintenance of the common parts of buildings. The present work proposes an analysis of factors influencing the current management of multi-apartment buildings, as well as the reasons of owners’ failure to fulfill their obligations for maintenance of buildings they own. In authors’ vision, the ownership over the common property, which is forced and perpetual, also requires the association of owners aimed at an appropriate management of this property. In this regard, the legislation of the Republic of Moldova needs to be changed.

Keywords: condominium, homeowners association (HOA), common property, share in common property, housing area, dwelling, owner, multi-apartment building.

Multi-apartment buildings management raises a number of issues, the resolution of which critically affect the property of anyone holding apartments in these buildings. There is no doubt that each owner is responsible for the maintenance and repairs of the multi-apartment building he lives in, and all owners are responsible for the overall management of the building they live in.

What does the Moldovan legislation provide for in this regard?

Thus, the Civil Code, Article 355(1) states: “If there are spaces in a building for housing or another destination, having different owners, each of them holds a shared ownership right, forced and perpetual, on the parts of the building which relates to use of spaces that cannot be used otherwise but in common”. [1, art. 355 (1)].

Similarly, the legislation emphasizes two principles that characterize the legal status of co-ownership:
1. none of the owners have exclusive right on a specific part of the common property, which is determined by unanimity rule, as any intended action on the respective property is allowed only with the unanimous consent of the majority of owners;

2. each owner has the exclusive right to the ideal share - an abstract of common property and may freely own this share.[8, pg. 50];

Shared ownership in multi-apartment buildings is forced and perpetual, determined by its existence regardless the owners’ will or preferences, common parts representing accessory assets with respect to the principal (individual) property - apartment or other private premises. Legal status of accessory assets is indispensable to the principal property for which these accessory assets are intended. The indivisible nature of accessory assets related to principal properties belonging to different owners and the permanent use of such accessories determines the perpetuation of ownership rights on common parts of the building.

In other words, the owners are required to maintain the common property and contribute to costs proportionate to their shares in the common property and can be released from such obligations only through alienation of individual property (an apartment or other private space).

In conclusion, the owners are facing the need to associate and take decisions for the management of common property, regardless whether or not the association is formalized by registration and approved status. The fact that all owners must approve decisions on common property, leads us to the need for reliable implementation mechanisms for owners’ rights in condominiums. These mechanisms must be clear, securing the interests of all owners and ensuring the integrity and safety of assets throughout the life of real estate.

The Law on Condominium in Housing Fund [2] determines the property management in multi-apartment buildings, procedures for the creation of homeowners associations (HOAs) and the ownership relations in condominium. However, the law does not provide mandatory association of owners, except for new buildings appeared after approval of the law. Thus, for most buildings, the owners decide themselves whether to use or not this form of management.
In the new draft Law on Condominium, currently being developed, are maintained the same provisions supporting the mandatory establishment of HOAs - mandatory for new buildings and optional for existing buildings - (the draft law requires a clarification in terms of determining the 'existing buildings' and 'new buildings' placed in service). The experts' initiative to require the creation of HOAs, following the practice of other countries, was stopped by the provisions of the Civil Code (art. 181) and the Law on Public Associations (art. 3) [3], which provides for the creation and activity of HOAs based on the principles of free choice.

On the other hand, the mandatory creation of HOAs is not an end in itself, but is a way of ensuring the maintenance process of apartment buildings, a process that is very important in maintaining both, the comfort of the residents and safe exploitation/use of these buildings. Obviously, there might be other ways of solving the problem, for example, - avoiding establishing public associations. That would mean that the owners would be obliged to exercise the right / obligation to perform works / contribute with funds for building maintenance and repairs, with the unanimous consent of each owner. This would be a very difficult to accomplish procedure given the complexity of building maintenance act, requiring decisions on various issues: on cosmetic repairs, contracting of works, as well as financial decisions that are the most complicated.

The other way is the building management by HOA - having an Association Agreement (whereby all owners agree upon to join the HOA), an approved HOA Statute determining the decision-making and control bodies and voting shares – where the things get organized and operation carried out in "automatic" regime. In this regime, which conforms to the Statute approved by owners at the Constituent Assembly, with the empowerment of the Governing Bodies, which shall fulfill all actions related to housing maintenance on behalf of all owners. This mechanism is obviously more suitable for appropriate management because it excludes endless meetings on standard and trivial topics, reserving the right to expressing the owners' unanimous agreement only with those topics that reflect their ownership right on the common property.

All the effort of condominium management – either by HOA or by owners' direct management – shall be the result of owner's obligation to care for and maintain the
property belonging to them.[1, art. 315, par. (6)]. Therefore, it shall not be left to the owners’ discretion, - of owners in our case - to maintain or not the building in proper technical condition. Now, the only question is the mechanism through which the owners should organize and enabled with to exercise these obligations. In other words, even if circulated that ownership right on common property is somehow constrained, the state has the right to establish provisions by law - provisions inducing to impose the apartment owners to cooperate (voluntary or forced) to meet the obligations of owners’ status, i.e. maintain the building in good condition.

The paradox of the situation is that the owners of apartments (or other spaces), by their stubbornness / reluctance to associate and carry out the building maintenance, are contributing to the deterioration of common elements of the building - walls, roof, foundations, etc. – thus deteriorating each owner’s individual property. Such degradation reduces the property price and may lead to its full destruction, but also with forthcoming occurrence of risk of accidents, which may endanger human life and safety. Therefore, this is the issue requiring the involvement of the state to call for mandatory establishment of HOAs for the purpose of appropriate management and administration of common property in condominiums.

The undertaken half measures that stopped the process of condominium formation in the housing area made possible a mass degradation of housing buildings and this is due to the missing legal requirement to establish HOAs in condominiums. In authors' opinion, the mandatory association is the only instrument possible to solve qualitatively the management problems of common property, supported by clear relationship rules between owners, including responsibilities, mechanisms to fulfill the tasks assigned to each participant to this relationship.

Of course, one can not provide legal provisions in contradiction to other laws, and namely the Civil Code and the Law on Public Associations. These two laws stipulate the principle of voluntary associations, but these laws may be amended by provisions reflecting the specific case of condominiums, where the owners association becomes mandatory, based on forced ownership over the common property. In this respect, it is necessary to amend Art. 181 of the Civil Code and art. 3 of the Law on Public Associations. As a result of these amendments, supported by the emerging Law
on Condominium, the things will move in the right direction, removing the false statements on violation of citizen's right to free association. In our condominium case, it is not about limiting the right to associate, but it is about the association when citizens are, de facto, already associated by the shared ownership right, which is forced and perpetual.

In this regard, the European experience is also welcomed [9]. In developed countries, the ownership on apartment is inextricably linked to membership in the HOA, organized as a private and non-for-profit organization. Expert's recommendations for managing apartment buildings in transition countries are clearly orientated to mandatory membership in HOA of all apartment owners' in condominium. These HOAs should work on democratic principles, with all necessary instruments representing the interests of owners.

In this context, it is necessary to mention, that democracy is applicable to common property management process, including formation of management and control bodies, approval of budgets, contribution rates to repair fund – so, the whole process of decision-making is aimed at owners’ democratic exercise of their obligations. As well, we cannot disagree or put into discussion the democratic principle of decision making on HOA establishment which had to be already established once the building became a condominium (meets all the qualities of condominium, i.e. - there is more than one owner in a building who owns individual property units [apartment and other private spaces], as well as a share in the common property in condominium).

Obviously, the condominium management organized through HOAs entails additional costs, but solves problems easier and more efficient, compared with ad-hoc management of each problem separately. Moreover, being a legal entity and duly registered, the HOA enables all owners with necessary specific tools for condominium management.

Speculation regarding the violation of owners’ constitutional rights when mandatory HOAs in condominium are required is nothing but an attempt to delay the process of housing reform. Various reasons are invoked in this sense, but the truth is the fear of assuming commitments from both, the authorities and the owners.
Now, after the completion of housing privatization, there were established three forms of association for the purpose of maintenance of residential buildings: association of owners of privatized apartments (APLP), homeowners associations in condominium (HOA) and housing construction cooperatives (CCL).

APLP is created under the Law on Privatization of Housing Fund [4], the legal form - consumer cooperative. They are autonomous and independent associations of individuals created on the principles of free will and can do business in favor of cooperating members. According to the Law on Consumer Cooperation [5] (art. 18, par. (2)) cooperative organizations assimilate to small businessenterprise.

As we see - in cooperative associations, the members can be only individuals, thus the management of spaces belonging to legal entities are excluded from management process (commercial spaces, municipal property and spaces, etc.). In addition, the common property of residential building to be managed by APLP is being transmitted for management only, but it is not registered as shared common property of each owner of that building.

This contradicts the provisions of the Civil Code and, given the HOA membership is voluntary, the owners who have not agreed to join HOA will remain outside the process too. The legislation does not clearly regulate the manner of execution of HOA decisions by owners who are not members of HOA. Although the Law on Privatization of Housing Fund (art. 24) requires the owners and lessees of premises with other destination than housing to sign contracts with HOA and participate in expenses - these provisions are very difficult to fulfill. Maintenance and repair are costly works requiring consistent financial commitment from the owners.

HOA is organized under the Law on Condominium in Housing Fund [2], where the rules of organization and activity are specified. The logics of approval of the emerging Law on Condominium relies on the necessity to make the management activity uniformed in multi-apartment buildings, thus, after its approval, the APLP and CCL shall be converted into HOAs, so naturally take the form corresponding to that specific property relations in buildings owned by multiple owners.

The Law also specifies the established owners’ rights and obligations, and management methods of common property, which are only two: directly by owners
(when the condominium includes up to 4 owners) and by association (which may delegate functions to a professional manager). In fact, excepting the case of 4 owners, there is only one method—management by the association.

In line with above, we can deduce that the HOA establishment is mandatory. Some provisions, however, make us to understand that HOAs are established on voluntary basis, while the changes in the Law on Condominium in Housing Fund from 2008 [7] introduced mandatory association for new buildings placed in service. Thus, we can deduce that for existing buildings the association is not mandatory. As well, the HOA establishment procedures described in the Law provide a certain number of votes for HOA validation. Just like with APLP, is not clear what are the mechanisms for imposing building maintenance obligations of owners who have not signed the Association Agreement.

CCL - another management method to date, appearing as a form of consumer cooperative, while in all cases, these cooperatives were established in order to invest in construction of apartments, so as after completion of construction works, to maintain the same form for the life of the building. The Law on Privatization of Housing Fund clearly indicates that in buildings where at least one member has paid the association share, the CCL is required to be reorganized in HOA.

One should note that the Law on Condominium in Housing Fund has not achieved its purpose. A few condominiums have been created so far and the majority of buildings remained to be managed by Municipal Enterprises of Housing Management (IMGFL). However, even in buildings where the HOAs are established, the full recognition and registration of the integral real estate within the condominium has not occurred. Only the rights on individual property belonging exclusively to owners are registered, while their shares in the common property are not. Although the Civil Code (art. 355) and Law on Condominium (art. 6 (3), Art. 17 (3)) require that each apartment (individual property) to be registered together / simultaneously with the share in the common property of each owner, this requirement remains to be one unfulfilled. Moreover, the Law on Real Estate Cadastre [6] stipulates that the registration of shares in common property is optional, so it is not mandatory.
Thus, already 14 years since 2000 have passed and the failure to establish an aviable mechanism for the exercise of owners’ obligations for appropriate maintenance of common elements in residential buildings has started generating structural threats to multi-apartment buildings and to the life and health of people who live in. It is clear that due to some errors, where technical, where lack of experience, the reorganization of the housing fund management process is staggering, and these errors require urgent correction.

What are the recommendations on improving the situation? Who should correct the errors?

Obviously, the public authorities are those who committed these errors – so they are responsible to undertake corrective actions. The state - that allowed discrepancies in various legislation on one hand, and local public authorities - for the reason of not undertaking required efforts to organize the transmission of assets to the rightful owners and not ensuring the HOAs organization under the law. We must recognize that it is not a simple process. It will take massive involvement of both, human and financial resources. Nevertheless, there are no other solutions.

To bring the process to normal evolution, it is necessary to take systemic actions with relevant modifications in legislation and carrying out programs financed from public budgets, under the following landmarks:

1. Ownership right on buildings that meet the qualification of a condominium to be registered on owners’ names, taking into account both, individual property and relevant shares in the common property as well.
2. The owners in these buildings to be considered associated by law.

Any changes in legislation, programs or actions, that will ignore these two crucial conditions - will be sterile and will not improve the situation.

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Clientele and goodwill

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Abstract
The present article intends to assess the legal nature of clientele, its place and role within goodwill elements and we shall also analyze clientele by comparing it to the goodwill itself. Given the lack of a legal regulation as far as the clientele is concerned, its legal nature is controversial, both in its theoretical and in its practical aspects. The following question becomes evident: is the clientele a constitutive element of goodwill, or is it just the result, the logical outcome and aim of all the other goodwill components? Is there such a good or right, and, if the answer is affirmative, what is its legal nature? Can it be subject to a legal act? The clientele determines the legal nature of trade fund (goodwill) itself. The mere existence of a clientele dictates the existence and the property of goodwill: the moment the clientele appears or disappears shows the moment goodwill comes to life or end its existence. Therefore, it is necessary for us to ascertain the concept of clientele, as the practical consequences of having a clientele are very important: every time an operation (demise, guaranty, lease or bringing capital to a company) is performed on the clientele, it is consequently performed on goodwill.

Key-words: clientele, goodwill, incorporeal property, commercial venue, competitive conditions, profit

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Introduction – The concept of clientele. Comparative legal aspects

The notion of trade is undeniably bound to the notion of gain or profit (finis mercatorum est lucrum). The idea of gaining, of making profit can only be achieved by attracting and keeping one’s clientele. Traditionally, clientele is considered to be the essential, indispensable element of goodwill, as it directly reflects in the trader's turnover. Without a clientele as a constitutive element, we cannot find goodwill, but only isolated and disparate elements, with little connection between them. Without a clientele, the trader could not perform its activities. Does the right on the clientele (which some authors equalize to the commercial venue or avviamento or achalandage) exist? What is its legal nature? Can it be subject to a legal act? Among the incorporeal elements of goodwill one should undoubtedly find a clientele the trader has earned and that makes profit possible [1]. One point of view [2] defines goodwill as “an incorporeal form of property which refers to the clientele attached to the particular trade fund by the elements that serve its running”. As important as the clientele is as far as the trading activity is concerned, the Romanian legislation does not regulate this concept.
The clientele is defined by the doctrine as the assembly of people, natural and legal persons, usually relating to the same professional trader, more specifically to its goodwill, in order to obtain or acquire goods and services [3]. We often define clientele by the value of the relations between goodwill and persons regularly requesting goods and services to the trader. According to this definition, the clientele represents an actual monopoly, based on a probable public influx and on constant contractual relations to a well-determined economic agent. The clientele is the indispensable hinge/element of goodwill, its main source of prosperity, as it offers originality, as far as the law is concerned, and economic value [4]. Another definition [5], significantly similar, states that the clientele is the assembly, or the entire sum of people, natural or legal persons, closing deals or developing trading activities with a certain trader. It becomes obvious by looking at the trader's turnover. Or, following the same line, the group of people, natural or legal persons, having legal relations with a certain trader. As far as the accounting is concerned, it is expressed through a number [6]. In the Romanian accounting law, the incorporeal elements of goodwill are registered as assets, and as a consequence we can find here elements of the business clientele: the loyalty of the clients, the number and quality of the clients, the opportunities to develop or increase the clientele [7]. In the Chart of Accounts position no 207, one can find the term “trade fund” (goodwill); within class 4 “third parties accounts” we can see details and categories, such as groups 40 and 41, suppliers and clients accounts. These two categories constitute the trader’s clientele. Moreover, law no 82/1991 [8], modified and republished, relating to the Romanian accounting system, names as main components of goodwill its incorporeal elements, especially the clientele and the trading/commercial venue [9].

Nevertheless, due to the lack of a legal definition and regulation, the legal nature of the clientele is a controversial topic, both in its theoretical and in its practical aspects. By taking this into consideration, we can ask the following questions: is the clientele a constitutive element of goodwill, or is it just the result, the purpose, the aim, the objective or the destination of trade? Is there such a good or right, and, if there is, what is its legal nature? Can it be subject to a legal act or document? Within the Italian legal system, this problem has been vividly debated upon. According to Cesare Vivante, the
cliente (avviamento) could be defined as “the entire assembly of legal and actual relations by which a trader ensures for itself the contribution of clients”. According to this definition, the clientele is practically mistaken for the trading venue. As an incorporeal right, the clientele can be subject to property rights and, as such, can be given away or sold separately from the goodwill. Consequently, the trader, as owner of goodwill, in order to protect it, may take legal action (eviction actions, actions for disturbance termination). It also has the right to claim reimbursement every time it can prove the existence of prejudice, and the moment it leaves the location it can be reimbursed by the owner of the building where it developed its business [10]. Another point of view states that clientele cannot be separated from goodwill or from the business itself, as it represents the hope for future earning which are variable and inconsistent, and cannot by guaranteed by the law. So, clientele is a feature of goodwill organization, it is a form of existence, an exterior quality, a result of all other elements, especially the personal qualities of the business owner, and definitely not an independent right [11]. The first opinion, the one that finds the clientele to be an incorporeal mobile good is closer, as I.L Georgescu shows, to every day life considering the existence of old trade houses which follow clear traditions and a fixed clientele, which can be transferred. The Italian jurisprudence took this under consideration and regarded such transfers as valid transfers. In a decision issued by the High Court of Justice in Rome, on June 19th 1903, one can read the fact that the clientele is a form of contribution of the old trader to the future activity of its successor, the reputation of the former helping increase the income of the latter, in other words the adequate price of the clientele represents the legitimate “bonus” for such a contribution, meaning a participation to the future profit of the business.

The Romanian jurisprudence walked on the same path, by considering clientele to be a patrimonial element. The High Court of Justice constantly decided that, in case of expropriation on grounds of public interest, one should be reimbursed not only for the corporeal goods being expropriated, but also for the clientele or for the commercial venue [12]. Even though commercial venue as a concept referring to a patrimonial element which can be damaged or dissolved is not regulated by our legal system, still the judges are obliged to take into consideration this element which, as a good, can be
a part of one's patrimony, and they can also offer reimbursement when legal support can be found [13]. As a consequence, from this point of view, as the clientele is an incorporeal mobile good, having a distinct existence, it can be subject to a separate transfer [14]

Within the French legal system, the law issued on March 17th 1909 [15] represents the basic regulation on goodwill but it only distinguishes the different elements which create the goodwill. The French doctrine showed two ways of determining the constitutive elements of goodwill: the first one is established by law and assesses the elements which are susceptible to form a trade fund (goodwill) and the limits of this concept, and the second one the necessary and indispensable elements of any trade fund (goodwill). Among these indispensable elements that we can certainly find every time is the clientele, as a common and necessary element for any trader. The doctrine and the practice agree on this topic. The divergent opinions one can sometimes find are easily explained. To some authors, the clientele is not a goodwill component, but the goodwill itself, which can be defined as as the right to a clientele; it is common knowledge that goodwill is inconceivable without a clientele. The moment other elements started to be considered necessary (the right to bail, alcohol trade license, transport license) came because: firstly, the clientele is never the sole element of goodwill, as one cannot conceive clientele without a physical or intellectual support; secondly, clientele has only one base that specifically appears of the essence itself.

Thus, it is important for us to define the concept of clientele, as the practical implications of this notion are significant. Every time an operation (transfer, guaranty, lease, bringing a contribution to the company assets) affects the clientele, it affects goodwill as a whole. Generally speaking, the existence of the clientele also implies the existence and the property of goodwill; the appearance or the disappearance of the clientele determines the moment goodwill is created or comes to an end. In order to claim the ownership on a trade fund (goodwill) one must find a real and certain clientele; a potential clientele or a clientele belonging to another trader would not be enough. Therefore, there is no goodwill in the absence of an independent clientele, moreover, goodwill belongs to the person creating the clientele.
Placing clientele among goodwill elements

Most legal systems grant significant consideration to the clientele, while considering it indispensable to the existence of any business. A common feature of all legal systems is the fact that this incorporeal element is closely linked to the potential of any business and to the business organization during its development.

Regarding the importance of the clientele for any trade fund (goodwill), one can consider relevant the fact that all goods belonging to the goodwill are organized and arranged in order to satisfy the needs of a clientele. Goodwill may represent an important patrimonial, if the clients it attracts and keeps are numerous. But the clientele is not always loyal or constant. Within a free economic market, it can be drawn by a more dynamic and powerful competitor. This explains the fact that goodwill value may vary in time considerably, so its uncertainty and vulnerability is due to the ever changing clientele. The clientele determines the legal nature of goodwill itself. It is commonly accepted that within an heterogeneous system of corporeal and incorporeal goods an immaterial element changes the legal nature of the whole. By having an inconsistent nature, the clientele generates important controversy and debate [16]. Although it is an essential component of any trade fund (goodwill), having a clientele is not a sufficient condition; one has to add a fixing point (the venue, trading bail) or an element which attracts (sign, logo, trademark). While goodwill remains a relative concept, its key elements are well known and classified by all legal systems. One controversial aspect remains: is the clientele an element of goodwill or is it not? What is its nature? Is it necessary for the mere existence of goodwill? What are its indispensable qualities? Is the clientele a constitutive element of a trade fund (goodwill) or is it the result, the objective, the ultimate aim of any trader and consequently of all other constitutive elements?

Within all legal systems, no matter the emphasis laid upon any of the theories regarding the legal nature of goodwill, it is unanimously acknowledged that goodwill represents the assembly of goods, whether corporeal or incorporeal, that a trader uses while unfolding its activity or trade. Still, beyond the diversity of goodwill constitutive elements, clientele plays a very important role for the business, as it represents the common and indispensable element of all trade funds (goodwill). The clientele
determines by its size, quality and loyalty the economic situation of the trader, its success or failure. This is the very reason why clientele appears as an indispensable element of goodwill, and for some authors it represents the. Without it, one cannot find a trade fund (goodwill), but only isolated and dis main constitutive element of goodwill parate elements. It is important for one to know the moment goodwill is created or comes to an end. The creation of goodwill is linked to the moment elements are gathered in order to create the clientele. Nevertheless, this is insufficient. Should one claim it since its use starts, since the first customers appear? Or can we admit that goodwill exists before clients exist, since the means to serve the clientele are already there? All hypothesis find their source in the jurisprudence. It seems excessive to expect clientele to manifest itself as a genuine business trend or “wave”. To settle for a virtual or potential clientele, as soon as elements used to attract it are created and put together, generates confusion between clientele and commercial venue and opens the door for unacceptable consequences, since the location of any building, as prepared as it may be for serving a business (trading activity), may be considered a lease of goodwill. The reasonable seems to be the public opening, as the project of the business comes to life and constitutive elements of goodwill turn into clientele. The French High Court of Justice ruled as far as this aspect is concerned by deciding that a strong clientele is not sufficient to generate the existence of goodwill, but admits in some cases the actual and real existence of clientele before the business is officially open, under the same ownership of the same person owning the business. The disappearance of goodwill is, at the same time, bound by disappearance of the clientele. The moment the clientele seizes to exist for a certain trader is when goodwill comes to an end, too. Maintaining a potential clientele due to the trading venue that continues to exist is not enough to make goodwill continue its existence. A temporary suspension of the trader's activity, followed by a continuance of goodwill exploitation (by the trader or by a successor) may allow the trader to find the clients who have not changed their habits and as long as a percentage of the clientele is still there, the goodwill continues its existence, too.

Nevertheless, as far as the legal nature is concerned, is the clientele a constitutive element of goodwill, or is it simply the outcome, the result, the purpose of all
other goodwill elements? As arguments in favor of the idea that the clientele represents a constitutive element one can rely on legal provisions [17] which clearly name the clientele as one of the incorporeal elements of goodwill. As far as the Romanian law is concerned, law no 298/2001 [18] does not enlist clientele as one of goodwill constitutive elements [19]. Given that, the legal text regulates penalties for unfair competition, and this leads to the conclusion that the final beneficiaries of this law are the customers, as they are affected by unfair competition acts. One may also support this idea based on steady and constant legal precedents: “of all goodwill elements, the clientele represents the most important component, as without it a trade fund (goodwill) could not exist” [20]. Another decision of the High Court of Justice states that the contribution the clientele has within a limited-liability company constitutes at the same time a contribution to the trade fund (goodwill) [21] Some authors disagree this assessment and state that the clientele is not a good from the legal point of view, and the trader has no right on its clientele or customers, as they are free to obtain supplies from anyone and any trader. The clientele belongs to the economic agent that is able to attract it, and so, on a free economic market, customers belong to no one. G. Ripert [22] defined the clientele as “a possibility for future and renewable contract”, and as such it does not constitute an element of goodwill, but a quality, a trait, a feature of goodwill. It represents not an ingredient, but a result, an objective. It also represents the binding element between different elements the business owner uses, it offers a sense of unity and cohesion to the assembly, without being a part of it. Moreover, a change within the clientele does not generate a change within the goodwill, just as the establishment of a new line of activity does not imply a transformation as far as goodwill is concerned, as long as the economic activity is continuous [23]. This point of view, which highlights the originality of clientele compared to the other goodwill elements, is preferable, but it totally overlaps the idea that the mere existence of a clientele determines the existence of a trade fund (goodwill) [24]

The role of the clientele within goodwill

The jurisprudence and the doctrine agree on considering the clientele as the key element and the essence of goodwill, “its revealing sign”, while strongly arguing that there is no goodwill where clientele is missing or no longer exists. This idea leads to a
series of practical consequences. A new goodwill comes to life only when it attracts a clientele, in other words if the economic activity has begun. If a location (building) is arranged in order to host a certain trade (for example a cinema, a casino, a garage, a hotel, etc) its lease is a mere bail right as long as the activity has not yet started; otherwise it is just an administrative location where goodwill is managed [25]. The transfer of the activity makes the goodwill disappear after a while, due to the loss or fluctuation of the clientele [26]. A contract is not considered to regard goodwill as long as it does not influence the clientele. In case the goodwill is sold, it is necessary for the clientele to be given away, too. This does not mean that all elements the seller had acquired should be transferred globally; it is sufficient for the seller to give away the elements which attract clients [27]. So, it becomes obvious that clientele, as an essential condition for goodwill existence, is based on specific elements that attract it and turn it into a loyal clientele, and it cannot be dissociated from them. These specific elements vary from one type of activity to another: in retail trade the bail is very important, for a transport company the transportation license is of the essence, etc. The same professional trader uses multiple trade funds (it has more than one goodwill) if it relates to different customers in different locations. It is not the same for the business which, alongside its headquarters, it also has one or more subsidiaries. Each subsidiary has a functional and legal autonomy, its manager has a certain freedom as far as his activity is concerned and can even close deals and sign legal documents with third parties. Still, there is a controversy when taking into consideration the autonomy of the subsidiary regarding the goodwill. In fact, the means by which customers are attracted (sign, logo, trademark), even if they are geographically dispersed, are common for the main business and office (location) and the subsidiaries. Yet, the subsidiary becomes a separate goodwill if sold separately [28], provided the elements which are sold be able to dissociate the clientele of the main business from the clientele of the subsidiary.

No matter its legal nature, whether we consider clientele to be a constitutive element or a purpose of goodwill, it needs a series of specific features.

Clientele should be real and certain. A virtual or potential clientele is not enough to generate goodwill. Goodwill comes to life starting with the first operations between the trader and the customers (the clientele). Nevertheless, the High Court of Justice
raised an exception to this principle, every time the company has undisputed fame and reputation up to the point where it constitutes a mandatory “passage” for the clientele. The issue has been debated upon on the occasion of a particular and practical situation, namely the situation of new gas stations; if such a gas station is built and equipped by a certain oil company, while being used or exploited by another company for the first time, to whom does the goodwill belong? Does it belong to the company which made all the investments, or does it belong to the company that has opened the station for the first time? The logical answer would be that it belongs to the latter, since it opened the business for the public and by doing so it attracted the clientele. Still, the High Court of Justice ruled in favor of the (former) oil company, considering that even before the gas station was opened it had a real and certain clientele, previous to the use of goodwill, belonging to the oil company. This ruling is based on the idea of “trademark notoriety” [29]

The owner of goodwill should also personally own the clientele. The difficulty of this problem appears both on a practical and on a legal level: the existence of the clientele is undisputed and unquestionable, while its attachment is uncertain. One needs to face the hypothesis of two businesses commercially and legally dependent on one another (bound on each other). One may find a commercial dependence every time a trader uses a huge surface while developing its business (for example a supermarket). The problem is a real one and one should not be surprised by the conflicting rulings of different courts of law. The problem of a derived (secondary) clientele, which belongs to someone else becomes obvious in the case of traders unfolding their activity within a perimeter which belongs to another business having its own customers – luncheon bars or restaurants functioning in railway stations, airports, racecourses, theaters, etc. Retail traders located within large commercial centers do not generally speaking have their own, independent clientele [30] A contrary solution could be admitted in case the trader developing its business in such an area can prove the fact it owns its clientele based on its competence and fame/ reputation [31]. For example, a restaurant placed in a railway station or an airport might claim its own clientele, but this would be more difficult for a luncheon bar or a taproom placed by a highway. The situation is similar in case of a legal dependence, for example the traders
incorporated in a modern distribution network, such as an exclusive concession (lease) network of an automobile constructor (Peugeot, Renault, Opel) or a franchise network, by which the franchisor gives to the beneficiary its commercial name, its trademark, its know-how and a series of products which are to be sold by means previously used by the franchisor. For all these traders it is very important to know whether they have their own clientele or if they use the common clientele, a clientele which belongs to the commercial center or to the company using a franchise network (the franchisor, as this type of legal dependence brings together the grantor and the grantee, the franchisor and the beneficiary. The problem is raised by the grantees that lose their contracts, whether because the contracts are not renewed or because they are terminated by the grantors; many times they try to get compensation for the clientele, which they helped create and which they have lost. The High Court of Justice conditioned such compensations by the proof that the grantor had made an abuse when refusing to renew the contract. Such a ruling is based on the idea that each grantee has a personal clientele which is not attached to the grantor, to its trademark or reputation; this clientele stays until the moment the contract is terminated. All these being said, within the French legal system [32], an attached clientele is the only acknowledged type of clientele, although one can notice a recent evolution of cases within this legal field (the franchise): some courts of justice have started to take into consideration the entire personal clientele of the trader benefiting from a well-known trademark or commercial name while bound by a very strict contract, and as such they have started to assess the attachment of the clientele to one of the parties, by taking into consideration the particularities of each case. This proves that goodwill, a concept based on the existence of clientele belonging to the particular trader, based as well on an individualistic view of making business, is no longer adequate to some forms of modern distribution.

The clientele must be lawful and legitimate. The business relations developed by the trader with its customers show a lawful nature as long as the economic activity unfolds according to the legal provisions, usually based on an administrative authorization. On the contrary, an illicit type of trade or a trade which refers to on object forbidden by the law (drugs, for example), even if it attracts some customers, it cannot be fostered or defended. A similar situation can be found in the case of an unauthorized
gambling facility, a liquor store which functions illegally, or an illegal brothel. As any trade performed and unfolded under such conditions, conditions which go beyond the admissible legal and moral limits, this kind of trade does not have a clientele, as its customers do not meet the conditions requires in order to form the clientele. The trader's relations remain occult and lack the normal effects of a healthy competition, and the defense the trader might claim against potential abuse from some rivals cannot function.

Last but not least, clientele must have a commercial character. The distinction must be made by comparison to the civil clientele which forms around the business owner which unfolds a liberal profession (lawyers, medical doctors) [33]. The relation to this person is fundamental, even more than if we look at the free competition, since one cannot underestimate the objective, economic variables, such as product quality or commercial venue. On the contrary, the value of the services rendered by a lawyer or a doctor is indestructibly bound to the person (professional) rendering these services. The physical conditions (the office) have a lesser significance in comparison to the commercial venue. The skills, the experience, the professional expertise and talent of the person rendering such services are of the essence, as well as the confidence and trust he or she inspires. His or her personality represents the main factor. The jurisprudence assessed the following case: does a medical facility (hospital, clinic, etc) have its own clientele, separately from the clientele of the doctors working for that facility. The French High Court of Justice considered that patients attracted by the surgeons' personality form the clientele of the clinic [34]. Going further, they consider that the moment the owner of the civil clientele terminates his activity, the clientele scatters. As a consequence, unlike the commercial clientele, the civil clientele is not susceptible of financial evaluation [35]. It is commonly acknowledged that it comprises, aside from groups of consumers, some handicraft clientele, even if the owner of the goodwill is a mere craftsman, and not a professional trader.

The clientele attached to a trade fund (goodwill) represents an economic value for the owner of goodwill, this value needs protection from the law. Even if the right to a clientele is not acknowledged as an exclusive right of goodwill owner, still this owner has a certain incorporeal right on the clientele. It can defend itself from unlawful acts
performed by the clientele. If these acts represent forms of unfair competition, the trader may use the defense tools provided by law no 11/1991, modified and republished, regarding unfair competition. As far as the transfer of clientele is concerned, most Romanian authors we have quoted consider that, since clientele is strongly bound by goodwill, the right to the clientele may not be transferred separately, but just alongside the entire goodwill.

**Conclusions**

All of the above being said, there are two general opinions within the Romanian and the French doctrine: the clientele is the most important element of goodwill, on the one hand, and, on the other hand the clientele is not a constitutive element of goodwill, but the aim, the purpose of using goodwill. Firstly, the clientele, within a free market, is not susceptible of transfer, secondly, in order to attract and keep customers, the trader puts together the constitutive elements of goodwill. Following this idea, goodwill is an incorporeal asset, more precisely the right to a clientele. I find this idea to be extremely interesting, more so as it supports the theory which attributes to goodwill the legal nature of a incorporeal property right. One should also notice that the theory which reduces clientele to a mere constitutive element of goodwill can no longer be considered sufficient.

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[17] French Law, 1909, art.1, paragraph 2 and art.9, paragraph 1

[18] Which modifies and completes law no 11/1991 republished, on unfair economic competition

[19] Law no 298/2001 art.2, letter c

[20] Decision issued by the French High Court of Justice on February 15th 1937, quoted by H. Rousseau


[22] RDC no. 605/1962 p. 53


[26] Civil law decision issued on May 18th 1978 – Bull. civ. no.205, p.159

[27] Civil law decision issued on June 10th 1986– Bull. civ. no.121, p.102

[28] Law issued in 1909, art.4, paragraph 2

[29] Civil law decision issued on 13.02.1980 – Bull.civ. no.37, p.26

[30] Civil law decision issued on 27.11.1991 – Bull.civ. no.289, p.170

[31] Civil law decision issued on 1.12.1976 – Bull.civ. no.436, p.331

[32] Law issued on 15.06.1991 on relations between economic agents and their principals (grantors)


Charter of fundamental rights of the European Union- legal decisional document in justice and administration

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Abstract
The international community is today more than ever concerned with the promotion of human rights as widely as possible, with creating a legal framework as diversified for international cooperation in this field, with creating a system as complex to promote and protect, on different legal ways, the human rights in various fields and ensuring the fullest possible transposition of these into practice, including penalizing infringements to the existing legal norms.

Keywords: charter, fundamental rights, European Union.

Introduction
On 7 December 2000, at Nice, was signed the text of the Charter of Fundamental Rights of the European Union (hereinafter “EU Charter”), within a solemn meeting, by the European Parliament President, the acting President of the EU Council and the European Commission President [1], but since the text of the Charter has not been included in the Treaty, it had no legal force [2], and its legal nature was of an inter-institutional agreement (between the European Parliament, European Commission and EU Council), these institutions undertaking to respect the rights contained in this document [3].

The EU Charter was solemnly re-proclaimed by the European Parliament, the EU Council and the European Commission on 12 December 2007. It represents a modern document which does not impose any transfer of competences, establishing the instruments with which can be controlled the way in which the Union or the Member States shall exercise their competences in the human rights matter in the EU law [4]. Signing this document represented an important moment on the road of European integration, reaffirming the signatories believe that the respect of human rights, of
fundamental values, constitute the fundamental rule on which the collaboration of European countries is founded [5].

The EU Charter represents a modern document, both through its formal presentation, as well as through the fact that, “renouncing to the distinction between civil and political rights and the economic and social rights, it regroups the rights proclaimed around six fundamental values: dignity, freedom, equality, solidarity, citizenship, justice” [6].

The protection of these values “is realized within the shared competence, namely a competence that EU bodies share with the Member States, the European Union being an area of freedom, security and justice, characterized by the respect of fundamental human rights and different legal systems and traditions of the Member States” [7].

The importance of the Charter of Fundamental Rights of the European Union in the substantiating of the decisional act

Analyzing the EU Charter provisions, we consider necessary to reveal some aspects regarding the importance of the analyzed document for the justice and administration bodies.

First, it should be pointed out the solemn character of this document, the fundamental ideas inserted into the Preamble of the EU Charter [8]. Apart from the references to preserve and develop the common values and diversity of cultures, as well as the traditions of the peoples of Europe, it is worth noting that the Preamble includes a reference about the reaffirmation, with the compliance of the competences and tasks of the Union, as well as with the principle of subsidiarity, of the “the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention” [9].
Therefore, with the intention of the initiators, the EU Charter was meant to be a synthesis of both the commitments assumed by states through conventional instruments, as well as the European practice in the field of human rights, selecting essential and maximum generalization ideas imposed by mandatory force not only to the states, but also to Union’s institutions [10].

Secondly, the EU Charter summarizes in a single document, for the first time in European history, all the categories of rights, namely civil, political, economic and social, systematized in a new way. Thus, the EU Charter guarantees the following rights and freedoms:

1. in Title I, entitled "Dignity": human dignity, right to life, right to the integrity of the person, prohibition of torture and inhuman or degrading treatment or punishment, prohibition of slavery and forced labor;

2. in Title II, entitled “Freedoms”: right to liberty and security of person, the right to respect for private and family life, protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and of association, freedom of the arts and sciences, the right to education, freedom to choose an occupation and right to engage in work, freedom to conduct a business, right to property, right to asylum, protection in the event of removal, expulsion or extradition;

3. in Title III, entitled “Equality”: equality before the law, prohibition of discrimination, equality between women and men;

4. in Title IV, entitled “Solidarity”: fair and just working conditions, prohibition of child labor and protection of young people at work, family and professional life, social security and social assistance;

5. in Title V, entitled “Citizens' rights”: the right to vote and to stand as a candidate at elections to the European Parliament, the right to vote and to stand as a candidate at municipal elections, the right to good administration, the right of access to documents, the right to petition, freedom of movement and of residence;

6. in Title VI, entitled “Justice”, regulates: the right to an effective remedy and to a fair trial, presumption of innocence and right of defense, principles of legality and proportionality of criminal offences and penalties, and the right not to be tried or punished twice in criminal proceedings for the same criminal offence. [11]
A third clarification concerns that, in terms of the scope of the legal subjects, the EU Charter makes no distinction between citizens and aliens, bringing together, for the first time, in a single document, the rights of all persons who are lawfully in the Union territory. For this reason, most of the texts that define the fundamental rights begin with the phrase "any person", which demonstrates the particularly broad level of protection of legal subjects. However, there are some differentiations. For example, Article 15, entitled "Freedom to choose an occupation and right to work", makes a distinction between the right to work and to pursue a freely chosen or accepted profession [12] and the right of every citizen of the Union to seek employment, to work, to settle or to provide services in any Member State [13].

An important provision is the one according to which "nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union" [14].

Regarding ownership, the EU Charter also contains a very broad provision, namely: “everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest” [15].

The right to asylum is guaranteed [16], but only with due respect for the rules of the Geneva Convention [17] of 28 July 1951 and the Protocol [18], which restricts awarding this right only to politically persecuted persons, not being accepted the formulation included in other international instruments such as the OAU Convention or the Charter of Cartagena, which have extended the right of asylum to persons who, for economic or social unrest reasons, were forced to leave their countries of origin [19].

Another clarification that we consider necessary refers to the inclusion in the EU Charter of numerous developments regarding the formulations in relation to the fundamental documents that were the basis of its development [20]. For example, the provision according to which “no one shall be condemned to the death penalty, or executed”. [21]
The provision on the right to the integrity of the person [22], establishes a set of rules to be followed in matters of medicine and biology. Thus, have to be respected in particular: “a) the free and informed consent of the person concerned, according to the procedures laid down by law; b) the prohibition of eugenic practices, in particular those aiming at the selection of persons; c) the prohibition on making the human body and its parts as such a source of financial gain; d) the prohibition of the reproductive cloning of human beings” [23].

The provision concerning non-discrimination [24] mentions, besides the well-known criteria of non-discrimination that are prohibited (for example, sex, race, color, ethnic or social origin, genetic features, language or religion), others such as [25]: beliefs, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation.

The right regarding the equality between women and men provides that, “the principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex” [26].

As for the Rights of the Child it is stipulated that “every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests” [27].

Likewise, we can notice the entire set of requirements included in Title IV, entitled “Solidarity”, which creates important guarantees of the right to work. Also, extremely important is the provision according to which, “every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States” [28].

The EU Charter contains important elements of supra-nationality, in particular to the right of European citizenship and its consequences [29]. Thus, it is recognized the right to vote of any citizen of the Union, the right to vote and to stand as a candidate at elections to the European Parliament [30], or at municipal elections [31], in any Member State of the Union, “under the same conditions as nationals of that State”.

All Union citizens have the right to refer to the European Ombudsman “the cases of maladministration in the activities of the institutions, bodies, offices or agencies of the
Union, with the exception of the Court of Justice of the European Union acting in its judicial role” [32], the right to move and reside freely within the territory of the Member States [33], to have access to documents whatever their medium [34].

It is observed that, certain rights included in Title V, entitled "Citizens' rights" refer not only to EU citizens, but also to any natural or legal person that is resident or has its registered office in a member state. Thus, people who do not have EU citizenship can address to the European Ombudsman (art. 43) or to exercise their right to petition [35]. The EU Charter expressly provides that its provisions are addressed to the institutions and bodies of the Union, respecting the principle of subsidiarity, and to the Member States only when “implementing the Union law” [36]. The same provisions, require that "they shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties”.

Not wanting to give the impression that this document would produce an expansion of the powers of the union, the EU Charter provides that it "does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties” [37].

The EU Charter contains a general clause limiting the rights [38], which provides that the restrictions on the rights must aim Union's general interest or the protection of the rights and freedoms of others should be proportionate and respect the essence of the right [39]. This limiting clause, by its general character, seems to be less protective than the Convention, which, for each right, specifies the restrictions approved [40]. To avoid a distortion in the protection of rights domain, the Charter introduces a clause referring to the Convention and provides that if the rights under the EU Charter correspond to the rights guaranteed by the Convention, then these rights have the same meaning and the same scope as those set by the Convention and its case law .[41]

The Charter’s provisions also establish the protection of the right level, so that “none of the provisions of this Charter shall be interpreted as restricting or adversely affecting human rights and recognized fundamental freedoms, in the respective fields of application, by the Union law and international law, as well as by the international
conventions to which the Union or all the Member States are parties, and especially the European Convention on Human Rights and Fundamental Freedoms, as well as by Member States' constitutions” [42].

**The Lisbon Treaty and the Charter of Fundamental Rights of the European Union**

The draft of the Treaty establishing a Constitution for Europe has created the legal basis for the Union's accession to the Convention, which would have allowed to contest before the Court, the acts of the Union’s institutions which infringe human rights. The failure of this project has led the European states to resume efforts in order to reform the Union [43].

These efforts have resulted in the adoption in Lisbon, on 13 December 2007, of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [44] (hereinafter referred to as the "Treaty of Lisbon").

The Treaty of Lisbon has introduced significant references to human rights and fundamental freedoms in the wording of the two treaties. The Treaty on European Union has been completed, even in its Preamble, with reference to "the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law", confirming "the Member States' commitment to the principles of liberty, democracy and respect for human rights and fundamental freedoms, and the rule of law” [45].

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law, as well as respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. [46]

At the same time, "The Union shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights” [47].

An important mention is that concerning the fact that "The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adopted at Strasbourg, on 12 December
2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions." [48].

The important provisions are also summarized in the paragraphs newly introduced, namely: "The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties" [49], respectively, "the fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law" [50]. The Union can adhere to the Convention [51].

Therefore, the fundamental rights, as guaranteed by the Convention and resulting from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law and the Union's adherence to the Convention represents a major contribution to the creation of a coherent system of human rights protection in Europe [52].

Through the Union's accession to the Convention is ensured the legal consistency of the two mechanisms of protection of fundamental rights, namely the Union and the Council [53]. Also, there is assured a mechanism of external control of the Union’s acts that concern human rights guaranteed by the Convention, whereas, through this accession, the Court acquires "ratione personae" jurisdiction in the respective matter [54].

Article 6 of the Treaty of Lisbon sets out three fundamentals [55] of respecting the human rights in the Union, namely:

a. legally binding effect similar to the treaties of the provisions of the Charter of Fundamental Rights;
b. Union's accession to the Convention;
c. Consecration of the fact that the fundamental rights, as guaranteed by the Convention and the constitutional traditions common to the Member States, represent the general principles of the EU law [56].

**Conclusion**

We conclude, therefore, that through the Charter of Fundamental Rights of the European Union have been recognized, reaffirmed and developed the fundamental legal norms on human rights and it strikes a balance between the regional regulations it contains and international legal provisions, both in terms of regulation and in terms of State competence in this matter.

Being the birthplace of human rights theory, Europe had played a pioneering role in this field and has developed its own tools to protect fundamental rights and freedoms. The European approach knows the largest development, being possible to identify some specific features of the concept.

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Determination of the law applicable in international civil cases

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Abstract
The general provisions on the conduct of international private law trials are contained in Title II of Book VII of the Civil Procedure Code entitled “The law applicable in international civil trial”. Other provisions on the procedure of international private law trials are contained in the specific regulations that are part of the European Union law.

The general rule is that the law of the forum is applied.

Keywords: international civil trial; applicable law; law of forum; locus standi of the foreigner; evidence regime.

1. General notions regarding the law applicable in international civil trials

“European civil procedural law” represents an integral part of “international civil procedural law”, bringing together the provisions governing the procedural aspects entailed by the international character of civil litigations.

The regulations applicable to the international civil trial are contained in Book VII of the Civil Procedure Code - entitled "International Civil Trial" (Articles 1050-1118).

The matters covered by these provisions are:
- The international jurisdiction of Romanian courts,
- The law applicable in the international civil trial;
- The effectiveness of foreign rulings;
- International arbitration.

The need to settle international jurisdiction stems from the fact that the courts of a state can not be competent for all international disputes. Also, each state decides which foreign rulings will be recognized and enforced on its territory and under what conditions.

Obtaining evidence or notification through the courts/persons abroad requires the consent of the state where the evidence is to be obtained or the act notified. In principle, the regulation of these issues is a matter of the national states, under the principle of national sovereignty.
The European states that joined the European Union have agreed through the Act of Accession to apply with priority the community law in the national territory.

Besides internal law and European Union law, there are many sources of international law, bilateral and multilateral conventions, which also aim to regulate the issues arising in international disputes.

The general provisions on the conduct of private international law trials are contained in Title II of Book VII of the Civil Procedure Code entitled “International law applicable in international civil trial” (Articles 1068-1078).

Law no. 189/2003 on international judicial assistance in civil and commercial matters also includes regulations on the procedure of international private law trials. Within the European Union, there were adopted the following rules applicable to the cases of international private law:

a) – Council Regulation (EC) no. 1348/2000 of 29 May 2000 on the notification of judicial and extrajudicial documents in civil and commercial matters (European rules on notification);

b) - Regulation (EC) no. 1206/2001 of 28 May 2001 on the cooperation between the courts of the member states on evidence-taking in civil and commercial matters.

The regulation regarding the obtaining of evidence is divided into three chapters:

- Chapter 1 (General Provisions) is limited to the description of the scope, initiation of direct cooperation between courts, as well as the designation of a central authority for each member state and determining its responsibilities.

- Chapter 2 contains five subchapters on material provisions: sending the letters rogatory (Part 1), receipt of letters rogatory (Part 2), obtaining evidence by the requested court (Part 3) direct taking of evidence by the court applicant (Part 4) and expenses (Part 5).

- Chapter 3 (Final provisions) contains practical rules and determines the relationship with other conventions and the entry into force.

c) – Council Regulation (EC) no. 1346/2000 of 29 May 2000 on insolvency proceedings (EU Insolvency Regulation; j. of. ce of 30 June 2000 l160/1)

e) – Council Decision of 28 May 2001 on the organization of a European network in civil and commercial matters;


2. The general rule of application of the law of forum in international civil trials

2.1. Justification for the application of the law of forum

Under the provisions of Article 1073 of the Civil Procedure Code, in the international civil trial the court applies the Romanian procedural law, unless provisions express otherwise [1]. In addition, Article 1074 provides that the classification of a problem as being of procedural law or substantive law is done under the Romanian law, unless there are legal institutions without correspondent in Romanian law.

These legal provisions enshrine the jurisdiction of the law of forum on the matter of the procedure. This legislative competence of the law of forum in terms of procedure is also provided in the legislation of other states, as well as in several international conventions.

The application of law of the forum is based on the following considerations [2]:
- Courts must defend in their activity the values that are considered essential by the state they are part of;
- The judging procedure is an activity carried out by the courts on behalf of the state, which sets the legal rules applicable;
- Procedural rules should respond to the general interest as conceived by the state;
- The acts of procedure are located in the territory of the state where the court belongs;
- Fundamentals of public utility, meaning to avoid difficulties in applying foreign procedural law;
- The forms of procedure depend on the laws of the state on behalf of which the court operates.

“Lex fori” is intended, in principle, to govern the procedural aspects of the trial (“litis ordinatoria”).
The literature raised the issue whether there are exceptions to the principle of applying the law of forum in matters of procedure, the solutions being different.

Along with other authors [3], we consider that for a better understanding of this issue, there should be considered the concepts of enforcement of foreign law and consideration of foreign law, as well as the conflict of laws in space and in time and space.

2.2. The scope of the law of forum

2.2.1. The standing and the qualification of the claim

The standing or the locus standi and the qualification of the claim are regulated by the provisions of Article 1075 of the Code of Civil Procedure, according to which the standing of the parties, object and cause of action in international civil proceedings shall be determined according to the law governing the substance of the legal relation brought to trial.

a) - The locus standi ("legitimatio ad causam") is a basic condition that must be met for a person to be party to the proceedings [4].

The difference between the capacity and the stand is that, while the procedural capacity is determined in general or for a certain category of persons, in accordance with common law, the stand concerns the possibility of a person to take part in a trial as plaintiff or defendant and is determined by the particular conditions being fulfilled, the parties being obliged to legitimize their right to sue in court [5].

The lack of locus standi is invoked by way of procedural exception in rem [6], being sanctioned with the rejection of the action.

The transmission of locus standi consists of passing the stand from the person who owns it to another person who acquires the active or passive legitimacy to continue the procedure [7].

The law that governs the transmission of the locus standi is the law governing the substance of the litigious legal relation ("lex causae").

The transmission of the locus standi may be legal when it obeys the law (e.g. succession) and conventional when it follows an agreement between one party and a third party (for example: assignment of receivables, debt assumption, sale or donation of the property in dispute).
b) The object of action is a prerequisite in the civil trial, along with the locus standi and cause of action.

   The object of the action means the plaintiff’s concrete claim (assuming the subjective right on the respective object).

   The object of the action must be lawful, possible and determined.

c) The cause of Action (“causae petendi”) consists of its legal basis, representing a substantive element of the civil action.

   The subject matter and cause are the objective elements of the action, while the parties represent its subjective elements.

   The cause of action (“causae petendi”) should not be confused with the cause of the legal relation or of the discussed obligation (“causae debendi”) [8].

2.2.2. The evidence regime

The Code of Civil Procedure contains detailed regulations on the evidence regime, since evidence represents a central institution in the international civil trial [9].

A. The law regulating the evidence [10]

   Under the provisions of paragraph 1 of Article 1.076, the evidence to prove a legal act and the probative value of the confirmation of document are those provided by the law agreed by the parties, when the law of the place where the legal act is concluded grants them this freedom. Without this freedom, or when the parties do not use it, the law of the place where the legal act is concluded is applied.

   With regard to civil status documents and their proving power, Article 1076 paragraph 4 provides that the evidence of marital status and the proving power of the civil status acts are governed by the law of the place where the cited document was drawn.

B. Carrying out the Romanian law. Invoking public order in international private law.

   The provisions of Article 1076 paragraph 3 constitute public order norms in international private, law removing from enforcement the law shown in paragraphs 1 and 2.

   Under those provisions, the Romanian law will be carried out (regarding the evidence to prove a legal act and the evidential value of the document, and regarding the evidence of facts), if it accepts other evidence than those provided by the laws in
paragraphs 1 and 2. The Romanian law is also applicable when it allows testimonial
evidence and presumptions of the court, even if such evidence is inadmissible
according to the foreign law declared applicable.

The provision contained in paragraph 5 represents a unilateral conflicting norm
indicating that the evidence-taking is done under Romanian law.

C. Superlegalization of official documents

The issues concerning the superlegalization of official documents are governed

The official documents drawn up or certified by a foreign authority may be used
before the Romanian courts only if they are superlegalized, administratively and
hierarchically further by the diplomatic missions or consular offices of Romania, thus
ensuring the authenticity of signatures and seals on them.

The administrative superlegalization is subject to the procedure established by
the state of origin of the document, followed by the superlegalization performed either
by the Romanian diplomatic mission or consular post from the state of origin, or by the
diplomatic mission or consular post of the state of origin in Romania and, further, in both
cases, by the Ministry of Foreign Affairs.

Exemption from superlegalization is permitted under the law, under an
international agreement to which Romania is part of or on a reciprocal basis.

The superlegalization of documents issued or authenticated by Romanian courts
is performed, on behalf of the Romanian authorities, by the Ministry of Justice and
Ministry of Foreign Affairs, in that order.

2.3. The locus standi and the rights of the parties in the trial

2.3.1. The law applicable to the locus standi

According to Article 1068 of the Code of Civil Procedure, the locus standi of each
of the parties in the trial is governed by its national law. The locus standi of the stateless
person is governed by the Romanian law.

This regulation supplements the provisions of Article 2572 of the Civil Code
regarding the personal status of natural persons. Both texts use the general term of
capacity, without containing distinct regulations regarding the capacity of utilization, the
standing, and the capacity of exercise, the right of standing.
The procedural standing (“legitimatio ad processum”) is applying, at procedural level, the standing from civil law and consists in the ability of a person to be part of the trial, of acquiring rights and assuming obligations at procedural level.

The procedural right of standing (“jus standi”) is the ability of a person, who has the use of a right, to personally engage and lead the legal process for the recovery of the conflicting right (ability to stand trial) [12]. The right of standing is the direct consequence of the standing. In practice, there are situations where a person has the capacity of utilization, but does not have capacity of exercise.

In this regard, Article 56 paragraph 2 of the Romanian Code of Civil Procedure provides that the persons who do not have the exercise of their rights can not stand in judgment unless they are represented, assisted or authorized in the manner indicated in laws or statutes governing their capacity or organization.

The locus standi of natural persons and legal persons is governed by the “lex personalis”.

Unlike the locus standi, the ability of a natural or legal person to formulate defense and conclusions in court (“jus postulandi”) is subject to the law of forum, as the functioning of the respective state jurisdiction is of interest [13].

2.3.2. The procedural rights of the foreigner

a) The legal status of the foreigner as a party to the case

The legal status of the foreigner as part of the international civil trial is regulated by the provisions of Article 1069 of the Code of Civil Procedure.

According to these provisions, foreign individuals and legal persons have, under the law, before the Romanian courts, the same procedural rights and obligations as Romanian citizens, respectively Romanian legal persons.

Before the Romanian courts, in international civil trials, foreigners benefit from tax exemptions and reductions and other procedure expenses, as well as from free legal aid, to the same extent and under the same conditions as Romanian citizens, under the rule of reciprocity with the citizenship or domicile of the applicant.

According to Article 1072, the provisions applicable to the foreigner shall apply accordingly to stateless persons, without requiring reciprocity.

b) Exemption from judicial bail (Article 1070)
Under the condition of reciprocity [14], the plaintiff, a foreign citizen or legal person of foreign nationality, can not be held liable to deposit the bail or obliged to other warranty because they are foreigners or do not have the residence or headquarters in Romania.

c) Special curator (Article 1071)

In cases where the representation or assistance of the foreigner who is incapacitated or with limited exercise of capacity was not ensured in conformity with national law, and because of this the trial process is delayed, the court will provisionally designate a special curator.

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[1] The text takes in a modified form the previous provisions contained in Article 159 of Law no.105/1992 according to which, in the cases concerning the relations of international private law, Romanian courts apply the procedural Romanian law, unless expressly stated otherwise. The Romanian law settles whether a certain matter is of procedural or substantive law.
[9] Through Law no. 175 of 9 May 2003, Romania adhered to the Convention on evidence-taking abroad in civil or commercial matters, adopted in The Hague on 1 March 1970. The Law mentions in article 3 the reserves of non-application of the provisions of articles 16,17,18 of the convention. The Ministry of Justice is the competent central authority in Romania, appointed to receive and transmit rogatory commissions. In conformity with the provisions of Article 2 letter c) of the law, Romania declares that it accepts rogatory commissions for a procedure known in the states of "common law" as "pretrial discovery of documents", to the extent to which this expression means providing evidence ("investigation in futurum").
[14] In principle, in conformity with the provisions of article 2561 of the Civil Code, carrying out the foreign law is independent from the condition of reciprocity. The condition of reciprocity represents an exception and it is expressly stated by the provisions of the law. In Romanian law, the condition of reciprocity is regulated by the provisions of article 2582 of the Civil Code (regarding the recognition of the legal person without patrimonial scope, together with other conditions), and by the provisions of article 1069 and 1070 of the Code of civil procedure (regarding the condition of the foreigner as part of the trial and the exemption from judicial bail).
The Civil Code between the legislative modernization and his adjustment to reality

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Abstract:
The codes, which are the expression of the systematization and rationalization of the law, have continued to evolve both substantially as well as formally once the changes in the collective consciousness come to be. In the plan of its organization we can notice the great guiding lines which the political, economic and religious elements have left. Thus, the “described” juridical reality of the code must transpose the social reality as precisely as possible.
Nowadays, the beneficial effect of codification is almost unanimously discussed because of how profoundly the legislative crisis was felt, a crisis determined by the dispersion of laws which no longer matched the old supports, the multiplicity and excessive specialization of norms, the periods of transition to the social, political and economic level, which were clearly felt on a juridical level. The evolution of facts has brought several changes and diversified the framework of codifying the law. Thus, even though there are legislative works which now serve as true examples of “the art of codification”, time does not spare them and it leaves its mark on them. New boarders are thus opened for the process of codification. The diversity of examples of codification has increased as we have observed, both formally as well as structurally.

Key-words: the Code, the legislative modernization, tradition, the social reality, the law.

Introduction
The fundamental nature of the law has a historical basis: this rule is acknowledged as an expression of the general will, in other words, an expression of sovereignty. Despite the fact that this notion has been seriously contradicted by the profound evolution of the legal hierarchy, it still has far-reaching effects on positive law. Even so, the law has maintained a certain preeminence since its origins on the acts of the executive branch, a preeminence guaranteed by legislative control.

Nowadays, the law is one among several acts of law. Many authors [1] claim, however, that the law no longer represents the cornerstone of the legal system. Another form of law originating from other institutions than those of the state, takes precedence over the law and competes with it.

The law is at the centre of a mutating hierarchy of legal norms, which shows deep changes in the relations between democracy and human rights, between judge and political authorities, and between the state and the European Union.
The traditional view of the law is simultaneously transfigured by the crisis[2], which the law faces as an act of authority. The desire to revalue the law is somewhat manifested in the process of codification in 2011. It certainly responds to a social need but is also dependent on changes in the political life.

1. Conditions for maintaining the codes and keeping them viable

The idea of codifying seems connected to the “advent of modernity”. Codification is seen as a simple remedy to legal inflation and dispersion of sources, in which case does the code itself risk becoming an excess? According to Aristotle, political thinking only allows for the law to govern and not man, in conformity with historical precedent, in order to guarantee freedom [3]; at the same time, the law must not become a simple instrument in the hands of men, or it risks losing its permanence, stability and universality; if the process of codification may restitute the traditional virtues to the law, then it has a bright future, if not, it will be discredited as the law was and all the predictions made by great authors will be confirmed: “Nowadays, the codes do nothing but choke us with their long phrases…” [4].

The legal system does not evolve through the action of the environment, but thanks to it. The social environment just generates the imbalances that the system absorbs thanks to its self-regulating capability. It compensates for external shocks through its “self-consciousness” or sui generis [5], thus keeping its identity. “The law is, of course, the creation of the social body, but once created it reorganizes this body and changes its purpose.”[6].

The social relations and the way in which they manifest at a given time must at least correspond with the norms that regulate them. Therefore, the bond between the law (in the broader sense) and the social behaviors is extremely tight. Any discordance between these two elements may give rise to difficultly controlled phenomena, such as: legal inflation, instability in the legal circuits, decay of the law, lack of legitimacy. In a constantly changing and developing society, in which the amount of legislation is considerable, the variety of normative acts needs to be systemized. This is determined by the need of organizing the acts based on precise criteria, so that the juridical norms are well known and applied in social relations.
In order to unify and focus the legislation, to rationalize and systemize the norms of law, they are grouped depending on the field or branch, based on common principles. Depending on the form, the structure and contribution to the unifying work, it can have different meanings either as a code or a codex[7]. Thus, according to article 17, paragraph (1) from Law nr. 24/2000 concerning the norms of legislative technique for the development of laws, “throughout the consolidation of the legal system, the regulations in force which concern the same field or related fields, contained in the laws, ordinances and governmental decisions may be incorporated by homogenizing the texts in a structure, a codex, which facilitates their knowledge and application.” We notice in the definition above that incorporating legal texts of different dates and origins represents a gathering in a collection based on external criteria as set by the Legislative Council. Also, this procedure does not reform the initial texts, but the normative ones included will be presented by considering all the subsequent modifications and completions, partial amendments, either intended of implicit, as well as the actualizations of names and places. Thus, since the created collection follows a logical pattern, it is accessible and clear and represents an inferior form of systematization.

To this effect, article 16 from Law nr. 24/2000 states: for the systematization and concentration of legislation, the regulations from a certain field or branch of law, subordinate to certain common principles, may be gathered in a single structure as a code. This time, it involves not just the gathering of legislative materials but also the creation of a new law. “The code is not a simple compilation, but a creative work, which fundamentally changes the existing regulations.”[8] As a legal procedure, the action of codifying standardizes a single branch of law or an important part thereof in a systemic, rationalized and complex whole, and represents a higher form of systematization. “Although it has the legal force of the law, the code is not a regular law, it is a unique legislative act, with a special internal organization, in which the juridical norms are organized in a logical and strict sequencing, very well thought out, which reflects the internal structure of that branch of law.”[9]

The changes brought to the legal system through the codification process may be very far-reaching or it can modify those aspects that are no longer conforming to the social reality. If the legislative reform involves elements of law from other countries,
such as in the case of the New Civil Code, then the transformations due to the old law are fundamental and extremely important, in part because of the new elements themselves and also because of the compatibility with the reality it belongs to.

The stages of the codification process include a tight link between the humanities and the juridical sciences. Before turning to norms of legislative techniques, we consider it necessary to the development of such an important work as a code of law to officially study the public policies in order to determine the level of perception of values which are to be instilled. This is the way in which the will and need to reform the legislative system are known and established in the collective consciousness, the compatibility of principles borrowed from the new legal system with the morality and traditions.

The diversity of laws is due to the growing complexity of the social life, coupled with the need for coordination, in order to protect the natural and social environment, of millions of individual decisions[10]. The normative acts are worthless on their own. They must be integrated in a legal system and serve its goals. To systemize the laws means precisely to include them in such a system.

In time, the law has permanently evolved under the pressures of social and political changes, whose source and limitations are traditions and the characteristic mentality of different people, the social customs and practices as well as the history. Thus, the frequency of one human relation or another will create a certain juridical regulation, or the periodicity of a certain event will entail the need to consider it from a juridical point of view [11].

Despite the fact that in the doctrine there were several opinions[12], which supported the inefficient existence of codes – considered as being too rigid and a limited form of law – we conclude that the systematization of these laws has a double role: on one side, the norms in a code ensures the accessibility of the text for the reader in order to better know the law, and on the other, all contradictions with other normative acts are prevented or eliminated through codification. Quite often, codifying is seen as a simple remedy to legislative inflation and dispersion of sources, in which case the code itself could be an excessive measure. All these notwithstanding, the codification becomes the expression of a rational law based on a logical and systematic method, which should enable to set certain general principles and to stipulate clear and
comprehensible consequences for the individual [13]. To quote Portalis, “the code is the spiritual method of applying the law”. Codification represents more than a sum of laws, it contains the essence of a system in its entirety[14].

2. Permanently Adapting the Norms to the Social Reality

A theory specific to law called sociological positivism is founded on the claim that to adopt a positive juridical norm is preceded by “an idea of law”, as G. Burdeau said. This is a diffuse representation at the core of society, of “the desired social order”[15]. Leon Duguit, influenced by sociologist Émil Durkheim, states that the juridical norm is nothing else a social norm established in objective law and moreover “the law retains its obligatory force not because of the will of those in power but in accordance with the social requirements”, or in other words, with the aspirations of society[16].

If the law’s purpose is to express the values of society and to regulate them, this role is increased even more by the code. Thus, the ideology on which it is based may comes out in every title, in certain provisions or in design and in content. Besides its ideology, the political core or the religious influence, we find a trace of the social consciousness deep in the legislation. The tradition, morality, history and culture of a people are relevant to the process of codification, as they are determining elements in reaching the goal, but also in determining the effects, accepting or denying the conformity of a certain juridical norm with the social reality.

The juridical system does not evolve because of the action of the environment, but thanks to it. The social environment only generates the perturbations that the system absorbs thanks to its self-organization. It makes up for external shocks and thus keeps its identity by being endowed with a sort of “self-consciousness” sui generis [17].

The law is, of course, a creation of society, but once created, it recreates society itself and its purpose.

Therefore, the purpose of the law must be achieved, which must be perceived dually: the internal purpose of the system, ensured by its own existence through its increasing unity and an external purpose, represented by the common good.
Codifying has therefore a social dimension: it often follows a social crisis at the end of which it seems necessary to establish new rules and reestablish the original order through a new social contract[18].

From a historical point of view, codifying has represented since the earliest times, the purpose in the struggles of the weakest, of the middle classes to obtain certain improvements in the life conditions (to erase the debts and renew property, etc). but, most importantly, the Civil Code of 1865, which understood the importance of promoting a new social order, in the spirit of melding traditions with new aspirations of liberty and equality, after an unstable period of changes that led to the Great Unification of the Principalities; we may therefore say that in this ages, the Civil Code represented a key element in establishing social relations: “the civil Code established for more than a century, the values of essential juridical relations, which predefined society”[19].

However, such a process of codification clearly implies a number of circumstances which rarely come together in the history of a nation; a people is not determined in every moment of its history to accept consciously the complex procedure needed for codification. The technical considerations which appear in the legal system (the crisis of the legal process, decay of law, normative inflation) are often elements which lead to a restructuring of the law. However, adopting a legal system and trying to adapt it to the social reality does not guarantee a transfer of the enforced law at the level of the social consciousness, also. The compatibility between the legal system and the collective consciousness is ensured only if the norm to be applied is itself founded on morality, traditions and the people’s way of life. At the same time, the fast pace of progress in our society, determined by several factors of the transition – be it political, social, economic, religious – involves a fast restructuring of the legal system, by maintaining the constant elements of the law, to which new ones are added, which are translated by factual realities of generated by the international context.

The problem of knowing the quality of the law and therefore knowing what a good law means, has preoccupied the authors of the Civil Code of Naples, and before them, philosophers like Montesquieu, for example.

For the latter, the law must adhere to a number of fundamental principles [20]:

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- the style must be simple and concise, the law must not contain unclear phrases, nor should it be subtle, since it is created to be understood by the common person;
- exceptions and limitations must be avoided, because the apparent details lead to the exaggeration of real detains; as useless laws diminish the authority of necessary laws, those which make exceptions confuse and weaken the legal system; a law must have effects and must not allow for any derogation from it through a special convention;
- finally, the laws must not be modified or changed, if there is no clear reason to do so.

This idealistic view of the law, this idealization even of the law, has inspired those who drafted the Civil Code. Portalis explains, better than anyone, the golden rules of law-making, nowadays called legislative technique, in his speech on the Civil Code. With the risk of exhausting all sources, it is necessary to recall to our mind some of the principles: “The laws are not acts of power in the strictest sense; they are acts of morality, justice and truth. The legislator has a calling, a holy role than a duty. He must not lose sight of the fact that laws are meant to serve people and not the other way round; they must be adapted to the characteristics, customs and circumstances of the people for whom the act is drafted; we have to be guarded when it comes to novelty in law-making, because, if in an institution it is possible at all time to calculate the advantages that new theories offer us, in this case we cannot know what drawbacks that appear only when put into practice… To simplify the situations by stipulating everything is a true art form. The useless laws must not be considered and thus weaken the authority of the necessary laws, since the former do nothing but compromise the certainty and superiority of the legislative act.”

The objective of the law is to establish in broad lines the general principles of the law; to establish both the creative principles as well as their consequences and to not get into the details that may come with such a problem, in any field… We would be mistaken to think that from the start there could be a legislative corpus which regulates all future social situations and can also serve the common citizen… When the law is clear, it must be respected; when it is obscure, it is disputed in order to refine the stipulations. If the laws do not exist, it is necessary to consult the customs and the good morals. The law regulates for all citizens, it must be seen to apply to all and never make a particular exception. It must never serve individual interests, or differentiate between
citizens in a suit. If this were the case, we should create new laws every day; their increasing numbers would be detrimental to then and lead to observations[21].

The interest is to return to what we may call “The Golden Age of the Law” and from this to what today we understand as the law that follows the principles of Montpensier, and also to measure the progress achieved, to assess the degradation but also to discover the means of giving the law the authority it needs. However, we must keep two things in mind. The first, criticism is not new and it may be considered as part of the liberal doctrine.

The second, which is more obvious, is that we must remind ourselves that the society where the law applies and for which it organizes the reality is very different from that of the nineteenth century[22]. We are talking about a complex society, dominated by technology, well-lit and subject to few rules.

3. The Flexibility and Diversity of Methods of Codification

Ever since ancient times people have turned to codification because it is meant to combat the wide differences between rules and to ensure a clear understanding of the law and implicitly respect for the law. The need for unity and security which the law has to fulfill are inherent to the concept of the code, even though it has had different forms throughout time: the history of modern western law gives us numerous examples of codes created based on the need to collect, publish, simplify or make all sources of law coherent[23]. The development process is without a doubt inseparable from the technical implications. In order that the codified law be respected and respectable it must meet numerous technical qualities, without falling into any of the extremes. The popularity of the code, the attempt to ensure the sureness of the law, the rationalization of the law, are only a few objectives that the codes has. However, to make the code a purpose onto itself may have negative consequences for the whole process, determining contrary effects that those wanted. This idea of a code is strictly connected to the form it takes at the moment when the norms so systemized are presented to the people, but too much attention is given to the form which may have particularly serious consequences on the code.
Experience has systematically allowed us to distinguish certain various forms of codification and to establish the following methods:

a) certain codes are deemed nothing more than compilations, of public or private law, which aim to group certain existing and future texts, in order to ensure a certain practicality, but without classification or amendment: as an example, we may offer collections of legal texts.

b) other codes fulfill the function of consolidation: this means that they aim to gather texts from jurisprudence, or to unite and integrate in a logical order, chronologically, texts pertaining to a legal issue in a certain field.

c) the integral form of a code is represented by the great reformative works, which integrate a group of traditional rules in one whole, to which innovative rules expressing principles of organization for the new society; the archetype is represented by the French Civil Code and to a lesser extent and depending on its extremely conceptual and technical quality by the German Civil Code.

d) one last form of codification, which has gained great importance in recent years, is represented by “the ordering of existing laws, wit a rational repartition of fields in any code and a methodical and systematic organization of each one of the laws.”[24].

Quite often, in the framework of this process of codification there have been opinions that support the predominant desire to reform the Code. Must we have a new code or reform the old legislations? The answer is determined by the advent of some real movements of codification.

On one side, we have innovative codification, which creates new rules, and on the other, the codification consists in only consolidating the old laws. We have often concluded that the innovative modern codification cannot exist[25], since creating anew code does not mean changing the legislation. More frequently, the bases remain the same, the general principles change very little, or are enriched with texts which ensure their applicability in the society where they are meant to be used. The innovative element is characterized quite often by the presence of new materials, by trying to unify and harmonize the legislation with the territory, in this case Romania, and align them with the norms of European law.
With concerns to the constant law, this is a means of administrative codification, as it as called in western European doctrine. The name is in accordance with the means that give rise to this type of code and by adjusting the legal texts from the Commission of Codification [26]. This body is entrusted with the actualization of legislative texts through the repeal of old or contradictory ones, and through adding new regulations etc. quite often the texts are refined so that they do not contradict one another and nor contain any errors especially when they can lead to misinterpretations.

As we can observe, the two type of codification do not exclude each other, but on the contrary, may be completed throughout time in a society in which evolution determines economic, social and political growth, which causes the rapid modification of laws.

The concept of the pilot code appeared at the time when the economic and social evolution has determined the advent of new materials whose regulations were reunited in one code, which is very precarious since it is very specialized. Thus it is necessary to relate to the general norms from the specific field [27]. Among such fields there are business law, transport law, employment law, customs law, maritime law etc. which use the characteristic principles of either public or private law. Thus, in private law, the Civil Code becomes pilot code for a great number of other subordinate codes.

The legislative inflation and a too specialized regulation are the causes of this tendency to undermine the law. The difficulty in relating to the pilot code, every time the specialized norm is mentioned, gives rise to a delay in applying the law. The jurist finds himself caught in a number of traps. Quite often the specialized law is not harmonized with the guiding principle from the Civil Code. In our law system, the Family Code represents such a case, since it makes reference many times to the articles from the Civil Code. Obviously, this is not the case in just our law system, but also in most Central and Eastern European countries. During the Communist period new laws were imposed by the political regime of that time, which was modified more or less through the transposing and systematization of the laws[28].

Once the new Civil Code came to be, family law is reintegrated in the great branch of private law. The Family Code becomes a component of the New Civil Code, as it was between the two world wars, before the rise of communism.
The principle of juridical stability therefore finds one of the most important of its attributes, its accessibility. Thus, both an unspecialized individual as well as a legal specialist may know the law without the need for a legislative migration. The legislator also has the possibility to exclude contrary, illegal or ineffective laws with greater ease, observing them all in their systemized entirety.

“Each State of Law needs the confirmation of a complete and coherent legislative corpus.”[29]. These are all ideals to which Jeremy Bentham aspired when he discussed the matter of codification.

At the time of codification, Portalis became aware of the difficulties of this great project: “To simplify is a task which we need to come to terms with. To stipulate everything is a goal impossible to achieve.”

The beneficial effects of codification, as a factor of political unity, social integration and unification and knowledge are counterbalanced by severe consequences: the legalist positivism radiates from there; we have tried to believe that the law may be a norm of social conduct independent of political or geographic limitations; we have forgotten or lessened the historic source which is a cornerstone of the legal system; we have forgotten to identify the legal morality because the only expression of this is codified; the idea of common law was limited by the tendency to regionalize; the law thus unfortunately faces its sovereign authority.[30]

Conclusions

“Born” out of a desire to systemize the internal laws and to harmonize it with the European laws, the New Civil Code appears as a manifestation of the collective consciousness, weighed down by factors which determine and rally the passage of time. Such factors are doubtlessly the mark of policies, the economy, traditions, morality, in one word of the place where the code appeared, will create its own history, ideas and behaviours. Time and reality will give the verdict whether the New Civil Code is a mere fantasy or on the contrary a common reality. Thus, the new codes will follow the tradition of other important legislative works which have survived the ages and have guided the material from which they appeared or they will fall trap to themselves, and thus become only mere collections of texts without the possibility of originating new
ideas and behaviors without the protection offered by the enforcement of the state. However, a code, be it civil, criminal or procedural, needs to have the support of the people that it serves without any external intervention from a constraining force.

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[7] Law nr. 24/2000 concerning the norms of legislative technique for the development of laws, published in the Official Monitor nr. 139/2000 with all subsequent modifications, the codex is accepted as homogenous structure compiled by gathering legislative texts.
[20] Montesqieu, L’esprit des lois, cartea XXIX, capitolul XVI.
[22] Idem, p. 72.
The Concept of Human Rights in the View of the Ancient Greek Philosophers until their Establishment in the National Legislation

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Abstract
Undoubtedly, human rights are connected to the modern history of humanity. Yet, a deeper research shows us that a concern of humanity for the idea of individual freedoms was present even in Antiquity. Human rights represent today the most important factor of law configuration as this is a complex factor which contains also moral and religious sources which it legally protects.
The establishment of the concept of human rights is granted the highest attention at the European level; thus, art. 3 of the statute of the European Council stipulates in essence that there must be accepted the principles of the lawful state and the principle according to which each person under its jurisdiction should enjoy fundamental human rights and freedoms.
Keywords: human rights, society, system, culture, law

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We cannot speak today of law, of systems of law, of law application, without referring to human rights. Nowadays we talk about a “culture” and a “philosophy” of the human rights. Regardless of epithets, it is a reality the fact that in the last decades the issue of the human rights has become a political and social topic of high interest. [1]

Undoubtedly, human rights are connected to the modern history of humanity. Yet, a deeper research shows us that a concern of humanity for the idea of individual freedoms was present even in Antiquity. Human rights represent today the most important factor of law configuration so that it is a complex factor which it legally protects.

1. The Ancient Greek thinkers and the human rights

The historical practice demonstrates that in any community and in any period of time, there is a regulator system, which results from the material conditions of people’s life, as well as from their mental patterns, designating for each individual the own
sphere of activity, connecting people through a series of bilateral and mutual relationships, so that the claims and obligations could correspond. [2]

Paradoxically and unacceptably in the modern society, the Ancient Greece, where great philosophers lived and contributed to the formation of the concept of human rights, allowed the slavery. Yet, Plato, Protagoras of Abdera, Solon, Sophocles, and other important philosophers of Peloponnesus considered that people benefited of rights a prioric to any law and that these rights were specific to the human nature. These noble and significant ideas made from "zoon politikon" a superior being nowadays, who places in the centre of every law the individual fundamental rights and freedoms, as a guarantee of the lawful state.

According to Irina Moroianu Zlătescu and Radu C. Demetrescu, the Greek philosophers considered the human rights as those fundamental, eternal and immutable rights, which the human society has to comply with; in other words these are rights emerging from the nature of things, and law is only the expression of this nature, the natural law being undoubtedly the oldest orientation in the field of law [3]. Thus, human rights emerge from the natural law and are natural rights. [4]

**Solon (640-558 BC)**

Solon was one of the greatest law-makers of all times. Complex personality, he was a poet, strategist, politician, law-maker and one of the fathers of democracy. [5] We can state that he promoted the right to defense and the free access to justice and law supremacy, which in our times are specific to any lawful state. Thus, as prof. univ. C. Stroe and N. Culic show, Solon’s constitution established “the right granted to any citizen to represent himself in court as a defender of the aggrieved people... and the main source of democracy... the right to appeal (at any decision of an authority) to the people’s court”. [6]

**Heraclitus of Ephesus (ca.535-475 BC)**

He was a Greek philosopher before Socrates, descedent from a family of sacerdotal kings of Ephesus. Understanding the positive effect of the normative acts in the life of polis, their role to maintain the social order, Heraclitus was a promoter of compliance with the laws, practically supporting the supremacy of the normative acts, an idea applied by any democratic modern state.
As the relatively recent doctrine shows, according to the philosophy of Heraclitus, existence is an uninterrupted change and transformation in compliance with certain laws. The same thing happens in the social life, where breaking the laws destroys the society. Law is an arbitrator whose supremacy should not be broken by anyone. [7]

**Socrates (469-399 BC)**

An important personality of ancient worlds and universal culture, Socrates did not leave any written line for the next generations, but his conceptions and thoughts that promoted strongly the idea of justice, and incriminated the injustice, were recorded by others who managed to configure the image of this man of rare modesty who stated: "The only thing I know is that I do not know anything".

According to prof. I. Craiovan, Socrates promoted the compliance with the laws, which the sophists despised, and not only the written laws, but also the others, which although they were unwritten had the same value everywhere and were imposed by gods to people. Hence, Socrates states his belief in a superior justice, for whose validity it is not necessary any positive sanction, any written formula. The compliance with the laws of the state is also a duty, for him, as the good citizen has to obey also the bad laws, for not discouraging the bad citizen to break the good ones. [8]

**Aristotle (384-322 BC)**

Aristotle was born in Stagira (the reason why he is also called the Stagirite), a town in the Chalcidice peninsula in the north of the Aegean Sea. His father, Nichomachus, was the court physician to the Macedonian king, Amyntas II, the father of Philip II and the grandfather of Alexandre the Great. His mother, Phaestis, came from an aristocratic family.

Losing his father in the childhood, Aristotle spent his first years in Stagira and Pella, and at 17 years he entered Plato’s Academy, where he remained for 20 years, first as a student and then as a professor. Having a vast culture, Aristotle is considered the founder of logic and of psychology. Aristotle promotes the principle of equality between people, and for him the notion of law equals to the idea of equality and legality, and justice should be perceived as a supreme, perfect virtue, which has to be exercised in the favour of the others. [9]
Certainly, we could not leave out of the line of great philosophers of Ancient Greece Democritus, who considered that justice had to give satisfaction to all people, and Plato, for whom justice represented the compliance with the laws, and injustice was equal to unhappiness.

For the philosophers in the ancient Peloponnesus, nothing from what is connected to law and its institutions is allowed to step outside the sphere of good, equity and morality. They used to dream about an ideal state, where people could be equal and could comply only with laws and justice. Law could not be conceived outside the sphere of the individual fundamental rights which guarantee the full equality of all people.

2. The human rights from the Middle Ages until their establishment in the positive law

If the jurist is directly interested in the positive law of human rights, he cannot ignore in interpretation the philosophical and moral fundamentals of this phrase and cannot make abstraction of the ideological and political “environment” which raises the problem of the defense of the main human rights and freedoms.

The lawful state is the supreme guarantor of the protection of human rights, by promoting and protecting the social equity and the segregation of powers. In the literature some authors consider that we cannot conceive the state without law or law without state, to the extent to which the state “creates” or “etatizes” the general norms of behaviour in society, transforming them in “law”, and law – at its turn – “norms” the state conferring it a certain institutional structure, well determined attributions and functions [10].

The beginning of the establishment of the individual human rights and freedoms, which will transform into the notion of human rights, emerged as a form of fight against the feudal absolutism and against other forms of state abuse. In this regard, the first text known in history is Magna Charta (1215 AD), which was proclaimed in England by King John of England, and which enumerated the privileges granted to church, to the town of London, to merchants and feudal dignitaries. It is essential the fact that this document stipulates that “no freemen shall be taken or imprisoned or disseised or exiled or in any
way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land." Similar provisions can be found in the Bill of Rights or Habeas Corpus Act, in the seventeenth century, both establishing the freedoms of the accused or the imprisoned people, as well as the necessity of an appropriate justice regarding the legality of the measure.

In the ancient Rome, Seneca talked about the self-improvement of people taking into account the idea of justice and equality between people, and Cicero showed that the role of the state was to protect the rights in the letter and the spirit of law. The merits to raise the human dignity at the rank of social value belong to the school of natural law characterized by the idea that law is a means of accomplishing justice and equity. According to the jus naturalists, people are sociable beings by nature, are born free and organize their life on the basis of a social contract that limits the powers of the state. The state has as main mission the compliance with laws and providing equality and freedom to citizens. The founder of the theory of natural law was Hugo Grotius, who emphasized the idea that people have rights and obligations that emerge from the human nature. In the centre of his research on natural law, there are Aristotle’s ideas, according to which man is good by his nature, and the need of the norm of law, of the rule of conduct results from man’s instinctive need to live in the society.

Later the illuminists elaborated the concepts that launched the values of the French Revolution. Montesquieu sees in the segregation of the powers of the state the best guarantee of respecting the freedoms of people by the state. Voltaire uses for the first time the notion of “human rights”, stating that being free equals to knowing the human rights and their knowledge leads to their defense.

History shows that the concept of human rights was promoted during the French and American revolutions. The preamble to the Declaration of the French Revolution in 1789 proclaimed that "ignorance, forgetfulness and contempt of human rights are the only causes of public misfortunes ... men are born and remain free and equal in rights".

The Declaration of the State of Virginia on 12 June 1776 stipulates that "all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest
their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

The Preamble to the Declaration of Independence of the United States on 4 July 1776, drawn up by T. Jefferson and revised by B. Franklin and J. Adams, shows that: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness. To secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.”

In 1948, The Universal Declaration of Human Rights retains that “disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind”.

The people’s concern for protecting and stating the human rights [11] constantly increased after WWII, as an answer to the horrors of the second world conflagration. Once with the higher and higher requirements for the defense of the values and mutual interests of the international community, the crystallization of the notion of international crime was determined by the entry into the sphere of globalization of some crimes that in the classical age of the international law fell under the exclusive competence of states. [12]

The concern of the human society for this topic is a natural one, so that we can talk today about international human rights law, a vivid proof of the extremely high rank played in our conscience by this eternal human value.

The national and international modern law is influenced, as regards its whole architecture, by the issues of compliance with the fundamental human rights by the authorities of the states. The human dimension of law tends to become international, situation that modifies the economic and political relationships between states. [13] The central ideas on which is based the whole analysis is that the international law has to focus first of all on the protection of the individual and man as a species. It is thus emphasized the correlation individual – state – international relationships, correlation that aims at modelling the role of the individual in its triple dimension: as a direct actor, as an actor within the state and as a physical entity. [14]
The foundation of the international human rights law is represented by the 
International Bill of Human Rights which includes:

a. The Universal Declaration of Human Rights,

b. the two international covenants,

c. the optional Protocol regarding the International Covenant on Civil and Political Rights and

d. the optional Protocol regarding the above mentioned covenant, regarding the death penalty abolition.

This fundamental act of humanity establishes civil rights and freedoms, social, economic, political rights etc. The proclaimed rights are not absolute, the exercising of these rights allowing the states to adopt laws meant to stipulate certain limits with the aim of respecting the rights of the third parties so that to ensure in a democratic society the requirements of morality, public order and welfare of all people.

The internationalization of the human rights conferred the respect towards the human being a universal dimension, and the decision-makers – institutions, governments, international organizations have the mission to protect the human lives by promoting human dignity, equality and fundamental freedoms.

As prof. C.L. Popescu shows, the human rights, internationally established and guaranteed, are rights of the human being, namely individual rights. They should not be mistaken for other notions of the international public law, i.e. the rights of peoples and the right of minorities, which are collective rights. [15] The same author shows that the human rights are essential for the human being and they derive directly from the existence of the human being, form man’s dignity, independently from their international legal formalization. The international norms establish and guarantee the human rights, are indissolubly connected. [16] As it was shown in the doctrine [17] the elements that make up the cultural diversity seem infinite in combinations; yet, the concept of guaranteeing the human rights has to appear as a unitary whole, especially in some regions of the world, which share mutual values, like in the case of the European Union.

The establishment of the concept of human rights is granted the highest attention at the European level; thus, art. 3 of the statute of the European Council stipulates in essence that there must be accepted the principles of the lawful state and the principle
according to which each person under its jurisdiction should enjoy fundamental human rights and freedoms.

Currently, as a consequence of the Treaty of Lisbon, it was modified the Treaty regarding the European Union in the sense that the fundamental rights, as are guaranteed through the European Convention on Human Rights and as it results from the member states’ mutual constitutional traditions, represent general principles of the Union law. [18]

From this perspective it should be followed the effect of ECtHR jurisprudence on the domestic law in relation to ECtHR jurisprudence and the principle of European law supremacy. The principles of the European law begin to be more significant, and crystalize as commandments in the European Union space.

In an extremely recent work [19], The General Principles of the Civil Law of the European Union, the German professor Norbert Reich, former dean of the faculty of law in Hamburg, emeritus professor of University of Bremen, shows that the European law is characterized by a difference between rules and principles, the former being the provisions of positive law of the European Union, and the others representing more general concepts that guide the interpretation and application of law.

At the national level we notice that our country place human rights on a well deserved position. At the highest level of the state administration, through the Ministry of Foreign Affairs, our country states that: “The observance of the human rights represents for Romania, as well as for the European Union, a priority of the foreign affairs.

According to the Romanian Constitution, Romania is a democratic and social lawful state, where human dignity, the rights and the freedoms of the citizens, the free development of the human personality, the justice and the political pluralism represent supreme guaranteed values, in the spirit of the democratic traditions of the Romanian people and of the ideals of the Revolution of December 1989.

Romania ratified most of the universal and European treaties regarding the human rights. According to art. 20 of the Romanian Constitution: “The constitutional provisions regarding the rights and freedoms of the citizens will be interpreted and applied in compliance with The Universal Declaration of Human Rights, with the pacts
and the other treaties to which Romania adhered. If there are discords between the
pacts and the treaties concerning the fundamental human rights, to which Romania
adhered, and its domestic laws, priority is given to the international regulations, except
for the case in which the Constitution or the domestic laws contain more favourable
provisions.”

The choice of the legal norm represents an important step of the process of law
application. Within this step, the mission of the competent institution is to establish the
legal norm applicable to the situation. That operation is carried out with the compliance
of the principle of legality. The activities specific to the institution of application consists
of: indicating the incident rule of law, noticing the validity of the legal norm, the
correlation and possibly the corroboration with other norms of law. In this step the
institution has to take into account the legislation regarding the human rights. For
instance, art. 4 Civil Code stipulates that in the matters regulated by the current Code,
the provisions concerning the freedoms and rights of the citizens will be interpreted and
applied in accordance with the Constitution, The Universal Declaration of Human
Rights, the covenants and the other treaties to which Romania is part of. In this regard
the doctrine [20] shows that according to ECtHR jurisprudence, the EU states have to
interpret and apply their own legislation in compliance with ECtHR provisions. It is
necessary the specification that in case of legislative conflict, the international acts
regarding the human rights have priority, according to the principle of priority of the
international regulations and of the common law in the matter. There is also an
exception, i.e. the one stipulated in art.4(2) Civil Code, according to which priority is
given to the domestic law if this is more favourable.

Prof. Nicolae Culic shows that the contemporary time, starting from the second
half of the twentieth century, witnessed the proliferation of the interest for human rights
in general, which has become a central topic of the political, juridical and moral debates,
and that there were created situations for promoting the human rights. The
contemporary declarations of the human rights were more detailed and comprehensive,
taking the form of some international agreements. [21]
Talking about new rights to express the idea that all individuals are part of the application field of morality and justice, to protect the human rights, means also taking all the measures so that people receive a decent treatment. [22]

3. Conclusions

Freedom represents a logical aspiration, specific to any human being. Freedom under all its forms is guaranteed by any democratic constitution and in any lawful state, but the individual freedom has certain legal limits and it must be exercised so that the others’ freedom should not be harmed.

The legal order in the democratic states places the individual together with his fundamental rights in the centre of the society so that all elements of substantial and procedural law are in strict harmony with this approach and will be created accordingly.

The human beings or the groups of people have rights that must be formulated, promoted and protected, being inconceivably, in the light of the elements of the lawful state and the democratic principles, a society that ignores them and does not place them at the top of the social pyramid.

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Abstract

Corruption - one of the "eternal" problems of development of human society. Corruption can not be considered an internal problem of a single country, it is a problem of the entire world community. The common motive for corruption is greed. Greed contains a very intense and concentrated mental energy that drives a person to act. Classified by the greed of the first degree (criminal motive as a qualifying legal circumstance), second degree (criminal motive which is a separate element of the crime), third degree (criminal motive as an optional statutory aggravating circumstance). If we find the content causes greed, we will be able to prevent its causes and to rehabilitate its consequences.

The problems associated with the implementation of international anti-corruption conventions are far from exhausted in the present article. Of course, work on the implementation of the provisions of international agreements in the Russian criminal legislation should be continued after the ratification of the conventions and making the necessary changes to the Criminal Code. We believe that the process of implementation of international legal norms of the Russian legislation can be quick and momentary. This is a complex and lengthy process, in which the main thing - not the speed of decision-making that can be ill-advised and hasty, and hard to follow on this path, the direction of the legislative process on Russia's fulfillment of its international obligations in this area. In addressing the problem of matching Russian criminal law the main international standards, in our opinion, is not a transfer of the Russian Criminal Code artificial, alien to the Russian criminal law structures, as reflected in Russian legislation conceptual ideas of international instruments for the effective fight against crime, including corruption, as well as to create conditions for cooperation among states in this area.

Keywords: Corruption, Anti-Corruption convention, Implementation, Criminal Code of Russian Federation, Motives corruption incrimination.
economic systems) and in the emergence of transnational varieties of corrupt practices significantly reduce the effectiveness of the international political, economic and cultural interaction. In today’s world the fight against manifestations of corruption can only be successful in terms of its effective combination of national and international components. Corruption can not be considered an internal problem of a single country, it is a problem of the entire world community.

The last two decades have seen a real "boom" of the international anti-corruption law-making. Adopted by many global and regional international conventions on the fight against corruption, as well as instruments of "soft" international law (program, declarations, resolutions and so on.), dedicated to the issue. [1] These international instruments have a significant impact on national law and practice anti-corruption worldwide. It should be noted that the problem of corruption in Russia, with all its "universality" has a special significance. Being one of the most pernicious effects of any state, corruption has become for Russia at the beginning of the third millennium, the main obstacle to political, economic and spiritual revival, has become a real threat to national security, the main obstacle in the way of any change. According to international studies the situation with corruption in Russia is close to catastrophic. So according to the authoritative international organization "Transparency International", engaged in the research of corruption around the world, "Corruption Perceptions Index" (CPI) [2] for 2007 Russia occupies the 143rd position, along with Gambia, Indonesia and Togo in the list generated on the principle of "most corrupt - in the end." In 2006, Russia was in the "sorrowful list of" 121th place in 2005 -126th, in 2004 - 90. Realizing the convention of "corruption rating" as a whole, international experts should be, unfortunately disagree. Becoming one of the elements actually functioning state, an integral part of its relationship with citizens, the corruption spawned monstrous distortions not only in the management and operation of public institutions, but also led to a major shift in the minds of citizens, who are increasingly losing confidence in the government and faith in justice. However, for various reasons, the Russian society is not yet fully realized the gravity of corruption and, therefore, does not seek to create for her harsh legal environment. In the context of the weakness of civil society and the lack of political will on an important impulse that can make a difference, it should be the need to fulfill
international commitments made by Russia as a participant in the global anti-corruption strategy. Certainly positive point is that the state finally listened to the recommendations of experts in 2006, the main anti-corruption international conventions (UN Convention against Corruption in 2003 and the Convention of the Council of Europe Criminal Law for korruptsiyu1999 city) have been ratified and, as a consequence, steel part of the Russian legal system. Ahead of the implementation of difficult and complex task - a full-scale adaptation of Russian legislation into line with international anti-corruption standards. Joining a major international legal agreements raises the question of compliance with the Russian legislation, including criminal law, international requirements. Following the principle of good faith fulfillment of international obligations requires the timely and adequate implementation of international treaties of the Russian Federation in the Russian legal system. We believe the right decision, that the implementation of the two anti-corruption conventions ratified must occur simultaneously and comprehensively. The UN Convention, as noted earlier, is developing the idea of other international instruments, including the Convention of the Council of Europe. A number of provisions of the two conventions are very similar, which allows their implementation "in the package." In addition, the Council of Europe Convention on the criminalization of corruption is an important part of the emerging European system of law, participation in which is necessary for Russia as a participant, albeit to a limited extent, the integration processes on the European continent. Entered into force on the European Convention already has its own mechanisms of control and monitoring of anti-corruption - operating group of States against Corruption (GRECO) at the national level has considerable experience in an implementation. The UN Convention against Corruption is a "young" document, which is yet to develop appropriate mechanisms for the implementation and enforcement of its provisions.

Problems of the relationship between international and domestic criminal law and the implementation of international criminal law are separate issues, but it should make some comments. In our view, the implementation of the implementation is often ignored or incorrectly interpreted the very meaning of international obligations arising from anti-corruption conventions. Their main task is to ensure the effective application of international standards in national law and practice. In our opinion, the norms analyzed
conventions belong to the so-called transnational criminal law (Transnational Criminal Law), the existence of which has long been recognized in the Western doctrine. [3] Transnational criminal law has a number of significant differences from international criminal law in the narrow sense of the word, which includes only the small number category "core crimes", that is, international crimes, criminalized norms of jus cogens (aggression, genocide, war crimes, crimes against humanity). In contrast, transnational crime is in its origin and the legal nature of the national and ipso facto are dependent on the characteristics of the national criminal law systems. Consequently, when implementing the Convention's norms, data should not seek to maximize unification of national legal definitions of the crimes (which, on the contrary, is characteristic of core crimes), and the maximum account of the features of the national legal system, the "embedding" of transformation in her international norms, do not have direct effect. Only in this way these norms can "earn", and consequently will ensure the implementation by States of their international obligations. This situation is perfectly illustrated by the "Guide to the implementation" of the UN Convention against Corruption: “Guide is not intended to provide definitive legal interpretation of the articles of the Convention. Its content is not authoritative and, in assessing each specific requirement should consult directly with the wording of the relevant provisions. It should also be approached with caution verbatim incorporation of the Convention into domestic law, which, as a rule, should be provided with higher standards of clarity and specificity for their effective implementation, integration into the overall legal system and legal tradition and enforcement. Also, before you use the language or terms used in the Convention, the drafters of domestic legislation are advised to check their compliance with the descriptions of other offenses and definitions of other concepts adopted in the legislation of the country”. This manual has been reflected on the implementation of the main idea of the implementation with the tradition and experience of national legal systems. The UN Convention, despite its global nature and the lack of opportunity for States Parties to make any reservations, yet very flexible international instrument in terms of national legal approaches to the criminalization of conventional crimes. It secured two types of international obligations: 1) mandatory rules on mandatory criminalization of acts, which focused very core of corruption; 2) The provisions of
recommendation describing alternative formulations of corruption crimes, providing them at the discretion of the criminalization of states (for example, the composition of illicit enrichment). Another character is the Council of Europe Convention, which contains mandatory obligations to criminalize, but leaves room for reservations. In this regard, it looks remarkably ill-considered decision of the Russian legislator, ratifying without any reservation, in the presence of significant and intractable conflict with the Russian legislation. A detailed comparative analysis of anti-corruption conventions and norms of Russian criminal law was held before us and many well-known experts. [4] In our opinion, the whole Russian criminal law on liability for corruption offenses in their conceptual basis of the relevant international requirements and standards. Of the Criminal Code Russian Federation in 1996, adopted in a deep political, economic and legal reforms, made significant changes in the regulation of liability for official crime. It is in this Code, new offenses, many of which are provided for in international conventions (commercial bribery, illegal participation in entrepreneurial activities, etc.). Significant changes were made, including in the direction of differentiation of responsibility in the rules on bribery and abuse of power - the most dangerous corruption crimes. It should be noted and a number of new offenses are inextricably linked to corruption (it is primarily a question of rules on liability for the legalization (laundering) of assets acquired by criminal means). However, careful analysis of the norms of the Criminal Code Russian Federation in relation international conventions shows that the Russian criminal legislation still contains a number of serious conflicts with international instruments under consideration, the resolution of which, according to earlier implementation of these principles, it is of paramount importance. Next, we will focus only on the most pressing and controversial issues.

Among the priority issues facing the Russian legislator in the process of implementation, stands the question of the subjects of corruption crimes. The global trend is the expansion of the concept of the subject of official crimes. The Russian Criminal Code Russian Federation also uses the term "officer" with an extremely narrow interpretation. This in Note 1 to Article 285 of the Criminal Code does not meet the definition of the term "public official" (Part A Section 1, Article 2 of the UN Convention), significantly narrowing the range of subjects that may be responsible for corruption
offenses. Thus, for public officials may be assigned civil servants, who for the functions they perform, or their employment status is not formally belong to the officials (for example, assistant to the State Duma and the Federation Council of the Federal Assembly of the Russian Federation, the advisers of the Government of the Russian Federation, etc.). However, they are at their official position, and may have a significant impact on the implementation of the officials of their duties and their decisions. Currently, according to Note 4 to the Article 285 of the Criminal Code Russian Federation, it follows that they can be prosecuted only under Article 288 ("Assignment of powers of the official") and Article 292 ("Falsification of official documents") of the Criminal Code Russian Federation. Part-ii Section-A Article 2 UN Convention apply to persons performing public that is socially important functions for the public (public) institutions or enterprises, or provides a public (public) service. This group, in our opinion, are the executives and other employees who are assigned organizational and administrative or administrative functions in state and municipal enterprises and organizations, including the Central Bank of Russia and its territorial divisions, as well as representatives of the interests of the Russian Federation and its subjects in the management bodies of joint stock companies with state participation. Considered face their criminal acts committed with the use of official powers, can cause substantial harm to the legitimate interests of the state, society and citizens. These are the official managers themselves crime of the Central Bank of Russia and its field offices, as well as Russian Joint Stock Company "UES", "Gazprom" and "Russian Railways" and the like, as well as representatives of the state in commercial organizations. As is known, the Russian criminal legislation classifies this category of persons to subjects Chapter 23 of the Criminal Code Russian Federation, that is, in fact, their crimes are matters of private prosecution. It is clear that the approach adopted by the Convention is much broader than is used in Chapter 30 of the Criminal Code Russian Federation the concept of official (application to Article 285 Criminal Code RF). As, no doubt, at one time reaching national criminal legal theoretical thought, in modern conditions, it seems, is as obvious anachronism. I think that we should agree with prof. B.V.Volzhenkin that "it's time to opt out of the use of the Criminal Code of the concept of official recognizing the subject of crimes against the interests of the public service of any public employee
no matter which category it belongs" [5]. It is noteworthy that the new federal law "On state civil service" no division of federal civil servants and civil servants of subjects of the Russian Federation for the officials and other persons. In addition, the long overdue issue of the need for inclusion in the subject malfeasance heads of state and municipal enterprises, as well as state representatives in the management bodies of joint stock companies. In our view, an important aspect of implementing procedures should be a clear realization of the idea of differentiation of responsibility is on the basis of the subject of crime and public administration (in particular, the allocation of such a dangerous form of corruption as the abuse of the judges). Unfortunately, in the Criminal Code Russian Federation lies a fundamentally different idea - the differentiation of responsibility for bribe or illegal payment. We are fully in agreement with the I.A.Klepitskiy and V.I.Rezanov that enshrined in Russian legislation differentiation of responsibility for bribery does not hold water. [6] Comparison of the wording of the international conventions and the Criminal Code Russian Federation shows that the responsibility for commercial bribery established in Article 204 of the Criminal Code Russian Federation is somewhat narrower than the responsibility for the "bribery in the private sector," provided for in international conventions. Thus, the subject of bribery, according to the Convention, may be "illegal benefits" (Article 21 of the UN Convention, Article 7 and 8 of the European Convention), and not just the "property benefits". According to the Convention a criminal offense relates "promise to transfer the subject of bribery" that the Russian Criminal Code is regarded as a criminal not punishable preparation of a crime.

Widely interpreted in international documents and offenses related to "bribery" (active and passive bribery of public officials). Under the "bribery" Convention understand not only the actions of the cottage, taking bribes, but also the promise, offering improper benefits to active bribery and, therefore, the adoption of promises and proposals to the passive bribery (Article 15 of the UN Convention Against Corruption, Art. 2 and 3 of the Convention of the Council of Europe, Article 8 of the UN Convention Against Transnational Organized Crime). Within the framework of the Russian criminal law the responsibility for such acts can only be as a prep for within the institution unfinished crime. Offer a bribe, demand bribes, along with other actions to create the
conditions for obtaining and bribery, has long stood out as preparation for typical cases of bribery in the theory of domestic criminal law. These provisions of international conventions shows the influence of French criminal law. It was the French Criminal Code uses the terms "active" and "passive" bribery, as broadly describes the objective side of these offenses, including the promise, offering bribes, and according to the requirements thereof - Art. 432-11, 433-1, 433-2 of the Criminal Code of France in 1992. In accordance with Article 30 of the Criminal Code Russian Federation, criminal liability arises only for preparations to commit grave or especially grave crimes. [7] Thus, the responsibility for the promise and offering bribes, as well as for the adoption of such promises and offers is only possible with qualified bribery (Ch. 2, 3, 4 Art. 290 and Ch. 2, Art. 291 of the Criminal Code RF). S.V.Maksimov proposed to solve this contradiction by amending Article 30 of the Criminal Code Russian Federation so that responsibility comes also for the preparation of a crime of medium gravity. [8] This proposal seems questionable. Equally significant legislative change, of course, requires criminological justification. The large-scale criminalization of acts of public danger which, at least, doubtful, of course, would be contrary to the general trend of humanization of criminal legislation, the decriminalization of low-risk acts. Another way of solving this problem lies in the inclusion of these actions in the objective side of bribery (commercial bribery) or in the construction of certain "truncated" formulations, providing for liability for a promise or offer a bribe (the subject of commercial bribery). That he looks better in this case. Of course, such "truncated" forms of bribery should be classified as crimes of small and moderate.

You should also state the difference between the international conventions and the Criminal Code Russian Federation on the issue of the subject of bribery in the public and private sectors. Indeed, in International law under such a subject is defined as "any undue advantage for themselves or for others", while according to the Criminal Code Russian Federation (Art. 204 and 290) for a bribe, or the subject of commercial bribery refers to "money, securities, other property or benefits (services) of material nature". Of course, the language of the Convention is more general, however, in our opinion, we should not exaggerate this contradiction. In essence, the "undue advantage" in the vast majority of cases it is the nature of the material. In the Russian literature of the criminal
law disputes, in essence, it is just a matter of sexual services as a subject of bribery. In other cases, the nature of the property bribes are usually obvious.

The most significant space of the Russian criminal legislation in terms of its compliance with international anti-corruption instruments is, in our view, the lack of rules on responsibility for "bribery of foreign public officials (ambassadors and etc.)" and responsibility for "bribery of officials of international organizations." These kinds of transnational and international corruption are extremely dangerous and are subject to criminalization under international conventions (Art. 5, 9, 10, 11 Council of Europe Conventions, Article 16 of the UN Convention Against Corruption, Article 8 of the UN Convention Against Transnational Organized Crime). There is an obvious gap of Russian criminal law. We agree that G.I. Bogush must be eliminated by the introduction of special provisions in the law on liability for transnational bribery, and they should be placed in a new chapter of the Criminal Code Russian Federation, which would bring rules on liability for crimes against international prawovoporyadka. As a temporary measure, we consider the possibility of placing the rules on international bribery in Section 30 of the Criminal Code Russian Federation, realizing at the same time, some of this legislative decision blameworthiness. [9]

Despite a number of problems, all the acts of corruption provided for in international conventions or already exist in the current Criminal Code Russian Federation, or can be criminalized without violating the structure and principles of the Russian criminal law. Perhaps the only exception is the provision under Article 20 of the UN Convention ("Illicit enrichment"). The concept of illicit enrichment is defined as follows: "a significant increase in the assets of a public official exceeding his lawful income, which it can not reasonably explain". Regarding the inclusion of this provision in the text of the Convention in the work of the Special Committee on the Convention developed a fruitful discussion. Delegations of the Russian Federation, members of the European Union and other countries have expressed their strong desire to delete Article 13. The documentation of the Special Committee lacks any justification for such a negative position. I think that it was caused by the fact that such a rule is not entirely consistent with the provisions of the presumption of innocence and introduces elements of criminal law objective imputation. It should be noted that, like other standards, the
Convention requires the intentional nature of the act ("when the crime committed intentionally"). In this case, it is unclear in relation to any act must be installed wine in the form of intent, as "a significant increase in the assets" is not an action (or inaction) of a person, and its consequences. Actions (inaction) is presumed and does not require proof that contradicts the principles of classical criminal law on the responsibility of the person responsible only for their own actions (inaction). However, this provision was included in the final text of the Convention. There is no doubt the fact that the implementation of this provision will cause considerable difficulties. The manual for the implementation of the UN Convention draws attention to the fact that "illicit enrichment" or the appearance of goods, the origin of which the official could not explain ("unexplained wealth"), already criminalized in some countries. Examples are Article 10 Ordinance on Prevention of bribery Hong Kong, Article 34 of the Act of Botswana on Corruption and Economic Crime, Article 37 of the National Law of the Republic of Indonesia to combat corruption criminal character number 31 in 1999. However, no examples of such solutions in the known legal systems omitted. In our opinion, the criminalization of illicit enrichment is not possible without violating the conceptual foundations of Russian criminal law. With the possible prosecution of illicit enrichment, as it were presumed origin of the official income due to the act of corruption. Such presumption of Russian criminal law and procedure are unknown. In a fair statement I. Kamynin, the appearance in the Criminal Code Russian Federation provisions of the Convention on illicit enrichment "prevents the fundamental principle of presumption of innocence, puts the onus of proving the wrongfulness of violations committed by law enforcement agencies and eliminating the possibility of a decision on the basis of conflicting and dubious conclusions". [10] The introduction of a legal structure with very vague criteria able to generate numerous abuses, including corruption. Rightly questioned the need for the criminalization of illicit enrichment N.A Egorov. [11] Of course, the mere presence of an official from the revenue that it could not reasonably justify a serious violation of professional ethics, may entail disciplinary responsibility for the very existence of such funds. A definite way out would be to establish liability of public servants for failure to declaration of income and assets or provide false information about their origin, but that rate must precede the establishment of such a
mandatory declaration in the legislation and, more importantly, the implementation of such a system in practice. Given the above, we consider it inappropriate at this stage in the establishment of the Russian criminal law liability for "illicit enrichment", in accordance with Article 20 of the UN Convention Against Corruption. Since the Convention establishes that the State party is considering the establishment of responsibility for the act "subject to its constitution and the fundamental principles of its legal system", the Russian Federation, in our opinion, should refrain from implementing its legislation in this provision.

The common motive for corruption is greed. According to some experts, self-interest is "material benefit" [12], while others defined it as "reckless egotistical desire," [13] "character trait of personality" [14], "pursuit of acquiring financial gain" [15], or as "physical or moral advantage." [16] We think that the motive of greed should be legally defined as an acquired character of personality and careless trait and excessive and egotistical desire, or greed for material gain. Greed contains a very intense and concentrated mental energy that drives a person to act. Classified by the greed of the first degree (criminal motive as a qualifying legal circumstance), second degree (criminal motive which is a separate element of the crime), third degree (criminal motive as an optional statutory aggravating circumstance). [17] The content of the term “self interest” is determined by the following formula:

\[
\text{PERSONAL GAIN} = \text{GAIN} + \text{LOVE} = \text{INDIVIDUAL PSYCHOLOGICAL ANTAGONISM}
\]

(cause of splitting and duplication of personality, that is, various forms of diseases of the soul psychological character).

If we find the content causes greed, we will be able to prevent its causes and to rehabilitate its consequences.

The problems associated with the implementation of international anti-corruption conventions are far from exhausted in the present article. Of course, work on the implementation of the provisions of international agreements in the Russian criminal legislation should be continued after the ratification of the conventions and making the necessary changes to the Criminal Code Russian Federation. We believe that the process of implementation of international legal norms of the Russian legislation can not be quick and momentary. This is a complex and lengthy process, in which the main
thing - not the speed of decision-making that can be ill-advised and hasty, and hard to follow on this path, the direction of the legislative process on Russia's fulfillment of its international obligations in this area. In addressing the problem of matching Russian criminal law the main international standards, in our opinion, is not a transfer of the Criminal Code Russian Federation artificial, alien to the Russian criminal law structures, as reflected in Russian legislation conceptual ideas of international instruments for the effective fight against crime, including corruption, as well as to create conditions for cooperation among states in this area.

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Aspects regarding the legal regime of natural resources

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Abstract
In colonized countries the right of exploitation belonged to the companies of the suzerain states. Invoking national interest, dispute over natural resources has increased in direct proportion to the increasing importance of these resources and inversely proportional to the decrease in quantity. A dull but intense battle at this point characterizes natural resources, especially of oil and mining of precious metals. Therefore, we can say that the power exerted on natural resources determines the ranking of countries of the world economic power and living standards of the population. Use of natural resources as an effective weapon in the economic consolidation became state policy and the expansion of exploration and exploitation in foreign lands required the development of complex regulations. Therefore, this study aims at presenting an analytic perspective of foreign law - specific states with relevant impact on the exploitation of natural resources - and the presentation of some features of international law.

Keywords: concession, international, oil, mining, explotation.

1. Introduction.

Beyond the legal nature of concession, often disputed in doctrine, this type of contract gained the reputation of the most used method of operation of the public domain by the Administration, by sending private exclusive rights in this regard.

Given the complexity of the institution of concession, the fluctuations that the legal framework have been suffered, and a poor bending comparative literature on the area of concession contracts on natural resources, we believe that the relevance of a comprehensive approach is undeniable. Thus, making a presentation to the laws of states with experience in concessions, with relevant impact in the oil and mining concessions, and a comparative analysis is neccessary for a more objective determination of the essential features that should define this field. For a wide coverage as the features of this contract, the study is not limited to the European space and it shows also a derivative contract of concession - Production Sharing Agreement - which is more commonly used in Middle and Far East.

The study captures the involvement of general interest, as well as specific criteria of oil and mining concessions and emphasizes the need to fulfill this criterion. The theory of general interest had a role in strengthening the identity of the concession right
in terms of necessity and its legal nature. Thus, concession is distinct from ownership and it was born from the need to simplify the operation of economic utilities and natural resources considered as a collective wealth. Stealing private ownership category of goods which are intended for the use of the entire population is a concern that has acquired a historical dimension, starting from Roman law until now. The study also select issues that have formed in certain states and in the approach to the exploitation through concession, successful recipes that become models for other states regarding implementation of natural resource concessions.


2. The legal regime of natural resources worldwide.

Peoples’ right to use and exploit their natural resources was recognized by resolution 626 (VII) of 21 December 1952 the United Nations (UN) General Assembly. Subsequently, XVII General Assembly Resolution 1803 of the UN on 14 December 1962 acknowledged that the right of people to permanent sovereignty over natural resources must be exercised in the national interest.

Recognising the right of countries, particularly those in developing countries, to secure and increase participation in the management of enterprises with foreign capital was mentioned by Resolution nr.2158 (XXI) of 1966 and the Charter of Economic Law and State requirements to was developed by Resolution no.3281 (XXIX) of 12 December 1974 issued by the same UN General Assembly.

Regarding oil and gas resources, article 1 par. (1) of the Act no.238/2004 provides that oil petroleum resources located in the basement of the country and the Romanian Black Sea continental shelf, defined under international law and international conventions which Romania is a party, shall be exclusively public property belonging to the Romanian state. According to the same article, the fuel oil is defined as those mineral substances consisting of mixtures of natural oil accumulated in the earth's crust which, in the frame of surface conditions, are present in the gaseous state, in the form of gas or liquid as crude oil and condensate.
The trends that have developed internationally were: ownership of natural resources belong to the landowner; property natural resources belong to the state or other public authorities where resources are located.

The United States are found in the first situation. The owner of the surface is also the owner of the oil that is located under the surface oil. In some jurisdictions, property of oil in situ is not recognized and it is claimed that the property appears only when the oil is produced and brought to possession, when it is extracted and becomes a movable property [1].

Moreover, in Texas it is recognized the "catch rule" according to that the oil belongs to the owner when drilling oil field which is found under his land. So if oil moves from one place to another under the bark, it will belong to a person or the other depending on the hazard of oil movement. In California and Indiana there is a property theory according to that the land owner has no title of in situ oil because oil can be extracted and belongs to whom extract (of course, on his land). The exploration and exploitation rights are granted by lease / lease / concession (lease) mines [2].

Natural resources belonging to the state has origins in Roman law, becoming the property of the sovereign political authority. Under this system whereby the king granted licenses for exploration and exploitation, soil mastery (dominium directum) returned either Crown or feudal lords and was separated from the title of ownership (dominium utile) of which represent the right to use and obtain profit field. Consequently, states have mineral resources and land owners have only been entitled to compensation for loss of land ownership (expropriation).

In Nigeria, the Supreme Court [3] ruled that only the state is the owner of natural resources, not local governments [4].

The Canadian Constitution explicitly assigns ownership of all land, mines, minerals and royalties to the provinces of Ontario, Quebec, Nova Scotia and New Brunswick. Section 92A of the Constitution (1867) completed in 1982, now gives the provinces exclusive jurisdiction to legislate with respect to exploration, development, conservation and management of non-renewable mineral resources such as oil.

In Papua New Guinea, although the communities have no such rights, they receive certain rights to the obtained benefits, rights that are entitled "royalty" benefits.
The Law of capture [5] shapes the legal regime of natural resources in the United States, although its recognition nowadays is considered anachronistic. This right has been regulated by the laws of other countries including Romania, as shown in the 1865 Civil Code which does not strictly copied the provisions of Art.552 of the French Civil Code 1807. The same thing happened in Ukraine, Great Britain and Russia.

In Latin America and the Middle East, the situation has been different. Thus, under The Spanish Ores Order (1783) and according to the Islamic Law regulating ores, as the state had control of these riches, very large concession areas were allowed.

Gradually, with the exception of the United States, other countries have waived this right in legislation and allowed the public interest to justify taking over the basement of the state. Romania followed the same trend. Nationalization of natural resources led to Romania existence concession contract which replaced such private nature contracts [6].

3. The judicial nature of the exploitation right

At present it is deemed, considering the exorbitant regime, derogatory from common law [7], to which public property [8] is subjected, that wealth “of any kind” of the underground is the exclusive object of private property, as stipulated also by art.135 par.(3) of the Constitution of Romania, republished.

Subsequently to the revision of the Romanian Constitution, art.136 par. (3) defines the judicial regime of „public interest” wealth, so that this category of goods suffers a restriction concerning the range of public property right. Per a contrario, the underground can be object of private or public property, so that the owner of that ground and respective underground can alienate part of the underground. Thus the underground belongs to the owner „in its entire depth, to the centre of the Earth” [9].

Also signalled is the necessity of legislating a clear delimitation between wealth of national and wealth of local interest, a distinction not made by the phrase „wealth of public interest”, which, as observed, was not necessary in the past. The Mining Law of 1924 for example attributed all underground wealth exclusively to the state, regardless of their nature or destination.
Relevant is also the distinction between the property right of the state or of the territorial-administrative units over the ground and underground in question and the property right over underground wealth on one hand, and the distinction between the latter and the exploitation right of the underground on the other. In this sense the state or territorial-administrative unit can exercise this in rem right as a public right [10].

According to art.L132-8 of the New Mining Code of France [11], the institution of concession creates an in rem right distinctive from the property of the surface, a right that cannot be mortgaged. As required by the exploitation, the concessionaire has the right to dispose of the non-assignable substances inevitably occurring in the works. The owner of the ground can claim the disposal of those substances that could not be used under these circumstances, by paying the mine operator an indemnification corresponding to the expenditure incurred by direct extraction.

4. Main features of oil and mining concession agreements in foreign countries.

United States of America.

It is proposed [12] that concession regulation in the United States of America (hereinafter, U.S.) to be similar to Directive 2004/17/EC given the development of the legal framework for Public Private Partnerships (hereinafter, PPP) in order to establish regulatory areas called "monopoly" and principles [13]. The difficulty of taking over European specificity is that the U.S. does not recognize the state's right over natural resources, operating the "catch rule" according to that the property owner is focused on the person of the soil and extract oil from both the basement and the basement has other neighboring owners.

According to point 71 from the United States Code (2011), any U.S. citizen over the age of 21 or any legal person created on American soil has the right to register the ownership of any tracts of land containing coal which are not appropriated by the state, no more than 160 acres / person or 320 acres / person in return for payment of not less than $ 10 / acre for an area of 15 miles or 20 dollars / acre for an area of to 15 miles [14].

Contrary to European law, in the U.S., PPP is regarded as a kind of concession agreement - so it is subsumed to concession, in which public project is carried out by
private funds. This view results from the history concession since the twentieth century when the first time the government granted monopoly in certain areas benefit in change of the private financing of public projects.

Transfer of acquired lands containing oil is not restricted if it is before oil exploration and discovery.

**Norway**

According to Article 77 (1) of the Act Sea Convention, the coastal state exercises absolute rights on the mainland coast for exploration and exploitation of natural resources [15]. But these provisions do not relate directly to the property of natural resources. According to the Petroleum Law No. 72 of 29 November 1996, the Norwegian State claimed ownership of oil deposits in the sea.

The Norwegian State has established a licensing system in which private companies participate as licensed together with the state. The aim was to attract competent technology and oil companies to explore deep waters in harsh weather conditions. This system was introduced in 1965 and still exists, containing three licenses: exploration and production, installation and operation of installations.

But the state does not need a license to carry out activities under the Petroleum Law and its activities consist primarily of seismic monitoring potential exploitation of natural resources.

A Norwegian licensing system feature is the strong participation of the state in this system. This was achieved by the so-called Statoil - initially 100 % state company established in 1972 through which the state holds 50 % shares in all licensed groups.

From the 1st of January 1985, state ownership was reorganized. Following an arrangement established between Statoil and state, Statoil participation split in the state's economy and the Statoil's one. The first was entitled State Direct Financial Interest (SDFI) [16]. This means that the Norwegian State participates directly in the Norwegian petroleum sector as an investor. SDFI has a direct financial interest in 146 production licenses and 13 joint ventures for onshore facilities and oil pipelines.

With the implementation of Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations...
for the prospection, exploration and production of hydrocarbons, the state lost its importance and became a commercial entity excluded of privileges.

In 2001 there is a reform that differentiates between the role of the owner and the resource manager. Thus, although there was a tendency on the privatization of the national oil companies including Statoil, the state remains the majority shareholder [17].

Subsequently reform Statoil retained responsibility for the marketing and sale of state-owned oil and gas through SDFI with Petora watching on establishing a fair price [18].

Statoil will remain under state control due to the importance of oil and to the fact that it is central to the economy [19].

_Brazil_

Initially the exploration and exploitation of oil in Brazil has been a state monopoly for 40 years until 1995 when Act No.9 of completion of the Federal Constitution of 1988 changed the legal structure of the state monopoly.

Thus, Law of Oil and Natural Gas no.9478/1997 allows private companies to pursue available through concession contracts and payment of taxes and government surcharges.

The discovery of new oil resources in deep waters of Brazil, rising oil prices and the global crisis have resumed discussions to return to the forefront of state involvement in the oil industry [20].

But lack of investment and rising inflation were reasons born for eliminating the monopoly of the state. Therefore, by Article 177 (1) of the Licensing Act nr.9/1995, private companies have been allowed to be licenced in the domaine.

There are three legal instruments to explore a public good in Brazil by a private entity: concession, permission or authorization. Authorization is a unilateral administrative, discretionary act, a temporary license that the licensee is allowed to use public property without prior auction. These are typical for oil transport and may be revoked at any time by the Government on the grounds of public interest.

Concession is another type of administrative license with the following characteristics: it is bilateral contractual, dependent on prior bidding. Concession cover activities of production and operation, and the risk belongs solely to the licensee.
The discovery of new oil deposits at 7,000 m deep in the ocean caused the need for large investments ( $ 1 trillion ) and adopt a new type of contract - PSA , and the concession was only preserved for onshore natural resources, Petrobras - the national oil company being entitled to have exclusive exploitation rights.

Regarding the administration of the petroleum field, the strategy was based upon the typology of the unilateral administrative acts which include: administrative power decisions legally binding, unilateral, administrative and information management contracts normative acts.

Like Petrobras, Statoil is frequently considered a state-controlled company, similar to more international oil companies. Statoil has expanded production to other countries such as Angola, Azerbaijan, Venezuela and became a model of efficiency.

Governmental strategy was to control the oil through two ways: by holding ownership of natural resources and the establishment of a national state oil companies .

**Venezuela**

With the arrival of Hugo Chavez to lead the country, nationalization was imposed as a result of the idea that some international oil companies have exploited Venezuela and weakened state. It was felt that a national oil company under state control would lead to greater confidence than in the private sector. The founded company was entitled Pétroleas de Venezuela SA (PDVSA) [21].

Through Hydrocarbon Law (2001), the fee was determined at 30 % , becoming the largest source of revenue - $ 20 billion for the year 2007 and for 2008. But PDVSA performance declined after the 2003 campaign Chavez administration [22].

5. **Conclusions**

Invoking national interest, dispute over natural resources has increased in direct proportion to the increasing importance of these resources and inversely proportional to the decrease in quantity. A dull but intense battle at this point characterizes natural resources, especially of oil and mining of precious metals. Therefore, the power exerted on natural resources determines the ranking of countries of the world economic power and living standards of the population. Use of natural resources as an effective weapon in the economic consolidation became state policy and the expansion of exploration and exploitation in foreign lands required the development of complex regulations.
Within the framework of the complex natural resources field, the concession contract remains the main tool of obtaining benefits through their exploitation. On the other hand, exploiting implies also the protection of public interest.

These reasons provoked the need of a comparative analysis among the legislations of different countries regarding the oil and mining concession agreements. The purpose of the present research is to underline the importance of knowing how the institution of concession is regulated in different countries around the world and how the property of the natural resources – such oil and minerals – is understood within their legislation. This aim is achieved through presenting relevant aspects regarding the above mentioned issues, including a similar type of contract, which is used in some parts of the world: production sharing agreement.

Moreover, we reiterate the necessity of a comprehensive European legislative initiative meaning to include all administrative contracts, in order to prevent further confusion existing between different types of contracts, whether we refer to concessions, procurement or PPP.

We appreciate that the selection of the adequate tools in elaborating this legislation lead or not to the preservation of the natural resources in every state that owns them. And this preservation is the final and the most important aim that a state should follow, in the interest of its people and the future generations. This is the reason why the public interest should be a common criteria that must be taken into account in order for the Administration to decide upon the opportunity of operating the state’s natural resources through concession agreements, in what terms and how to ensure the state control over the execution of contract. Therefore, the aim of the study is to shape an objective approach regarding the regulation of the institution of concession and its procedural aspects referring to the protection of public interest and to the special status of the natural resources. Modern legislation and fair clauses within a concession contract would not be possible without the knowledge of what is happening around the world.

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[7] For details on the view that the system of public law is another form of specific legal regime democratic and civilized society, see A.Iorgovan, op.cit., p.206;
[9] Popescu C-L, op.cit., p.6;
[10] The right to use the subsoil is a simple prerogative of public ownership when the ground / basement is in the public domain or local government unit, "but if the land loses its character as public property, acquires the right its subsoil use " - Corneliu-Liviu Popescu, op.cit., p.11;
[13] Although the oil and mining concession agreements are mentioned by the Directive 2004/17/EC, they are excepted from regulation;
[16] Hammer, Models for State Ownership, 163;
[17] Despite these tendencies, a new company was created, Petora, which was totally owned by the Norwegian state;
[19] The more and more rare discovery of oil resources will lead to the decrease of production after 2020, as the Norwegian Oil Directorate anticipates. But both Petrobas and Statoil have confronted difficulties in the exploitation of natural resources and they have taken advantage of their privileged situation as champions of an adequate technology.
[22] Hults, PDVSA, 420. Despite all these, the author recognizes that, during that period of time, the biggest state income had been collected, and an important part of this income was invested in political policies addressed to the Venezuelan people.
Legal rule in the rule of law

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Abstract
The legal standard is a pattern of behavior in society. It is a "program" containing the claims and demands of society towards the conduct of its members in certain categories of relationships. The issue of legal rules in the rule of law can be made at the deepest level, namely obedience to the rule of law. The three dimensions of the rule of law - the principle of hierarchy of norms, the principle of obedience to the rule of law and of the content of the law in force - constitutes all the values and principles defended and must be well articulated. The concept of "rule of law" involving two juridical aspects, namely normative ideology, evoking the idea of mood and legitimacy.

Keywords: legal standard, state, law, legitimacy.

1. General considerations

Basic cell of a law - the legal standard - is the basic legal system of the state. Outside normative reality, right and there can not be explained. Conscious representation of the legislature in relation to possible conduct or the subjects participating due to social relations is stored in the content of any legal norms. [1, p. 151]

Throughout the development of human society, customs, norms of religious and moral norms primitive times, with the advent of state vacate the legal regulations of social relations by rules imposed by state law. The legal standard is therefore the primary element of the system of law. Today it is a rule of social conduct, legislation enacted or sanctioned by the state, which is enforced if necessary by coercive force of the state. [2, p. 211]

Since the state creates law, national rules are likely to be settled by coercive force of the state. Meaning that the unitary binding rules of conduct, right, as the state is a product of social development. Legally, it is formed in the state organized society as a regulator of social relations. As the great jurist argued Giorgio del Vecchio, human activity is regulated by a complex system of rules, which is found in every historical stage of development of the state. [3, p. 45]
The right, as a set of legal rules include the fundamental relations, structural, legal normative principle for. As stated in the literature, the right has internal logic that ensures functionality, applicability, expressing interdependencies between legal norms, forming a package that is not reduced to its component parts. [4, p. 211]

Law is an extremely complex social product, but it is also extremely important in the regulation of the human relationships. In fact in the modern society living cannot be conceived beyond the legal norms, outside the legal institutions, and human existence outside the legal phenomenon is unconceivable. [5, p. 469]

The legal rules with legal relations arising in their base form legal order, as part of the social order. Social order is not confined to the rule of law is more than the rule of law, as it concerns activities, relations, with rule of law without contingency. The rule of law constitutes the core of social order and this is the basic equilibrium of society, guarantee essential rights of individual achievement and functioning of the institutions. [1, p. 152]

Legal norms are, in reality, means of achieving the ideal of social justice in accordance with the will that is expressed in the contents of its provisions. Analysis of legal rules leads to the conclusion that they may, in addition to the rules of conduct and other rules. This may include general principles of law, definitions (definition of property, the contravention of the contract, the crime, etc.), explanations of legal terms, the legal capacity description etc. Prof. Ion Deleanu stated that the state law is the work product of the manifestation immanent state taxation plan and achieving the general will, binding to ensure the common good. [6, p. 113] However, we must admit that once set right, it must state law itself also subject to other subjects. To force to impose law requires some minimum requirements:
- Postulation by law norms of moral values, political, authentic and persuasive global civil society and for the individual;
- The establishment of a democratic ambience;
- Consolidating the principle of state responsibility;
- The establishment of efficient and stable control means;
- Promoting strict principle of legality and constitutionality principle;
- Axiologic cardinal landmark human transformation.
Of course, all this should be in institutions. [6]

Throughout history, the link between the state and the law was different, moving in opposite directions: either toward authoritarian totalitarian state, the right is neglected, relying on force, either towards democratic state, that is based on law. The rule of law must accomplish the rule of law in all its work, both in relations with the citizens and in relations with the governing bodies.

The existence and manifestation of the state involves a certain status of "power" limited to the extent possible to avoid to become a prerogative of those exercising that discretion. In all its work, the state should encourage good, but always in the right shape so that any act of his to be based on law, which is the manifestation of the general will. [3, p. 292]

In social life, human freedom manifests as of right, freedom is governed by legal rules. The concept of rule of law has emerged through a long historical process of interference of different theories, especially German and French doctrine. [7, p. 23]

As literature specifies, freedom in all its forms is guaranteed by any democratic constitution and by any lawful state, but the individual freedom has some legal limits and it should be exercised so that the freedom of other people should not be affected. [5, p. 470]

French lawyer Jacques Chevallier defined the rule of law as the type of political regime in which state power is framed and limited by law. [7]

2 Characteristics of legal rules

The legal rule to be invoked against a standard of conduct and evenly and continuously each individual should address diffuse and impersonal addressees. With these features, the legal standard is different from the individual act, which by its nature is concrete and personal. As Ulpianus wrote swears non singulas personas, sed generaliter constituuntur (right arrays not individual man but for all). [1, p. 153]

The legal rule eliminates the concrete, the particular, the abstract and abstracting it. The legal standard envisages an average generality of relationships and behavior. The general character of the legal norm can not be defeated either on grounds of local autonomy. Hegel, based on the general nature of the legal norm, characterized it as a universal determination to be applied to the specific case. To the identical formula,
repeatability, in a legal rule, the legislature seeks General, what is universal in a bundle of social relationships, and make in relation to this type of conduct. The legal standard requires a between-report, it is binding, intervening in key areas of society, governance areas that are either contingent or watch the being social, public or private, individual. [1, p. 157]

The purpose of the rule of law, justice purposes accomplished, with binding activity and national administration, is essential to ensure safety and harmony of social relations under a value ideas considered by the legislature. To the extent technically understandable and responsible interest that represents the legal norm will achieve its purpose.

In a state of law, the legal standard is mandatory and apply the benefit of human coexistence and common life in defense of specific values, whenever the conditions contained in normal situation. [9, p. 36)

The legislature should describe a specific legal provision conduct, conduct a required subject in all the circumstances and in connection with this conduct is fixed and some form of reaction (penalty). Acknowledging time, the subject will act in accordance with the conduct referred to in it, will reject a purpose prohibited by a regulatory prescriptive, refraining from action or, conversely, will assume the risk prescriptive evading sanctions or in violation of it. We have to mention that all of this: the conditions, conduct penalty, legal rule called up elements and structure of the legal norm. [10, p. 88; 4, pp. 57-61]

As content elements of law, legal rules are in constant relationship with the legal consciousness that considers the source material Mircea Djuvara of positive law and, thereby, the entire material and spiritual conditions of society. [11, p. 16]

The legal rules are the sides that form the right content, are sine qua non prerequisites and conditions of order and social control instruments. Being bearing social beliefs, legal rules correspond to a command and behaves functionally purposeful value. The human factor is, for any legislator, the central area of interest. By regulating people's behavior within various categories of social relations, legal norm relates to permanent human presence in the society, the ability to influence and even to transform the social. [1, p. 70] To enjoy the effectiveness, rule of law must evoke concrete images
of the individual conscience, so to incorporate human psychological heritage. The rules should remove legal uncertainty, provide positive alternatives man, to establish the meaning of its existence.

Efficiency action law, its legal rules is related to the complex psychosocial functioning mechanisms legislature which gives them satisfaction, prefiguring the rules of conduct as alternatives to consider as useful both socially and individually.

In a state of law protects human dimension of rights, above all the core rights of the individual, rights that guarantee full equality of all people, the opportunity to show their unhindered under justice and freedom, because man, by nature, is a free and dignified existence. The legal rules are based policy framework - administrative and judicial hierarchy, likely to promote a common framework for people living and homogeneous, in which they assert the legitimate interests. [12, pp. 172-193]

Current development of social relations attests inter and intra incontestable reality cooperation of States in the essential human rights. The concerns of the international community on compliance by States of human rights and their legal regulation tend to be matters of principle. In this context, legal norms tend axiologizare acquires a shape ever safer and reinforce the idea that the right belongs to the empire of reason and no reason empire. [13, p. 24]

In conclusion, it can say that the legal rules governing human conduct, behavior of people in society and the state intervenes by means of coercion when people violate legal norms. Building solutions by the legislature normative action appears as a complex reality conditioned by social, economic, spiritual, axiological domestic or international.

The right of juridical norms that a will is inviolable, as stated Neo-Kantian Rudolph Stammler, in that its rules are mandatory and coercive. What differs in this respect the right of other social normative system is precisely this quality normative legal will that expresses the entirety of rules, with all the consequences of that fact. Content of the right side is the dominant component system of legal norms. Any system of law achieves its functions by the action of the rule of law and the mechanism of its influence on social relations is essentially linked to how the standard of conduct that includes the rule penetrates into the fabric of human relations. Mircea Djuvara opined
that their contents are always different laws, although in essence and in form there is something hanging over them, and served them permanent framework, the idea of obligation ideal trend toward legal sanction, topics and subject to the legal relationship. [11, p. 16]

Of course, as the system evolves with society constantly highlighting the legal reality in its essence. In their content, rules and regulations vary in time and place, so Georges Ripert wrote: "No lawyer would dare today to support the right not evolve." [14, p. 32]

The theory of the rule of law requires that the State acted as (by building a hierarchical legal system) and it is governed by the law, and not only its organs, for law is the state itself. [7, p. 86]

The legal rules are enacted to enforce them, the legislature is considering drafting legislation, major social interests, seeks to provide guarantees good development of relations between people and protect social values. Fundamental coordinates action legal norm in a state of law are time, space and person. In principle, acting on an indefinite legal norm in a space dominated by the notion of territory and subjects involved in the legal circuit in this space. [9, p. 46]

Legal subordination of the administration of the law is a prerequisite for defending the rule of law and judicial review is an effective guarantee thereof. For a democratic government by the existence of a state of law is absolutely necessary separation of powers. [15, p. 348]

The rule of law is established clear competences for each public authority, so substituting in place of another authority be legally excluded. Any public authority is obliged to perform the tasks and prerogative that was invested. [16]

In contemporary society, the legal rules governing the bulk of social relations, but cannot regulate everything, which is why they are interdependent, coexisting with other categories of social rules that form the legal system.

CONCLUSIONS

The legal rule in a state of law must regulate these social relationships aimed at the smooth conduct of relations in society and constitute the foundation of all social order.
Legal norms know specific forms and methods of transposition in life insurance, forms and means found anywhere in any other category of social norms.

The essence of the rule of law is that the state, in all its activity is organized and run by law is subject to legal rules, both the state apparatus and the state within the meaning of sovereign organized population in a given territory.

The content and essence of the rule of law, the relationship between the rule of law and democracy and fundamental human rights, individual rights and man's natural and essential aspects of the controversial rule of law.

If the legal state based on the will of the majority is entrusted to guarantee the rights of law whose servant is judge, rule of law system is the constitutional judge who has the task through control over law.

In our opinion, the true state of law can only be a natural state law, the state court, where justice should be seen in the following aspects: philosophical, as a value; moral, as a virtue; sociologically as constituting a state; technical and legal, accounting technical method.

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The pluralism of international legal orders

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Abstract
The Court jurisprudence concerning the hierarchical relationship between the UN and EU legal orders had an evolution from the constitutional vision of international space seen as a horizontal and segregated one, in which the EU is an independent and separate “municipal” legal order existing alongside of other constitutional systems, towards the path of soft constitutionalism recognizing no the existence of a hierarchy between different legal international orders, but only the existence of communication and conflict resolution through political processes of ad-hoc negotiations and pragmatic adjustments between different legal orders [1], and furthermore, towards a pluralistic perspective emphasizing the plurality of diverse normative international systems allowing their mutual influence and gradual approximation and preventing any control to each others [2].

Keywords: Pluralism, International Legal Order, Structural Limitations, Customary Law;

Chapter I. Introductory Considerations Concerning the Status of United Nations (UN) Legal Order and Its Relevance in European Union (EU) Legal Order

The pluralism on international legal orders was largely debated in the case of implementation of Security Council resolution within EU legal orders.

Somebody could rightly be wondering why this process would be relevant and why it is important for EU as long as EU is not an UN member. Indeed, according to Article 4 of UN Charter, only states could be UN members: “1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council”.

However, the EU is affected by these sanctions from at least four points of view, such as:

1. A part of Security Council (SC) sanctions, mandatory for EU member states, hit the Common Commercial Policy (CCP) which is in the exclusive competence of EU;
2. The main aim for creating European Community by its founders was to maintain international/European peace and security, the Security Council having the international peace maintaining/restoring as its primary responsibility – concurrent competences;

3. Sometimes, the measures for maintaining peace and security are more efficient when their implementation is made at EU level.

4. These sanctions could lead to European law distortions, European Court of Justice being competent to assure the uniformity of EU law and the compliance of EU member states with.

   We'll analyze separately each point from those aforementioned.

   European Common Commercial Policy governs the trade between Member States and third countries, and therefore, to allow the Member States to implement individually economic sanctions falling within European Community Treaty (EC Treaty), such as the commercial embargo, transportation, and other trade sanctions, may cause distortion of the Common Commercial Policy and, in some cases, to affect the primacy of EU law through different implementations of sanctions at national level, such as we will show in the next paragraphs.

   Moreover, the sanctions of economic embargo imposed by SC resolutions related to the restrictions of goods, services, flight bans, economic embargoes, etc. were introduced through the common expressions such as: “it is prohibited to, knowingly and intentionally, sell, supply, export or send, directly or indirectly...” [3]. Thus, such measures could be interpreted as measures having equivalent effect to the export quota, restrictions on selling goods, etc, forbidden by Art. 28 EC Treaty (Art. 34 TFEU [4]).

   In Kadi, the Court of First Instance (CFI) held that, if economic sanctions are imposed unilaterally by each Member State, the multiplication of ways of sanctions’ national implementation might affect the common market, interstate trade, especially the movement of capital and payments and the right of establishment. They could create distortions of competition, as much as any differences between state sanctions’ application could bring advantages or disadvantages for the competitive position of certain economic operators [5].
In order to avoid such distortions, European Court of Justice (ECJ) stated in CentroCom judgment, that national measures have to respect Common Commercial Policy (CCP, cf. Art. 133 European Community Treaty-EC Treaty hereafter- and Art 207 TFEU), and any national restrictive measures hitting CCP are not tolerated even they pursue a foreign policy or security objective [6].

This objective is also clear in the Preamble of Council Regulation 881/2002 on measures against Usama bin Laden, Al Qaeda and the Taliban, which also states that "(4) These measures fall under the scope of the Treaty and, therefore, notably with a view to avoiding distortion of competition, Community legislation is necessary to implement the relevant decisions of the Security Council as far as the territory of the Community is concerned" [7].

Pieter Jan Kuijper showed in his article “Implementation of the Security Council Binding Resolutions by the EU/EC” that currently, the common commercial policy has become too common and liberalization of capital movements and current payments too complete for allowing Member States to take separate or even coordinated measures under Art. 297 and 307 EC Treaty (Art 347, respective 351 TFEU) [8].

Finally, the victims of sanctions brought, sometimes, their applications before national courts challenging the Council Regulations implementing such sanctions within Community (Bosphorus [9], Yussuf [10], etc), and national courts felt necessary to rule before ECJ a preliminary question concerning the application of Council Regulation implementing those sanctions.

Chapter II. Structural Limitations of EU Legal Order under United Nations Charter

The evolution of ECJ case-law showed that the regulation implementing SC sanctions within the EU could enjoy neither immunity in the sense that they cannot be reviewed by the Court, nor by the presumption of validity according to the principle of “equivalence” of systems of human rights protection stated by European Court of Human Rights (ECtHR) [11].

During the hearing on the admissibility in Bosphorus from September 2001, the ECtHR made a comprehensive reference to the link between the principle of direct effect of EU law and the principle of state liability showing that it cannot be fully
accepted any responsibility of States under the Convention on the grounds that their actions are justified by the need to meet the obligations incumbent upon them under international law of IO in which they are members (referring to the European Union, but this rationale is available for States’ action within UN) [12].

In another case, Yussuf Al Barakaat, the Court of First Instance (CFI) considered itself to be no competent for reviewing directly the legality of Security Council resolutions, because there is a legal basis neither in international law nor in the EU law for such judicial control [13]. Moreover, it deemed necessary to interpret the EU law in a manner consistent with the obligations of Member States under the UN Charter, because of the principle of state responsibility aforementioned. However, the CFI held that the SC resolutions could be scrutinized indirectly in terms of their complying with jus cogens norms of human rights, general mandatory, the fulfillment of those norms being in the exclusive responsibility of States (though it is doubtful if human rights fulfillment remained within the domains reserved to States, being well-known that Security Council considered the human rights infringement as a threat to international peace in some cases, such as Somalia, Rwanda, Yugoslavia, etc).

Jus cogens norms of human rights were understood by CFI in the case aforementioned as a body of high-value rules, binding on all subjects of international law, including UN bodies and on which no derogation is possible. In this regard, the Court recalled that Article 53 of the Vienna Convention on the Law of Treaties provides that a treaty (such as United Nations Charter is) is void if it conflicts with a peremptory norm of jus cogens. In the same case, the Court held that, in accordance with Art. 24 (2) of the UN Charter, the Security Council must act, carrying out its powers for maintaining international peace and security, in accordance with the purposes and principles of the United Nations. As such, the Court concluded that the sanctionatory powers of the Security Council fulfilling its primary responsibility of peace maintaining, must be exercised in accordance with the purposes and principles of the United Nations, particularly, and with the international law, general speaking. Concluding, the CFI stated that the binding power of Security Council resolutions is experiencing a limitation in terms of their compliance with international norms of jus cogens.
If the SC resolutions overcome this limitation, the Court stressed that Security Council resolutions are binding neither for Member States, nor for the EU [14]. Indeed, there is a difficult chosen of EU Member States between the fulfillment of ECJ decision and their obligations under UN Charter.

More, the ECJ agreed in Kadi case with the Council arguments that economic and financial coercion resulting during the process of implementation of SC binding resolutions, is an express and legitimate purpose of EC Treaty, even if the object is very marginally related to the main objectives of the treaty (those of the free movement of capital or ensuring that competition is not distorted in internal market) [15].

However, ECJ held that the EU is based on the “rule of law”, and consequently, neither its Member States, nor its institutions could impede the judicial review by ECJ of the conformity of the EU institutions’ acts in accordance with the basic constitutional Treaties establishing a complete system of legal remedies, even they are implementing SC sanctions. Moreover, it stated that the allocation of powers, and consequently, the autonomy of the Community legal system cannot be affected by an international agreement such as UN Charter is, the observance of the aforementioned being ensured by the Court by virtue of its exclusive jurisdiction conferred by Article 220 EC [16].

Further, the ECJ followed the AG Maduro opinion that the fundamental rights form an integral part of the general principles of law whose observance the Court ensures, drawing its inspiration from the constitutional traditions common to the Member States (during the Kadi judgment, the Charter of Fundamental Rights was not mandatory because of the lack of Lisbon Treaty ratification), and from the guidelines supplied by international instruments for the human rights protection on which the Member States have collaborated or to which they are signatories (especially, the Human Rights Convention adopted in 1950 by the Council of Europe) [17].

Concluding, ECJ stated that the obligations imposed by an international agreement such as UN Charter is, cannot prejudice the constitutional principles of the EC Treaty (TFEU after Lisbon Summit) including the principle of respecting fundamental rights which is a condition of the EC acts’ lawfulness; being for the Court to review it in the framework of legal remedies established by the Treaty [18].
In this context, ECJ deemed that the review of the validity of any EU act by the Court in the light of fundamental human rights should be considered the expression of the constitutional guarantee of the autonomy of EU legal system, which is not to be prejudiced by an international agreement in an European Community based on the “rule of law” [19]. This power of judicial review of the ECJ is not affected by the existent remedy of the re-examination procedure before the Sanctions Committee within United Nations system. This diplomatic remedy cannot give rise to the generalized immunity of regulations implementing SC resolutions, from ECJ jurisdiction within the EU internal legal order, being rather diplomatic and intergovernmental procedure than a judicial one. Such immunity would be an unjustified derogation from the judicial protection of EU fundamental rights laid down by the EC Treaty, because this re-examination procedure does not offer the guarantees of judicial protection, the persons or entities concerned having no real opportunity of asserting their rights before the Sanctions Committee taking its decisions by consensus, each of its members having the right of veto [20]. It seems from the aforementioned that ECJ considered EU human rights’ system as limiting the effect of SC resolution in its area of jurisdiction.

In its judgment of Ayadi, the ECJ held that it is in the exclusive competence of Member States to ensure an effective legal remedy for the EU citizens and assimilated persons when the EU judiciary is not accessible to them. It was, thus, in the exclusive competence of States to protect their nationals through diplomatic channels to UN Sanctions Committee. Saying that, the Ayadi judgment was the first which called for a “appropriate” or “equivalent” substitute such as diplomatic protection before Sanctions Committee, instead of an effective judicial protection within the EU, raising the question of the effectiveness of such protection. The ECJ rationale could be challenged in the sense if diplomatic protection before the Sanctions Committee may give a right to appeal, at least before the national courts, not to mention the European ones, in order to be “equivalent” to the judicial remedy [21].

Probably therefore, ECJ abandoned this thesis in Kadi judgment suggesting that the general immunity from jurisdiction for Security Council measures is inappropriate: “the existence, within that United Nations system, of the re-examination procedure before the Sanctions Committee, even having regard to the amendments recently made
to it, cannot give rise to generalised immunity from jurisdiction” [22], because such immunity could not be justified in the case of the Sanctions Committee procedure lacking sufficient guarantees of judicial protection.

In Hassan, the ECJ referred also to the exclusive competence of states to ensure an effective protection of fundamental rights of their nationals raising a broader debate on the different standards of protection of human rights in different national legal systems [23], while in Mujaheddeen and Sison, the Court of First Instance (CFI) established that the Council Regulation implementing SC sanctions was no valid, invoking rather procedural considerations than substantial ones (the persons concerned have not been notified of the reasons relating with the decision taken against them, etc.) [24].

The Court proceedings in both cases above mentioned were based more on procedural grounds than substantial; they did not clarify whether judicial review against charges of terrorism is possible in terms of the substantive law or what is the solution to be adopted in cases of conflictual norm between EU law and Security Council resolutions.

Chapter III. EU Legal Order is autonomous in the context of international customary law

Although the ECJ has a rich case law concerning the principle of judicial review reflecting the principle of international law enshrined in Art 6, 13 of Human Rights Convention, the question arising is if, however, there are also structural limitations imposed on the principle of judicial review by general international law or by the European Community Treaty itself.

In International Fruit Company case, the ECJ argued that, for challenging the rule of international law before the national courts and, possibly, submitting a question to the European Court, that rule must have direct effect in national order being able to give the individual rights that can be enforced by national courts [25].

How could we verify the fulfillment of this requirement of direct effect in the case of international customary law?
The General Advocate deemed in Racke v. Hauptzollamt Mainz that the applicability of this condition in the case of customary international law could be interpreted in the same way as in the case of the direct effect of international agreements. In this context, the Advocate General argued that the customary laws of treaties, including the doctrine rebus sic stantibus, concerns more the relations between states and international organizations than among individuals. He distinguished between the law of treaties and other rules of international law conferring rights on individuals as well as humanitarian law, and concluded that the nature and purpose of the customary law of treaties does not lead to a direct effect. Therefore, he considered that a condition which the Court must consider when examining the direct effect of these rules is if the rules of international law, being even a customary origin, contain clear, precise and unconditioned rules. Therefore, if EU acts implementing SC sanctions affect human rights, even of customary origin, the direct effect should be considered (human rights are clear and precise rules). Thereby, the Advocate General opined to maintain a balance between the lack of control of political discretion in the exercise of EU institutions’ legislative powers and the need to protect the right of judicial review in situations ultra vires affecting human rights under customary law. The Court held that, since customary international law is part of the EU legal order, challenging the validity of the EU regulations affecting individual rights under customary international law cannot be prohibited [26].

The ECJ judicial review of the hardship provisions adopted by SC or left to UN Member States’ discretion to be adopted even on the customary basis, should be limited to the cases where there was a manifest error of understanding concerning the conditions for their application (error in law). However, the ECJ ruled in Bosphorus that the preliminary reference procedure prevents the development of legal arguments based solely on international law without any reference to EU law [27].

In Ebony Maritime, the Court extended its jurisdiction beyond the international customary rules against a ship flowing on the high seas. According to international customary law, it wouldn’t have been subject to other jurisdictions, excepting the jurisdiction of the flag under the ship is located, but the Court considered its jurisdiction on the strength of the SC resolutions imposing sanctions, considering that the aim of
those sanctions could be achieved applying them to the vessel wherever it is, and humanitarian exceptions under the SC resolutions are not related to the place of vessels [28]. On the contrary, in Poulsen and Diva Navigation, the Court used the international customary law of the sea as mean of interpretation of fisheries law of the EU [29].

Concluding, it seems that during the debates concerning the conflict which may arise between the Security Council resolutions implemented by Council regulations and the human rights’ norms of customary origin, the Court limited the power of the judicial review principle of SC resolutions’ implementation considering, firstly, that the states act under powers circumscribed to the purpose of these resolutions and have no autonomous discretion. This implies, in particular, that the states could neither directly alter the content of those resolutions when they are implemented by national laws nor to build a mechanism giving rise to their deterioration against or using the direct effect of EU Regulations. Secondly, the enforcement of SC sanctions is achieved through judicial review of Council regulations implementing them and the compliance of regulations with those resolutions, which require rather an interpretative role of the Court. However, in Yussuf Al Barakaat, the Court held that if the direct effect of those resolutions affects the jus cogens norms of human rights, their binding effect can be neglected, giving a prove of its decident role in this area. It remained at the discretion of the Member States to comply with a judicial decision which let empty the ultra vires resolutions of SC or to apply the SC resolutions as belonging to a higher legal order. Further, in Kadi, the ECJ extended this rationale to all human rights norms recognized by EU law, such as we will show below.

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[9] Case C-84/95, Bosphorus Hava Yollari Turizm ve Ticaret AS v. Minister for Transport, Energy and Communications, Ireland and others (hereafter Bosphorus), Judgment of 30 July 1996 available on www.curia.europa.eu (last accessed 24.05.2015). All subsequent cases are taken from the same site (ECJ site)
In terms of the Court of Human Rights, the measures taken by States in accordance with the legal obligations incumbent upon them under constituent treaties of IO are justified as long as those IO protect the fundamental rights regarding both the substantial guarantees offered and the mechanisms for monitoring them, in such a way which could be considered at least “equivalent” to that provided by the Convention (the "equivalent protection" of human rights was held and explained by the German courts in Solange cases and by the ECHR in M. & Co.). By "equivalent", ECtHR understood "comparable", but not "identical", the latter being contrary to the interests of cooperation sought by the States. According to ECtHR, such a “equivalence” could not be final being likely to be revised, taking into account any subsequent change in the protection system of fundamental human rights.

If we consider that such "equivalence" is available for another international organization, the ECtHR established the statutory presumption that Member State to the Human Rights Convention (Convention) has complied with the Convention standards while they fulfilled the legal obligations stemming from their quality of membership of international organization concerned. However, such presumption could be rejected if the circumstances of the particular case proved that the protection of human rights provided by Convention was, clearly, deficient.

This theory was challenged by the concurrent opinions of Judges Rozakis, Tulkens, Traja, Botoucharova, Garlicki and Zagrebelsky in Bosphorus showing that, even assuming that such "equivalent protection" between human rights systems of the UN, the Council of Europe and, respective, EU – this finding is likely to be revised taking into account any change in the system of protection of fundamental rights - it cannot, generally, endorse the idea that an abstract evaluation of the EU human rights system would lead to its "equivalence" to that of the Convention system, abiding the presumption of legality. This presumption of legality of acts of States within those two organizations would determine, in fact, their immunity from any judiciary scrutiny, because it is difficult to reject this legal presumption on the grounds that the protection of the rights provided by Convention was manifestly deficient. The expression "manifestly deficient" appears to establish a relatively low threshold of human rights standards, which is in contrast with the rest of ECtHR jurisprudence. Moreover, this reasoning seems to accept that EU law could be authorized on behalf of "equivalent protection" (but not identical) to have lower standards, less stringent than those of the European Convention on Human Rights, which would give rise to the double standards of appreciation (more details in Henry G. Schermers, Denis F. Waelbroeck: Judicial Protection in the European Union, Kluwer Law International, Netherlands, 2001, p. 173 or Wojciech Sadurski, Adam W. Czarnota, Martin Krygier: Spreading Democracy and the Rule of Law?: The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-communist Legal Orders, Springer Publishing Company, UK, 2006: p. 39)

[12] Supra note 9
[13] Supra note 10, para. 272
[14] Supra note 10, paras. 277-281
[16] Ibidem, paras. 281-282
[17] Ibidem, para. 283
[18] Ibidem, para. 285
[19] Ibidem, para. 316
[20] Ibidem, para. 323
[22] Ibidem, para. 321
[27] Supra note 9
"Reasonable” Grounds for Name Change through Administrative Procedure

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Abstract
Changing family name or forename is that operation of replacing them or only one of them at the request of the interested person with another one through an administrative decision. Regulation of name change is in Government Ordinance no. 41/2003 on acquiring and changing the names of individuals administratively Just because the name is an attribute for identifying individuals in social relations and in the family, it is clear that the social interest requires that the name should be constant and not necessarily unchangeable.

Keywords: name, administrative change, reasonable grounds, regulation.

Preliminary Issues

According to art. 85 of the new Civil Code, "Romanian citizens may obtain, under the law, the administrative change of surname and forenames or only one of them." Changing family name or forename is that operation of replacing them or only one of them at the request of the interested person with another one through an administrative decision[1]. So, unlike the name modification, which leads only to last name change, the administrative change of the name can see both the last name and the first name[2].

The administrative change of the name, unlike the family name modification, is not supposed to replace it as a result of changes in the status of the person [3], but its replacement is based on solid grounds expressly regulated. The administrative replacement of the name occurs only on request, once again limiting the change of surname of the modification of the surname. In the case of name modification, its replacement is not conditioned by any expression of will of that person in such a direction [4].

In Roman law, the name change was possible unless the change would have been fraudulent. This possibility was preserved in the Middle Ages, with some
restrictions: craftsmen they could not change the name when it served as trademarks; notaries could not change neither their name nor their normal signature without an authorization. Gradually monarchy has increased control in this matter, tending to turn a social institution into a police one. Thus, in the old France there were settled laws like this: no citizen will carry a different forename or surname than that the one established by his act of birth, and those who forsake them will be held to retake them [5].

The first national law governing the whole name[6] issue is the "special" Law from March, 1895, which offers concrete solutions for different situations, not containing "scattered provisions " [7] like the Code. Due to legislative provisions that were void until then it draged in serious problems. There were some foreigners who carried on a trade in a corner of the country, they went bankrupt, therefore they went to another corner of the country and Romanized theirs names, changing it completely, because there was no relative formality to change the name. So Rosenfeld changed into Rosetti, Rosenzweing into Roznoveanu and Braustein in Brateanu. Although this law was fought with great talent by Delavrancea Barbu it was, however, adopted to meet the needs of those times[8].

According to art. 1 para 4 of the earlier said law, anyone could take any name, the only condition being that you had no right to take a historical name. But what is a historical name? Nicolae Titulescu stated that historical names are not boyar’s names, but it must have done something in history, not being enough to have exercised only the title of a boyar. Following the researches undertaken, Barbu Delavrancea said once with the name law debate, that there were only 130 historical names for Moldavia and Muntenia, the other names being boyar’s names. While nobility was considered just a function, aristocracy sprang from an ancestral right, based on historical facts[9].

It is the principle that an individual should not be able to change family name (or Christian name) arbitrarily but only by its will. Just because the name is an attribute for identifying individuals in social relations and in the family, it is clear that the social interest requires that the name should be constant and not necessarily unchangeable [10]. In addition, the legality of the name requires that any change in the family name (or first name) can be carried out only when and as provided by law [11].
Regulation of name change is in Government Ordinance no. 41/2003 on acquiring and changing the names of individuals administratively, which expressly repealed Decree no. 975/1968 concerning the name. The right to request the change of name of the individual is recognized by art. 4 of O.G. No.41 / 2003, which provides that: the name can be changed administratively. The statement used in the art. 3 is similar to that used in art. 85 of the new Civil Code. Art. 4 to 21 of O.G. No.41 / 2003 regulates uniformly both the change of last name and of first name. Moreover, through the application, the person concerned may request either a change of surname and forename, or only the change of one of the two. In the following we are going to relate to the change of the name generally, taking into consideration, especially, the reasons that make possible the change of the last name.

The administrative procedure of the name change is regulated by art. 5 to 19 of O.G. no. 41/2003 and art. 106 to 114 of the Methodology on the implementation of the provisions on civil status, approved by H.G. no. 64/2011. Could obtain the administrative name change Romanian citizens, whether they have or not their residence in Romania [art. 4 para. (1) O.G. no. 41/2003 and art. 87 para. (3) the of the Methodology for implementation of the provisions on civil status] but also stateless persons which have their residence in Romania (art. 5 of the O.G. no. 41/2003). Per a contrario, stateless persons not having their residence in Romania and foreign nationals would not have this right even if the latter have their residence in Romania [12].

„Reasonable” Grounds for the Administrative Name Change

Cases for the administrative change of the name are expressly provided in O.G. No.41/2003 [13]. While article 4 of Decree no. 975/1968, was only content to provide that the name change could be obtained for solid reasons, without providing further explanation in this regard, the Government Ordinance no. 41/2003 considers solid the grounds that are provided by article 4 which contains an illustrative list in para. (2) letter a) to j) and para. 3. That we are in the presence of an illustrative list it results from the elaboration of art. 4 para. (2) letter m), which refers to other similar justified reasons[14].

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Although the paragraph (2) states that "are considered reasonable" requests for the change of the name where it contains the text of the law, and by para. (3) it provides that "are also considered justified" name change requests in the cases listed in its content, there is no difference of legal regime as the application is based on reasons provided by one or other of the two paragraphs. Separate listing of cases contained by the two paragraphs of article 4 can be justified by the fact that the situations provided in para. 3 regard specific cases related to various situations of civil status change and aimed, mostly, removing names change which occurs in such situations. Next we analyze the cases provided for in paragraph(2) of article 4.

According to art. 4 para. (2) of O.G. no. 41/2003, based applications are considered for the administrative change of name in the following situations:

a) when the name consists of indecent expressions, ridiculous or transformed by translation or otherwise; It should be noted that art. 15, para. (2) of Law no.119 / 1996 on civil status, republished in the Official Gazette no. 339 of 18 May 2012, imposes civil status officer the legal obligation to refuse any entry of name "composed of indecent, ridicule words". This was the only reason expressly stated in Decree no. 975/1968, art. 9, para. (2) and provided that the request for change of name was exempt from disclosure in this situation, aspect provided and by the current regulation. In addition, the ground above presented discusses the correlation with art. 20 of the O.G. no. 41/2003 on name retranscription. Transforming name by translation is the result of a mistranslation [15] of it in another language or from another language in Romanian, which may be corrected only by the name change, whereas in the case of faithful translations it is applied, on request, the name retranscription procedure provided for by art. 20. Also, to be in the presence of a transformation name otherwise, that is a reasonable ground for a change of name is necessary that this "other way" to be different from those provided by art. 20 para. (1) [16].

b) the person concerned has used in the profession, the name wants to obtain proving its use, and the fact that he is known under this name in the society; This legal provision brings into question the imprescriptible name character. So we can say that prolonged possession of the name in certain circumstances (to be in the profession use and under this name the person is known in society) may give the holder the right to
acquire it. However, using the name of the profession exercise must be for a longer period, specifically to coincide with the profession exercise over time; and this use must be continuous and that the application be successful, the person must have been known by that name in society [17]. Ovidiu Ungureanu and Carmen Munteanu considers as provided above mentioned unfulfilled if the time is short and so the person could not make themselves known under this name in society. In other words, even if the condition of permanence is fulfilled, the name change request would be rejected. They concluded by saying that if the name cannot be lost through long disuse, it can be acquired under certain restrictive conditions (through acquisition); individual and social interests lead to this solution [18].

On the other hand, the regulation stated above provides the possibility of professional pseudonym transformation into a name. This could create confusion in this matter. In addition, professional use of the name is specific to individuals exercising a liberal profession (lawyer, notary, doctor, architect, bailiff, etc.), but the law prevents the exercise of these professions under cover of a pseudonym and oblige those concerned to use the name (real) [19]. By the pseudonym we understand the name chosen by the individual volunteer, under which it wishes to pursue a legal activity. Only Law no.51/1995 (republished in the Official Gazette, Part I no. 98 of February 7, 2011) on the legal exercise of the profession of lawyer also includes rules on the professional use of the name and result of its content is that is excluded the exercise of this profession under cover of a pseudonym. The normative acts regulating the exercise of other liberal professions excluded indirectly the previous possibility presented. As a result, an individual authorization for the exercise of such occupations involves first identifying him on the basis of civil status documents and other official documents such as studies, as they appear under their real name, thus being excluded exercising profession under another name [20].

Therefore, the regulation contained in art.4 para. (2) letter b) is applicable for those individuals who are active in the literary, artistic, religious areas, or others like this, where the use of pseudonym is really widespread. This situation should be limitative interpreted, since is only about the name used to perform a professional basis,
otherwise it would have reached the imprescriptible legal character of the name expressing its acquisitive aspect [21].

In addition, Eugen Chelaru believes that the name referred to the legal provision cited is a false name, the person never acquired it legally and that is different from his real name. Under this name the individual has conducted work and is known not only in the field of activity concerned, but also in society in general. [22] The law regulates such pseudonym transformation in name, operation possible if the conditions set out above, are fulfilled. Since the establishment of these conditions it results that not every person can ask the pseudonym change into name, but only one who’s true identity was not known to the public. It retains the existence of negative conditions, namely that the use of that name in the course of that person has not usurped the name of another person, so it could be possible to create confusion. Given its restricted scope and existence of legal regulations pseudonym (the right to express nickname is regulated alongside other non-property rights in Law No.8 / 1996 on copyright and related rights) express doubts regarding the need and usefulness of setting this name change case [23].

c) when the officers of civil status carelessness or by ignorance of the legal regulations made wrong entries in civil records or were issued civil status certificates with false names, which were issued under other acts ; This provision should be correlated with the provisions of the Law no.119 / 1996. So from art. 9 and art. 43, it results that the registration form that records marginal mentions on civil status (in civil records) is performed in the event of change of civil status of the person and in other cases provided by law. As a result, they will enter mentions on acts of birth / marriage or death in situations such as: a) establishing parentage by acknowledgment or final and irrevocable court consent on wearing the name; b) contesting recognition or denial of paternity; c) marriage, dissolution, termination or annulment of marriage; d) adoption, dissolution, termination or annulment of adoption; e) loss of or acquire of Romanian citizenship; f) change of name; g) death; h) rectification, completion or cancellation of civil status or the information placed on them; i) change of sex after a final and irrevocable judgment [art. 43 of Law no.119 / 1996].

Some of these changes in civil status, such as death or termination of marriage by death, have no effect on the name, so they are not part of the case governed by art.
4 letter c) Government Ordinance no. 41/2003. Because the order specifically refers only to "mentions" there are not a part of this area any form of drawing up records of civil status [24]. It should be noted that any mistake committed by officers of civil status in situations in which art. 4 para. (2) letter c) disposes, whether due to carelessness or ignorance of legal regulations, will be directed compulsorily by one of the methods covered by Law no. 119/1996, republished: cancellation, modification or amendment of civil status and mentions on them, which is performed only on the basis of a final judgment [art. 60 para. (1)] or by rectification of civil status and mentions on them, which may be ordered by the mayor of the territorial administrative unit that has kept the act of civil status [art. 61 para. (1)].

In addition, the provision under consideration should be seen in close connection with the institution of cancellation, rectification and completion of civil status and mentions on them, which are regulated by Law no. 119/1996 and Methodology for the uniform application of the provision of Law no. 119/1996, published in Official Gazette no. 151 of 2 March 2011.

d) when the person concerned has his family name or surname consisting of several words, usually combined, and wants to change it; In this case the name change is justified when a person has a name consisting of several words and wants a family name or a simple name, thereby giving away one or more words.
e) when the person has a surname of foreign origin and required to wear a Romanian name; In order to achieve rapid integration of foreigners in Romanian society, the law supports those who have acquired Romanian citizenship.
f) the person has changed the name of foreign origin in a Romanian name, administratively, and wants to return to the name acquired at birth; Eugen Chelaru states that the return should be made necessarily at the name acquired at birth and not the one worn from the first changes, which may be that acquired by marriage or otherwise [25].
g) when the parents changed their name by administrative means and children required to wear a common family name with their fathers; It takes into account the situation where parents have a common name, different from that of their children. The common name must be the result of the parents name change administratively. Changing the
surname of the parents doesn’t impose automatic change of surname of children. The same results from art. 8 par. (1) of O.G. no. 41/2003, which states that the change of surname of the minor may be done concurrently with the name change of his parents or, for good reasons, separately. Reasonable grounds covered by the provisions quoted above as to whether the separate formulation of the two requests and not reasonable grounds that justify the name change request that are provided for in art. 4.

h) when the person required to wear a common family name of other family members, a name that has been acquired as a result of the adoption, maintaining the name at marriage, the establishment of parenthood or of previously approved name changes about administrative; This supports the idea of a traditional family unit, so as to offer those who are in family relationships that flow from marriage, kinship or adoption to be able to adopt a common family name [26]. O.G. no 41/2003 does not provide its own definition of the concept of “family”, so you will need to refer to the concept of common law legal family, as it is configured by the provisions of the new Civil Code. As the Family Code repealed with the entry into force of the new Civil Code, the current regulation does not contain a definition of family and uses this notion in a limitative or large way. So of art. 258 of the new Civil Code, whose marginal denomination is “family” [27] it results that the family in the limitative sense, is made up of husband, wife and their children. At the other extreme is art. 516 of the new Civil Code, which establishes the maintenance obligation between former spouses, which leads to the conclusion that relations between them are treated as family relationships [28].

i) when the spouses during the marriage agreed to wear both surnames combined and they ask to change it administratively, opting for surname acquired at birth or by one of them choosing to return to their names before marriage; The couple have a common family names if at the marriage declared, whenever possible option provided for in art. 282 new Civil Code, that they will wear during the marriage a common name, which may be the name of one of them or their names combined[29].

j) whether the person concerned provides evidence that it was recognized by the parent after the registration of birth, however, failing to go to court for approval of his family name in life, there is no option to acquire the parent than by administrative means; Government Ordinance no. 41/2003 it covers only children born of unknown parents,
who either established their lineage to one of the parents, after registration of birth, or that after the establishment of parentage from the first parent and have established and compared to the second parent, and children born out of wedlock, with filiation determined on birth registration to one of the parents, who subsequently establish their parentage and to the second parent. Establishing parentage should be by recognition, not by court order because otherwise the court would have had the opportunity to rule on an application for a declaration of wearing name, according to art. 438 of the new Civil Code.

From art. 450, in conjunction with art. 449 new Civil Code it results that, as a rule, establishing the name of the child born out of wedlock is made with the recognition of his parentage by one or both parents. If filiation has been established first to one of the parents the child took his name and whether filiation is established and subsequently to the second parent, parents [30] may agree to modify this name. In such situation, the child would bear the surname of the parent to whom filiation has established later or combined name of his parents. In case of disagreement between parents guardianship court decides. The action for the declaration of wearing a certain name is imprescriptible since it hasn’t a patrimonial character. Because the action requiring the wearing of the parent’s name is imprescriptible and can be formulated including against his heirs it is believed that the name change through administrative means is only possible if that parent died heirless[31].

k) when the surname worn is specific to the opposite sex;
l) when the person was allowed sex change by final and irrevocable court decision and required to wear an appropriate name, with a forensic document showing his/her sex;
m) such other justified, well-grounded cases. From drawing art. 4 para. (2) letter m) that we are in the presence of an illustrative list.

CONCLUSIONS

The importance of this legislation is that it offers greater flexibility to change the name administratively. In addition, the legislature explained where the application name change is justified compared with the old regulation (Decree no. 975/1968) which contained only a general formula (reasonable grounds).
References:
The authorization regime in passenger transportation under the laws of the Republic of Moldova

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Abstract
Passenger road transportation in Republic of Moldova is carried out in two ways, by regular and occasional services. Road transport operator shall transport by scheduled services in local traffic, regional, interdistrict, international or municipal only on the basis of authorizations and road transport services by irregular (casual) shall be based on Interbus book and Roadmap book. The public authority responsible for issuing authorizations, Roadmap book and Interbus book is Administrative Authority “National Road Transport Agency”. The documents making road transport regular and irregular passengers are acts of strict nominal records. Failure by road transport operators of the conditions set out in the transport documents or activity without authorization of road transport, shall be penalized in accordance with the provisions of the Contraventional Code and Criminal Code.

Keywords: road transport operator, transport authorization, Interbus book, Roadmap book, regular and irregular transport, timetable, transport services in national and international traffic.

Concepts. In accordance with the Code Road Transport of the Republic of Moldova [1], the authorization of road passenger transport regular services is the document certifying the right haulage operator to carry out road transport people surcharge regular services in national and international traffic on a particular route according to the preset timetable and program of road, during its term (Article 5). The authorization is an act of strict registration (form), which is awarded the series and number; it is a nominal act, which cannot be transferred another carrier (Article 38 paragraph (19) and Article 39 paragraph (2)). The term of validity of the authorization is 8 years (Article 38 paragraph (16)).

Road transport authorization of persons by regular services shall be issued only for the routes included in the programs of road transport. According to the Code of road transport, road transport program is the program that sets routes and routes needed, graphs of circulation, the heads of the route, bus stations, public stations, the required number of vehicles and their minimum capacity to carry out road transport surcharge
people regular services (Article 5). In the Republic of Moldova there are five types of programs of road transport: a) local; b) municipal; c) district; d) interdistrict and e) international (Article 33). The development, approval and amendment interdistrict programs and international road transport is performed by the central body [2], the district – by the district councils, local – by local and municipal – by municipal councils. In order to correlate interdistrict road programs with the district, approval and modification is made only after obtaining the positive opinion of the specialized central body (Article 35).

Road transport of persons by regular services in local, district, interdistrict and municipal traffic. The passes to road transport of persons by regular services shall be awarded by competition, in public meeting, by commissions specially designed. Competition committee on awarding of regular road transport is established, according to competence by the central body, local councils (villages, communes or city), municipal or district. If a route has been filed for a single request, the race is awarded road transport operator respectively. If several requests have been submitted, transport operators will be based on scores they shoot a route is assigned to the applicant who will meet the highest score (Article 38). The procedure for certification of road transport operators, their evaluation criteria and scoring methodology laid down in Regulation road transport of passengers and luggage.

Road passenger transport by scheduled services in international traffic is carried by domestic carriers based on the authorizations of road passenger transport by scheduled services in international traffic, issued by the Administrative Authority “National Road Transport Agency” (AA “ANTA”), a specialized central body decision, as well as authorizations to end and transit issued by competent authorities of other countries (Article 39 paragraph (1) of the Road transport code). In order to open a regular international passenger routes, the carrier must first identify a partner carrier in the country of destination, to sign agreements on cooperation (for making transport in parity). Parity gives certainty that passes will be carried out without interruption, because in exceptional cases (accidents, bus failures, natural disasters etc.), the foreign partner steps in to save the situation [3]. Partners must sign a number of documents, such as: time schedule, route scheme, working conditions and rest of drivers, tariffs, on
the basis of which concerned ministries in the Republic of Moldova and of the member state of destination shall issue authorizations for the route required. If the route crosses the territory of other states, will require authorization for passage.

Opening new international routes, modification or closure of existing ones shall be made by the decision of the Ministry of Transport and Road Infrastructure of the Republic of Moldova (MTRI) in collaboration with the ministry in partner countries. Currently, the Republic of Moldova has concluded bilateral agreements on international road transport of passengers with multiple states, such as Romania, Ukraine, Bulgaria, Denmark, Lithuania, Czech Republic, Armenia, Netherlands, Germany, Uzbekistan, Kazakhstan, Azerbaijan, Turkey, Belgium, Estonia, Switzerland, Spain, Slovakia, Macedonia, Slovenia and Poland [4].

The transport system based on the bilateral agreements has advantages, because any company can obtain in their own country authorization for access to the public road use of another state. Periodically, the contracting states shall determine the conditions of authorization, task being on joint committees (Moldovan-Romanian, Moldovan-Ukrainian etc.) that negotiates the exchange of authorization (pct.1.1 (a) of the Provisional instruction on how to release and evidence unit authorizations for international road traffic, approved by order issued by MTRI no. 11 of 16.01.2010) [5]. Issue of permits for the transport on regular services in international traffic shall be made for payment, the size of tax being laid down in the Annex no. 3 to the Road Fund Law nr.720/1996 [6]. The authorization may be used only by the carrier in whose name it was issued, that can not be transmitted to another person. Moreover, the authorization is part of the registration number of the vehicle with which to perform route that reason, take more permits carriers (4-5) to each vehicle individually. The authorization of road passenger transport by scheduled services in international traffic (including transit) is approved by order MTID no. 3 of 26.01.2015 and the control of the use of the authorisations shall be made by AA "ANTA" [7].

In order to get the license for carrying out scheduled passengers in international traffic, the operator of road transport operator shall submit to the address MTID a folder that will contain: (a) the application, in the form determined by the specialized central body; (b) copies of the certificates of registration of road vehicles required for carrying
out courses; c) the schedule of movement proposed, with an indication of the places of embarkation/disembarkation of persons; d) the scheme route, with an indication of the places of passage of borders; e) duration of management that would allow for compliance with control of driving and rest periods of their drivers auto; f) the contract, in Romanian, concluded with a foreign road transport operator in the state where the other end of the route in case the international or bilateral agreements provide for the making racing at par, for performing flights on the requested route; g) the tariff for transporting people, coordinated by both road transport operator partners (Article 39 paragraph (7)). Receiving the dossier, MTRI shall submit to the competent authorities of the member of destination and transit decision concerning the opening stroke and relevant copies of documents, in accordance with the provisions of the agreements and international conventions to which the Republic of Moldova is a party.

The basic requirement imposed on the transport operators to obtain authorizations for regular road transport passengers in international traffic shall consist in the possession required number of motor vehicles. For this purpose, the applicant must have owned or rented by coach, written on behalf of the undertaking at the Department for the registration of transport and qualification of drivers of the Ministry of Information Technology R.M., as well as in the information system automated search “The Car” [8]. We note that according to the Code of road, central body may reject the file of permit if the applicant is unable to provide off road vehicles owned, comfort, or if the number of such vehicles is not sufficient (Article 39 paragraph (10) and (11)).

There are problems with the system of work and rest periods for drivers. Importance of the problem is explained by major responsibility incumbent on the driver's seat for the life and health of passengers during travel [9]. The vehicles are considered high-risk sources and according to art.1410 of the Civil Code, persons whose activity is linked to the source of increased danger (operation of vehicles) are required to repair the damage. This justifies the introduction of special requirements for drivers, such as age, possession of driving license and a driver's sovereignty and a driver in international traffic, obligation to respect the regime of work and rest [10].

In accordance with Article 294 of the Labor Code, working conditions and the rest of the employees whose work is linked to directly from the movement of means of
transport shall be determined by normative acts, as well as international agreements to which the Republic of Moldova is a party. By analysing the provisions of the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) of 01.07.1970 [11], from this we can infer that the period averaging daily driver at the steering wheel must not exceed 9 hours, and after 4 and a half hours of driving, the driver must make a break of at least 45 minutes. As an exception, permit twice a week daily driving period should be extended for up to 10 hours (Article 6 and Article 7).

With regret, in the Republic of Moldova is missing a normative document which should apply the regime of work and rest periods for drivers. In accordance with section 3.3.2 of Regulation on ensuring road safety at enterprises, institutions and organizations engaged in transport of passengers and goods no.9/12 of 09.12.1999 [12], working conditions and drivers’ rest periods shall be drawn up in accordance with the rules of labor legislation and regulation with regard to working hours and rest time of drivers. The paradox is that although legislative acts refer to the Regulation on working time and rest of drivers, such a law into national law is not yet approved.

National law does not require equipping road vehicles with tachographs, which is why the current mechanism for tracking and control of working time and rest of drivers in Republic of Moldova is inefficient. In accordance with Article 144 of the Code road transport, record of working time and rest periods shall be carried out by each member of the crew, in writing, on the record sheet, using appropriate graphic symbols and with indication of the periods of driving and rest. For comparison, in the majority of member there is the obligation equip vehicles with digital tachographs, and written record on record sheets is not practiced since 1990.

Practice proves that drivers often violate the regime of work and rest while performing international routes traffic over long distances. For example, to perform the route Chisinau - Paris, in accordance with the rules AETR road transport operator must lead to five drivers, a condition difficult to observe for domestic carriers. Combating this phenomenon becomes difficult to be carried out in reason that transport operators and drivers reach a mutual consent, in which the operator wants to hire as few of the employees, and the driver, to receive his full remuneration of completion of the journey
In the European Union such a problem does not exist, because road transport of passengers is accepted at distances relatively small, as an alternative is to use air transport [14].

Some difficulties for road transport operators arising in connection with compliance timetable, which must contain the starting point and destination, are provided halts settlements, parking duration, distance, time to destination and starting points crossing the border. The graph need to be prepared accurately and the drivers do not admit delay, otherwise, the smallest deviation (even up to 20 minutes) may be penalized by the control of European Union states. Because of unfairness traffic graphs, and the procrastination border state, drivers are not within the limits driving time and timetable, and control bodies fines route. Consequently, many road transport operators have given up regular passenger routes, opting for irregular routes that have fewer formalities.

Road transport of passengers by occasional services (irregular). Road transport of passengers by occasional services in international traffic shall be performed in accordance with the Agreement on the international occasional carriage of passengers by coach and bus (Interbus Agreement) signed in Brussels on 28.09.2000 and implemented in Republic of Moldova by Government nr.456 of 24.04.2007 [15]. Occasional passenger road transport vehicles that have the number of seats between 6-9 shall be carried out on the basis of a membership roadmap. Interbus and Carnet Booklet roadmap issued by A.A. “ANTA”.

Interbus Agreement allows transport subject to certain conditions, namely: a) behind closed doors-the same group of passengers is transported towards the tour and return; b) journey round loaded and return empty; c) to travel round the empty and loaded return. Compliance with such requirements is ensured by the National Police Inspectorate, the Customs Service of the Republic of Moldova and A.A. “ANTA”.

From the structural point of view, the Interbus Carnet is comprised of a set of sheets to be filled in before starting drivers in accordance with the provisional Statement concerning the release and use of Carnets with roadmaps (Interbus), approved by order No. 43 of MTID 20.02.2012 [16]. The Interbus Carnet shall be attached to the contract of carriage concluded with group travel and proof of payment in company accounts to
travel fee. The practical problem is that the carriers to use Interbus and roadmaps for regular routes, so occasional transport acquires the character of regular service, in violation of the provisions of the Interbus Agreement.

By 2014, the occasional carriage of passengers towards ex-soviet states (Russian Federation, Ukraine, Belarus, etc.) to be carried out on the basis of a membership roadmap issued by A.A. “ANTA” in accordance with the provisions of the Provisional Instruction concerning the issue, use and control of the complete book of the journey form (CFP) for the international transport of passengers, as approved by the order no.42 of MTRI by 20.02.2012 (repealed) [17]. Subsequently, by order no.45 of MTRI by 27.03.2014 regarding changes to the procedure for issuing a membership roadmap, it was established that the irregular passenger transport towards ex-soviet states will perform under Interbus. The book Roadmap needs to be issued only to individuals engaged in the carriage of passengers in international traffic motor vehicles with a carrying capacity of embarkation is 6-9 places [18].

**Conclusions and recommendations.** 1. Carriage of persons in the Republic of Moldova shall be carried out in two ways, through regular or occasional services. Road transport operator can perform operations on regular services in local traffic, district, interdistrict, international or only in the core of municipal permits. The service road by irregular (casual) applies Interbus and booklet Roadmap. The public authority responsible for issuing authorisations, the Interbus Carnets and Carnet roadmap is A.A. “ANTA”.

2. Authorisations to carry out regular passenger road transport are rated acts strictly accountable. Failure by road transport operators of the conditions stated in the permit activity without authorization transport vehicles, constitutes a contravention and is punishable by a fine according to Article 197 paragraph (4), Article 197 (1) paragraph (2) and Article 263 paragraph (4) of the Contravention Code of the Republic of Moldova.

3. The legislation contains certain inconsistencies of terminology. Article 197 (1) paragraph (2) of the Contravention Code refers to “route license certifying the right to transport on regular routes”, but under the law of transport, document called “transport authorization for carrying out regular passenger routes”. The explanation is that the Contravention Code is not brought into line with the provisions of the Code of transport.
road and did not take into account that MTRI order no.41 of 20.02.2012 on “The provisional approval of Instruction on how to issue and use permit activity the route” [19] was repealed.

4. Interbus system is detrimental to carriers providing regular transport services. Practice proves that the holders of the transport of passengers by Interbus violation of the Interbus Agreement. By essentially Interbus card can only be used for making custom routes. De facto, holders of these cards on order simulates transport, systematic efetuând regular routes in Romania, Ukraine, Russian Federation and European Union countries. Consequently, road transport operators who work legally, have a reduced boarding share, do not cover costs and reach insolvency process. The only solution in this case would be the establishment by MTRI a moratorium on the release of Interbus books for the changes to be made to Regulation auto transport of passengers and luggage nr.854/2006.

The main condition imposed on road transport operators to obtain Interbus book consists of holding a bank account 5000-9000 euros, but this, admittedly, does not contribute to solving the problem. Solution would be to introduce enhanced requirement to obtain books Interbus, the main condition being that serve the road transport operator, the request Interbus book at least 3 regular routes in national or international traffic and a training activity for 5 years. In this context we propose to amend Regulation road transport of passengers and luggage nr.854/2006 by exposing paragraph 59 as follows: “The occasional international transport (based on the book Interbus) can be performed only by road transport operators which were awarded to maintenance at least three (3) regular international passenger routes in national or international traffic and a stint working in the field for at least five (5) years”.

5. Road transport operators carrying out international routes under the Interbus carnet should be obliged to hold digital tachograph for each vehicle, as well as the graph and the rest of the drivers, completed for the entire distance of the race. Before the race start, the vehicle to undergo technical and testing drivers to undergo medical checks. Note that currently, the rules are observed only by road transport operators carrying out regular routes, while the carrier voyages under the Interbus carnets, daily threaten the life and health of passengers.
6. Taking into consideration the practice of the European Union, we recommend that at the opening of the regular international passenger routes to be required the written consent of all road transport operators on the same route that hold authorisations for regular services road transport in international traffic.

7. We suggest that regular international road transport permits travelers to be granted to a limited number of carriers that have experience working in the transport of passengers router for at least seven years and have material and technical base. Carriers that do not meet these requirements are advised to enter into contracts with carriers authorized under the name of their company to transport passengers. The scheme works effectively given the European Union, where road passenger transport network is owned by “Eurolines”, “Deutsche Touring”, “Atlassib” etc., transport companies notorious guaranteeing comfort and security of passengers.

8. In the current version, article 153 paragraph (c) of the Code establishes the obligation of holding road transport by road transport operators of at least 1/3 of road vehicles with proprietary or financial leasing. Taking into account that this norm put in financial difficulty, we encourage transport operators to amend it by excluding the proportion of 1/3, with road transport operators the obligation to hold property or leases at least 2 (two) vehicles.

9. We recommend the exclusion of the use of certificates of conformity, since their presence in the legislation is complemented by other similar document, called the report the technical verification of the vehicle. At the same time, we propose that the transport manager (s) and driver in international traffic (it shall be valid for the driver) should be issued for a term of 5 years. Moreover, certificates of professional competence for carrying out international passenger routes to be issued only to drivers who hold a job in the field of road passenger transport in national traffic of at least 3 (three) years.

References:


[17] Instruction provisional release, completion and monitoring of Carnet Roadmap (CFP) for the international carriage of passengers, approved by Order no.42 of 20.02.2012 (repealed) // Official Gazette of the Republic of Moldova, 2012, nr.46-47;


Perspectives of the Administrative Regionalization of Romania

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Abstract
The study analyzes the possibilities in which the intermediate administrative level, namely the region, may function, as well as the evolution of the regional development institutional framework in Romania, given the current intensive discussions on a possible administrative regionalization of the country. There have been also considered several directions of reflection on the results that the administrative regionalization may have. Furthermore, the study includes various aspects of the existing administrative regions in different European countries.

Key-words: regions, administrative regionalization, local communities, regional development, regional strategies.

1. Introduction
From the very beginning, it is necessary to mention that the term “region” has several meanings, depending on the context of analysis. The word "region" comes from the Latin word "regionem" and it is found in most European languages with the meaning land, expanse of land with boundaries and with more or less accurate characteristics. But the common element of all definitions is the idea of a space representing an entity, so that one can talk about the region as a unit.

Firstly, from a global perspective, the term "region" means a “geographical area” which includes several countries (such as the Balkans, Baltic Region).

Secondly, in terms of regional development, the region is seen as a “zone”, an area within a country, which is geographically homogeneous, with common or similar cultural traditions, ethnic characteristics, etc.

Thirdly, the term is used to denote the association of the regions within the European Union member countries, in order to jointly achieve one or more of their objectives (the so-called Euro-regions). [1]

One may observe that, when delimitating the boundaries of a region, there can be used three categories of criteria: the homogenous criterion, the functional criterion and the administrative criterion. The downside is that administrative boundaries are not the same as the boundaries imposed by economic criteria, in this case the political
decision in the region being more difficult to implement. From the perspective of European development policies, the region designates a territorial division of a country, which may be administrative or not.

The term “region” suggest a functional and relational entities related to governmental and non-governmental efforts to determine the development of national communities through more efficient social policies. Thus, the “region is a constituent of social progress, representing [...] a fundamental space type congruence of political, social and economic processes” [2].

Therefore, the regions are “entities created by the force of relationship: economic, administrative or symbolic/cultural maintained against central state authorities” [3]. Viewed in this way, the degree of regionalization will always depend on how the central power will understand or accept to delegate some of its authority to the sub-national level.

2. Conceptual distinction between “development region” and “region”

It should be noted that, in the historical evolution of the administrative organization, the concept of “region” can be defined as a territorial unit, which does not identify with the concept of “development region”, the basic structure of the regional policy of the European Union. [4] The distinction between these two concepts results from their defining elements. Whereas the development region constitutes strictly on the basis of economic criteria, the region as a territorial unit (existing in the administrative structure of Romania during 1950-1968) was formed on administrative criteria.

As one could notice, in different stages of Romania’s evolution the administrative territorial structures had different names and were organized on one, then two or three levels, having direct relations with the central power of the state or relationships that were mediated by other territorial structures, created by the state. In all these cases, legal relations towards the state represented relationships of hierarchical subordination, the state maintaining full power over the administrative units created on its territory [5].

The doctrine used certain concepts and terms such as “administrative-territorial organization”, “administrative-territorial improvement”, “administrative-territorial reorganization”, “administrative-territorial division” etc. It was considered [6] that the notion of “administrative-territorial organization ” is the primary action that aims at
constituting several administrative units within the state, for the first time, without paying attention to the number of levels or to the relationships between them. Any other further intervention over this primary organization can be considered either an "improvement" or an administrative "reorganization" of the territory.

An analysis [4] of the regulations on the administrative-territorial organization of Romania has revealed that the notions of “county” and “region” were concepts that defined the administrative-territorial units of Romania, according to the regulations adopted during its historical evolution.

Assembly of the Regions (AER) defines regions as “those political entities positioned on the next level bellow state that has certain powers exercised by a government that is accountable for his actions before a democratically elected assembly”.

Thus, elements to be taken into account in defining a region must to identify territorial issues; must to help identify appropriate locations for certain types of actions for funding, applying differentiated taxes, cooperation or partnerships, etc.; must be based on substantiation made by regional development experts, decision makers and citizens in the regions.

The regional level [7] as “an administrative level having its place in the administrative hierarchy of the Member States in a position immediately below the central level” i.e., “echelon immediately below that of the state”, echelon that depending upon the competences that have been granted (if centralized) or who gave them (in federal systems), manage administratively and politically a territorial community whose size varies widely [8]. A definition are in The Community Charter of Regionalization [9], where the European Parliament, 1988 gives also a definition, in Article 1, stating regionalization “as a territory forming geographically, a net unit or a similar assembly of territories having continuity, the population have certain common elements and wants to keep the resulting specificity” a various names and the legal and policy title that these entities can receive in the various states - autonomous communities, provinces, nationalities, etc. does not exclude them from the considerations set out in the Charter.

EU member states are invited, "given the will of the people, their historical tradition and the need for efficient and proper administration of their functions - especially in the field
of planning their economic development, to institutionalize regions in their territories (or maintain them, where the case), according to Art.1 of the Charter.”

It is difficult to give a unitary definition of the region, taking into account the characteristics of each country, their cultural traditions, the existing economic and social policies, their legal and institutional systems or the endogenous resources etc. The legislative and institutional framework in the EU member states on the administrative structures and regional institutions involved in the regional economic development also argue the difficulty of finding a full definition of the concept. [10]

It is noticed [4] that, at EU level, the concept of “development region” imposed at the economic level, aiming at a balanced development of all areas, within the European regional policy. Within regional policy, the principles that have been developed are based on economic criteria and are to be considered in all member states, despite some ethnic or political interests. Thus, it is considered [11] that at European level, the EU's global economic competitiveness can increase the diversity of the regions and may even influence a certain tendency towards micro regionalization of some broader macro regions, following the triangular relationship between the main institutional actors, namely the sub-national, national and transnational ones.

The attempt to define the “region” encountered two obstacles in the context of the social and economic cohesion. The former took into account the absence of a clear demarcation of the region, from an economic point of view, the latter was given by the administrative-territorial heterogeneity of the European Community member states. These two aspects led to the decision that, starting with the Treaty of Rome, the word “region” should designate a geographical area, generally considered [12]. Another major change occurred in 1988, with the revision of the regulations on the Structural Funds and the State aid. From this point, areas that are subject to development policies are designed according to the Nomenclature of Territorial Units for Statistics (NUTS). [13] NUTS divisions are based on two criteria, one administrative and the other regarding the number of inhabitants. According to the administrative criterion, the region is “a geographical area resulting from the division of the territory of the EU member state in a finite number of spatial units based on the powers of local authorities.” Thus defined, the region reflects the political will, it usually has a statuary character in the administrative
practice of the member state, it is clearly defined and universally recognized, being relatively stable in terms of division.

In the member states of the EU, NUTS II units, similar to those existing in Romania bear different names: provinces in Belgium and the Netherlands, regions in France, Ireland, Italy, autonomous communities in Spain, Bundesländer in Austria, Regierungsbezirke in Germany. [14]

Within the European Union, the role of the regions has grown significantly, these becoming partners of the European Commission in the foundation, development and implementation of the European policies financed through Structural Funds.

3. Reasons for the administrative regionalization of Romania

It is important to reflect on the idea that regionalization is one of the main features of the contemporary world, because it does not have only a geographical dimension, as it might seem to common knowledge, but also other dimensions - economic, political and security ones - that are interconnected. Regionalization coexists with globalization, which may seem impossible, if there were considered only the most common definitions of the two processes. Moreover, regionalization is closely related to regionalism, to which it is not always in harmony. As a result, the regionalization process proves to be complex and nuanced, which leads to the need of a thorough analysis at the theoretical level.

The administrative regionalization of Romania is one of the topics widely debated by the media, by the experts in the field, and by politicians alike. Currently, it seems that society begins to realize the benefits of a multi-level governance and the fact that this process can bring economic growth of the regions and may contribute to diminishing economic disparities between regions. But there also arises a sensitive, natural question: What will happen if the regionalization process is not achieved efficiently and is reduced to a political decision? The efficiency of this process must be supported by an ongoing dialogue with the representatives of civil society and of the private sector [15].

The regionalization of the national territory, i.e. the creation or de facto acceptance of regions, represents a geopolitical action of strategic importance, oriented by different needs or various political, economic or development interests. [16]
stake here is not their territorial segregation, but the harmonious development of the areas created for socio-economic development [17]. Some regions are deeply marked by their history, so that their specific relationships and attachments are more powerful than the state buildings whose part they are today.

Any administrative-territorial organization aims to increase the efficiency of public authorities activity as well as their initiative and efficiency in public service, to improve the relationship between central and local authorities, particularly with base units, and to ensure better control and more support to the competent administrative units [18]. The general progress of the society is closely related to a proper organization of the territory and of the local government, thus favoring rational placement of public investment in the country and a proper development of different areas (regions) and municipalities.

A possible paradox at the national level is the obvious contradiction between the existence of certain morphological, cultural, economic and historical features that could define regions and a frail assertion of regionalist currents in the public discourse [19]. Originally conceived as a space for economic development, the region strives to gain in Romania too, an administrative dimension. The proposed amendment to the Constitution of Romania, prepared by the Parliamentary Committee constituted in this regard, states that administrative-territorial units in Romania will be the village, the town (city), the county and the region. Like other administrative-territorial units, the region will have elected administrative authorities - regional council and president of the regional council and the manner of their election shall be determined by law. It will have its own budget, patrimony and staff. Regarding the designation of representatives of the region, the legislature should remain consistent with formula established for designating authorities at village, town or county level that means by choosing them directly by the community, and not to opt for the indirect election from among elected local or county. Of course, this should be correlated with duties which will fall after the regional administrative-territorial reorganization because tasks must relate to legitimate authority that has the authority and the place it holds in the institutional architecture of the state [20].

One should also take into account the fact that the purpose of local government reform in Romania, aiming regionalization, is to make it able to fulfill its functions, in
order to contribute to the economic and social development of the country. A strategy of developing regional communities should aim at determining their long-term goals and objectives, at adopting local and regional policies and at allocating resources to achieve the proposed goals, taking into account the needs and wishes of the citizens and the components of the local political system. In the central decision-making mechanism there should be also included the regional and local decision-making bodies.

The administrative regionalization of Romania implies strengthening the capacity of NUTS II regions to sign relevant decisions regarding the content of programmes and of regional development projects, by co-working with all partners that are relevant at the regional level and by developing the potential to prepare appropriate projects and specific measures.

In other words, the administrative regionalization of the national territory must be made for an effective governance and administration and in order to reduce regional disparities. These may be achieved through two courses of action, namely the administrative-territorial reorganization, by creating regional institutional framework for better functioning of public administration, and the reform of public administration, by means of decentralization and simplifying law and administrative procedures for more efficient public services. As a result, the primary mission of future regional institutions shall be to provide public authorities all the necessary tools to design and implement strategies of balanced development. In the long run, the purpose is the modernize the Romanian society as a whole, by reducing the existing imbalances between regions, by linking various government and sector policies at the regional level and by stimulating regional and local initiatives. [21]

Both theoretically and practically, regionalization is beneficial for initiating and providing participatory approach towards local and regional, allowing citizens to participate in decision-making at national level, and to have a picture of the problem to be solved locally. In a system based on decentralization one can speak of social control over the political decision; citizens that have more control over local government exercise a certain pressure on the political decision so that it shall approach regional needs. In case the regionalization process does not take place in several stages, on
several levels, with the support and help of civil society and the private sector, the regionalization of Romania is likely to turn into an administrative chaos. [15]

There are a number of proposals aimed at a possible model for optimizing the administrative-territorial organization made by [22] should be based on central (national), regional (most important, consisting of administrative regions formed on the basis of historical provinces), departmental (county), communities (cities, towns and villages) and sub-community level (administrative districts within cities and hamlets in the villages). Bridging gaps, harmonious development involve essentially new programs, additional financial resources and people trained to implement regional development programs.

As previously mentioned [20], one can appreciate that the utility of regionalization is intrinsic and undoubted; still, the manner in which Romania will perform administrative and/or a social-economic regionalization should be debated. For the success of administrative regionalization, there should be involved the Romanian Parliament, the legislative authority, but also other central and local public authorities. The Parliament has, as the main task, to create the legal framework necessary for the implementation of the regionalization process [23], representing also a discussion forum open to all representatives of the currently existing administrative units [24].

An analysis of the relevant assumptions, launched by specialists indicates that Romania, in a future regional configuration, could be between minimum 8 and maximum 16 regions, but when will be assessed all assumptions it might conclude that the optimum is 12 or 13. It would be preferable, in terms of lower costs, bringing together territories of 2-4 actual adjacent counties to provide a new region. [25]

Functional criteria recommended by teachers and experts [26] who have analyzed the possibilities of future boundary regions are:
1. Spatial extent of the region, to include at least four counties.
2. Accessibility of administrative residence - are preferable circular regions - and the existence of specific infrastructure (international airport European road, rail, etc.).
3. The existence of multiple growth poles within the region.
5. The existence of common interests and problems between counties within the region.
6. The presence of a diverse labor force with skills in several areas to serve as many productive activities within the region.
7. Natural economic resources are sufficient and varied to ensure the diversity of the local economy.
8. Economic competitiveness in terms of economic indicators.
9. High degree of multiculturalism.
10. Demarcation of regions based on the delimitation of the current counties.
11. The capacity of the new structures to take regional administrative skills.
12. The existence of regional development strategies.

One mention that must be made is that the lines between regions are simple formal administrative boundaries, such as the present boundaries of counties. Between regions will not be boundaries in the sense of frontiers. So the phrase “how Romania will be divided” is erroneous; Romania will be not divided into regions, but will be administratively organized in regions (as it is currently administratively organized in counties, towns and villages) [27].

One should also discuss the fact that, in agreement with the subsidiarity principle, the newly created regions must have legal personality, which involves changing the Constitution. Therefore, it appears the hypothesis of an increased bureaucracy by creating new structures, even if it started in parallel with partially overlapped structures, but as long as the duties, powers and responsibilities of each part are clearly defined, this problem is to be solved along the way. In this way, some will disappear naturally, but the decision-making process should go down to the regional level.

4. Conclusions

Considering all these, one can appreciate that the administrative regionalization of Romania is impossible to be effectively achieved in a very short time, e.g. within a year [20]. Discussions and proposals on regionalization should be based on analysis and regional impact studies, intended to prepare the administration for such a complex process. Otherwise, we risk creating new regional institutions without a clear understanding of responsibility and tasks. To avoid a possible regional administrative chaos that encourages clienteles, bureaucracy and corruption, we believe that civil
society and private sector representatives should be involved in decisions on the regionalization process and how it will be achieved. However, the regionalization process should coincide with decentralization [15], which transfers to the regional government decision on tax collection and sharing of resources.

Decentralization triggers major implications in terms of equity, both horizontally - between regions - and vertically - between different socio-economic groups within society. Decentralization is expected to have a positive effect on efficiency [28]. Responsiveness is given by the way in which regional authorities, benefiting from an increased local autonomy, will meet the needs of regional communities. The decentralization activity must be accompanied by the design of development strategies at counties and regions level, by developing their own investment programmes, by improving the efficiency of regional and local government, by finding financial support for activities to be conducted. The key element [29] will be the economic development, in relation to problems and opportunities that are specific to each region, with respect to local development objectives.

As a conclusion of our study, we can conclude that the existence of administrative regions could create the prerequisites for a domestic offer of regional solidarity-based development [19]. Regional development processes will generate much higher absorption capacity and, thus, will increase the absorption of development funds, which are more substantial than in the current system. There are also opinions [15] considering that it is wrong to interpret regionalization as a means to get better absorption of EU funds. In this respect, regionalization should be made in order to have a more effective governance and administration and to reduce regional disparities.

It is nowadays almost universally accepted the fact that the structure and functioning of the development regions management do not allow the emergence of regional projects, inside them taking place a “battle” for financing local or county projects. Surveys on the field and the results of the projects unrolled through these institutional structures have revealed the existence of disparities. The only utility of the current territorial decoupage is of statistical nature, serving Eurostat to define the NUTS II units for Romania. But, even from a statistical point of view, the current grouping of
counties in development regions only masks regional disparities (i.e. between and within counties) [30].

As far as the number of the administrative regions is concerned, from various positions taken by policy makers, there has resulted no consensus on the subject, currently circulating several versions. What should be considered throughout this process is that the administrative-territorial reorganization should not start from the person who will lead the region or from the place where will be the capital of the region, but from principles and values. In this respect, the citizens, as beneficiaries of public administration, need to know why it is necessary to establish a new administrative or bureaucratic level, what the powers of regional authorities will be, on what criteria there will be grouped the current counties in future regions and what changes regionalization will bring to local communities and the benefits for the citizens.

In the European Union “the need for solidarity among people and regions is an accepted principle, kept in an unwritten code, known as the European social model, which combined traditional attempts to promptly secure the highest possible standards of welfare and to adopt distribution policies in order to fulfill them.”[31] In the concerns [32] for ensuring a balanced development of a country’s territory, the issue of disparities in the regional economic growth constitutes a landmark, arousing vivid discussions both in terms of conceptual and methodological approach, as well as in terms of their implications over economic and social practice.

References

[13] Idem, p.44.
Some consideration of legal issues that have generated non-unitary practices in the interpretation and application of certain provisions on the legal regime of contraventions

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Abstract
We have analysed throughout this article some legal issues that have generated non-unitary practices in the application of certain provisions on the legal regime of contraventions, in light of doctrinal, normative and jurisprudential references on the subject, our aim being to reveal as an opinion the legal and legitimate solutions identified for correction.
In this regard, we briefly rendered the Decision of the High Court of Cassation and Justice of Romania no. 6/2015, issued on the appeal on points of law raised by the Ombudsman, on the interpretation of the provisions of Art. 17 of the Government Ordinance no. 2/2001 regarding the legal regime of contraventions, framework regulation in relation to certain specific legal regulations on the matter of contravention liability.
We have also revealed the multitude of changes and additions occurred on Government Ordinance no. 15/2002 on the application of user charge and the fee for crossing the national road network in Romania, commenting, as an opinion, the determination of the continuous form of the contravention therein even after ten years of its publication.
Finally, we highlighted the opinion of the European Court of Human Rights, given in the Case Anghel against Romania - The final judgment of 31/03/2008, regarding the presumption of legality of the contravention report which should be considered reasonably, with the observance of fundamental guarantees - including the presumption of innocence - which protects citizens against possible abuses by the authorities in the light of Article 6 of the Convention.

Keywords: contravention report, appeal on points of law, continuous contravention, presumption of legality, presumption of innocence

INTRODUCTION

We intend to analyse in this article some legal issues that have generated non-unitary practices in the application of certain provisions on the legal regime of contraventions, in light of doctrinal, normative and jurisprudential references on the subject.

From the historical point of view, contravention originates in the French criminal law that established the demarcation of infractions in “crimes, felonies and contraventions” until after 1948 when contravention has been removed from the criminal area of law and placed in an “administrative legal regime” [1].

The French model was also adopted by Romanian law: “contraventions were originally covered by the Criminal Code in 1865 and 1936, which divided infractions in
crimes, felonies and contraventions”; “Decree no. 184/1954 operated a
decriminalisation; contraventions were removed from among infractions and classified
as violations of administrative nature.” [2]

In the legal doctrine numerous definitions of the contravention were formulated
and one of the most complex and complete, in our opinion, is that according to which
“contravention is an antisocial offence that consists mainly of breach of public law, it
may also intervene for breach of other branches of law, but is, in all its aspects, an
institution of administrative law.” [3]

According to Art. 1 of Government Ordinance no. 2/2001 regarding the legal
regime of contraventions, [4] as subsequently amended and supplemented,
“contravention is an offence committed with guilt, established and sanctioned by law,
ordinance, by Government decision or, where appropriate, by decision of the local
council of the village, town, city or district of Bucharest, of the council county or of
Bucharest General Council.”

Also, qualified in the doctrine as “one of the forms of administrative liability”
contravention has been also defined as “the offence committed with guilt that is
provided and sanctioned by law or other regulations and which is a social threat, usually
less serious than infraction [5].”

About the contravention liability it has been noted that “it is just a form of
administrative liability, contravention being currently a manifestation of the
administrative illicit, the most serious form of it” and “its legal regime is predominantly a
regime of administrative law”; “liability for contraventions is not a typical form of
administrative liability, but an atypical, imperfect form”; “therefore, in terms of synonymy
between the administrative and contravention liabilities there are different opinions,
instead there is unanimity of opinion in the sense that the grounds of contravention
liability, the illicit deed that triggers is, is contravention.” [6]

The legal sanctions for contravention are provided for in Art. 5 of Government
Ordinance no. 2/2001 and they are main and complementary. The main contravention
sanctions are: a) warning; b) contravention fine; c) provision of community activities [Art.
5 par. (2) of the Ordinance].
“The application of contravention sanctions is done through individual unilateral administrative instruments which must be in accordance with the framework legislation (GO no. 2/2001) and with special legal regulations on the matter of contravention liability”. [7]

The contravention is established by a report signed by those specifically provided for in the law who define and sanction the contravention, generically called official examiner, according to Art. 15 par. (1) of Government Ordinance no. 2/2001.

On the legal nature of the contravention report, opinions were expressed in literature according to which the contravention report is “the administrative instrument individualizing the unlawful and contravention act”, “a contravention administrative act”, “a unilateral sanctioning administrative instrument”. [8]

The contravention report is “a special administrative instrument, an administrative contravention instrument”; [9] it is “an official written document, being drawn up by a public official, as a state representative. (...) an authentic written document because it produces legal effects without any other formality of approval or confirmation being required.” [10]

Government Ordinance no. 2/2001 provides in Art. 16 entries the contravention report will necessarily include, and in Art. 17 it provides the following cases entailing the annulment of the report: “absence of indications on the full name and capacity of the official examiner, full name of the contravener, and for a legal entity absence of name and premises, of the offense committed and of the date on which it was committed or of the official examiner’s signature”.

According to literature, nullity “is the sanction generally applied to the proceedings concluded without observing the conditions of substance and form prescribed by law” [11], and absolute nullity “occurs for breach of the substantive, essential conditions for the validity of the instrument” and “is characterized by the fact that it sanctions the non-observance at the conclusion of the legal instrument of a rule which protects a general, public interest” [12].

“Moreover, the ruling of the legislator determines the imperative nature of legal norm provision which, protecting the potential contraveners from any abuses of the official examiners, does nothing more but to create the right environment for the
operation of the presumption of innocence as one of the main fundamentals that govern the criminal proceedings and all the more so a contravention". [13]

Regarding the appeals against the report for contravention findings and for the application of the contravention sanction, the court is the one that “will decide on the legality and the grounds of the report and will order the maintenance or cancellation of the sanction imposed”. [14]

The jurisdiction of the court also results from Art. 38 par. (3) of Government Ordinance no. 2/2001 which provides for the replacement by the court of the contravention fine by warning sanction; but the court cannot order a severer contravention sanction, “because it would violate the principle that nobody’s situation may be aggravated in his own remedy (non reformatio in peius)”. [15]

We briefly present hereunder the Decision of the High Court of Cassation and Justice of Romania (HCCJ) no. 6/2015 concerning the interpretation of provisions of Art. 17 of the Government Ordinance no. 2/2001, concerning the lack of indications regarding the signature of the official examiner, that voids the contravention report.

Section 1. The Decision of the High Court of Cassation and Justice of Romania no. 6/2015 - appeal on points of law to the interpretation and unitary application of certain provisions on the legal regime of contraventions

By Decision no. 6/2015 [16], having deliberated on the appeal on points of law, the High Court found the following issues, which we briefly present below in extract.

The issue of law that has generated the non-unitary practice (pt. 1 of HCCJ Decision) in its appeal on points of law brought under Art. 514 of the Civil Procedure Code, [17] the Ombudsman referred to the High Court of Cassation and Justice to rule on the law issue, which was resolved differently by the courts, on the interpretation of the provisions of Art. 17 of the Government Ordinance no. 2/2001, approved with amendments and supplements by Law no. 180/2002, as amended and supplemented and Law no. 455/2001 on electronic signature, republished [18], in terms of official examiner’s signature required for the legality of the contravention report, for contraventions punishable by Government Ordinance no. 15/2002 on the application of user charge and the fee for crossing the national road network in Romania, [19]
approved with amendments and supplements by Law no. 424/2002, as amended and supplemented.

The solutions delivered by the courts (pt. 3 of HCCJ Decision)

In a jurisprudential orientation it has been found that the lack of the handwritten signature of the official examiner, in this case Compania Națională de Autostrăzi și Drumuri Naționale din România (CNADNR) - SA, voids the contravention report concluded for the establishment of contraventions covered by Government Ordinance no. 15/2002.

In another jurisprudential orientation, courts have held that the existence of the electronic signature of the official examiner and not of the handwritten signature, is not likely to void the contravention report.

Ombudsman’s opinion (pt. 4 of HCCJ Decision)

The Ombudsman expressed his view in that the electronic signature of the official examiner, in this case CNADNR - SA, is likely to void the contravention report concluded for the establishment of contraventions to the Government Ordinance no. 15/2002.

One of the arguments invoked by the Ombudsman was that: The contravention reports issued under Government Ordinance no. 15/2002 are generated and electronically signed being transmitted to the contraveners not through an electronic system, but on paper by mail services, so it cannot be argued that those written documents bearing the electronic signature of the official examiner would be eligible for legality conditions established, under penalty of nullity, by the provisions of Art. 17 of the Government Ordinance no. 2/2001.

High Court (pt. 7 of HCCJ Decision)

The Court specifically found that the courts have been entrusted with the verification of legality in light of the fulfilment of the requirement regarding official examiner’s signature, provided by Art. 17 of the Government Ordinance no. 2/2001, under penalty of absolute nullity, on the reports concluded according to Art. 9 par. (1) a), par. (2) and (3) of Government Ordinance no. 15/2002, by the authorized personnel within CNADNR - SA for continuous contravention provided by Art. 8 of the same law, consisting in the offence of circulating without holding valid vignette.
Art. 9 par. (2) of Government Ordinance no. 15/2002 provides that: “Beginning with October 1, 2010, the establishment of contraventions can also be made with approved technical means placed on the national road network in Romania, which fact shall be entered in the contravention report”. According to art. 9 par. (3) of the same Government ordinance, the report could be concluded in the absence of the contravener. [20]

Art. 10 of the Government Ordinance no. 15/2002 contains a provision referring to Government Ordinance no. 2/2001, so that this regulation is also applicable as general law in respect of the contravention provided by Art. 8 of Government Ordinance no. 15/2002. [21]

These reports, communicated to the persons sanctioned for contravention under the provisions of Art. 27 of Government Ordinance no. 2/2001, by mail, do not contain the handwritten signature of the official examiner, but only the indication that the documents were generated and electronically signed, under the provisions of Law no. 455/2001 and of Government Decision no. 1.259/2001 on the approval of Technical and methodological rules for the application of Law no. 455/2001 [22].

The Court held that the courts which admitted the complaints regarding contravention acted appropriately and found that the lack of the handwritten signature of the official examiner, i.e. CNADNR - SA, voids the report for the establishment of contravention and for the application of the contravention sanction, concluded pursuant to Art. 9 of Government Ordinance no. 15/2002.

As a preliminary action, the High Court considered that some theoretical considerations are required to be made regarding the legal nature of the report for the establishment of contravention and for the application of the contravention sanction, and the form thereof.

The High Court showed that the majority opinion expressed in the literature is in the sense that this report is an administrative act, [23] in a recent paper it was considered that the contravention report is a mixed legal instrument - administrative act and contravention proceeding act [24], and the Constitutional Court case law has ruled that the legal nature of the contravention report is that of an “ascertaining administrative act” [25].
As such, the Court considered, the contravention report, materializing a unilateral manifestation of will by a public authority (through persons acting as official examiners) is a unilateral administrative act with individual character, issued under public power, in order to produce legal effects.

The contravention report must be in writing, as it is the only probative act of a contravention, [26] and must contain the particulars set out in Art. 16 and Art. 19 of Government Ordinance no. 2/2001 otherwise no sanction may be imposed, as no evidence can be brought to establish the contravention.

According to Art. 17 of Government Ordinance no. 2/2001 among the elements that must be included in the contravention report, only lack of some of them voids the report, including the signature of the official examiner. Nullity can also be established ex officio. The doctrine stated that these are grounds for absolute invalidity that cannot be removed in any way [27].

The High Court showed that the settlement of the law issue by appeal on points of law involves several levels of legal analysis.

First, the Court held that the application of Law no. 455/2001 and of the Technical and methodological rules for the application of Law no. 455/2001, approved by Government Decision no. 1.259/2001 is incompatible with the contravention procedure, regulated by Government Ordinance no. 15/2002 - special law - to be completed by Government Ordinance no. 2/2001 - common law on contraventions. Government Ordinance no. 15/2002 does not include provisions on methods to communicate the contravention report, in which case the provisions of Art. 26 par. (3) and of Art. 27 of Government Ordinance no. 2/2001 which states that the report concluded by the official examiner in the absence of the contravener with notice of payment shall be communicated to him by mail, with return receipt, or by posting at the domicile or premises of the contravener, become incidental.

To determine the field of electronic signature application, in simple or extended form, and of its legal regime, provisions of Art. 4 pt. 1-4 and Art. 5-7 of Law no. 455/2001 are relevant, added the Court.

Analysing the provisions of Art. 4 pt. 1 and pt. 2 of Law no. 455/2001 [28], the Court held that a legal act can enter into the scope of this law only when the
manifestation of the will of the one emanating the act is in electronic form and also reaches the recipient of transmission in the same form, by means of data transmission in electronic format.

The Court noted that the legislator expressly provided in Art. 5 of Law no. 455/2001 [29] that the document in electronic format bearing an extended electronic signature is assimilated an act under private signature, but it is intended exclusively for use in the electronic system.

By Art. 6 of Law no. 455/2001 [30], the legislator has provided the requirement regarding the recognition of the instrument in electronic form to that to which it opposes in order that it has the same legal effect as an authentic document.

In art. 4 pt. 3 of Law no. 455/2001, the electronic signature is defined as “data in electronic form which are attached to or logically associated with other electronic data and which serve as a method of identification”.

From the analysis of the provisions of Art. 4 pt. 4 of Law no. 455/2001 [31] on the extended electronic signature, the Court concluded that the electronic signature can only be attached to a written instrument in electronic format. As such, it cannot be applied to a document on paper.

In conclusion, the High Court held that the report prepared in electronic format that has an extended electronic signature attached, which was not communicated in electronic format to the person sanctioned for a contravention, stored on a computer medium of the authority to which the official examiner belongs, only benefits from presumption of validity prescribed by Art. 283 of the Civil Procedure Code. However, this presumption does not work against third parties (in the cases reviewed, the persons sanctioned for a contravention), but in their favour. [32]

In addition, such an act has no legal effects, since it was not notified in the forms prescribed by law, for which reason it is lacking enforceability conferred to unilateral administrative instruments taken in public power conditions.

Given the report issuance and submission form, the handwritten signature of the official examiner is mandatory. Otherwise, the act cannot benefit from the presumption of authenticity which, as a rule, is specific to administrative instruments issued in compliance with the procedural requirements regarding the form.
Second, the Court held that the report signing method used by the official examiner within CNADR - SA is a lack of signature of the official examiner that attracts the absolute nullity of the instrument, according to Art. 17 of Government Ordinance no. 2/2001.

The Court said that, one cannot assess that, by printing the report on paper and communicating it to the person sanctioned for a contravention in this form required by Art. 27 of Government Ordinance no. 2/2001, with the specification that it was signed with extended electronic signature and indication of a qualified certificate issued by a certification service provider, absolute nullity can be covered, since, in principle, such nullity cannot be removed, the missing element being considered essential by the law. In this context, the Court considered that the argument for legal interpretation presented in the second jurisprudential guideline according to which Art. 17 of Government Ordinance no. 2/2001 does not impose the handwritten signature of the official examiner as a condition of legality, cannot be accepted.

First, the principle of legality requires a strict interpretation of the legal rule, so that the result of the interpretation is consistent with the will of the legislator [33]. Second, as shown above, by using arguments of logical and systematic interpretation of the provisions of Government Ordinance no. 2/2001 and of those under Law no. 455/2001, the legislator’s will was that the report for establishing and sanctioning the contravention be communicated to the person sanctioned on paper. In those circumstances, there is a legal and logical incompatibility between the medium on which the instrument is communicated to the person sanctioned and the extended electronic signature, allegedly applied on said instrument to ensure authenticity thereof.

When the document is received by the addressee on paper, the authenticity of the document, when the written form is required by law ad validitatem is assured only by affixing on this document, the issuing official examiner’s handwritten signature (in solemnibus forma dat esse rei).

For the reasons shown under Art. 517 with reference to Art. 514 of the Civil Procedure Code, the High Court of Cassation and Justice, in the name of law, ruled to allow the appeal on points of law raised by the Ombudsman and, therefore, determined that:
In the interpretation and application of Art. 17 of Government Ordinance no. 2/2001, relative to the provisions of Art. 4 pt. 1-4 and Art. 7 of Law no. 455/2001, the reports for establishing and sanctioning contraventions prescribed by Art. 8 par. (1) of Government Ordinance no. 15/2002, concluded according to Art. 9 par. (1) a), par. (2) and (3) of this law, sent to the persons sanctioned for a contravention on paper, they are null and void in the absence of a handwritten signature of the official examiner. The decision is binding, according to Art. 517 par. (4) of the Civil Procedure Code.

Section 2. Other legal issues regarding the legal regime of contraventions reported in contravention administrative practice

We state that Government Ordinance no. 15/2002 has undergone many changes and additions to the present, both by laws and by simple ordinances or emergency ordinances of the Government, the last of which is the Government Emergency Ordinance no. 8/2015 amending and supplementing certain legislative instruments, published in the Official Gazette no. 285 of April 28, 2015. [34]

It is not insignificant that barely ten years after the entry into force of Government Ordinance no. 15/2002, Art. 8 par. (1) [35] within it was amended and supplemented by pt. 1 of Art. I of Law no. 144/2012 published in the Official Gazette of Romania, Part I, no. 509 of July 24, 2012, in that “the act of circulating without holding a valid vignette is a continuous contravention and is punishable by a fine” versus previous form of the text which does not enshrine the continuous form of contravention consisting of “the act of circulating without holding a valid vignette”.

Until the operation of this change, the contravention administrative practice generated “a very difficult situation to the contravener, disproportionate to the social danger generated” [36], although according to Art. 13 par. (2) of Government Ordinance no. 2/2001 “contravention is continuous if the breach of the legal obligation lasts in time,” and according to Art. 10 of the Government Ordinance no. 15/2002 “contraventions referred to in Art. 8 are being applied the provisions of Government Ordinance no. 2/2001”.
Section 3. The right to the presumption of innocence enshrined in Art. 6 paragraph 1 of the European Convention on Human Rights

The judicial practice showed that “the ascertaining report is evidence until proven otherwise” and “the contravener has the obligation to bring and submit evidence proving the groundlessness and/or the illegality of the instrument”. [37] Recent doctrine has held that “using this stereotype (“the one who makes a proposal before the court must prove it”), situations where courts have “self-reduced” their active role have been created”. [38]

The issue of the presumption of legality of the contravention report was brought before the European Court of Human Rights. In the Case Anghel against Romania, the Court found that “allegations of fact and law are found in every legal system; in principle, the Convention does not derogate from them,” however (...) Art. 6 par. (2) “requires states to consider these presumptions, within reasonable limits, taking into account the seriousness of the offences and preserving the rights of defence.” [39]

The Court held that “the non-observance of fundamental guarantees - including the presumption of innocence - which protects citizens against possible abuses by the authorities, is an issue that must be examined under Article 6 of the Convention” and in this case, the applicant’s case was not tried fairly, as provided by Article 6 of the Convention, therefore this provision has been violated. [40]

These findings of the European Court of Human Rights “are somewhat inconsistent with the legal reasoning based on the presumption of legality of the contravention report, practiced by Romanian courts”, but they “are forced to consider its provisions and implement them”, “with the purpose of ruling legal and accurate decisions, this being, first, to the interest of the party in trial”. [41]

The presumption of legality, the principle of legality of administration, respectively, “must guarantee freedom of citizens against obedience of the executive without limits.” [42]

CONCLUSIONS

On the one hand, we ask rhetorically the question whether such matters of law generating non-unitary practices in the interpretation and application of provisions on the legal regime of contraventions, serve the public interest and, hence, the citizen.
On the other hand, we cannot but admit that the legislative and judicial interventions in recent years, in matters of legislation specific to the legal regime of contraventions, have produced favourable consequences for the protection of the legitimate public interest – aiming at rule of law and constitutional democracy and, equally, guaranteeing rights, freedoms and fundamental duties of citizens and the realization of public authorities jurisdiction [43].

“There are two ways to do the criticism of law. One concerns the quality or usefulness of rules or legal principles, in which the subject of this criticism is the positive law. The other relates especially to the validity of law, i.e. to the objective truth as expressed by law, legal rule, situation in which law as a science, or the legal science is highly controversial.” [44]

Therefore, we did not propose to make a critical approach in this article, on the contrary, our intention was to reveal as an opinion, from subjective and objective points of view, solutions which we consider to be legal and legitimate to correct issues of law that have generated non-unitary interpretation and application of certain provisions on the legal regime of contraventions and, implicitly, dissatisfaction expressed not just by academics and practitioners, but also by public opinion.

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[27] Note no. 8 of HCCJ Decision no. 6/2015: Antonie Iorgovan, op. cit., pag. 428; Mircea Ursuța, op. cit., pag. 133.

[28] According to art. 4 pt. 1 and 2 of Law no. 455/2001 “data in electronic form are representations of information in a conventional form suitable for creating, processing, sending, receiving or storing it by electronic means” and “written document in electronic format is a database in electronic form between which there are logical and functional relationships and which render letters, numbers or other characters with intelligible meaning, intended to be read by a computer program or other similar device”.

[29] Pursuant to Art. 5 of Law no. 455/2001 “document in electronic form having an extended electronic signature included, attached or logically associated based on a qualified certificate unsuspended or unrevoked at the time, and generated using a secured device for creating electronic signature, is assimilated in terms of its requirements and effects, to the document under private signature.”

[30] Art. 6 of Law no. 455/2001 states: “A document in electronic form having an electronic signature included, attached or logically associated, recognized by the party to whom it opposes, has the same effect as an authentic document among those who signed it and among those who are representing their rights.”

[31] The extended electronic signature defined by art. 4 pt. 4 of Law no. 455/2001: “The electronic signature which meets the following conditions: a) it is uniquely linked to the signatory; b) provides the identification of the signatory; c) is created using means exclusively controlled by the signatory; d) is linked to the data in electronic form to which it relates in such a manner that any subsequent amendment thereto is identifiable”.

[32] Note no. 12 of Decision no. 6/2015: Ioan Leș - Noul cod de procedură civilă. Comment on articles, art. 1-1133, C.H. Beck, Bucharest, 2013, comment art. 283 - Presumption of validity of the entry, p. 427: Act stored on computer, bearing the electronic signature of its issuer benefits from the presumption of validity, provided by Art. 283 of the Civil Procedure Code, which requires only the condition of some “sufficiently serious guarantees” for providing credibility of the document and that only works “for third parties” and not against them.


[35] Par. (1) of Art. 8 was again amended by pt. 25 of Art. III of Government Emergency Ordinance no. 8 of April 22, 2015 published in the Official Gazette of Romania no. 285 of April 28, 2015: “The act of circulating without a valid vignette is a continuous contravention and is punishable by a fine”.

[36] For further reading, see: Piperea și Asociații, 9 nov. 2011, document available on the website : http://www.piperea.ro/blog/gehorghepiperea/wp-content/uploads/2011/11/draft-plangere-rovinia-cu-jurisprudenta-inclusa.doc, accessed on 16.05.2015: „(...) in the event that a vehicle passes through the national roads for several months, without the driver being aware that he does not possess a valid vignette, he can be fined for contravention by dozens of times and, in addition to this sanction, he has to pay to CNADNR S.A. compensation rates corresponding to the alleged contraventions committed!”

[37] Alexandru Ticlea, op. cit., p. 39 and footnote 121 on the same page.


[40] ECHR, Case Anghel against Romania, cited above, pt. 68-69.


Contributions to the analysis of the offence of infringement provided in art. 38 of law no. 16/1995, as amended by law no. 187/2012 for the application of law no. 286/2009 on the criminal code

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Abstract
This study reviews the amendments made to Law no. 187/2012 for the application of Law no. 286/2009 on the Criminal Code to the offence of infringement of the topography of a semiconductor product regulated by art. 38 of Law no. 16/1995.
The author identifies the amendments and tries to convey the reasons for the amendment of the analysed offence. The connections of incriminations from the reviewed law with the laws related to the rights breached by the offence regulated by the special law are highlighted.
It should be noted that the study is circumscribed to the tangent judicial institutions mentioned in the Criminal code in force, for example, the reconciliation – the cause for removal of the criminal liability. The author reviews the doctrinal opinions in this field and conveys sensible opinions that, without being heuristic, open the way for fertile debates aimed to remove the ambiguities in the application of the incriminatory norms examined.
Keywords: topography of a semiconductor product; infringement; days – fine system; reconciliation.

1. Brief introductory statements. Object of the matter

The offence of infringement of the topography of a semiconductor product is regulated by art. 38 of Law no. 16/1995 on the protection of topographies of semiconductor products [1] hereinafter called Law. This offence was amended by art. 50 of Law no. 187/2012 for the application of Law no. 286/2009 on the Criminal Code.

Prior to this amendment, the content of the offence was: “Art. 38. (1) Within the meaning of this law, the unauthorized commercial exploitation or production of a protected topography or semiconductor product embedding a protected topography or a circuit element embedding such a semiconductor product, as far as said element still contains a topography, shall constitute the offence of infringement. (2) The acts mentioned under paragraph (1) shall be deemed to be considered as an infringement when committed after the date of publication of the topography registration in the National Register of Topographies and shall be punishable with imprisonment from 3 months to 2 years or with a fine from 10,000 to 30,000 lei. (3) The criminal action shall
be initiated ex officio. (4) For the prejudice caused to him, the owner shall be entitled to damages, according to the common law, and may require to the competent jurisdiction to order the seizing or destroying of the counterfeited products, as the case may be; said provisions shall also apply to the equipment used directly for committing the infringement offence.”

After the said amendment, art. 38 had the following content: “Art. 38. (1) Within the meaning of this law, the unauthorized commercial exploitation or production of a protected topography or semiconductor product embedding a protected topography or a circuit element embedding such a semiconductor product, as far as said element still contains a topography, if the act was committed after the date of publication of the registration of the topography with the National Register of topographies, shall constitute the offence of infringement shall be punishable with imprisonment from 3 months to 2 years or with a fine. (2) The reconciliation removes any criminal liability.”

By confronting these two incriminatory texts, we can easily find the amendments made by the law-maker. These refer to:
- The merger of par. (1) and par. (2) of the old regulation, the reformulation of the incriminatory text included in these paragraphs and of the punishment with fine;
- the removal of par.(3) regarding the circumstances in which the criminal action is initiated ex officio;
- the removal of par. (4) related to the fact that the owner of the protected topography is entitled, for the prejudices caused, to damages and may require to the competent jurisdiction to order the seizing or destroying of the counterfeited products and equipment used directly for committing the infringement offence;
- the introduction of a new paragraph – par. (2) – establishing a cause for the removal of the criminal responsibility, namely reconciliation.

Below we will analyse the amendments made to the incriminatory text and, in the end, we will draw a few conclusions.

1.1. Amendments to the offence of infringement. 2.1. A first amendment is, as shown, the merger into one paragraph of the first two paragraphs of the incriminatory articles and the reformulation of the punishment with the fine.
The last part of the amendment retains our attention, namely the reformulation of the punishment with the fine. Therefore, the formulation from the old regulation according to which the offence is punished with “imprisonment from 3 months to 2 years or with a fine from 10,000 lei to 30,000 lei” was replaced with: “imprisonment from 3 months to 2 years or with a fine”. The non-specification of the value of the fine in the new regulation is not accidental. The formulation adopted by the law-maker is consistent with the new system for establishment of the punishment with fine adopted by the current Criminal Code, namely the days-fine system [2].

This stipulates that the punishment with fine does not take the form of a sum of money, but the form of a number of days – fine, and the amount corresponding to one day – the fine will be established by the court of law between certain limits provided by the law [3]. With this mechanism of establishment of the fine rate, there is a better identification of the punishment applied, in terms of proportionality as well as in terms of efficiency [4], since the value of a day –fine is determined by taking into account the material situation of the person sentenced and its legal obligations towards its dependant persons.

The criminal code [5] stipulates that if the law stipulates the punishment of the fine alternatively with the punishment of imprisonment of no more than two years, as is this case, the special limits of days-fine are between 120 – 240 days of fine. The criminal code [6] also stipulates that the amount corresponding to one day-fine is between 10 lei and 500 lei. Therefore, based on this data, after a simple calculation, it follows that in the case of the offence of infringement analyzed, the special limits of the punishment with fine may be between 1200 lei (120 days X 10 lei) and 120,000 lei (240 days X 500 lei).

We notice that compared to the previous regulation, the special lower limit of the fine was reduced (from 10,000 lei to 1,200 lei) while the special upper limit was increased (from 30,000 lei to 120,000 lei). Moreover, these limits, in certain conditions, can be increased with a third [7]. It applies when the aim of the offence was to obtain a material benefit, perfectly possible in this case, and the punishment provided by the law is only the fine or the court rules for the application of the said fine.
A special procedure applies when the individual sentenced to the fine punishment must execute this sentence. The procedure we refer to is regulated by Law no. 253/2013 on the execution of punishments, educational measures and other non-custodial measures ordered by the judicial bodies during the criminal trial [8]. Pursuant to art. 22 of the law mentioned, the person sentenced must pay fully the fine “within 3 months from the date the sentence becomes final and to communicate the proof of payment within 15 days from the execution of the payment to the judge delegated with the execution. When the sentenced cannot fully pay the fine within the legal term, the judge delegated with the execution, at the request of the sentenced, may dispose, by resolution, the breakdown of the fine settlement in monthly instalments, for a term of maximum 2 years. The breakdown decision shall contain: the sum of the fine, the number of monthly equal instalments of the fine breakdown and the deadline of payment. If the fine punishment is executed by the sentenced, fully or partially, within the legal term, the delegated judge shall inform the court of execution. This court shall order the following measures:

a) the execution of the fine by non-remunerated community work, unless the sentenced cannot work, for health reasons, if the non-execution is not attributed to the sentenced;

b) the replacement of the fine with imprisonment – if the non-execution is not attributed to the sentenced and he/she does not agree to provide non-remunerated community work;

c) the replacement of the fine with imprisonment – if the non-execution is not made in bad faith.

If the sentenced considers that the execution is not imputable to him/her, the delegated judge can inform the court before the expiry of the deadline for the settlement of the fine. The community work shall be provided within 2 years from the definitive decision of execution of the fine and can terminate by payment of the fine corresponding to the non-executed fine-days.

The matters conveyed regarding the fine punishment are valid when the active subject of the offence of infringement is an individual. When the active subject of the
offence is a legal entity, then the fine punishment is subject to other special regulations set out in the Criminal Code.

In the second circumstance, the fine punishment is also determined by the days-fine system but the number of fine-days differs as well as the fine-days amount [9]. Therefore, the amount corresponding to one day – fine is between 100 and 5,000 lei [10], and the special limits of fine days (if the offence we review is committed by a legal entity) are between 120 and 240 fine-days [11]. Consequently, by multiplying the amount corresponding to one day of fine we obtain the special limits of the fine: 12,000 lei (100 lei X 120 days of fine) the lower limit and 1,200,000 lei (5,000 lei X 240 days of fine) the upper limit.

Whilst if the infringement was committed by a legal entity with the purpose of obtaining a patrimonial benefit, which is customary in most cases, since we are talking about a legal entity, whose purpose is to obtain profit, the special limits of the days of fine can be increased with a third, but not exceeding the general maximum of the fine [12].

In practice, obstacles can emerge, sometimes insurmountable, when there is the issue of execution of a criminal fine. This is the reason why we present below the legal provisions aimed to provide solutions to such situations. We refer to Law no. 253/2013 on the execution of punishments, educational measures and other non-custodial measures ordered by the judicial bodies during the criminal trial that we have already referred to. The execution of the punishment of criminal fine applied to legal entities is regulated by art. 25 of this law. By the meaning of the said law, the legal entity that the fine is applied to must fully settle the value of the fine within 3 months from the date the criminal resolution becomes final and to communicate to the judge delegated with the execution, within 15 days from the date of settlement, its proof.

If the legal entity cannot fully pay the fine within the legal term (3 months), the judge delegated with the execution, at the request of the legal entity, can order, by decision, the breakdown of the settlement of the fine in monthly instalments, for a period of no more than 2 years. The breakdown decision must specify: the value of the fine; the number of monthly equal instalments of breakdown of the fine and the deadline for payment.
Where the deadline for full settlement of the fine or of a monthly instalment is not observed, the provisions of G.O. no. 92/2003 on the Fiscal procedure code shall apply. In this case, the tax executors must inform the judge delegated with the execution, on the date of full execution of the fine, that the payment was made and to convey any circumstance that might prevent the execution [13].

2.2. The second amendment made to the offence of infringement of the topography of a semiconductor product refers to the removal of the paragraph stipulating that the criminal action shall be initiated ex officio.

The reason for removing this specification is given by the circumstance that as long as it is regulated by the principle of official nature of the Romanian criminal trial, the preservation of the removed provision would have been superfluous. Therefore, art. 3 par. (2) of the Criminal procedure code stipulates that judicial functions are initiated ex officio, unless it is otherwise regulated by the law.

Similarly, pursuant to art. 7 par. (1) of the Criminal procedure code, the prosecutor is obliged to initiate and to exercise the criminal action ex officio, when there is evidence pointing to an offence committed and there is no legal cause of prevention. Therefore, the rule stipulating that the criminal action can be initiated ex officio for every offence would have been a stereotypical, irrational measure that would have uselessly burdened the incriminatory texts. Only the exceptions to this principle are explicitly mentioned in these offences.

2.3. The third amendment of the offence aims at the removal of par. (4), regarding the circumstance that the owner of the protected topographies shall be entitled to damages, for the prejudices caused, and may require to the competent jurisdiction to order the seizing or destroying of the counterfeited products and of the equipments used directly for committing the infringement offence.

This paragraph was also removed from the incriminatory text precisely to avoid the redundant repetition of a similar provision. For instance, the entitlement to damages of the damaged person is regulated by art. 1381 of the Civil Code. Pursuant to this text of law, any prejudice gives the right to damages, a right that emerges from the date of the prejudice, although this right cannot be immediately exploited.
Moreover, according to the Criminal Code [14] the goods produced as a result of the act committed and the goods used, in any manner, or meant to be used for committing an act set forth by the criminal law are subject to seizing. The law also regulates the manner of execution of the seizing (special and external) and the destruction of the seized goods [15].

2.4. Finally, the last amendment aims to insert in the incriminating text a new paragraph - par. (2) – by which the criminal liability for the offence of infringement of a protected topography can be removed by reconciliation.

This insertion is more favourable for the suspect or person charged with the offence, since, in the old law, the criminal liability for infringement of the topography could not be removed by reconciliation.

Moreover, as regards the reconciliation, the case that removes the criminal liability, a few considerations must be retained. The first one refers to the fact that the institution of reconciliation is incidental only for offences for which the initiation of the criminal proceeding is made ex officio and only if this is explicitly stipulated by the incriminatory text. These conditions are fulfilled by the analysed offence.

The second matter related to the reconciliation refers to the formulation of par. (2) of the analysed offence, a formulation related to the institution of reconciliation. The formulation “Reconciliation removes criminal liability”, is correct as it appears in the amended legal text or the law-maker should have adopted the phrasing “reconciliation of the parties (s.n. – B.F.) removes the criminal liability”?

Is it justified the absence of the term “parties” from the content of the regulation or is it an error of the law-maker? The answer is that the phrasing of the incriminatory text is correct, since it is compliant with the provisions of the Criminal procedure code in the matter of the parties of the criminal action. Therefore, pursuant to art. 32 par. (2) of the Criminal procedure code, the parties of the criminal proceeding is the defendant, the public party, and the publicly liable party. We notice that the damaged party is not part of the criminal proceeding. However, the reconciliation within a criminal proceeding occurs between the suspect or person charged and the damaged party.

Here is why the correct phrasing is “the reconciliation removes any criminal liability” and not “the reconciliation of the parties removes any criminal liability”, the
damaged party while not being part of the criminal proceeding is entitled to be subject to the reconciliation: Quod erat demonstrandum.

The third matter is that in order for the reconciliation to be valid, it must be complete, unconditional and final. Therefore, the criminal proceeding must completely end with a reconciliation, without any condition and irrevocably.

Finally, if a legal entity has committed the offence of infringement of protected topographies, the reconciliation with the damaged person does not mean also the reconciliation of the latter with the individuals who participated in the offence. The reconciliation is made by the authorized representative of the legal entity or, in its absence, by a chosen or appointed attorney. If the legal entity and its authorized representative are suspects or charged, the damaged party (the owner of the topography) can reconcile either with the legal entity or only with its statutory representative, or with both infringers. The reconciliation with the legal entity is made with the chosen or appointed attorney, on account of the legal entity, and the reconciliation with the authorized representative of the legal entity is made on its own behalf.

3. A few conclusions

The amendments made to the offence of infringement of a protected topography regulated by art. 38 of Law no. 16/1995 are welcome. They are part of the steps for which legal specialists plead [16], the simplification and increase of the efficiency of law. The simplification of regulations contributes to the removal of the excessive and redundant formalism of laws to ensure the efficient implementation.

References:
[1] Republished in the Official Gazette of Romania, Part I, no. 824 of October 6, 2006. The republication was made in accordance with art. III of Law no. 337/2005 for the amendment and supplementation of Law no. 16/1995 on the protection of the topographies of integrated circuits, published in the Official Gazette of Romania, Part I, no. 194 of December 5, 2005 and the texts were renumbered.
[2] The days-fine system was adopted in the Austrian, Finnish, German, Swedish laws etc.
[12] The general maximum value of the fine is 3,000,000 lei (5000 lei X 600 days of fine). See art. 137 par. (2) 2nd thesis of the Criminal Code.


[14] See art. 112 par. (1) let. a) and b) of the Criminal Code.


[16] See the Romanian Academy, „Acad. Andrei Rădulescu”Legal Research Institute, Simplification – an imperative of modernization and improvement of the quality of law, Communications presented at the Scientific Session of the Institute for Legal Research Institute, April 17, 2015, Bucharest.
Some aspects imposed by the changing of civil rule regarding inheritance

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One of the most complex and perennial legal institutions, the inheritance, has raised and will permanently cause approaches, interpretations, procedural application extremely interesting and charged by emotional factors.

"The institution of inheritance, is an important component in the process of economic development and strengthening family relationships, of society as a whole. Starting with the habit, passing over the rules stage and early and empirical rules, continuing with a system developed and refined by European or national laws and regulations, the "inheritance" or "succession" suffered various approaches both in terminology and in deeper plan of legal philosophy, elements determined by economic, legislative or policy development of that company." [1].

Adding up in its construction both elements regarding ownership and family relationships, an analysis of the concept of "inheritance" reporting that a company in a particular historical moment given to this institution, faithfully reveals the role and place of family and ownership in the philosophy and culture of that company.

As recalled by Nicolae Iliescu: "In terms of law, as in art, literature, religion, every age, every nation has its character. Law varies by time and places, being the product of variable needs by time and places " [2]. Paraphrasing below the opinion on “ownership” of the author mentioned above, thus applying this view to the right to inheritance we can say that the right to inheritance “has also changed over the centuries when the needs and conceptions of the human spirit by changing had drawn the transformation of the “right to inheritance” [3].

Being a concept so strongly linked to fundamental rights such as the ownership and family, the legislative changes imposed especially by legal philosophy in communist period, failed to affect very consistently the civil rule in general, but particularly the provision regarding the inheritance.
“The inheritance in general, and the successional procedure, in particular, have always represented and will continue to represent, both for legal practitioners and for theorists, a challenge generated by the complexity of the raised issues." [4].

Current Civil Code, amends a civil rule which actually managed to cross a long time, miraculously surviving to several attempts to amend. Amendments required by the law of the New Civil Code (Law no. 287/2009) [5].

These amendments include both conceptual and terminological amendments, and procedural solutions that are required by the reality of the moment and by the European legislation.

We recall in this context, as example, the preference of the legislator for the term inheritance in the disadvantage of the term succession, amendments on succession unworthiness, of the term of successional option and changes in the provisions of the will.

"Etymologically analyzed, the word "succession" has its origins in the Latin succesio-succesioonis, which means "replacement" and also "continuance" or "succession of things."

The experts in law, based on the fact that the concepts of succession and inheritance are synonymous from legally point of view, they gave a special meaning to the concept of inheritance, this designating the transmission of inheritance of a deceased natural person to one or more persons in being (physical persons, legal persons or state) " [6]

Returning to the current Civil Code this governs the matters of inheritance in Book IV of - "On inheritance and liberality" starting with Title I - "Provisions relating to inheritance in general", continuing with Title II - "Legal Inheritance", then with Title III - "Liberality" and closing the book IV with the Title IV - "Transmission and inheritance partition." Clearly the Civil Code hosts several articles with respect to inheritance, rights and successional procedure, references that completes the constitutional provisions in matter and that completes the legal provisions from subsequent legislation.

“Consecrated at the constitutional level by Art. 146 "The right of inheritance is guaranteed" and the Civil Code, Book IV, "On inheritance and liberality“, the inheritance
is an objective necessity linked directly and deeply influenced by the socio-political and economic context of the moment" [7].

Starting right with art. 953 Civil Code [8] it proposes a new definition of inheritance to the one consecrated by the former regulation, where, succession (inheritance) was described only as a way of acquiring the property.

Regarding art. 954 Civil Code [9] we mention that para. 2 of the article, removing the criterion imposed by Law no. 36/1995, respectively "the most important assets as value" [10].

As a result of European concerns and regulations in matters of inheritances with foreign elements, in the same article imposing a system and a unitary practice generated by the inheritance applicable law.

Art. 955 Civil Code clarifies another theme on kinds of inheritance as requiring the mixt inheritance, expressly stating the possibility of coexistence of legal inheritance with testamentary inheritance.

The current regulation, maintaining the interdiction of pacts on unopened inheritances (Art.956 Civil Code) [11] in art. 1.160-1.162 allows some exceptions to this rule if the ascendant partition and the ability to stipulate in the company contract the agreement of associates within the company, that where one of the partners dies, his heirs may take his place in company whose activity continues.

It should be noted that "documents authenticated by notary, to the above category (see explanation above), draw absolute nullity and comes under art.1.258 New Civil Code on notary public liability. Are premises and are not penalized with void the aforementioned (see text above), respectively the corporate terms in civil companies or by persons and ascending division (art.1.161 New Civil Code) " [12].

Regarding unworthiness to inherit, so in case of legal unworthiness and judicial unworthiness we meet new texts introduced or amended. Thus, it is established in art. 958-959 Civil Code [13] two categories of unworthiness: legal unworthiness art. 958 Civil Code and judicial unworthiness art. 959 Civil Code regarding the notary procedure we only specify that the legal unworthiness may be found under the final judicial decision [14]. It is also interesting the specification of para. 2 [15] of the same article which sets that the unworthiness is valid and applies even if the person in matter could
not be convicted because of the death of the author or in case has intervened the prescription or the application of a decree or a law of amnesty.

In terms of the effects of unworthiness, art. 960 Civil Code states that the indignity applies both to the legal inheritance and testamentary inheritance and consequently also mixed inheritance. The unworthiness, according to the new provisions is to return the fruits obtained from the date of opening the inheritance. Please note that according to the New Civil Code the forgiveness of the unworthy removes the effects of unworthy if the forgiveness is contained in an authentic document or in a will in which expressly this statement will be found. Procedural "both the authentic will and the notarial authentic document through which removes the effects of unworthiness, will be entered in the National Register of Authentic Wills, according to the provisions of Art. 95 of Law no. 71/2011 for the implementation of Law no. 287/2009 on the Civil Code ". [16]

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Art. 953 Notion The inheritance is the transmission of the heritage of a deceased natural person to one or more persons in being.

Art. 954 Opening the inheritance

(1) “A person’s inheritance opens at the time of his death.

(2) The inheritance opens at the last residence of the deceased. The proof of the last residence has to be made with the death certificate or, where appropriate, with the declaratory judgment of death remained final.

(3) If the last residence of the deceased is not known or is not in Romania, the inheritance opens in the place from the country located in the jurisdiction of the notary public seised first, if there is at least one immovable property of the person who leaves the inheritance. If in the estate there are no immovable properties, the place of opening the inheritance will be in the jurisdiction of the notary public seised first, if there are movable properties in its jurisdiction of the person who leaves the inheritance. If in the estate there are no properties on Romanian territory, the place of opening the inheritance will be in the jurisdiction of the notary public seised first.

(4) Provision of para. (3) shall apply accordingly when the first organ seised to conduct the inheritance proceedings is the Court.

[10] Please note that art. 68 para. 2 of Law no. 36/1995 was repealed by Law no. 71/2011.

Art. 956 Legal documents on unopened inheritance

If the law does not specifies otherwise, are absolutely void all the legal documents having as object the eventual rights on an inheritance yet unopened, as well as documents according to which are to be accepted or waived any heritages before being open, or the acts which alienates or promise the alienation of rights it might acquire at the opening of the heritage.


Art. 958 The legal unworthiness

(1) It is unworthy to inherit:

a) person convicted criminally for committing an offense with the intent to kill the one who leaves the legacy.

b) a person convicted criminally for committing, before the opening of the inheritance, an offense with the intent to kill another possible heir, if the inheritance were open at the time the offense would have removed or restricted the vocation to inherit the perpetrator.

(2) If the conviction for the facts referred to in para. (1) is prevented by the death of the perpetrator, by amnesty or prescription of the criminal liability, the unworthiness operates if those facts were established by a final civil judgment.

(3) The legal unworthiness can be established at any time, at the request of any interested person or ex officio by the court or by the notary public, based on the judgment from which it results unworthiness.

Art. 959 Judicial unworthiness

(1) It is unworthy to inherit:

a) the convicted person for committing, deliberately, against the one who leaves a legacy, grave acts of physical or moral violence, or, where appropriate, the facts that had as result the victim’s death.

b) a person who, in bad faith, concealed, altered, destroyed or falsified the will of the deceased.

c) a person who, by fraud or violence, prevented the person who left the legacy to prepare, amend or revoke the will.
(2) Under penalty of forfeiture, any potentially successor may request the court to declare the indignity within one year from the date of opening of inheritance. Introducing the action constitutes an act of tacit acceptance of inheritance by the potentially successor claimer.
(3) If the sentence for the facts provided in para. (1) Letter a) is pronounced after the date of opening the inheritance, the period of one year is calculated from the date of the final civil judgment.
(4) When the conviction for the facts mentioned in para. (1) a) is prevented by the death of the perpetrator, by amnesty or limitation for criminal liability, the legal unworthiness may be declared if those deeds were established by a final civil judgment. In this case, the period of one year begins to run from the occurrence of the cause of preventing the conviction, if this took place after the opening of the inheritance.
(5) In cases provided in para. (1) letter b) and c) the period of one year begins to run since the successor knows the reason of unworthiness, if this date is subsequent to the opening of the inheritance.
(6) Village, town or, as appropriate, the municipality in whose jurisdiction the goods were on the date at the opening of the inheritance may bring the action provided in para. (2) where, except there is no successor except he author of one of the acts referred to in para. (1). The provisions of para. (2)-(5) shall apply accordingly.
[14] Delivered by Criminal Court for one of the acts referred to in art. 958 of Civil Code
The legal unworthiness
(2) If the conviction for the facts referred to in para. (1) is prevented by the death of the perpetrator, by amnesty or prescription of the criminal liability, the unworthiness operates if those facts were established by a final civil judgment.
Termination of the mandate of mayor, deputy mayor and the local councilor

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Abstract
The termination of the mandate as mayor is established by an order issued by the Prefect, local elected officials in state law, and in case if he does not exercise, unduly warrant for 45 consecutive days. The order issued by the Prefect is an individual administrative document, the issuer of the document must motivate not only in right, but in fact too, detailing the reasons is required when issuing institution has a wide discretion, because it gives the document transparency, private persons can check if the document is properly grounded and at the same time, allows the court to exercise judicial review. The absence of the individual administrative document constitutes a violation of the rule of law, the right to good administration and a breach of the constitutional obligation of administrative authorities to provide correct information to citizens on their personal issues.

Keywords: local elected officials mandate, individual administrative document, public institution, discretion, constitutional obligation.

By order no. 233 / 17.05.2013 issued by the prefect was found termination of the mandate of deputy mayor, Mr MP, due to incompatibility, taking into account city Secretary C. addresses no. 3554 / 03.27.2013 and no. 3554 / 04.09.2013, registered at the Prefecture - no. 2240 / 03.27.2013 and no. 2651 / 11.04.2013, requesting views on the situation of incompatibility of deputy mayor, accompanied by referral filed by a group of local councilors in the C. City Council; proposal no. 2240, 2651 / 24.04.2013, prepared by C. city secretary recording the incompatibility of deputy mayor of the city; resolution no. 2 / 26.06.2012, adopted by the Council, regarding the validation of the mandates of the concilors declared elected in the elections of 26.02.2012; resolution no. 2/26.06.2012, adopted by the Council of C. city, regarding the election of Mr. M.P. the position of deputy mayor of the town C.; art. 203, paragraph 2 of Law nr. 31/1990, regarding commercial companies, republished, with subsequent amendments; art. 87, paragraph 1, letter d( and art. 91 of law no. 161/2003, on measures to ensure transparency in exercising public dignities, public functions and in the business environment, preventing and sanctioning corruption, with subsequent modifications and completions[1]; art. 63 paragraph 2 of Law n. 144/2007, on the establishment,
organization and functioning of the National Integrity Agency, republished, with subsequent modifications and completions[2].

Considering that have been violated legal provisions regarding incompatibility in public office, thus prejudice public image, as on date 22.06.2004 has resigned as manager of SC LPI Star Impex SRL just to comply with the provisions of Law no. 161/2003, the applicant brought judicial approach in formulating administrative action for cancellation order issued by the prefect, considered to be unlawfully issued.

On the issue of law under debate, it must be stated that according to art. 26 paragraph 1 of Law 340/2004, republished, the prefect and prefect institution for the fulfillment of its attributions, the prefect issues orders with individual or normative nature under the law.

According to art. 87 paragraph 1 d) of Law no. 161/2003 on some measures for ensuring transparency in exercising public dignities, public functions and in the business environment, preventing and sanctioning corruption[3], mayor and deputy mayor and deputy mayor of Bucharest, president and vice president of the county council is incompatible with the position of president, vice president, general manager, director, manager, administrator, board member or auditor or any other administration function or execution management companies, including banks or other credit institutions, insurance companies and the financial , the autonomous administrations of national or local, to national companies and enterprises, and public institutions.

On this line of ideas, according to the procedure established by legislators through art. 91 of the same law mentioned above the incompatibility occurs only after validation of the mandate, and in the case stipulated in art. 88 paragraph 2, after validation of the second term, ie after the appointment or employment of local elected subsequently validate the mandate, a position incompatible with the locally elected; in the case stipulated in art. 89 locally elected incompatibility to intervene after the local representative, spouse or first degree relative thereof become shareholders; local representative can give up position held before being appointed or elected to attract the incompatibility or within 15 days of the appointment or election to the post. A local representative which is incompatible with the implementation of this section is forced to resign from one of the incompatible functions in no more than 60 days after the entry
into force of this law; in case the local representative being in a state of incompatibility does not give up one of the two incompatible functions within the period stipulated in paragraph 3, the prefect shall issue an order that finds the mandate of local elected as the date when the time limit of 15 days or after case, 60 days proposal from the secretary administrative-territorial unit. Any person may notify the secretary of the administrative territorial unit; order issued by the prefect under paragraph 4 may be appealed administrative court jurisdiction; the mayors prefect Government will propose the date for election of a new mayor, and in the case of local and county councilors, proceed to validate the mandate of a deputy, according to Law no. 70/1991 *) on local elections, republished, with subsequent modifications and completions.

In the context outlined above, it has also shown that under Art. 63 paragraph 2 of Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency, the provisions on incompatibilities provided in Art. 80-110 of Chapter III, Title IV, Book I, and those mentioned in art. 115-117 of Chapter VII, Title IV, Book I of the Law no. 161/2003, as further amended and supplemented, they are and remain in force at the effective date of this law .[4]

Reported to the legal incident, the prefect issued an order that finds the termination of the mandate of elected local adrept in case the person in a state of incompatibility does not give in period stipulated by art. 91 paragraph 3 of Law no. 161/2003, one of the functions that determine the incompatibility and therefore interferes with their mandate under the law, and the prefect, by order only finds a fact, determined by compliance with a mandatory legal provision.

In our opinion we appreciate, it is not unimportant to recall and circumstance that judicial interpretation of legal provisions should not be invoked only made grammatical meaning of the words used by legislators and by the way they are arranged and connected in the phrase, but teleological , searching to discover the legislators intended purpose of adopting legal rules, in order to discern, in relation to this purpose, the meaning to be attributed to the texts and to be as close to the presumed intention of the legislature, and systematic method which takes into account the legal norm place to be interpreted in the context of the law or related intregiilegislatii context, and not the least logical, in that context must be taken into account and the specific rules of interpretation
expressed in the doctrine, through formulations like that the exceptions are to be interpreted strictly – „exceptio est strictissimae interpretationis” or where the law does not distinguish, we do not need to distinguish – „ubi lex non distinguere debemos”.

Jurisprudential examination reveals that the provisions of Article 89 paragraph 2 of Law no. 161/2003, received different interpretations, opinion according to which the contested order is unlawful and likely to affect his public image as long as the date of issue does not fulfill any other functions that may be incompatible with the deputy mayor, in any case not violated Article 87 of Law no. 161/2003, ceased following the incompatibility of demand and liquidation note of the status of employee and manager of the company.

Therefore, and despite the contention of the plaintiff until the General Meeting of Shareholders of SC LPIS.I SRL has adopted Decision no. 1, the applicant acted as administrator, holding a function in this way incompatible with the position of Vice, so the claim that incompatibility has ceased its request and the note can not be intercepted and liquidation for the reason that according to art. 1371 of Law no. 31/1990, republished, administrators are appointed and dismissed by the general meeting of shareholders.

Finally the incompatibility generated as manager at ... by exceeding the deadline of 15 days stipulated in Article 91 paragraph 3 of Law no. 161/2003, in which he had to quit the position held within the company, termination entails finding the right quality local choice in the Order issued by the Prefect, in that it has done nothing to declare a state of which is sanctioned by the power law given that the date of election as Mayor and until it was removed from the position of administrator at SC LPI Star Impex SRL, it has held two incompatible functions within the meaning of Law no. 161/2003.

Regarding the application of art. 26 paragraph 1 of Law no. Termination of law 340/2004 concerning the establishment of the status of local elected under the Order issued by the Prefect, in that he did not do anything else but to declare a state of affairs which is punishable by law given that power from her election date The Deputy Mayor and until it was revoked as manager at SC LPI Star Impex SRL, it has held two incompatible functions within the meaning of Law no. 161/2003 prefect and prefect.
institution, case covered in art. 69 b paragraph 2 of Law no. 215/2001 republished of the local public administration in accordance with the mandate of the mayor shall cease as elected officials in state law, and in case if he does not exercise, unduly warrant for 45 consecutive days, all Prefect will issue an order to cease legal notice local elected representative's mandate.[5]

Regarding the need for motivation in fact and in law, to an extent and the nature sufficient to allow the unhampered then exercise judicial control of the court, the supreme court ruled[6], showing it is in the power of an authority can not discretionara be seen in a state of law as the absolute and unlimited power, for exercise of discretion in violation of citizens' fundamental rights and freedoms provided by the Constitution or by law, constitutes abuse of power, in the context of the Romanian Constitution Article 31 paragraph 2 prevedein obligation for public authorities to provide correct information to citizens about public affairs, and matters of personal interest. It was therefore withheld by the High Court that any decision likely to cause effects on the Rights of fundamental rights and freedoms must be motivated not just in terms of competence to issue the act, but also from the perspective of the individual and society possibility to assess the legality measure, namely the observance boundaries of discretionary power and arbitrariness, because the authority does not accept the argument that must motivate the decisions equates frustrating the essence of democracy and the rule of law based on the principle of legality.

In other words, given that public authorities are obliged to provide correct information to citizens on their personal issues and given that their decisions are subject to judicial authorities in the administrative courts can not support that allowed absence explicit motivation appealed administrative act.

In the absence of explicit motivation of administrative act, the possibility to challenge in court the act in question is illusory, since the judge can not speculate on the reasons leading the administrative authority to take a certain measure and the absence of that motivation favorizeazaemiterea abusive administrative acts, since lacking motivation absence of any effective judicial control of administrative acts.

Therefore motivation is a general obligation, applicable to any administrative act, it is a condition of external legality of the act subject to an assessment in concreto, by its
nature and context of its adoption and its goal is to present in a clear and unequivocally the reasoning of the institution issuing the document. In court judgment, reasoning follows a dual purpose; meets, primarily a function of transparency in profit beneficiaries of the act, which can thus verify whether or not the act is founded; it allows also to achieve control or jurisdictional court, so eventually reconstitution of its author reasoning carried to intervene and interests which addressees may have in receiving such explanations and thus reach adoption thereof.

Of course it must be set out in the act and be done by its author.

So motivate clearly involves making known the facts and law that allow understanding and appreciation of its legality and the importance of this demanding depends greatly on the nature of the act, the legal context in which it should enable the court to exercise control on matters of fact and law that served as the basis for the exercise of discretion, so be performed in a sufficiently detailed manner, by indicating in the present case the reasons for the issuing authority concluded the necessity of finding cessation of as a primary mandate, in other words, to be effective motivation or complete, precise and circumstantial.

Moreover, jurisprudence and community to remember that motivation must be adecvataactului issued and must present a clear and unequivocal algorithm followed by the institution which adopted the contested measure so that the persons concerned be allowed to establish measures and motivation, also enable the competent Community courts to revise the act (Case C-367/1995).

As the European Court of Justice decided, scale and detail of motivation depend on the nature of the measure adopted and the requirements that must be fulfilled motivation depend on the circumstances of each case, insufficient, or wrong, is considered to be equivalent to a lack of act’s motivation. Moreover, insufficient motivation or failure to state reasons shall entail the nullity or invalidity of Community acts (Case C-41/1969). A breakdown of the reasons is required when issuing institution has a wide discretion, for the motivation of the act gives transparency, individuals can check if the document is properly grounded and at the same time permit the exercise of judicial review by the Court (Case C -509 / 1993).
Or, in question, given that the contested order was founded in law on Article 69 paragraph 2 letter b) of Law no. 215/2001, republished, local government, which was already made in paragraph of this speech injunction restraining the state in fact, is the author of the administrative act attacked indenyl namely owed to motivate him and in fact, imperative context in which the Court emphasized the reasoning of an administrative act has two essential sides, indicating that the applicable legal texts given situation and, secondly, an indication of the factual circumstances upon which to remember the applicability of those legal texts.

From this perspective, is fully justified assertion of the applicant in its action under to be admitted as a general rule not only, but especially individual administrative acts that are detrimental to a person must be motivated, given that the motivation constitute a guarantee against arbitrary public administration and only this makes possible the effective exercise of rights of defense, in accordance with the jurisprudence of the Supreme same court sentence to be recalled in the front:

It thus held that the obligation namely the decision of issuing authority to motivate administrative act constitutes a guarantee against arbitrariness of public administration and is needed especially in the case of acts that suppress individual rights or legal situations, such as in this case where do order challenged referring to alleged irregularities, stated generic situation contrary to Article 31 paragraph 2 of the Constitution in that it does not provide correct information on the issue analyzed personal interest (High Court of Cassation and Justice, Decision no. 2732/2008); from the perspective of the court, motivation is crucial to make distinction between administrative act adopted in the discretion conferred by the law adopted by the public authority and the abuse of power, as that term is defined in Article 2 1 n) of Law no. 554/2004 (High Court of Cassation and Justice, Decision no. 1153/2008); motivating administrative act is intended to avoid acquisition by an administrative authority discretionary powers and to ensure the exercise by the legal entity to whom it addresses a defense and the right to a fair trial, regulated by Article 6 of the European Convention Human Rights, whose disregard attract condition anulabilitatea act[7]. (High Court of Cassation and Justice, Decision no. 1384/2008).
In continuation of already shown with regard to ensuring the right to a fair trial of the administrative act to whom it is addressed, it is not unimportant to remind the court that the Court EDO never ceases to emphasize the fundamental principle of the rule of law since the decision stated "Sunday Times" of April 26, 1979, in a context where it is known as a recipient of guarantees on which sets forth in Article 6 of the Convention, recalled in the previous paragraph is "any person"(EDO Commission decision of 17 December 1968, the complaint no. 3798/68).

In conclusion, we believe that the absence of motivation challenged administrative act constitutes a violation of the rule of law, the right to good administration and a breach of the constitutional obligation of administrative authorities to provide correct information to citizens on their personal issues.

In particular, the objections raised by the applicant can not be considered as justified as long as the determination is missing consecutive 45-day period referred to in Article 69 paragraph 2 letter b) of Law no. 215/2001 and the applicant is claiming that the mayor and has served unduly and are not indicated in any case the factual circumstances upon which to remember the applicability of the aforementioned legal text.

It is superfluous in this regard, the support of the preamble to the order prefect Arad attacked as they were taken into account "common nationality statements" against the high degree of generality of this expression and the absence indicarii content of these statements, and their authors, as evidenced identity in terms of reason and "common complaints from local councilors .....", as long as they do not reveal what specific elements that can be circumscribed objective criteria in respect of which it may determine the exercise or non-exercise ultimately function and which can substantiate the termination order finding the mayor mandate.

In the context outlined above, it is obvious that subsequent motivations Arad County Prefecture issuing authority, brought directly before the court, as in the present case, as has been already stated in paragraphs 3 and 4 of the sentencing considerations front, so as those highlighted by the defendant stamps instead welcome and submitted written observations to the case when this time has prevailed for reasons of fact and law which are not in the disputed order, in any case can not be accepted by
the court administrative in the sense envisaged by the defendant maintaining that the administrative act; therefore they are not likely to drain the existing irregularities whatsoever in terms of the order in question and which can be removed only by depriving the legal effects of the act issued regarding the applicant.

Not least and according to Article 1 paragraph 1 of Law no. 554/2004, any person who considers himself injured in a right or a legitimate interest by a public authority through an administrative act or failure of an application within the time period may address contentious court administrative competent for the recognition of the claimed right or legitimate interest and repaying the damage was caused, fully applicable legal text in which it concerns the applicant and thus, the court will itself criticisms that the applicant has filed against the objections raised concerning its failure to state reasons, in which case it is absolutely necessary that the plaintiff was injured cocluzia in its legitimate rights and interests by issuing the authority to order the defendant in question within the meaning of Article 2 paragraph 1 a) Law no. 554/2004 on administrative procedure.

A contrary conclusion would be liable to defeat and Article 41 of the Charter of Fundamental Rights that enshrine the "right to good administration" (under paragraphs 1 and 2 of this article: "Everyone has the right to benefit, in terms his or her affairs, by impartially, fairly within a reasonable time by the institutions, bodies, offices and agencies of the Union and this right includes: (a) the right of every person to be heard before any individual measure which would may be prejudiced; (b) the right of every person to have access to the file, while respecting the legitimate interests of confidentiality and of professional and business secrecy; (c) the obligation of the administration to give reasons for its decisions ") which obviously it may not be accepted.

Moreover, it would disregard the principle of "equality of arms" which requires that "each party to such a process to enjoy a reasonable opportunity to present his case to the court under conditions that do not significantly disadvantage vis-a-à-vis the opposing party "(EDO Court, Dombo Beheer BV v. the Netherlands, judgment of 27 October 1993, Series a no. 274, p.19; EDO Commission decision of 6 July 1968, the complaint no. 2804/44 of Annuaire the Convention, Vol. XI, p.381; EDO Court,
Georgiadis v. Greece, judgment of 29 May 1997), and of the presumption of innocence because the obligation to observe the presumption of innocence lies not only judge but to all state authorities (EDO Court, Allenet of Ribemont, judgment of 10 February 1995, Series a no. 308, p.16; EDO Court, Daktaras v. Lithuania, judgment of 10 October 2000).

Finally, our opinion concerning the nullity / invalidity of the administrative act unreasonably be found in the jurisprudence of the Court of Appeal Timisoara, the Department of administrative and tax[8].

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Some considerations on effects of unworthiness to inherit

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"Civil Code, as well as any other normative act, in order to be useful and valuable for the company it governs, from the perspective of legal reports, must "go along" with the times with which it is contemporary." [1].

The new regulation of the Civil Code brings text amendments or even new approaches on the successional unworthiness or on the unworthiness to inherit.


In this paper we want to present some of the aspects of the effects of unworthiness as they were regulated in the Civil Code in force, highlighting the difference of approach of the legislator to the former Civil Code.

First we must say that the civil rule in force establishes two categories of unworthiness: legal unworthiness and judicial unworthiness.

Regarding the effects of unworthiness we can appreciate a new introduced provision by art. 960 Civil Code which states that:

- the unworthiness is removed from the legal and testamentary inheritance [6]
- The possession exercised by the unworthy on property of the inheritance is considered of bad faith.
- The preservation and administration documents concluded between unworthy and third parties, are available to the extent that are useful to the heirs. Also, are maintained onerous acts concluded between unworthy and bona fide third party purchasers, being applicable the rules of the land register matter.
Given that, practically, the unworthiness has the legal nature of a penalty as a result of an abusive and incorrect of the potential successor to de cuius, we can appreciate that in case of judicial unworthiness we are in the situation of a civil penalty residing from a judicial decision, while in case of legal unworthiness we consider that we are in the situation of a civil sanction.

If we want to analyze the effect of unworthiness to inherit, it will be useful that in our analysis to approach separately the effects of unworthiness compared to the one declared unworthy to inherit, the effects of unworthiness to the third parties (in relation with the potential successor and with de cuius) and the effects of unworthiness to the descendants of the one declared unworthy.

If in the first situation, namely in the case of the analysis of the effects of unworthiness against the unworthy, the occurrence of the unworthy succession does not create problems in situation in which the potential successor declared unworthy didn’t enter in the possession of any property from his estate, we still need to mention that if the (unworthy) own the total or a part of the properties that constitute the estate, on the date on which he was declared unworthy and the obligation to return all these properties together with the natural fruits, industrial or civil perceived from these fruits, being considered a possessor of bad faith will be obliged to pay them.

Regarding the consequences of the effects of unworthiness to third parties (successors in questions) we consider that “the obligation of returning may rest not only with the unworthy, but with his successors in question that have contracted with a non domino and must bear the consequences of the principle nemo plus iuris ad alium transfere potest quam ipse habet” [7]. In the same time from the text of art. 960, para.(3) Civil Code we notice that unlike the old civil regulation, the preservation documents, and the administration documents, to the extent that are useful to the heirs, concluded between unworthy and third parties, are available.

In the same paragraph, it is expressly mentioned that are maintained onerous acts concluded between unworthy and bona fide third party purchasers, but it is stated that all the rules of the land register matter remain binding and enforceable.

Staying in the legislator's logic who drafted this text, we can appreciate that per a
contrario all documents of provision concluded in bad faith with the third parties and the documents free of charge will always be abolished.

If the legal act is maintained, the refund will not be satisfied in nature but will be achieved through equivalent by the unworthy, in compliance with the rules of possession in bad faith [8]. Unworthiness as shown above, does not produce effects only to the unworthy or third parties respectively successors in question of the unworthy. The unworthiness in a new approach of the legislator causes effects for the descendants of the unworthy, meaning that unlike the old regulation, the current Civil Code starting from the strictly personal nature of a sanction states that "the unworthiness has the character of the strictly sanction of the heir for his acts of unworthiness and, therefore, in principle, should not cause effects in the person of descendants, regardless of their degree" [9].

In conclusion, we will remember some aspects of removing the effects of unworthiness. Art. 961 Civil Code basically introduce a new regulation which unlike the old text (which established that forgiveness of the unworthiness does not remove the effects of unworthiness) regulates that "the effects of legal or judicial unworthiness can be removed by will or by an authentic notarial document by the one that leaves the legacy ".

We emphasize that forgiveness of the unworthiness must be made expressly, after the time of producing the fact which led to the declaration of the potential successor as unworthy and to describe enlightening both the author and the act of unworthiness. The forgiveness of the unworthiness is not deducted nor assumed. Just to reinforce the obligation of fulfillment the background conditions, the legislator provided an obligation on the fulfillment of formal conditions. In this context we recall that civil rule in force require as condition ad validitatem that the externalization of forgiveness is made in solemn form by authentic will or by authentic notarial document. In both situations these are registered in the National Register of Authentic Wills, according to the provisions of Art. 95 of Law no. 71/2011 for the implementation of Law no. 287/2009 on the Civil Code ".

We consider that the debates on the amendments of legal rules in respect of civil matter should continue, because they "provoke the practitioners for a correct, uniform and non-discriminatory interpretation in each EU Member State" [10]

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References:
The legal unworthiness
(1) It is unworthy to inherit:
a) person convicted criminally for committing an offense with the intent to kill the one who leaves the legacy.
b) a person convicted criminally for committing, before the opening of the inheritance, an offense with the intent to kill another possible heir, if the inheritance were open at the time the offense would have removed or restricted the vocation to inherit the perpetrator.
(2) If the conviction for the facts referred to in para. (1) is prevented by the death of the perpetrator, by amnesty or prescription of the criminal liability, the unworthiness operates if those facts were established by a final civil judgment.
(3) The legal unworthiness can be established at any time, at the request of any interested person or ex officio by the court or by the notary public, based on the judgment from which it results unworthiness.
Judicial unworthiness
(1) It is unworthy to inherit:
a) the convicted person for committing, deliberately, against the one who leaves a legacy, grave acts of physical or moral violence, or, where appropriate, the facts that had as result the victim's death.
b) a person who, in bad faith, concealed, altered, destroyed or falsified the will of the deceased.
c) a person who, by fraud or violence, prevented the person who left the legacy to prepare, amend or revoke the will.
(2) Under penalty of forfeiture, any potentially successor may request the court to declare the indignity within one year from the date of opening of inheritance. Introducing the action constitutes an act of tacit acceptance of inheritance by the potentially successor claimer.
(3) If the sentence for the facts provided in para. (1) Letter a) is pronounced after the date of opening the inheritance, the period of one year is calculated from the date of the final civil judgment.
(4) When the conviction for the facts mentioned in para. (1) a) is prevented by the death of the perpetrator, by amnesty or limitation for criminal liability, the legal unworthiness may be declared if those deeds were established by a final civil judgment. In this case, the period of one year begins to run from the occurrence of the cause of preventing the conviction, if this took place after the opening of the inheritance
(5) In cases provided in para. (1) letter b) and c) the period of one year begins to run since the successor knows the reason of unworthiness, if this date is subsequent to the opening of the inheritance.
(6) Village, town or, as appropriate, the municipality in whose jurisdiction the goods were on the date at the opening of the inheritance may bring the action provided in para. (2) where,
except there is no successor except he author of one of the acts referred to in para. (1). The provisions of para. (2)-(5) shall apply accordingly.

Effects of unworthiness
(1) The unworthy person is debarred both from legal and from testamentary succession.
(2) Possession exercised by the unworthy on property of the inheritance is considered of bad faith.
(3) The preservation and administration documents concluded between unworthy and third parties, are available to the extent that are useful to the heirs. Also, are maintained onerous acts concluded between unworthy and bona fide third party purchasers, being applicable the rules of the land register matter.

Removing unworthy effects
(1) The effects of the legal or judicial indignity can be specifically eliminated by will or by an authentic notarial deed made by the person who leaves the inheritance Without an express declaration, it does not constitute the removal of effects of unworthiness the legacy left to the unworthy after committing the offense which attracts the unworthiness.
(2) The effects of unworthiness cannot be removed through rehabilitation of the unworthy, amnesty occurred after sentencing, pardon or prescription of criminal punishment.

[6] Since the current Civil Code enshrines mixed inheritance, ie coexistence with the testamentary inheritance, we can appreciate as a consequence that the unworthy is removed in the case of mixed inheritance

[9] Idem
A Brief Research on Human Rights Aspects from the Legislative Initiatives of the Members of the Romanian Parliament. The right to physical and psychological integrity of persons

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Abstract
The challenge of consolidated democracies has as a touchstone the ratio between civil law and moral law in order to guarantee and protect the common good. Beyond electoral interests invoked by parliamentary political elites, socialization and professionalization of political elites is yet not finalized and that’s why the quality of elite is not an advantage in the process of democratic consolidation in Romania. This work is part of a broader research aimed at analyzing the way in which human rights are understood and regulated in the legislative proposals initiated, by the Romanian Parliament elected, in the current 2012-2016 term. Our hypothesis is that the presence of human rights violations in the legal regulations is the source, on the one hand, of the lack of knowledge on the documents both in national, European and international level and, on the other hand, the invoking of certain considerations of religion and Christian morality that denies, often, the very foundation of human rights.

Keywords: human rights, the right to physical and mental integrity, Chamber of Deputies, political elites, regulation.

1. Introductory remarks

However, certain fundamental values, necessary and indispensable to guarantee the common good, must be protected by law and when that the law does not protect a vital right for coexistence and the common good the law must be changed and may be subject to rejection from “conscience reasons”

Thus, individuals’ behaviour was guided by those moral precepts that were emphasized by the religious norms from times immemorial. At the same time, it must be noted that the application of legal norms in different areas as economic and socio-cultural development, with as recipients diverse subjects of law, may in some cases be a serious violation of the rights of subjects of law, that is it is therefore necessary to draw up rules to take as its starting point the general principles, rules with a high degree of generality, suitable to various interpretations. [1].
The purpose of this work is circumscribed to the approach, more widely, that analyze some legislative initiatives of the Chamber of Deputies members from 2012-2016 legislature, covering the aspects of human rights violations. [2].

Thus, we are interested in the quality of legislation, deputies being holders of the right of legislative initiative, on how it legislates, on the fact that some proposals put to the test an entire system of values and Christian traditions of their citizens.

We analyze two initiatives that aim, on the one hand, at defending the right to physical and mental integrity of children, and the punishment, on the other hand, of the pedophiles through intervention on their physical and psychological integrity.

The authors of these initiatives are representatives of the entire political spectrum, therefore, precisely for the reasons explained above, in this endeavor, we will not stop on their political affiliation but on the object that regulators have pursued in their proposals and we use the raw data collected on the website of the Chamber of Deputies. [3].

The two parliamentary initiatives that were under discussion in 2014 are:
1. The legislative proposal on combating and preventing acts of pedophile and crimes against sexual freedom and integrity of the persons (PL -X -44/ 2014) ;

2.International legal framework, European and national level regarding the fight against sexual abuse of minors and the right to physical and mental integrity of the persons

An interesting study on the relationship between religious and legal order belongs to Georgeta Cretu and is showing that over time, ensuring order in social relations (social order) were set on the path of custom, tradition (order customary) or on religious precepts (religious order) or by using moral precepts (moral order).

With the creation of a public authority ruling, the development of rules that disciplines human conduct in relation to the protected social values, this order was established using the right (law) [4]. So, the first element of the system time is right. Social order is secured not only by the customary rules, moral, religious and legal norms.
The legal rule is meant a descriptive sentence prescriptive in which these orders, a command of the legislature, that established a kind of behavior, desirable or undesirable, in relation to cultural shaping social values and the requirements of discipline and organization of social life.[5]. If religious precepts had and have an important role in regulating social relations, contributing to compliance with the law, especially those legal norms of religious origin, sometimes they can lead to exacerbation of the legislature.

The two legislative proposals concern the regulatory establishment of safety measures and protection of children against all forms of sexual abuse and as a result, desired chemical castration regulation therefore offender pedophile acts should be punished by nature chemical castration.

So, these proposals were made in order to prevent violence and child abuse, to support good physical and mental development of those children so that, in the opinion of the initiators, the superior interests of the child to prevail as is defined in national and international regulations.

The New York Convention, entitled the International Convention on the Rights of the Child, in Article 32, recognizes “the right of the child to be protected from economic exploitation and not to be compelled to any work that involves any hazardous or is likely to be to compromise his education or harm his health or physical, mental, spiritual, moral or social development” [6] And the article 39 states that States parties “shall take all appropriate measures to facilitate recovery and reintegration as social and psychological say a child victim of: any form of neglect, exploitation or abuse, torture or cruel, inhuman or degrading treatment or victims of an armed conflict. Such recovery and reintegration shall take place in an environment which fosters the health, self respectful and dignity.” [7].

With regard to Europe, in addition to the European Social Charter of the Council of Europe, there are other documents such as the Convention for the Prevention of Torture and Inhuman or Degrading Punishment (ETS No. 126/1987/1989) and the Convention for the protection of children against exploitation and sexual abuse ( CETS no.201 / 2007) [8].
Another document of the Council of Europe is the Lanzarote Convention, signed on 25 October 2007, ratified by over 20 countries of the 47 Council of Europe, which entered into force on 1 July 2010. [9]. Text of the Convention consolidates existing standards in this area and fill some gaps and the emphasis is on prevention, on a wide range of protective measures for children and victims, referring to all children under the age of 18. The document also includes provisions on new forms of violence and exploitation of children through new information technologies and telecommunications. The Convention was ratified by Romania by Law no. 252/2010 on ratifying the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Abuse, adopted in Lanzarote on 25 October 2007 and signed by Romania in Lanzarote on 25 October 2007.

In Romania, the international and European provisions were regulated by Law 272/2004 on the protection and promotion of children’s rights. Initiatives to prevent violence and sexual abuse on minors require that the perpetrator found guilty of violence and sexual abuse of a minor and sentenced for aggravated sexual abuse to receive an additional punishment by “inhibiting sexual impulses by chemical methods” to prevent , thereby, relapse.

Also, according to the draft, the convicted pedophile accused would be still under surveillance by GPS monitoring after serving his sentence. The initiators have shown that in terms of medical, castration, hormonal therapy for diagnosed psychiatric pedophile - is not irreversible and will be made only after obtaining permission if the condemned.

It benefits from reduced sentence if he agreed with chemical castration. Dr. Cristian Andrei supports this measure because “it would be very good treatment in the interest of the community, but also in the interest of pedophile.” [10]. According to the recitals initiators came with a historical- legal argument showing that the first case of chemical castration was recorded in 1944 in the US, and in Europe, the first state that applies this treatment Poland.

Thus they will benefit from psychological rehabilitation because they really need help in this regard, but must also be motivated by the fact that the penalties be reduced
by half unless they accept and follow the treatment that will inhibit impulses that threaten the inviolability sex of a person, including minors.

At the debates in committees were present representatives of the Orthodox Church. Through its representative from Putna Monastery, Father Victorin declared: “Well Christian mercy apply if there is discernment. Discernment is the most valuable. My freedom stops when you go over the other's freedom. If we did not have this awareness planted in us, the society must take care of this problem. Can I be sympathetic to that which created further trauma for the child throughout life?” Senator Tudor Barbu presented his public opinion: “This vote is extremely important because we are a Christian country. It is an extremely important vote because we are in a pagan country in terms of crime rate. ( ... ) . I know very well, we are, most of us parents, most of us have kids at home, which his tormented you safe from fire, drowning his beware of evil, criminals, to childhood and adolescence make as beautiful and push it in as healthy a life.” [11].

These legislative proposals have received negative opinions from the commission and from the Legislative Council and negative views of the Government.

3. Who defends the rights to physical and mental integrity of the persons?

These pedophiles action measures should be considered in the light of international and European treaties to which Romania is a party and the provisions of the Constitution, which in Article 22 guarantees the right to physical and mental integrity of persons.

Another important aspect concerns the fact that the initiators of pursuing chemical castration for pedophiles only establishment, made the regulations of this type not compatible with the legal regime established by the Penal Code ( under PL- 44-2014 ) .

If the application of the security measure is refusing to follow treatment or measures referred to in article 218 or 220 of the Penal Code, but this is not covered by criminal law.

As regards the government, the view was negative invoking precisely the Constitution and the international and European law.
The subject still remains controversial and is approached by Christian morality, and lawmakers and legislative initiatives are reportedly defend the interests of the voters, so the common good remains a concept, more theoretical, in the challenging landscape of democracy.

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The Right to vote of Persons with Disabilities

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Abstract
The right to vote is a fundamental right of every citizen. Convention on the Rights of Persons with Disabilities (CRPD), the legal instrument that applies human rights disability, requires states to guarantee to the persons with disabilities the right to vote, stand for election and be elected, including the possibility of effectively and fully benefit from them, without discrimination and on an equal basis with others, directly or through freely chosen representatives. This means ensuring that voting procedures are adequate, accessible, easy to understand and use, protect the rights of persons with disabilities to vote by secret vote, guaranteeing the free expression of the will of persons with disabilities as electors, in which case it will allow assistance in voting by a person chosen by them.

Keywords: right to vote, persons with disabilities, the Convention on the Rights of Persons with Disabilities, accessibility.

1. Introduction
The evolution legislation in the field of civil and political rights for people with disabilities has led national legal paradigms evolution, from a law based on providing benefits to the rights one. This new dimension of disability law was a major landmark on the way to the recognition of human rights of persons with disabilities, a road that more governments seem willing to go through.

2. General International and European Standards in terms of political rights
The right to vote has a long and quite controversial history. Thus, Article 21 of the Universal Declaration of Human Rights (1948), solemnly proclaims the right of everyone "to take part in the government of his country, directly or through freely chosen representatives. (...) The will of the people shall be basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures".

² PhD candidate, SNSPA, beneficiary of "Doctoral and postdoctoral scholarships for young researchers in the fields of Political Science, Administrative Science, Communication Science and Sociology" project, financed by the ESF - OPHPD 2007-2013 - Priority 1 : "Education and training in support for growth and development of knowledge based society "Key area of intervention 1.5 "doctoral and post- doctoral research support".
The right to vote became legally binding with its inclusion in the International Covenant on Civil and Political Rights (1966), which in Article 25 recognizes every citizen "the right and the opportunity, without discrimination (...) and without unreasonable restrictions, to take part in the conduct of public affairs, directly or through freely chosen representatives; to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors (...) ".

However, there is a contradiction between the principle of universal vote and the recognition of the right and possibility of every citizen to vote without unreasonable restrictions. This discrepancy can be explained by the fact that when the Covenant was adopted, most of the state parties consider voting for persons belonging to groups or categories - including foreigners, children and minors, persons deprived of legal capacity or convicted criminals – that can be restricted and does not represent violation of universal vote

Regionally, the right to vote was included in the first Protocol to the European Convention on Human Rights and Fundamental Freedoms (1952), which, in Article 3, establishes to states the commitment "to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.

In matters of the right to vote, also applies the European Union Charter of Fundamental Rights and the European Union treaties.

Articles 39-40 of the Charter of Fundamental Rights of the European Union (2000) guarantees to every citizen the right to vote at local and European Parliament elections in the Member State in which she or he resides, under the same conditions as nationals of that State.

The right to vote must be read together with Article 10 of the EU Treaty and Article 22 of the Treaty on the Functioning of the European Union.

As provided in Article 22 of the Treaty on the Functioning of the European Union, every citizen of the Union residing in a Member State which is not a national shall have the right to vote at municipal elections and at the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State.
Therefore, the right to vote is legally protected by international and European instruments. According to general human rights law, the right to vote is not an absolute right, and in some cases, especially in the disability may be limited.

3. International and European instruments on the right to vote for persons with disabilities

Recommendation Rec (2006) 5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of persons with disabilities in society: Improving the quality of life of people with disabilities in Europe 2006-2015 saying, in the 1st action line, that participation of all citizens in political and public life and the democratic process is essential for the development of democratic societies. The document also recognizes that people with disabilities should have the opportunity to influence the destiny of their communities, therefore, it is important that they can exercise their right to vote.

Article 29 of the Convention on the Rights of Persons with Disabilities (2006) (CRPD) guarantees to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, states committing themselves to ensure that persons with disabilities have the right and opportunity to vote.

The right to vote is crucial to ensuring equal opportunities for persons with disabilities and their full and effective participation and inclusion in society. Through its exercise, persons with disabilities affirm their individual autonomy, including the freedom to make their own decisions, and the right to recognition as a person before the law.

As mentioned in letter a) of Article 29, persons with disabilities have not only the right but also the "opportunity" to vote and to be elected, the document setting out the obligation for States parties to ensure, through positive measures, that all persons have ability to effectively exercise the voting rights.

Therefore, it is not sufficient formal recognition of the right to vote of persons with disabilities; states also have an obligation to ensure that persons with disabilities are truly able to exercise their right to vote, by:
- Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;
- Protecting the rights of persons with disabilities to vote by secret ballot without intimidation, to stand for elections, to effectively hold office and chose to perform all public functions at all levels of government, facilitating the use of assistive and new technologies, where appropriate;
- Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their choice;

European Disability Strategy 2010-2020: a renewed commitment to a barrier-free Europe, adopted comprehensive strategy to create, by 2020, a Europe without barriers for people with disabilities, aims to provide people with disabilities the ability to enjoy full rights and completely benefit from participation in European social and economic life. The strategy focuses on eliminating barriers, the Commission committed itself to take action on accessibility in voting to facilitate the exercise of electoral rights of EU citizens.

Recommendation Rec (2011) 14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life recommends continued efforts to achieve the goals set by the Action line no. 1 "Participation in political and public life" in the "Action Plan 2006-2015 to promote the rights and full participation of people with disabilities in society", the aim of which is to achieve full equality in participation in elections and representation of all members of society in decision-making bodies to ensure that the diversity of views and needs is taken into account in national, regional and local legislation and policy development in member states

To ensure the exercise of the right to vote, on an equal basis with others, states are obliged to adopt appropriate legislative measures to ensure:

a) Equal Rights and Opportunities, the removal of restrictions on legal capacity, the abolition of voting test, the introduction of relevant legal provisions, specific forms of assistance, awareness raising and funding, equal access to justice and legal protection in conditions of equality with others, in the event of infringement.
b) Accessibility of the environment, goods and services, procedures, rules, information and communication. The failure to guarantee accessibility through "universal design" and "reasonable accommodation" infringes the rights and dignity of persons with disabilities, and the principles of equality, non-discrimination and equality.

c) Non-discrimination in the exercise of legal capacity, supporting and providing, upon request, assistance needs of persons with disabilities in exercising their legal capacity in different aspects of life, especially when exercising the right to vote, which is a universal right.

d) Assistance in decision making and free choice by persons with disabilities if they need assistance in order to vote or express an opinion, by being able to be accompanied by a person of their choice. "Assistance" in this case means to help persons with disabilities to express their own will, and did not decide for them. If the journey towards to conventional voting sections is a major obstacle to political participation of persons with disabilities, States have the obligation to introduce alternative mechanisms to allow them to vote otherwise.

e). Education and training in democratic participation – combating stereotypes among all members of society is a task which should be tackled by means of training programmes and awareness-raising campaigns. Every person involved in activities related to the public about political or public life should receive training. Persons with disabilities themselves, children and adults, should gain confidence in themselves in order to carry out their own decisions and fulfil their potential and capacities in public and political life.

The revised interpretative Declaration to the Code of Good Practice in Electoral Matters on the participation of people with disabilities in elections (2011), which, in order to ensure disabled people the right to vote and participation in political and public life as elected representatives on an equal basis with others citizens, complement the principles of the previous 2002 Code.

Thus, universal suffrage ensure that people with disabilities cannot be discriminated against the exercise of their democratic rights, voting procedures and the facilities must be accessible and allow, when needed, providing assistance in voting, with the principle that the vote must be individual.
As regards the obligation to allow voters to know the list of candidates standing for elections, public authorities must ensure that the above information is available and accessible, to the greatest extent possible and taking due account of the principle of reasonable accommodation.

The right of persons with disabilities to vote by secret ballot should be protected, inter alia, by guaranteeing the free expression of their will as electors and to this end, where necessary, at their request, allowing them to use assistive technologies and/or to be assisted in voting by a person of their own choice, in conditions which ensure that the person chosen not exercise undue influence.

4. Main aspects of the effective realization of the right to vote of persons with disabilities in the European Union

Article 29 of the CRPD requires States Parties to ensure persons with disabilities equal and effective exercise of political rights, including the right to vote and to stand at the election. This provision does not provide any reasonable restriction, nor allow an exception for any group of persons with disabilities. Therefore, any exclusion or limitation of the right to vote on the basis of disability, psychosocial or intellectual perceived or real would be discrimination within the meaning of Article 2 of the CRPD.

However, as it shown in the studies elaborated by the Fundamental Rights Agency "The right to political participation of persons with mental health problems and people with mental retardation" and "The right to political Participation for persons with Disabilities: human rights indicators", in the case intellectual disability, limiting the right to vote has been argued that such a restriction is not based on disability itself, but rather the lack of legal capacity. Such an argument is in contradiction with the CRPD which recognizes that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life (art. 12, item 2), a provision which does not provide any exception, but require states to take all appropriate measures to ensure access by persons with disabilities to the support they may require in exercising their legal capacity (art. 12, pt. 3). Thus, the prohibition or restriction of legal capacity for mental or psychological disabilities is a violation of Article 12 of the CRPD.

Of all the European Union Member States that have ratified the CRPD, Malta is the only state that has raised reservation on Article 29 letter a), stating that it will
continue to apply its own electoral legislation that includes provisions for persons with disabilities who need assistance to vote in the voting booth in front of authorized workers, although the CRPD sets States the obligation to take all measures to ensure the exercise of political rights to all persons with disabilities, regardless of the type of deficiency and not setting any restriction in this respect.

Only seven of the 28 EU countries - Austria, Croatia, Italy, Latvia, the Netherlands, Sweden and the UK - guarantee the right to vote for all persons with disabilities, including those without legal capacity.

Other EU Member States have a system which evaluates the actual capacity of the individual to vote. In Hungary, the system in which all those under guardianship had no right to vote was changed, so that, judges decide whether persons with "limited mental abilities" are allowed to vote. In Slovenia, the legal test of judges to decide whether to restrict the right to vote monitors whether the persons with disabilities is able to understand the meaning, purpose and effect of the elections.

EU member states such as Belgium, Bulgaria, Cyprus, Denmark, Estonia, Germany, Greece, Ireland, Lithuania, Luxembourg, Malta, Poland, Portugal, Romania and Slovakia prohibit voting by persons with disabilities without legal capacity. This exclusion is being established in the constitutions or in the electoral law.

One other aspect that deserves to be discussed is that relating to the obligation imposed by some EU Member States to potential voters to register before voting requirement can hinder political participation of persons with disabilities, where registration procedures the vote is not accessible.

In more than half of the EU countries (15), registering to vote is automatic for all voters. Several of these states provide specific provisions for persons with disabilities who want support or assistance in voting, to request reasonable accommodation long before the day of the election. In Bulgaria, for example, persons who cannot vote at polling stations for reasons associated with disability must request permission for mobile voting within 30 days before the election day, while in Poland, voters, persons with disabilities can change the place of voting with an accessible polling station, in which case shall notify authorities at least 14 days before voting.
Although most of the people express their votes at polling stations, there are other methods of voting, such as postal voting, e-voting or voting by proxy, alternative voting means that may be available to all voters or either designed to allow those who otherwise could not get to a polling station to vote on election day, for example due to lack of place of residence, illness, or disability.

In eight Member States, Austria, Denmark, Estonia, Finland, Germany, Lithuania, the Netherlands and the UK, all voters can vote using the alternative vote by correspondence. In the Netherlands and the UK, proxy voting is permitted, but not for more than two proxy votes.

In a second group, comprising nearly half (13) of EU Member States, alternatives are available to vote at the polling station only to persons with disabilities or health problems, the most common measure for voting is permitted at residence of the voter in the presence of election officials. In Ireland, Luxembourg and Poland, however, postal voting is available to persons whose disability or health problems prevent them from the access to a polling station, while proxy voting is an opportunity for such persons in Poland and Sweden.

In Cyprus, Greece and Portugal, votes may be expressed only in polling stations.

A particular problem arises when persons with disabilities in institutions hosted in the long term, although the CRPD states their right to live in the community (art. 19). Having the right to enjoy political participation on an equal basis with others, persons with disabilities face a number of problems in exercising it, access to a polling station is difficult, either because institutions are located in remote areas or because of the lack of accessibility means of transport or because residents cannot leave the institution without assistance. Thus, under these conditions, ensuring the right to vote involves providing alternative forms of voting, setting up voting booths or allowing mobile ballot boxes to be made to institutions. Such measures should take into account the importance of ensuring secrecy of the vote and ensure that people with disabilities can make a free choice without undue influence from others.

Eighteen EU member states have specific legislation governing how people living in long-term institutions can vote. In Austria, Bulgaria, Finland, France, Germany and Poland, the law provides for polling stations to be set up in institutions that host long-
term persons with disabilities. In Italy, in order to establish a polling station in a residential institution must have at least 200 beds.

In other countries such as Hungary, Latvia, Lithuania, Slovakia and Slovenia, the opening of a polling station in long-term institutions require an individual application or notification in advance, which could act as a barrier to the exercise of voting rights.

In Denmark, Luxembourg, Netherlands, Romania, Spain, Sweden and the UK in long-term institutions are used general measures on alternative forms of voting. Mobile polling stations are not provided in these countries except Romania, where the mobile box can be provided for national elections where a person requests medical reasons is unable to provide transportation to a polling station, but the request must be approved by the chairman of the electoral area. In Belgium, Cyprus and Greece there is no legislation to establish how the long-term living in institutions can exercise their right to vote.

Regarding the right to stand and be elected, as in the case of the right to vote, in many countries it continues to be linked to the legal capacity of person. In some cases, a person under guardianship can be a candidate in the elections, even though she or he may exercise the right to vote. In France, for example, persons under guardianship enjoy, in principle, the full recognition of the right to vote, but cannot hold any elective.

Only a limited number of countries people with intellectual or mental disabilities can participate as candidates in elections on an equal basis with others. For example, in the UK, there are no restrictions on the rights of persons with disabilities to stand for the election.

5. The right to vote of persons with disabilities in Romania

The Romanian Constitution guarantees, according to art. 36, the equal rights of all Romanian citizens without discrimination and privilege and states that are entitled to vote all Romanian citizens who have reached the age of 18, except debilitated or mentally insane, laid under interdiction, and persons convicted by court final judgment, to the loss of electoral rights. The Constitution also provides that Romanian citizens with the right to vote, residing in the country, may be elected, unless they are forbidden to join political parties.
According to the electoral law in Romania state ensures equal conditions for exercising the right to vote. The Romanian electoral law allows only the direct exercise of the right to vote or assisted exercise but not voting by representatives. Thus, the voters have the opportunity to go themselves at the polling station to which they belong, establishing a series of requirements to ensure suitable conditions for exercise of voting rights:
- in establishing of polling stations will be considered especially spaces at ground floor;
- for access to persons with disabilities who intend to exercise their right to vote, it is setting up special ramps;
- in addition to standard cabins calculated for a polling station it is recommended making and placing a voting booths for persons with disabilities, sized and marked.

In the polling station, voters who, for good reasons, are found by the chairman of the electoral office of the polling station that cannot vote by themselves, has the right to call in the voting booth an attendant of his choice to help them, which cannot be from among the observers and members of the electoral office of the polling station.

For voters who cannot be transported because of their illness or invalidity, the chairman of the electoral office of the polling station may approve, at their written request, together with the copies of medical documents or other official documents showing that the persons concerned are not transportable, that the team of at least two members of the electoral office to move with a special box and with the necessary materials for voting to the location of the voters, to vote. In the radius of a polling station is used only one single special box which can be transported only by the electoral office members of the polling station and move only within the area subordinated to that polling station.

6. Conclusions and recommendations

CRPD heralds a new era for political participation of persons with disabilities imposing an obligation to ensure to the persons with disabilities political rights and the possibility that they can exercise this rights on an equal basis with others.

In many countries, persons with disabilities continue to face physical and communication barriers, with inaccessible polling stations, the lack of information in accessible formats that prevent or limit their equal and effective participation in
conducting public affairs. Much more needs to be done to ensure equal and effective access to the political rights by all persons with disabilities, measures could be envisaged:

- Elimination of legal and administrative barriers: Disability Action Plans should address how to promote voting participation of persons with disabilities, including changing laws that deprive these persons of their right to vote because of disability; introduction of alternative forms of voting for institutionalized persons and accessibility of complaint mechanisms on voting;

- A political participation more accessible, meaning that polling stations should meet the needs of all persons with disabilities, not just those with physically impairments. Information about the election and the campaign materials should be available in a variety of accessible formats - Braille, sign language, readable formats etc.

- To increase voting participation, meaning that should be promoted opportunities for the participation of persons with disabilities to public consultation by using accessible forms of communication or by providing additional support where necessary.

- Raising awareness of rights - officials involved in elections, political parties, public authorities and the media need training and guidance on how to meet the needs of persons with disabilities. Also, organizations of persons with disabilities should receive support to implement awareness programs among their members about the importance of voting.

- Data collection to measure voter participation, reliable and comparable data at EU and Member States to be used for the formulation of targeted measures that will the vote of persons with disabilities.

There are needed to be developed alternative ways of voting that allow persons with disabilities to vote in public, preferably without assistance, thus ensuring secrecy of the vote.

They should always be assessed in relation to the general obligation to include people with disabilities in all aspects of society, promoting independence, autonomy and dignity, to be used only in cases where it is not possible, or is extremely difficult, for people with disabilities to vote in polling stations, like everyone else, because the general dependence on voting assistance and alternative voting are not consistent with
the general obligations undertaken by States Parties under Articles 4 and 29 of the CRPD..

Bibliography
Energy Union, a new concept or the old one; some keys of interpretation

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Abstract
Energy Union is a concept that has its source in the founding treaties. Its understanding and definition must take into account the evolution of European law, up to date.

Keyword: Energy Union. Internal energy market. Legal framework.

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Along with installation of the new European Commission after the 2014 elections, one of the strategic goals set forth and proposed, an absolute priority has been and it is that establishment of an Energy Union.

The action proposed covers several sectors of energy, include climate issue, and articulates on five directions: secure supplies, internal energy market, energy efficiency, emissions reduction, research and innovation in energy.

Thus European Commission expressed the view about energy policy through three strategic communications.

By communication COM (2015) 80 final has submitted "A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy", with a goal of giving to EU consumers, households and businesses, secure, sustainable, competitive and affordable energy. [1]

To summarize briefly, it is revealed that in the face of current challenges, related also to dependence on imported energy sources with an emphasis on oil and gas, the existence of fragmentation of markets and a national approach by almost each Member State, energy markets are not functional. For this reason all these elements considered together must lead to a rethinking of the entire strategy in energy, and a fundamental change of thinking and design of the energy system in Europe have to erupt.
The Paris Protocol – A blueprint for tackling global climate change beyond 2020 it is the second communication relevant on this issue, COM/2015/081final, presented by European Commission.

In summary it is fixed a link between climate change and energy, setting a global framework, duties and obligations that must be followed by adoption a new climate agreement.

Translated the Commission working document it means:

Finally “Achieving the 10% electricity interconnection target Making Europe's electricity grid fit for 2020” statement comprised by Commission communication COM/2015/082 final.

The road to an internal energy market is established and implemented, but the issue of its functionality, there is still working point. Having a financial and legal framework [4], there are premises for achieving this objective. Enhancing network interconnection is vital issue for the energy market. [5]

The three communications expressing an integrated package approach that aims to provide answers and solutions to serious problems in the energy sector and here it is envisaged primarily the problem of security of supply of energy.

Chronologically, policy statement on energy union has emerged from the political program proposed and assumed by the new European Commissioner Junker [6]

Subsequently, various professional associations, universities, politicians and businessmen have taken over and debated new policies on energy.

Notes that the first unequivocal positioning, critical pamphleteer but with goals and auspices for construction, clarification and conceptualization belongs to Professor Jean-Michel Glachant, Director Florence School of Regulation.

Also to be seen the Bruegel Institute, independent European think tank, with a synthesis paper “Elements of Europe's Energy Union” by Georg Zachmann.
Last but not least, it must be highlighted consistent and extended approach of Institute Jacques Delors-Notre Europe, by report “From the European Energy Community to the Energy Union. A policy proposal for the short and the long term.”

These fundamental studies have tried to clarify and to detect the basis of the new European construction in energy, starting from the assertion that it is a lack of concept when we try to approach Energy Union [7] to identify a “Common energy policy that consists for the very least of the following policy measures: (1) a well-functioning liquid European energy market supported by (2) state of the art integrated networks, (3) corrected by price stabilization measures and (4) complemented by innovation policies(...). Only a (5) strong and financially independent Community or Union, (6) speaking with one common voice on the international scene(...) (7) its member states can count on each other in times of shortages.” [8]

National standpoints also have to be indicated in the general debate on energy content. From the materials studied on the video catches, missing written reports, it appears that the actors in energy have more a takeover positioning of this concept rather than to be the nucleus of a real debate.

Romanian Senate adopted in this energy union topic, two political decisions Decision No.20 / 2015 entitled Report on the Working Program of the European Commission in 2015 and also, Decision No.41 / 2015 on the Commission Communication to the European Parliament, the European Economic and Social Committee and the Committee of the Regions - EU Energy package. Certainly a very active position compared to other players in the energy.

It should be underlined the importance of this issue by the role assumed by the European Council regarding the strategic direction and priorities in energy policy and climate issues, in 2014 and again in 2015.

It is a completely new approach in energy from the institutional point of view, and that shows the fact that on the one hand is giving a decisive boost in energy policy and on the other hand is an expression of a consistent political will at European level.

From our point of view we are not stand before a new concept. The construction of Europe today was based on the formation of a coal and steel markets, seen at that time, as elements of society development.
Even today we speak about energy market, but in the narrowest sense, it is considered just electricity and natural gas, as energy sources essential for the development of society. On the background there is no paradigm shift when we analyze the internal energy market.

Updating of the subject of Energy Union, placing in the foreground common policies, occurs as a result of energy security crises. A solving solution using tools of individual approach from Member States it seems that is not enough, and anyway, would undermine the entire internal market principle.

Another element that led to the deepening of this theme it is linked to the concept of solidarity, a key concept that historically it belongs to the Treaty establishing the European Community.

Its definition is necessary, needed, both from the legal and from practical perspective.

We consider also that the approach it from the perspective of the common foreign and security policy has proved poor, without succeed, at the present time and it seems necessary to introduce a specific element, namely Energy Union.

The content of Energy Union, its elements, are aspects that are today in the debate. The problem that we see is in which way we reconcile a competitive internal market with a regulated internal market. Last it appears to be necessary in consideration of at least two issues: energy poverty and security of supply. And when you approach a regulated market, on the one hand we consider fixed prices and on the other hand not as an element against a market liberalization process.

Another approach is the one from the national regulatory authorities. The legislative package no. 3 in energy hardened and grounded legal greater autonomy and independence. Energy Union project aims to strengthen the Agency for the Cooperation of Energy Regulators (ACER) by "EU-wide regulation of the single market should be strengthened, through a significant reinforcement of the powers and independence of ACER to carry out regulatory functions at the European level in order to enable it to effectively oversee the development of the internal energy market and the related market rules as well as to deal with all cross-border issues necessary to create a
seamless internal market." (COM/2015/080 final) and exemplified as argument with the case of new interconnection infrastructure.

The Agency’s role is one that must be correctly analyzed from the perspective of competence laid down in the Treaties of the Union, and its autonomy in relation with the Commission itself. On the other hand, as is the case in Romania, where there is a beginning of the road in terms of autonomy and independent national authority, in a hybrid energy market, it is difficult to estimate if a regulatory and monitoring "at the Center" offers appropriate solutions, responding and accuracy.

In this issue at European level, with a delay in time, it was implemented a legal solution for transparency and integrity of energy markets, Regulation REMIT [9], which in our opinion has encountered serious reserves in its implementation within the Member States.

The road was opened; the solutions can only come from a real debate, open, transparent and professional. Its outcome will have a direct impact on all, either households or commercial clients.

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[2] The 2030 Policy Framework1 confirms the EU’s firm commitment to lead by example in tackling climate change. It sets out a binding, economy-wide domestic reduction target of at least 40% greenhouse gas (GHG) emissions below 1990 in 2030
[3] All members of the United Nations Framework Convention on Climate Change (UNFCCC) have agreed to adopt a new international climate change agreement in December 2015. Before then, they will set out their proposals on cutting emissions of greenhouse gases. G20 and high and middle income countries are expected to publish their proposals by the end of March 2015.

[5] “An interconnected European energy grid is vital for Europe’s energy security, for more competition on the internal market resulting in more competitive prices as well as for better achieving the decarbonisation and climate policy targets which the European Union has committed to. An interconnected grid will help deliver the ultimate goal of the Energy Union, i.e. to ensure affordable, secure and sustainable energy, and also growth and jobs across the EU. There are missing interconnection links between several countries. Building these interconnections will require the mobilisation of all efforts at all levels, as a matter of urgency, to achieve the common objective of a fully functioning and connected internal energy market.” Quotation from communication of the Commission.


Current problems of directors on child protection in the European system

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Abstract
In summary the issues raised in the study, in the following we will consider a brief overview of the most important concepts that characterize the current problems of directors on child protection within the European Union. Despite a comprehensive framework of tools, standards and commitments on the rights of the child and the first progress in achieving agreed objectives, current reality for millions of children worldwide it is still very contrasting in relation to these commitments and objectives.

Keywords: “directors”, “child protection”, “commitments”, “standards”, “rights”.

I. INTRODUCTION ON CHILD RIGHTS

Interest in children's rights occurred in the second half of the nineteenth century, when the first movement arose concerned with issues related to child development, thus pleading for protecting children against neglect, exploitation and violence. After WWI, the idea of child rights for the first time captured the world's attention. In 1924, the League of Nations adopted the Geneva Declaration. In 1959, the United Nations adopted the Declaration of the Rights of the Child.

On 20 November 1989, it has adopted the UN Convention on the Rights of the Child. It entered into force in September 1991 and has been ratified by most countries of the world except the USA and Somalia.

According to it,

• The child has the right to establish and preserve its identity.
• The child has the right to maintain personal relations and direct contact with parents, relatives, and other persons to whom the child has become attached.
• The child has been separated from both parents or one of them, by a measure ordered by law has the right to maintain personal relations and direct contact with both parents, unless this is contrary to the best interests of the child.
• A child whose parents reside in different States shall have the right to maintain personal relations and direct contact with them, unless it is contrary to the best interests of the child.
• The child has the right to receive an education enabling the development discriminatory conditions, skills and personality.
• The child has the right to enjoy the highest attainable standard of health attainable and to benefit from medical and rehabilitation services necessary to ensure the effective realization of this right.
• The child has the right to be protected against exploitation and can not be compelled to work that carry a potential risk or is likely to compromise his education or harm his health or physical, mental, spiritual, moral or social.
• The child has the right to enjoy a living standard enabling the development of physical, mental, spiritual, moral and social development.
• The child has the right to benefit from social assistance and social insurance, depending on resources and the situation in which it is located and which is dependent individuals.
• The child has the right to be protected against illicit use of narcotics and psychotropic substances as defined by international treaties.
• The child has the right to protection from all forms of exploitation.
• The disabled child is entitled to special care tailored to their needs.
• The child has the right to protect his public image, his intimate life, private and family. It prohibited any action affecting the public image of the child's right to private life and family.
• The child has the right to freedom of expression.

Parents or, as appropriate, other legal representatives of the child, people who foster children and persons who by reason of function promotes and ensures the rights of children are obliged to provide information, explanations and advice according to the
age and understanding of them and allow them to express their views, ideas and opinions.

• The child capable of discernment has the right to freely express his opinion on any issue that concerns them;

In any judicial and administrative proceedings affecting the child, the child is entitled to be heard. It is mandatory hearing a child reaches age 10. However, it can be heard and the child has not reached the age of 10 if the competent authority considers that the hearing is necessary for solving the case.

• The child has the right to freedom of thought, conscience and religion. Religion child 14 years old can not be changed without its consent; the child who has reached the age of 16 have the right to choose their own religion.

• The child has the right to freedom of association, formal and informal structures, and the right to freedom of peaceful assembly within the limits set by law.

• The child belonging to ethnic, religious or linguistic minorities have the right to enjoy their culture, to declare his religious affiliation, to practice his or her religion, and the right to use their language in community with other members of the community to which it belongs.

• The child is entitled to the personality and individuality and may not be subjected to corporal punishment or other humiliating or degrading treatments.

• The child has the right to rest and leisure.

• The child has the right to be protected against any form of violence, neglect, abuse or ill-treatment.

• The child has the right to grow up with his parents.

• The child has the right to be brought up in an atmosphere of affection and moral and material security.

• Any child who is temporarily or permanently deprived of parental protection or to protect its interests can not be left in their care, he is entitled to protection alternative.

• The child has the right to submit complaints regarding the violation one of their fundamental rights; the child is informed of his rights and of how to exercise them.

Children's rights enshrined in the Convention relating to our attention that there are three broad categories of rights:
• protection rights - refers to protection from all forms of physical or emotional abuse, and against all forms of exploitation;
• development rights - refers to the availability and access to all basic services such as education and health care services;
• participation rights - refers to the child's right to be involved in decisions affecting him.

II. RIGHTS PROTECTION

Children have the right to be protected against:
• all forms of violence, abuse, mistreatment or neglect;
• illegal transfer abroad of non-refoulement and economic exploitation, sexual exploitation and sexual violence;
• illicit use of narcotic drugs and psychotropic substances, kidnapping and trafficking for any purpose or in any form;
• corporal punishment or other humiliating or degrading treatment;
• deprived illegally, the elements of his identity, or some of them.

Immediately after birth, the child is registered at this time has the right to a name, the right to acquire a nationality and, if possible, to know their parents and be cared for, raised and educated by them.

It granted special protection:
• refugee children;
• disabled children;
• Children belonging to national minorities, ethnic, religious or linguistic;
• children unaccompanied by parents or a legal guardian, or which are not under the legal supervision of persons, children in areas of armed conflict;
• Children who have committed criminal offenses and are not criminally liable.

*The relationship with parents, children have the right:*
• to know their parents and be cared for and educated by them;
• not to be separated from their parents against their will, except as expressly and exhaustively provided by alternative protection law;
• to maintain personal relations and direct contact with parents, relatives, and other persons to whom the child has become attached.
Although the main responsibility of raising a child rests primarily its natural parents, the law obliges the local community to support children and families.

Even if the state can supply the subsistence conditions by respecting its role as guarantor of the rights mentioned above, it can not replace parents, which is why services were promoted family alternative, which is a real help to prevent separation of children from parents its swing in contrast to the old children.

Law on Child Rights has as a basic principle the idea that all children have the same rights as parents, local authorities and the state in general have a duty to assist and protect children so that they can realize their rights in their fullness.

It should be stressed that in any case, children are not mini people with mini rights but are citizens like everyone else, with full rights.

Infringement of a child exposes it great risk and abnormal physical and mental development, poor health, non-inclusion in education, dropout or homelessness.

**Right to life**

According to the UN Convention on the Rights of the Child, every child has the right to life; so, with the birth of this law enters into force.

In article 20 of the same Convention it is stipulated that any child who is deprived, either temporarily or permanently from his family environment is entitled to social protection and state aid. Therefore, the state is obliged to provide social protection of abandoned children and provide appropriate care possibility from another family or in a special institution.

**The right to be protected against violence**

Most are of child rights protection. Children must be protected against risk, such as the illegal transfer abroad, violence, abuse or neglect by parents or care-tors his sexual abuse or other involvement in the trafficking of illicit drugs and trafficking in children.

An abused child is a minor injury, which the physical and emotional injuries:

- vulgar language and behavior in his presence;
- negligence;
- abandonment;
- corrections management body;
• deliberate isolation;
• starvation;
• allowing illegally and committing any sexual act involving a minor, including incest, rape, indecent exposure, prostitution, etc.

Those who abuse children may be parents, knowledge, teachers and strangers, even other children because abuse can happen in any social environment.

**The right to live in peace**

In time of war, children have the right to be protected and the former can not become soldiers.

The war in Afghanistan was used for the first time in history Special me anti-child. These "toy mines" exploded in the hands of curious children.

**Child exploitation**

Child labor is a form of harmful and hazardous work for children and a violation of international law and national legislation.

It's work and activities that are dangerous and harmful for children mentally, physically, socially or morally. Because of this, children are deprived of education or are forced to lead double burden of walking to school and work.

It can also be a work in which children are brought into a state of slavery and are separated from their families, condemning children and their families to get into a downward spiral of poverty and deprivation. Being fragile and sensitive physically and mentally, invites children are exposed to greater risk in the workplace than adults.

National surveys have shown that a very high percentage of children are physically injured or fall ill while working. Might some of these children will not be able to work again. The different sectors that use machinery, such as agriculture, the risk of accidents is much higher.

Agriculture, mining and construction are sectors with a high risk for working children.

**III. Child Protection on EUROPEAN LEVEL**

Convention on the Rights of the Child is the treaty on human rights with the widest ratification of history. It contains, in conjunction with its two Optional Protocols, a comprehensive set of binding international legal standards in the promotion and protection of children's rights. Together with other international and regional standards
on children's rights, including those adopted by the Council of Europe, these instruments provide a solid basis enjoyment of human rights by all children without discrimination of any kind, while constituting a reference for promoting and monitoring progress realization of child rights.

Other international commitments to promote and protect children's rights have been adopted at the UN Special Session devoted to children (UNGASS) in May 2002, providing an strategy based on binding deadlines for implementing and monitoring progress.

By adopting the Declaration and Plan of Action UNNGASS "A World Fit for Children" in 2002, Heads of State and Government pledged to promote children's rights globally and to implement the goals, strategies and actions agreed.

In addition, the Millennium Declaration and Millennium Development Goals with direct relevance on children's rights have been accepted in full. Concluding Document of the 2005 World Summit reaffirmed the importance of achieving their goals and targets.

1. EU Guidelines for the promotion and protection of child rights.

In the European Union human rights guidelines plays solid regional framework for the EU's work in promoting and protecting human rights in the EU’s overall foreign policy on human rights and on the rights of children. To strengthen children's rights, the European Union has committed many years, multidimensional actions which include, in particular, the following:

• implementation of the 2003 EU Council Guidelines on Children and Armed Conflict;
• discussing children's rights in relation to third countries, particularly in the political dialogue;
• financing, in particular through the European Initiative for Democracy and Human Rights (EIDHR), of projects to promote and protect children’s rights;
• during the enlargement process, monitoring progress in terms of promoting child rights and supporting the reform of child protection in the candidate and potential candidate countries;
• Within the United Nations, the European Union, together with Latin American states, annually propose and support a resolution on the "Rights of the Child" and regularly...
calls on states to sign, ratify and implement the Convention on the Rights of the Child and its Protocols its Optional;

- support for the work of relevant international and regional actors in the field of child rights, in particular the UN Secretary General, United Nations Security Council, UN treaty bodies, particularly the Committee for the Rights of the Child, the UN special procedures and mechanisms, and support for appropriate organizations the UN, especially UNICEF, OHCHR, ILO, WHO and UNFPA and regional mechanisms, in particular the Council of Europe, OSCE, the European Network of Ombudsman for Children and civil society organizations;

The development policy of the European Union, "European Consensus on Development" includes respect for children's rights in EU Member States through reference to main international frameworks on human rights and the Millennium Development Goals.

For EC, there is a three way approach toward children, specific issues such as violence against children, children affected by armed conflicts, child trafficking, children’s rights and needs through specific themes like education and health, and better integration of children's rights as one of the cross-cutting issues to consider in all programs and projects funded by the EC.

Guidance Notes implementing these policies and EC guidelines on mainstreaming children's rights at the country level require that children’s rights are protected in a rights-based approach and seen as a cross-cutting issue. Sectorial policy documents are further tools for action.

The monitoring process following the special session dedicated to the children of the United Nations General Assembly (UNGASS) and control activity of the Committee for the Rights of the Child show that the Convention on the Rights of the Child is still insufficiently implemented and that mandatory deadlines UNGASS goals and reference elements on the Millennium Development Goals are far from being achieved.

To address this situation and allow more sustained and systematic action in order to promote children's rights in its foreign policy on human rights, the European Union decided to base, from now on worldwide promotion and protection of children's rights The following guidelines.
The guidelines.

With these "EU Guidelines for the Promotion and Protection of the Rights of the Child" (the "Guidelines"), the European Union underlines the importance of the main legal instruments and international norms and standards on human rights and political commitments relevant to the promotion and protection children's rights, in particular the Universal Declaration of Human Rights, the Declaration of the Rights of the Child, the International Covenants on Human Rights, the Convention on the Rights of the Child and its two Optional Protocols, the European Convention on Human Rights and Freedoms Fundamental Statute of the International Criminal Court and the Millennium Development Declaration and Millennium Development Goals, the Declaration and Plan of Action "A World Fit for Children" adopted by UNGASS in 2002 and other instruments and relevant standards on children's rights.

The European Union reiterates its determination to pursue a priority in its foreign policy on human rights promotion and protection of all rights of children, namely those under the age of 18, taking into account the interests of the child and his right to protection against discrimination and to participate in decision-making processes based on the principles of democracy, equality, non-discrimination, peace and social justice and the universality, indivisibility, interdependence and correlation of all human rights, including the right to development.

To achieve these objectives, the EU will promote general measures as contained in the guidelines and specific actions in priority areas based on implementing strategies that will be determined separately. By adopting an integrated approach to the promotion and protection of child rights, the EU will complement with these Guidelines its own guidelines on children and armed conflict in 2003, which will continue to guide EU actions in this specific area.

The guidelines will contribute in particular to:
• increasing the share of children's rights in its international agenda in order to give concrete and prevent violations of children's rights everywhere, especially at national level;
• Underlining the EU's commitment towards full recognition of children's rights, as guaranteed by relevant international instruments, most notably the Convention on the Rights of the Child and its Optional Protocols;
• Underlining the inalienable character of children's rights in their completeness and indivisibility of the universal human rights, and that all rights recognized by the Convention on the Rights of the Child have equal importance, although actions to ensure their implementation should be based on The priorities in the light of specific national contexts;
• advancing the process of implementing the Convention on the Rights of the Child and its Optional Protocols and other international and regional instruments and standards on children's rights;
• raising awareness of EU action on children's rights in the EU and third countries;
• supporting the integration of children's rights in EU policies and activities and strengthen the capacity of all relevant actors within the EU on children's rights;
• promote synergies, strengthen inter-institutional cooperation and supplementing the EU institutions, including the initiatives promoted by the European Commission on children's rights;
• providing additional operational tool for the EU to be used in political contacts with third countries and in international fora in any field relevant to the promotion and protection of children's rights.

Operational guidelines.

In its relations with third countries and in international fora, the EU will act, particularly in the sense:
• active promotion of its objectives the promotion and protection of child rights as part of the European Union's foreign policy on human rights, including in contexts related to development, peace and security, and to further promote the integration of these objectives in other policies External, including through political dialogue, development cooperation, humanitarian assistance and the accession process;
• prosecution of a human rights-based approach in the implementation of these objectives in the general principles of the Convention on the Rights of the Child, namely
non-discrimination, the interests of the child, child participation and child survival and development;

- promote a holistic approach, thus reaffirming the indivisibility, interdependence and interaction of children's rights while giving specific attention to priority areas concerned;
- prosecution of child rights promotion and protection in full compliance with the relevant international instruments and standards, in particular the Convention on the Rights of the Child, by adopting all necessary legislative, administrative or other measures, in particular the cross measures identified as "general measures implementation "by the Committee for Children's Rights.
- targeting a capacity enhancement "holders of obligations" (states and governments, to meet their obligations) as well as of "rights holders" (children, to enjoy and claim the rights).

2. EU objectives are:
- to remind third countries to encourage them and support them in their efforts to honor and fulfill their legal obligations and specific commitments to promote and protect children's rights under international law and political commitments, with particular reference those obligations under the Convention on the Rights of the Child and its Optional Protocols, the declaration and action plan "A World Fit for Children" of UNGASS, the Millennium Declaration and the Millennium Development Goals and the relevant provisions of the World Summit outcome document and to support them in meeting these obligations and commitments;
- to promote and raise awareness towards a better understanding of the principles and provisions on children's rights as guaranteed in the Convention on the Rights of the Child and its Optional Protocols and other international and regional instruments and standards relevant to children's rights;
- to complement and strengthen the European Union's ongoing efforts in multilateral fora and in EU relations with third countries to promote and protect children's rights through specific actions in priority areas;
- improve coherence between activities undertaken by Member States and the European Union's overall external action on children's rights.

3. Operational tools for EU action in relation to third countries.
To achieve these objectives the EU will use, in particular, the following tools for action:

Political dialogue (namely the introduction of children's rights in meetings and discussions in international and regional organizations and third countries at all levels, including the ministerial talks, joint committee meetings, formal dialogues led by the Presidency of the Council, the Troika, Heads of Mission or the Commission), in particular in order to:

- awareness on children's rights and international norms and standards on the promotion and protection;
- promote the ratification and effective implementation of relevant international instruments in the field of children's rights;
- promoting legislative reform to ensure conformity of national laws with international norms and standards on children's rights;
- promote the development of independent national institutions on children's rights in accordance with the Paris Principles;
- promote the effective coordination of interdepartmental activities and of actions between national and sub-national authorities as well as an allocation of adequate resources to ensure the promotion and protection of child rights;
- develop indicators for children and child impact assessments for the promotion and protection of child rights;
- commitment to support civil society in promoting and protecting children's rights;
- promoting children's participation in decision-making for the promotion and protection of their rights.

Steps (in connection with public statements, where applicable) - to respond to developments impacting the immediate importance of promoting and protecting children's rights, in particular to remind third countries to take effective measures to promote and protect children's rights, including consideration of the concluding observations of the Committee on the Rights of the Child and other treaty bodies, using information from UN agencies, regional organizations, national institutions independent civil society organizations.
Bilateral and multilateral, including the following measures:

- expanding development programs and humanitarian assistance focusing on children's rights;
- discussing child rights in trade negotiations, programming discussions, country strategy papers, dialogues on development goals and National Action Plans for children as foreseen under UNGASS;
- use of Community funding and bilateral and development cooperation programs when funding projects to promote children's rights;
- Follow improve coherence between activities committed by Member States and the European Union's overall external action on children’s rights, particularly in priority areas;
- Strengthening national structures and institutions, promoting legislative reform in conformity with relevant international standards, developing independent child rights institutions in accordance with the Paris Principles;
- Developing indicators for children and child impact assessments;
  
  Promoting the involvement of civil society and child participation.

  Developing partnerships and intensifying coordination with international stakeholders, such as:

- UN, in particular UN human rights mechanisms, special procedures and treaty bodies, in particular the Committee for Children's Rights;
- UN organizations, especially UNICEF, OHCHR, ILO, WHO and UNFPA;
- regional organizations, particularly the Council of Europe and OSCE;
- European Forum for Children;
- Partnerships between public and private research institutions;
- Civil society and international financial institutions.

4. Implementation.


In principle, the EU remains committed to promote and protect all the rights of children without distinction. The European Union will continue and expand current efforts in its external human rights policy, in multilateral fora and in its relations with third countries, encouraging states:
a) adhere to and implement international norms and standards and cooperate with international mechanisms and procedures in the field of human rights, in particular by:

• joining and subscription to international instruments and standards appropriate promotion and protection of children’s rights and promote their effective implementation, in particular the Convention on the Rights of the Child and its Optional Protocols, Conventions 138 and 182 ILO Convention on Refugees and its Protocol, the Convention on the Rights of Persons with Disabilities and the Rome Statute of the International Criminal Court;

• compliance with requests for protective measures, decisions, resolutions and recommendations of international human rights bodies, including the Committee on the Rights of the Child;

• cooperation with relevant UN mechanisms and procedures of human rights and national thematic mechanisms, particularly relevant in promoting and protecting children’s rights;

• cooperation with relevant Council of Europe mechanisms, and promoting compliance with the European Court of Human Rights;

• cooperation with regional mechanisms for promoting and protecting children’s rights, including monitoring progress.

b) to strengthen capacities for promotion and protection of children’s rights at national level, in particular by:

• supporting the development of comprehensive national plans or strategies for the promotion and protection of child rights;

• Supporting the development and strengthening of governmental mechanisms for coordinating action to promote and protect children’s rights at national and subnational levels.

c) Improve monitoring processes and structures, in particular by:

• Improving data bases and surveillance systems and development of indicators to gather, analyze and disseminate information broken promote child rights;

• promoting research in the field of child and including children in research and monitoring;
• observation capacity building, including the establishment of independent national institutions on children's rights, such as ombudsmen;
• encouraging civil society participation.
d) encourage the allocation of resources for the promotion and protection of children, in particular by:
• supporting the development and use of tools to provide visibility of children in budgetary processes at national and subnational levels, including in the context of international cooperation;
• Encourage economic and social impact assessment policy on children.
e) encourage legislative reform to promote and protect children's rights, in particular by:
• encouraging and supporting the enactment and changes in national legislation to ensure its compatibility with relevant international norms and standards in the field of child rights, in particular the Convention on the Rights of the Child and its Optional Protocols;
• encourage and support increasing the capacity of law enforcement agencies to investigate violations of children's rights and development processes tailored to the needs of the child for investigating and prosecuting violations of children's rights.
f) Combat and discourage violations of children's rights, in particular by:
• legal prohibition of child rights violations and ill-treatment of children, including criminal law, and ending impunity for violations of children's rights;
• condemnation at the highest level all forms of violations of children's rights, including through their inclusion among crimes of genocide;
• take effective measures legislative, administrative, judicial or other measures to prevent violations of children's rights under the jurisdiction of the State and combat impunity for such violations;
• Creation of national legal guarantees to promote and protect children's rights;
• providing effective training to law enforcement officials and other staff working with and for children to promote children's rights protection and enforce international rules and instruments;
• ensuring the recovery, rehabilitation and social reintegration of victims of violations of children's rights.
g) offer children the opportunity to participate more effectively in decision-making and implementation of policies that affect them and to facilitate their participation;

h) increase the capacities of families and other people who are under their care to perform their roles all the way in the protection of children's rights;

i) support the development of awareness programs on child rights, in particular by:
   • Promoting public awareness campaigns on the rights of children and ensuring the promotion and protection of children's rights;
   • Encourage the inclusion of children's rights in school curricula and the development of training programs in all relevant areas.

4.2. Specific actions to strengthen children's rights in priority areas.

In the background to these guidelines, specific action will take place in priority areas on the basis of separate Implementation Strategies which will complement these Guidelines. To enable the EU to better address different categories of rights of the child over time, COHOM will select a priority area for a period of two years and an Implementation Strategy developed accordingly. Priority Area is subject to regular assessment and possible changes. The first such Priority Area will be "All violence against children".

4.3. The role of the Council working groups.

In accordance with its mandate COHOM will oversee the implementation and follow guidelines regarding the promotion and protection of child rights in close coordination and cooperation with other Council working groups. This will include:
   • to promote inclusion, within European Union policies and activities appropriate to the appearance of promoting and protecting children's rights;
   • evaluating the implementation of the Guidelines at appropriate intervals and form of ad hoc meetings;
   • annual transmission via PSC and COREPER, as appropriate, reports to the Council on progress made towards the implementation of these instructions.

4.4. Informal platform for exchange of views with external third parties.

In the implementation of these guidelines, COHOM members can exchange views, if appropriate, with external third parties, in particular NGOs and international
organizations. The Commission is fully associated. No decision is respected. 2001/264 / EC of 19 March 2001 adopting the Council's security regulations.

5. Monitoring and reporting.

Given the vast scope of these guidelines, the European Union will follow by monitoring progress in the implementation of these guidelines to use the extensive experience relevant actors outside the EU and to work closely with them, in particular with bodies and mechanisms UN Special Procedures, treaty bodies, in particular the Committee on the Rights of the Child, UN organizations, particularly OHCHR, UNICEF, WHO, UNDP, ILO, UNFPA and civil society.

Human Rights Working Group of the Council, COHOM:

- will assess these guidelines and implementation strategy every two years of their adoption;
- Particular importance will be given to the first review of the guidelines progress in their implementation and on suggestions for further improvement, and determining whether the priority will be retained until the next review or changed, and submit these reviews to the Council;
- Particular importance will be given to the first assessment of the strategy for implementing the pilot program and progress in developing national strategies;
- seek to identify further means of cooperation with the UN and regional intergovernmental organizations, NGOs and other relevant actors in implementing and monitoring these Guidelines and will submit, if necessary, proposals to this effect by COREPER or the Council;
- promote and oversee further integration aspect of promoting and protecting children's rights in the relevant EU policies, regional and multilateral fora, these guidelines will spread and promote their implementation in the Member States, the EU Commission and the Parliament European.

IV. STRATEGY of IMPLEMENTATION FOR PRIORITY AREA "ALL FORMS OF VIOLENCE AGAINST CHILDREN"

To carry out specific action in the implementation of the "EU Guidelines for the promotion and protection of children's rights", the "All violence against children" was chosen as the first priority area of these guidelines.
The cultural elements, social status, education, income and ethnic origin, violence against children represents a particularly widespread violation of children's rights, also compromising children's developmental needs.

Different forms of violence continue to affect the lives of children of all ages from all over the world, including physical violence, mental, psychological and sexual violence, torture and other cruel, inhuman or degrading treatment, child abuse and exploitation, hostage-taking, domestic violence, trafficking or sale of children and their organs, pedophilia, child prostitution, child pornography, child sex tourism, group violence, harmful traditional practices in all settings and corporal punishment in schools. For example, according to official estimates, in 2002 approximately 150 million girls and 73 million boys under 18 experienced forced sexual relations or were subjected to other forms of sexual violence. It is believed that worldwide, between 100 and 140 million girls and women have undergone some form of mutilation / female genital injury. In 2004, 126 million children were subjected to hazardous work.

Although the consequences of violence on children can vary depending on the nature and severity, the short- and long-term consequences are often grave and damaging. Children's vulnerability and their dependence on adults requiring special attention and determined international action to protect them from all forms of violence. Preventing and combating all forms of violence against children

To complement its global action to combat all forms of violence against children with country-specific measures, the European Union, taking into account the predominant forms of violence in various countries and regions and addressing, while sex issues violence against children, develop national strategies for targeted actions in third countries:
a. To develop strategies and as a basis for this, the EU will pay a first step, a comprehensive assessment of the situation in different countries regarding violence against children. Such assessment should be based, as far as possible on existing materials, in particular those from UNICEF, the UN Special Mechanisms, government sources and from the relevant actors in civil society.
b. On the basis of such comprehensive assessments, and taking into account the recommendations of the UN Secretary General's Study on Violence against Children,
where appropriate, the concluding observations of the Committee on the Rights of the Child and other treaty bodies in human rights recommendations human rights mechanisms and relevant information provided by stakeholders, particularly UN organizations, such as OHCHR, UNICEF, WHO, ILO and UNFPA, and regional organizations and civil society, national strategies may consist of the following items:

• encourage rapid ratification of the Convention on the Rights of the Child, its Optional Protocols and other international and regional instruments and standards in human rights to prevent and address all forms of violence against children;

• encourage the withdrawal of reservations to the Convention on the Rights of the Child and its Optional Protocols which are incompatible with the objectives and purposes of the Convention and its Optional Protocols or even contrary to international law;

• encourage effective implementation of the Convention on the Rights of the Child and its Optional Protocols, and - if necessary - of other international and regional instruments and standards in human rights monitoring and implementation of political commitments with particular relevance for combating violence against children;

• encouraging and supporting legislative reform to include national legislation banning all forms of violence against children, and under impunity;

• encourage and support the creation of independent national mechanisms and procedures for monitoring, reporting and complaint tailored to the needs of the child, on the cases of violence, with the development of procedures and relevant support services tailored to the needs of the child;

• encourage and support their active involvement in the development and implementation of systems and mechanisms for implementation;

• encouraging and supporting the creation of independent national institutions to promote the prevention and combating all forms of violence against children;

• encourage and support the development of strategies, action plans and national policies on violence against children that promote, inter alia, non-violent values and awareness raising and that prioritize prevention, taking into account issues of gender violence, duly supported by the allocation of necessary resources;
• encouraging and supporting the development and implementation of efforts to collect, analyze and disseminate data at national level, and to promote relevant research initiatives;
• encourage and support capacity-building measures those working with or for children to enhance the protection of children from violence and prevent, detect and respond to all forms of violence against children;
• encourage and support the provisions on services for victims, tailored to the child recovery and social reintegration for development of mechanisms for prevention and juvenile justice systems tailored to the needs of the child;
• encouraging and supporting the creation of mechanisms for establishing responsibility for ending impunity and to bring to justice all perpetrators of violence against children.

c. Once you have taken a decision on the list of countries that carry out specific actions, COHOM will take the necessary steps to develop assessments of these countries and draw up draft national strategy, emphasizing particularly relevant forms of violence against children and making concrete proposals to address them.
The draft national strategy will be submitted by COHOM European Union Heads of Mission in the respective countries for additions, additional assessments and approvals at the local level. After receiving these additions, COHOM will adopt national strategies and will start implementing them.
d. To speed up concrete EU action on violence against children in different parts of the world, a pilot program will be developed in the initial phase of the implementation of the guidelines, guiding EU action to a maximum of ten countries from different regions and in light of different contexts identified by the UN Study on Violence against Children. The selection of countries to be included in the pilot program, the EU could give special consideration to countries with which it already dialogues or consultations on human rights, thus enabling the EU to include rapidly and systematically addressing violence against children human rights dialogues and consultations on human rights.

V. FINAL THOUGHTS

In summary the issues raised in the study, in the following we will consider a brief overview of the most important concepts that characterize child protection within the European Union.
Human rights are the main conditions that enable people to develop and use their skills as effectively as physical, intellectual, moral, socio-affective and spiritual. They inspire and arise from the growing of mankind to a life of dignity and value of each is respected and protected.

Despite a comprehensive framework of tools, standards and commitments on the rights of the child and the first progress in achieving agreed objectives, current reality for millions of children worldwide it is still very contrasting in relation to these commitments and objectives.

Children still face major threats to survival, lack opportunities in terms of education quality and appropriate health and social services; they are victims of worst forms of child labor, sexual exploitation and abuse, diseases, armed conflict and various forms of violence; they are forced to marry at an early age and endure harmful traditional practices.

Children belonging to vulnerable groups or children in particularly difficult situations face particular risks and are exposed to discrimination, marginalization and exclusion. Girls young age face specific risks and require special attention.

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Evolutionary aspects regarding Romanian legislation. Some present-day problems in administration and justice

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Abstract
Legal systems and legal families are studied by legal, historical, as well as political researchers. The constitution of legal systems, the factors which influenced and still influence legal families, the interaction thereof continue to be of interest, being a present-day topic.
The evolution of the legal systems is correlated with the development of the society, being practically dictated by the new requirements of a forever changing world.
Administrative law is not an exception to these realities, being the mirror of society development, as well as of public administration in particular. At the same time with the enforcement of the principle of local autonomy, it became necessary to develop a mechanism – administrative tutelage, which verifies and sanctions, with the consent of the administrative court, the administrative documents which break the law.
If the old law 29/1990 did not include this institution, the evolution of the society made it necessary as a means of re-establishing legality.

Keywords – legal systems, administrative court, administrative document, administrative tutelage

Section 1. Short historical considerations on the evolution of law in Romania

The study of national legal systems, as well as of the legal families catches the attention of legal, historical and political researchers. Since ancient times researchers have tried to elucidate the way in which legal systems were created, to discover the conditions which have influenced legal systems and legal families, the way in which they interact, as well as the specific relations established between the family of systems and the national system.

Nowadays, a legal system represents a real vector for the configuration of the society.

Romania’s acquisition of the status of full-fledged member of the European Union presupposes the integration of the national legal system within a community legal order, where various models of positive law coexist and interact: the continental system, represented by the Romano-Germanic legal family and the common-law system, represented solely in Great Britain, but with an unexpected extension in the European Courts – European Court of Human Rights (ECHR) and the European Court of Justice (ECJ).
Subsequent to the revolutionary changes which occurred in Eastern Europe, at the same time with the disappearance of the legal system of the socialist countries, the legal system of Romania took its seat within the great Romano-Germanic legal system, its origins being traced back to the classical Roman law, as well as to the ancient Dacian law.

In its research on the Romanity of the Romanian law, Professor Andrei Rădulescu was showing that the influence of the Roman law is felt in a series of institutions, both in family law and in civil law.

Along the century, the legal sources have evolved in keeping with the needs of the society, both in terms of form and in terms of content.

It was barely in the 18th century that the enactments came to be called “registers” or “codes”, as a sign of the Western influence, and later, “acts”.

The Civilian Code of Moldova, also known as “Calimach’s Code”, was enforced in 1817, the used sources indicating its orientation towards the modern law of Central and Western Europe.

According to Professor Ioan Rusu, the Organic Regulation was the first fundamental act of the Romanian States, which replaced the “custom of the land” and the arbitrary practice of government, regulating the principles and rules of state organisation.

French law continued to influence the Romanian Principalities after 1830 as well, the French Commercial Code being introduced in Muntenia, then the Napoleonic code, and in 1864 Wallachia adopted the same French Commercial Code.

Historian Nicolae Bălcescu was writing that “in spite of all of its evils, the Regulation had brought some sort of useful principles and it was a tool of progress. It had admitted the principle of commercial freedom, separating judicial, administrative and legal powers and had introduced the parliamentary regime”.

A distinct chapter in the process of modernisation of the Romanian law is represented by the legislation of Cuza who, through the Royal decree of July 11, 1864 was initiating the elaboration of a new Civil Code. This Code, with strong European influences, was enacted on December 4, 1864 and enforced a year later. F. Sion pointed out that “in its time”, this code “represented a strong foundation, taking into
consideration the latest trends and achievements in the political, scientific, economic and legal areas.

After World War II, the civil legislation adopted by Cuza underwent substantial changes due to the integration of the Romanian legal system within the socialist one. The Civil Procedure Code of 1865 was abolished on February 15, 2013 and the new Civil Procedure Code came into force, however, the lawsuits which had begun under the old code remained to be governed by the same law.

Section 2. Some present-day issues related to the administrative due process

After a short general presentation of the evolution of the Romanian legal system, we turn our attention to a particular branch of public law, namely, the administrative due process in Romania. Nowadays, its base is represented by Law 554/2004 on the administrative due process, the Romanian Constitution, as well as other provisions of some special laws, the enforcement of Law 554/2004 abrogating Law 29/1990.

The administrative due process represents the activity of specialised courts faced with cases which involve a legal / natural person on the one hand and a public authority on the other hand.

The contentious character of the action is given by the provisions of article 1 paragraph 1 of Law 554/2004, respectively “Anyone who considers themselves aggrieved by a public authority, through an administrative document or failure to settle a request in due time, may refer to the competent administrative court for the cancellation of the document, recognition of the alleged right or legitimate interest and remedy of the damage. The legitimate interest may be private, as well as public.” Therefore, not any file on the cause list of courts pertains to the administrative due process if one of the involved parties is a public authority, as the legal requirements have to be cumulatively met. Thus, apart from the legal standing, the person must allege that a legitimate interest or right of theirs has been trespassed or impaired by a public authority, in one of the ways required by the law, that is, either through an administrative document or failure to settle a request in due time.

In administrative law disputes, the public authority may also be plaintiff (legal standing) in the case of requests for which the competence for settlement is provided by special provisions of laws or decrees.
A particularity of administrative law or administrative due process disputes is represented by the prior procedure, known as “graceful appeal” or “administrative appeal”, procedure regulated by article 7 of Law 554/2004. According to this piece of law, “before referring to the competent administrative court, anyone considering themselves aggrieved by a particular administrative document must request to the issuing public authority or to the superior authority, if applicable, the total or partial revocation of the said administrative document, within 30 days from the communication thereof. In the case of the normative administrative document, the prior complaint may be formulated any time”.

If the plaintiff does not resort to this prior procedure and the defendant invokes the absence thereof within the legal term (at the same time with the counterclaim or, if the counterclaim is not compulsory, at the first audience at the latest), the administrative court shall dismiss the action as inacceptable. The order thus pronounced is not a case law, the plaintiff having the possibility to submit a new action to the court, after the administrative appeal, subject to the observance of the term provided by the dispositions of article 11 of Law 554/2004.

Another issue related to the authority of the public administration and the administrative courts is qualifying a document as administrative. The law of administrative due process expressly defines it in article 2 paragraph 1 letter c as “the unilateral document of individual or normative character issued by a public authority, with the statute of public power, for organising the law or actually fulfilling the law, which gives rise to, amends or extinguishes legal relations; within the meaning of this law, the contracts entered by the public authorities with the object of valorising public property goods, performing works of public interest, rendering public services, public procurements fall within the scope of administrative documents; special laws may also include other categories of administrative contracts subject to the competence of administrative courts.

From the above definition it results that the administrative document is a document issued by a public authority for organising the law or actually fulfilling the law, which gives rise to, amends or extinguishes legal relations. The contracts entered by
the authorities, with the above-mentioned objects, fall within the scope of administrative documents as well.

Therefore, not any document issued by a public authority may be qualified as an administrative document. For instance, a sales agreement entered between an administrative-territorial division (locality, town, city) and a natural or legal person with the object of a private property, cannot be qualified as an administrative document, but as a civil document and any disputes which may arise thereof shall not be settled by the administrative court.

In practice, the ignorance of the exact notion of administrative document by plaintiffs leads to the extension of the duration of the proceedings, as the administrative court relinquishes its competence over to the civil court if the concerned document is contested.

The same holds true when a plaintiff addresses to the civil court for requesting the cancellation of an administrative document, case in which the court shall relinquish its competence over to the administrative court. There also may be situations in which the two courts – civil and administrative – mutually decline their competence, case in which the dispute shall be settled in accordance with article 135 of the New Civil Procedure Code by the superior court, based on the competence regulator.

However, all of these extend the duration of the proceedings, which might trespass the principle of settlement of the litigation in an optimal and predictable amount of time, as well as of article 6 of ECHR which consecrates the reasonable duration of the proceedings.

On the other hand, this aspect burdens the courts of law which, undoubtedly, are faced with a great volume of work.

Consequently, as outlined above, the ignorance of the essential notions by the people resorting to justice is of great significance.

The principle of local autonomy, passed in the fundamental law – the Romanian Constitution, as well as in Law 215/2001 on the local public administration, expression of democracy, is sometimes abusively or incorrectly understood or applied by the local public administration. In the conditions of excessive manifestation of local autonomy, trespassing the principle of equality, Law 554/2004 - article 3 -regulates the institution of
administrative tutelage, according to which “The Prefect may submit directly to the administrative court the documents issued by the authorities of the local public administration should he find them illegal; the action shall be formulated within the time frame stipulated in article 11 paragraph (1) which begins from the communication of the document to the prefect, according to the conditions of the present law. The action submitted by the prefect is exempted of stamp fee. (2) The National Agency of Civil Servants may submit to the administrative court the documents of the central and local public authorities which trespass the legislation on the public function, according to the provisions of the present law and of Law 188/1999 on the Statute of Civil Servants, republished. (3) Up to the settlement of the case, the disputed document, as per paragraphs (1) and (2), is rightfully suspended.”

The High Court of Cassation and Justice – the Panel for the settlement of judicial issues, rules in Decision no. 11/11.05.2015 that “through the interpretation and enforcement of the provisions of article 3 of Law 554/2004, corroborated with the provisions of article 63 paragraph 5 letter e and article 115 paragraph 2 of Law 215/2001 and of article 19 paragraph 1 letters a and e of Law 340/2004 and of article 123 of the Romanian Constitution, the Prefect is recognised the right to submit to the administrative court the administrative documents issued by the local public authorities, within the meaning specified by article 2 paragraph 1 letter c of Law 554/2004”.

The institution of administrative tutelage represents, therefore, a legal tool provided to the prefect, with the purpose of eliminating the abuses of the local public authorities with respect to administrative documents, as analysed above.

The administrative tutelage is also regulated by the European Charter of local autonomy, even if in article 8 this institution is called “administrative control”.

The institution of administrative tutelage grants legal standing to the National Agency of Civil Servants as well in relation to the documents of the central or local public authorities, but only with respect to breaches of Law 188/1999 on the Statute of Civil Servants. The goal of these actions is to partially or totally abolish the administrative document which trespasses the law.
Section 3. Conclusions

In the light of the above, we may state that the Romanian legislation in terms of the administrative due process is harmonised with the legislation of the Member States of the European Union, offering sufficient judicial instruments to the authorities in charge with establishing or re-establishing law enforcement.
The right to a fair trial - distinct interpretation from the sense outlined by the art. 6 of the European Convention on Human Rights

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Abstract:
The right to a fair trial in the sense of art. 6 of the European Convention on Human Rights aims at fulfilling all of the following elements: access to justice; case consideration fairly, publicly and within a reasonable time; case examination by an independent court, impartial, established by law; public pronouncement of judgments. Principle of the right to a fair trial is fully reflected in the mediation process, with the certainty that through mediation, the parties will have at least the same procedural safeguards as in Court.

Keywords: European Convention on Human Rights, mediation, right to a fair trial

European Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights, “was ratified by the quasi-totality of the member states of the Council of Europe and represents one of the newest constructions of the international institutional system [1]”. By Law no. 30/05.11.1994 [2], Romania ratified European Convention for the Protection of Human Rights and Fundamental Freedoms and the additional protocols to this convention, i.e. protocols no. 1, 4, 6, 7, 9 and 10. In this way, the Convention and its additional protocols became an integral part of the national law and consequently a mandatory source of national law, so as mentioned under art. 11 and 20 of the Constitution [3]. The consequences of this fact at national level are represented by the immediate application of the Convention and of its protocols by the Romanian courts and at international level by the acceptance of the control provided by the Strasbourg court over the national judgments.

1. Concept of a fair trial in the sense of art. 6 of ECHR

As a guarantee of the respect of human rights, the Convention provides under art. 6, point 1 the right of any person to a fair trial:
"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

The above text leads us to the conclusion that in the sense of the Convention, the right to a fair trial consists in the concurrent existence of the following elements: free access to justice, fair, public and reasonable term public hearing; hearing by an independent, impartial tribunal established by law; public rendering of judgments.

2. **Brief presentation of the elements of the right to a fair trial**

2.1. **Free access to justice**

Free access to justice is stipulated, at international level, by art. 6, point 1 of the Convention, by art. 10 of the Universal Declaration of Human Rights [4] and by art. 14, point 1 of the International Covenant on Civil and Political Rights [5] and, at national level, by art. 21 of the Constitution. Free access to justice encompasses the possibility of any person to initiate an action in court. This possibility involves the obligation of the state to settle the action in court, so that, per a contrario, any limitation of the free access to justice would be equivalent to a breach of the national and international legislation.

2.2. **Fair and public hearing within a reasonable term**

The principle of fair hearing means that the fundamental principles of any trial are observed: adversarially principle, principle of the right of defence, principle of equality between parties in a trial.

Adversarially represents a fundamental principle of the civil procedural law, meaning that “in line with the rules established by the civil procedural law the parties may submit requests, propose and produce evidence, as well as submit arguments on all the de facto and de iure aspects relevant for the correct settlement of the case.” [6] In relation with this right/principle, for its observance, the court has the obligation to submit
to parties’ debate all the de facto and de iure aspects occurred during the trial, defence actions, motions, de facto and de iure aspects circumstances based on which the litigation will be settled, the judges grounding their decision only on the de iure and de facto aspects that were subject to parties’ debate. Adversariality principle prevails over the principle of active role, the court not being able to decide on issues without listening to the parties’ position [7].

The principle of the right of defence imposes the rule according to which the right of defence is guaranteed during the entire duration of the trial, this obligation of the state being fulfilled through the organization of the courts, through procedural laws and by the legal assistance.

The right of defence is guaranteed, so as stipulated under art. 24 of the Constitution, republished version, and under art. 15 of Law no. 304/2004 on the organization of the courts [8], with the subsequent amendments and completions. In the same time, in civil trials the parties have the possibility to be assisted by a lawyer, chosen by the parties or appointed ex officio, and in criminal cases the legal assistance is mandatory. Sanctioning this principle by law is aimed at ensuring that judgments express the truth and are grounded on the in force legislation.

The principle of equality between parties in a trial establishes the rule that stipulates the equality of parties in their relationships with the court, existence of the same concurrent judicial rights and, in the same time, existence of the same obligations according to the quality of each party in the trial.

The principle of public hearing regards the publicity of the debates, which is ensured both by the participation of the parties to the trial sessions and by the access to the debates of any other persons.

The reasonable term for the hearing has to be determined for each specific case, taking into account several aspects: object of the case, complexity of the dispute, length of the procedure, number of pending cases, as well as the possibility to challenge the decisions.

2.3. Hearing of the case by an independent and impartial tribunal established by law

In this context, the independence encompasses the following two aspects: independence of the courts and independence of the magistrate.
Independence of the courts has in view the fact that the court system is not a part of and is not subordinated to the executive and/or legislative powers. The principle of independence of judges represents the rule according to which in their activity, the judges are subjected only to the law that they have to observe. Romanian Constitution, republished version, stated this principle by art. 124, paragraph (3) that stipulates that judges are subjected only to the law and Law no. 303/2004 on the statute of judges and prosecutors [9], republished version, provides under art. 2, paragraph (3) that judges are independent, subjected only to the law and that they have to be impartial. Another guarantee offered to magistrates that insures their independence is given by irremovability – the rule according to which judges can be moved to another court or promoted only based on their consent; in the same time, judges can be suspended or removed from office only under the conditions provided by law.

Impartiality of the courts is a very important aspect of the judicial act. As a principle, the Strasbourg court stated, with respect to the case Padovani vs Italy [10] (February 26th 1993, paragraph 27) that it is essential for a tribunal in a democratic society to inspire trust to the parties, art. 6 paragraph 1 of the Convention imposing the obligation of impartiality for any court (paragraphs 35 -38).

Impartiality can be analysed from different angles, one of which consists in a subjective approach that tries to determine the inner thinking of the judge in a specific case, while another one consists in an objective approach meant to determine whether the judge offered sufficient guarantees to eliminate any legitimate doubt about himself (Piersack vs Belgium [11], October 1st, 1982, paragraph 30 and Grieves vs United Kingdom [12] [MC], December 16th, 2003, no. 57067/00, paragraph 69).

Establishment of a tribunal by law refers to the general competence, i.e. the subject-matter or geographic area of competence, the legislation including clear provisions regarding these types of court competences.

2.4. Publicity of judgements rendering

This principle allows the parties to become aware of the judgement immediately after the deliberation of the court.

3. Other meanings of the concept of fair trial
In his address to annual address to the American Bar Association’s winter convention, Los Vegas (February 12, 1984), Warren Earl Burger, Chief Justice of the United States from 1969 to 1986 said that “the entire legal profession - lawyers, judges, law teachers - has become so mesmerized with the stimulation of the courtroom contest that we tend to forget that we ought to be healers - healers of conflicts. Doctors, in spite of astronomical medical costs, still retain a high degree of public confidence, because they are perceived as healers.”.

During the same address, Chief Justice Warren E. Burger added “For some disputes, trials will be the only means, but for many claims, trial by adversarial contest must go the way of the ancient trial by battle and blood. Our system is too costly, too painful, too destructive, and too inefficient for a truly civilized people.”

After 1970s, a general concern was expressed by many people in United States of America, that the traditional method for resolving disputes by conventional litigation becomes more expensive, slower and more painful. Moreover, a high caseload was registered in the court dockets, as more time was needed for many lawsuits in order to be processed through the judicial system.

This concern contributed to the creation of the need for new processes, alternatives to litigation, which could be used by the parties in order to resolve their disputes quicker, more privately, without wasting resources, in short, more effectively. These alternative dispute resolution (ADR [13]) methods or processes were created to improve by complementation the judicial system in a constructively and not to replace the traditional litigation. For example, the parties can use ADR before and during litigation in order to prevent a lawsuit or to prevent a decision that will not be accepted by one party, at least.

Between 1994 and 1996, Lord Wolf [14] reviewed the civil courts’ rules and procedures in England and Wales. At the bottom of this review there were similar concerns like limited access to justice due to high costs of litigation, too complex and traditional terminology, unnecessary distinctions of practice and procedure. In the final report that was published in 1996 [15], Lord Wolf considered that for particular areas of litigation, the civil justice system was not meeting the needs of litigants. The fundamental issues identified in the Report were cost, delay and complexity.
included recommendations “as to the adoption of pre-litigation protocols to encourage a more co-operative approach to dispute resolution, to promote fair settlements and to avoid litigation wherever possible”.

The National Alternative Dispute Resolution Advisory Council (NADRAC), Australia, an independent non-statutory body was established in October 1995 in order to provide policy advice to the Attorney-General on the promotion of use and development of mediation and ADR.

On 23 April 2008, the European Parliament formally approved, without amendments, the Council’s position on the new Mediation Directive. Following its signature by the President of the European Parliament and by the President of the Council, the DIRECTIVE 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters was published in the Official Journal of the European Union. As stated above, the purpose of the Directive is to facilitate access to dispute resolution and to promote the amicable settlement of disputes by encouraging the use of mediation and by ensuring a sound relationship between mediation and judicial proceedings.

All of the above are examples of how the global culture of dispute resolution can be enriched by new approaches, meant to enhance the judicial system’s capacity to fulfil the people’s needs in the best way possible. These approaches are as various as people and their needs and for any given situation, a continuum of ADR processes can stay at the bottom of any robust strategy for addressing conflict effectively, non-violently and constructively. All these examples show implication from the states in the direction of citizens’ self-determination, in the pursuit of consensus based decisions in as many cases as possible.

3.1. Overview of the most known ADR processes

Alternative Dispute Resolution is a system of methods and processes that can be used to resolve disputes. Some definitions of ADR refer to processes that are alternatives to litigation. The ADR processes develop a spectrum, called ADR continuum, defined by the level of intervention, resources invested and control of outcome criteria. Therefore, the ADR spectrum starts with minimal level of intervention, minimal resources invested and maximal control over outcome, i.e. negotiation. The last
stages of the ADR spectrum involve a maximal level of intervention, maximal resources invested and minimal control over outcome (i.e. litigation).

Created as an acronym for Alternative Dispute Resolution, A.D.R. gained different meanings in time. One of them, Appropriate Dispute Resolution, refers to the fact that based on thorough analysis, at a certain moment, a certain method of dispute resolution offers the best prospects of effective resolution, therefore is more appropriate than the others in that particular moment. For example, this is the case with litigation that in some cases may be the most appropriate to be tried first, while in other cases, other ADR processes may be the most appropriate to be used first.

We'll describe further a selection of Alternative Dispute Resolution processes. Out of them, negotiation, mediation and arbitration are probably the most known and used by the parties worldwide and in the European Union.

3.1.1 Negotiation

The negotiation process was approached from many perspectives. According to one of them, negotiation is a communication process between two or more parties that are looking for solutions to common problems. Henry Kissinger [16] defined negotiation as, “a process of combining conflicting positions into a common position, under a decision rule of unanimity”. Negotiation was also defined [17] as “Back-and-forth communication designed to reach an agreement between two or more parties with some interests that are shared and others that may conflict or simply be different. Negotiation is an intrinsic part of any kind of joint action, problem solving, and dispute resolution, and may be verbal, nonverbal, explicit, implicit, direct, or through intermediaries.”

3.1.2 Mediation

According to article 3, let. A of the EU Directive 2008/52/CE, “mediation means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State”.

The Romanian mediation law (Article 1, Law 192/2006) defines mediation as follows: “Mediation represents a way of amicable settlement of conflicts, with the support of a third party specialized as a mediator, in terms of neutrality, impartiality, confidentiality and with the free consent of the parties.” Mediation can be also defined [18] as a negotiation process facilitated by a trusted neutral person having no power of decision.

3.1.3 Conciliation

Conciliation is a facilitation of communication process meant to lower tensions and improve the relationship of two or more disputants, by a third party, called conciliator. Conciliation is the least formal of ADR processes and can pave the way for a later mediation process. Sometimes, the conciliation can result in a settlement.

3.1.4 Arbitration

Arbitration is the most traditional form of private dispute resolution. Arbitration is a binding procedure. It is often "administered" by a private organization that maintains lists of available arbitrators and provides rules under which the arbitration will be conducted [19]. Parties choose arbitration over litigation because of the additional flexibility, process neutrality (arbitration can take place in a country, other than the ones of the parties), possibility to select the arbitrators, time and costs, confidentiality, binding decisions and recognition and enforcement of the awards.

3.2. Presentation of the right to a fair trial’s components from the mediation’s perspective

From all the ADR methods, mediation is the most used consensus based one, that is based on the intervention of a neutral and impartial person (the mediator). The principles that govern the mediation process are the legality of the documents developed during the mediation process, parties’ self-determination, mediator’s neutrality and impartiality, process’ confidentiality and its voluntary character.

The mediation benefits include efficient use of resources for the purpose of effective solutions, efficient management of risk to continue the misunderstandings and potential for reconstruction of the social relation that was affected by the conflict. From the judiciary’s perspective, benefits include a better quality of the justice act,
unburdening of the courts’ high caseload, parties’ better satisfaction with the court’s decisions and efficient management of public funds.

We will further analyse the way that mediation ensures the right for a fair trial of the parties’ that choose this procedure to bring their dispute to a resolution by analysing each component of the right for a fair trial from the mediation’s perspective.

If by access to justice one can understand access to the hearing process of his case in the court of law, justice can be also accomplished through mechanisms like institutions from the field of human rights, European Ombudsman [20] or other alternative dispute resolution methods. Actually even the Romanian Constitutional Court stated in 1994 that “free access to justice requires access to procedural means by which justice is carried out” [21]. Also, to decide whether a judicial-administrative procedure constitutes a violation of free access to justice or have the effect of limiting such access, the Court held that "it is the exclusive competence of the legislature to institute such proceedings generally directed to ensure faster resolution of certain categories of disputes, decongestion of courts cases that can be solved in this way, avoiding court fees”. Incidentally, these are also benefits provided by the mediation process, that is, equally, a means of justice.

The second component of the right to a fair trial which is "fairly consider the case, publicly and within a reasonable time" is met if we consider mediation, as each party has the right to express their own point of view concerning the conflict, the right to talk to the other party on the dispute face to bring all the arguments that it considers necessary to try to resolve the conflict amicably and negotiate directly and correctly the other party to adopt the solution which it considers most appropriate (win-win solution). The condition regarding reasonable time, we mention that this is also satisfied since the mediation law stipulates that the mediator has the obligation to take all necessary for the parties to arrive at a mutually convenient, within a reasonable time. The principle of hearings in public is reflected in mediation, mediation in terms of the possibility of participation of both the conflicting parties and other persons related to the case. But unlike classic judicial process, people who have nothing to do with the cause cannot attend mediation sessions without the agreement of both parties, this procedure is an identical judicial processes are those judged in the council chamber. Confidentiality is of
the essence of mediation, this principle is set out as such in the mediation law. Also, the right of defence of parties is ensured in the mediation, whereas in the mediation in civil matter, parties have the right to be assisted by a lawyer, chosen or appointed and in criminal mediation, legal assistance is compulsory.

„The examination of the case by an independent court, impartial, established by law” principle is revealed for mediation in the sense that mediators are neutral and impartial, persons who have special training in the field, being authorized by the Mediation Council in Romania.

„The public pronouncement of judgments” principle is extrapolated in the case of mediation since the parties know the contents of the mediation agreement after completion of mediation.

4. Considerations on the free access to court, according to the Decision of the Romanian Constitutional Court no. 226/2014

According to art. 601 of Mediation Law [22], in cases that can be settled by mediation or by another alternative dispute resolution method, parties and/or the interested party are obliged to prove that they participated to an informative session on the advantages of mediation, in the subject matters provided by this text of law.

In case of breaching the legal obligation on information about the advantages of mediation, the law initially provided the sanction of rejection of the court action if the parties (i.e. the claimant) did not prove to the court that they participated to informative session. This sanction came into force on August 1st, 2013. Later on, the Constitutional Court delivered a Decision on the unconstitutionality of art. 200 of the Civil Procedure Code, as well as of art. 2 paragraph (1) and (1^2) and of art. 60^1 of Law 192/2006. [23] In this Decision, the Court considered that the limitation of the free access to justice “irrespective of how insignificant it might be, has to be thoroughly justified, being necessary to analyse if the created disadvantages do not outweigh the possible advantages. (...) Consequently, access to justice has to be ensured in an effective and efficient manner [24]. For these reasons, the Court believes that the mandatory preliminary procedure regarding the information on the advantages of mediation is an impediment in the exercise by the citizens of their judicial rights. Moreover, a procedure that consists in information on the existence of a law is a restriction of the right of free
access to justice, the subject of this right having an inopportune burden since the preliminary session is not meant to settle the dispute but provide information on mediation. Practically, participation of the parties to the mediation session in front of the mediation has a formal character.”

The reasons for judgment and the judgment show that only art. 2 paragraph (1) and art. (12) of Law no. 192/2006 was considered as unconstitutional – texts that stipulated the sanction of rejecting the court case if the preliminary procedure on information on the advantages of mediation had not been carried out – and art. 601 of the mediation law became optional. In other words, even if the judge does not advise the parties to accomplish the information procedure in that particular case, the judge has no coercion mean to oblige the party to obtain information from the mediator on the advantages of mediation.

5. Conclusions

As a result of the fact that the demographic, social and technological evolution of the humanity has seen exponential growth in recent years, the concepts of "justice" and "due process" processes are undergoing major changes designed to adapt and harmonize the existing mechanisms to current fundamental values. In conclusion, in the context of the constant changes that occur, we consider that the mediation process confer the same procedural safeguards as a trial, so that the parties have guaranteed respect for legality and correctness of the procedure itself applicable and of the documents that are prepared during the mediation process. These aspects do not diminish the advantages offered by the judicial process (especially if we take into account the binding character of judgments and the possibility to be immediately enforced, within a very short period of time) or the advantages offered by other ADR methods, so that the parties have the possibility to decide on the most suitable modality – at the right time – for the settlement of the dispute in which they are involved.

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Proposals for improving the legislation on local public administration

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Abstract
The implementation of different regulations in the practice of local public administration has allowed the observance of the legislative gaps and barriers that hinder the correct application of the legislation governing local public administration. The administrative practice at local level has revealed that some norms lack clarity, precision and consistency, creating difficulties in their implementation and violating the European standards regarding the quality of the law. This paper aims to provide a range of legislative solutions to correct such deficient regulations and to make them compatible with the European requirements, bringing into focus the latest legislative interventions of the Parliament and Government in matters of local public administration.

Keywords: legislative proposals, local public administration, local authorities, legal regime, administrative practice.

Preamble

The evolution of the Romanian society has led to a permanent transformation of the legal framework on local public administration. An important place within the regulations concerning local public administration is occupied by the law on local public administration, the law on the status of local elected officials, the law for the election of local public administration authorities and the law on local public finances. These normative acts have undergone some recent amendments and supplements as a result of the Parliament having adopted Law no. 115/2015 [1]. At the same time, Law no. 215/2001 on local public administration has been amended by Law no. 119/2015 [2] and the Government Emergency Ordinance no. 14/2015 [3]. Despite these recent changes, the normative acts mentioned still contain some objectionable provisions, as the legislative interventions fail to offer efficient solutions and clarify legislative ambiguities. This is the reason for initiating this scientific endeavour that seeks, on the one hand, to highlight the latest amendments and supplements to the most important regulations of the local public administration, and, on the other hand, to bring a series of
de lege ferenda proposals under attention. We have previously stated [4] that the law on local public administration requires substantive changes to settle the legal institutions specific for local public administration in their natural order and allow the correlation of certain norms belonging to this regulation with the provisions of other normative acts. We further support the idea that the norms of the framework law on local public administration must be correlated with the provisions of the law on the status of local elected officials, the law regarding the regime of incompatibilities and conflicts of interest, the law for the election of local authorities and the ordinance on the framework regulation for the organization and functioning of local councils. Moreover, amendments and supplements must be introduced to Law no. 273/2006 on local public finances.

The main legislative changes brought by Law no. 115/2015, Law no. 119/2015 and G.E.O. no. 14/2015

Law no. 115/2015 creates a new regulatory framework for the election of local public administration authorities, amending and supplementing the law on local public administration and the status of local elected officials. This new regulation has abated Law no. 67/2004 for the election of local authorities and any contrary provision in the matter, bringing new legislative solutions in the legal order, with the aim of improving, as the initiators declare, the mechanism for the designation of local public administration authorities and to ensure a transparent electoral process, in full compliance with the requirements of a democratic society. The law includes three titles, each title covering a particular subject matter. Title I concerns the election of local public administration authorities, Title II is devoted to the amendment to Law no. 215/2001 on local public administration, and Title III amends and supplements Law no. 393/2004 on the status of local elected officials. Despite the fact that it regulates three different matters, the legislator has merely mentioned in Article 1 of Title I that the law governs the regime of elections for local public administration authorities. It would have been normal to mention, under the effect of this act, the regime of elections for local authorities, together with the amendments and supplements to certain normative acts. Among the novelties included in Title I of the law, there is the indirect election of the president of the county council from among the county councilors, where the county council president
retains the quality of county councilor, an amendment operating with the following mandate, enabling the persons holding the public office to be part of the electoral offices without entering a state of incompatibility, plus a clearer regulation of the rights and responsibilities of actors involved in the organization and conduct of elections etc.

The second title of the law amends several articles of the local public administration law. A aspect worth mentioning is that the legislator clarifies a legal institution in a different manner throughout the same normative act, namely the president of the county council, in the sense that Article 1 of Title I of the law includes the county council president among local authorities, while Title II establishes that local autonomy, as a right, is exercised by the mayor, local council and county council, in their capacity as local public administration authorities elected by citizens through universal, direct, secret and freely expressed vote, excluding the president of the county council from the category of public administration authorities implementing local autonomy. Even if indirectly elected by county councilors, the county council president remains a public authority establishing local autonomy at county level. In fact, Article 1 paragraph 1 letter d of Law no. 215/2001, which defines the concept of executive authorities, includes the president of the county council in the category of local authorities. We believe that the correct wording should have been as follows: “This right (local autonomy) is exercised by local councils, mayors and county councils, local public administration authorities elected by universal, equal, direct secret and freely expressed vote, as well as the president of the county council, a local public administration authority indirectly elected from among the county councilors”.

Title II of the law amended the manner of removal from office of the deputy mayor, opting for a more rigid legislative solution than the one in the old regulation; it also provided that this operation is done by the local council, with the vote of two thirds of the local councilors in office, according to a reasoned proposal of the mayor or a third of the local councilors in office. The initial version of the law provided for the removal from office of the deputy mayor by a majority vote of the local councilors in office. What will be problematic in the administrative practice, in our view, is the interpretation of the phrase “reasoned proposal”, since the text of the law is not clear whether it is a mere formality or it must represent a substantial step in showing that the person proposed for
the removal from position has committed certain acts or has behaved contrary to the position held. The law does not provide any reason for the removal from office of the deputy mayor, leaving for the mayor or a third of the councilors an opportunity to formulate a reason adequate to their political interests.

The solution adopted in the case of the deputy mayor is also regulated for the vice presidents of the county council, in the sense that their dismissal from office may be done by the county council, through the secret vote of two-thirds of the county councilors, on a reasoned proposal of at least one third of the county councilors in office. Compared to the regulation specific to the deputy mayor, for the provisions concerning the replacement from office of the county council president and vice presidents, the legislator provided the interdiction to replace the holders of such positions at county level in the last six months of the mandate of county councilor. Drawing a comparison between the regulation of the removal of the deputy mayor and that of county council president and vice presidents, we find that the legislator uses different phrases for the same operation (in the case of the deputy mayor the phrase “replacement from office” is used, while for the president and vice presidents of the county council the phrase “dismissal from office” is used); it also introduces the interdiction to replace from office in the last six months of mandate only for the president and vice presidents of the county council and expressly stipulates the secret vote only for the president and vice presidents of the county council, and not for the deputy mayor as well.

Another amended provision is related to the number of local and county councilors; the law provides that this number is determined by prefect order, depending on the number of inhabitants of the commune, town or municipality, respectively county, in accordance with the population reported by the National Institute of Statistics on 1 January of that year. The minimum number of local councilors is 9, and the maximum is 31. For county councilors, the minimum number is 31 and the maximum 37.

Law no. 115/2015 has eliminated the 90-day period within which the Government was obliged to hold elections for local council if this was dissolved by law or by local referendum, as well as for the position of mayor if the mandate was legally terminated. This legislative change is basically a continuation of the approach initiated by the
Government in 2014, when, by E.O. no. 68/2014, the Executive amended the provisions of Article 72 of Law no. 215/2001, removing the 90-day period when it was obliged to hold elections for the position of mayor, if this position became vacant. In our opinion, the variants the organic and the derivative legislator opted for are counterproductive, and we propose that this period should be reintroduced in the legislation, together with sanctions for the Government if it refuses to hold elections within the 90 days.

The return to the indirect election of the county council president from among the county councilors in office has determined the amendment of Article 102 paragraph 2 of Law no. 215/2001 regarding the political accountability of the county council president. In this respect, it was provided that the county council president is responsible before the county council for the proper functioning of county public administration. In our view, the president of the county council has a dual political accountability: on the one hand, before the citizens who elected him or her as county councilor and, on the other hand, before the county council which elected him or her the president of the deliberative county forum.

Title II of the Law no. 115/2015 also ordered the republishing of Law no. 215/2001 on local public administration.

Title III of the law, entitled “Amendments and supplements to Law no. 393/2004 on the status of local elected officials”, contains two articles which amend a number of provisions of the law on the status of local elected officials. Thus, it is provided that mayors, local and county councilors are elected by the universal, direct, secret and freely expressed vote of the citizens entitled to vote from the administrative-territorial unit where they will exercise their mandate, and the presidents and vice presidents of county councils, as well as the deputy mayors, are elected by indirect secret vote, in accordance with the provisions of Law no. 215/2001 on local public administration. This was practically a correlation with the changes brought to the local public administration law. Also, to remove the obstacles from the local or county deliberative authorities if the termination of mandate for a councilor is noted following the loss of membership of the party on whose list he or she was elected, the legislator has enacted the prefect to issue the order for the legal termination of the mandate as a local or county councilor respectively. Therefore, it was provided that within 30 days from the notification of the
political party or organization of national minorities on whose list the local or county
councilor was elected, the prefect should find, by order, the termination of the mandate
before the end of its normal period and declare vacant the position of that local or
county councilor. For other cases of legitimate termination of councilor mandate the
procedure remains unchanged, meaning that the local or county deliberative authority
adopts, during the first ordinary meeting, at the mayor’s proposal, or that of the county
council president, a decision which notes the situation created and declares vacant the
position of the respective councilor. In connection with this legislative amendment, there
is the question whether the local and county councilors who have left the party on
whose list they were elected, under G.E.O. no. 55/2014 (declared unconstitutional by
the Constitutional Court of Romania) lose their mandate or this particular case of
mandate termination is applied only to those who are about to transfer from the party on
whose list they were elected to another party? Given that the decisions of the
Constitutional Court apply in the future, a principle valid for the temporal application of
the law, and the local and county councilors left the party on whose list they were
elected, based on G.E.O. no. 55/2015 (which, at the time, enjoyed the presumption of
constitutionality) it can be stated that the prefect, even if notified by that political party on
whose list they were elected as local or county councilor, cannot issue the order for
legal termination of the mandate of the respective councilor, because the transfer to
another party happened before the issuing of the Constitutional Court decision and the
amendments to Law no. 215/2001 on local public administration brought by Law no.
115/2015. The only institution that can clarify this situation is the Parliament, which must
pass the law rejecting Ordinance no. 55/2014, regulating, in accordance with the
constitutional provisions, the issue of the legal effects of the respective ordinance [5]. In
our opinion, urgent clarification is needed because it is unnatural to apply a rule to one
local councilor but not to another, in the same mandate. We consider the situation of a
councilor who already is a member of another party than the party on whose list he or
she was elected and the situation of another councilor who is still a member of the party
on whose list he or she was elected and decides to leave that party. For the former, the
termination of the mandate does not apply because the norm stipulates the loss of
membership of the party on whose list they were elected, and they are no longer a
member of that party, and if they do leave the party, the mandate does not terminate; for the latter, who is a member of the party on whose list they were elected and, if the party membership is lost, the mandate as local elected lawfully ceases.

Another legislative change is related to the time of reception of the mandate by the county council president, county council vice presidents and deputy mayor. It is stipulated that they can effectively exercise their powers after they are declared legally elected, according to Law no. 215/2001 on local public administration. As regards the termination of their mandate, the law provided for a rightful termination, following the termination of mandate as local or county councilor, and also a termination due to the release or dismissal from office, under the law regarding local public administration. The term revocation seems unnatural, given that local public administration law operates, in the case of the deputy mayor, with the phrase “replacement from the position”, and in the case county council president and vice presidents, with the phrase “dismissal from the position”; for the regulatory unity the same terms must be kept.

In this Title, as in Title II, the republication of Law no. 393/2004 regarding the status of local elected officials is stipulated. Another normative act which amended Law no. 215/2001 on local public administration is Law no. 119 of 21 May 2015. This legislation amended Articles 66 and 105 of the law on local public administration. Under the new legislative changes, the mayors of communes, towns, municipalities and county capitals can employ a number of personal consultants, an opportunity offered to the county council president as well. Indeed, this possibility was included in the old regulation, but this legislative intervention brings some clarifications necessary to correct the implementation of these legal provisions. Thus, the mayors of communes may establish, to the extent of the positions approved, a position of consultant of the mayor, while the mayors of towns, municipalities and county capitals may establish, in turn, to the extent of the number of positions approved, the cabinet of the mayor. The cabinet of the mayor is a distinct department formed of maximum 2 positions in towns and municipalities, and a maximum of 4 positions in county capitals. The consultants of the mayor are appointed and dismissed by the mayor. With regard to county council presidents, they are entitled to set up, in the
maximum number of positions approved, the cabinet of the president, a structure which takes the form of a separate department, consisting of a maximum of 4 positions.

The third normative act that supplemented, in 2015, the Law on local public administration is G.E.O. no. 14/2015. With this legislative intervention the Government has sought to regulate the exceptional situation in some administrative-territorial units in Romania where there is no executive authority, no deliberative authority or no secretary of the administrative-territorial unit; because the deliberative authority is dissolved, the mayor or county council president can not exercise their mandate and the position of secretary of the administrative-territorial unit is vacant. This affects the proper management of public affairs at the level of administrative-territorial units; therefore it was imposed to be governed by way of emergency ordinance.

In this hypothesis, the prefect appoints by order a person through detachment, under Law no. 188/1999 regarding the status of public servants, republished, with the subsequent amendments, who would take on the duties of the secretary of the administrative-territorial unit and solve the current problems of the commune, town or municipality, until the public position of secretary is occupied in accordance with the legislation on the public office and public officials. This person must meet the requirements of education and experience in the specialization provided by the law in force.

As this is an exceptional situation, the prefect must expeditiously request the National Agency of Public Servants to organize the contest for the leading position of secretary of the commune, town or municipality, under the law. The appointment of the secretary of the commune, town or municipality is done by the prefect, at the proposal of the National Agency of Public Servants.

The same procedure is used at county level, if the county council is dissolved, the president of the county council can not exercise the mandate and the position of county secretary is vacant. G.E.O. no. 14/2015 has also established some derogatory norms from the provisions of Law no. 273/2006 [6] on local public finances, in the sense that these enable the secretary of the administrative-territorial unit to act as main credit for current operations.
All the normative acts presented have brought specific legislative solutions in legislation, leading to the amendment and supplement of Law no. 215/2001 on local public administration and other laws. Unfortunately, some of these amendments and supplements are not of help, but on the contrary, lead to blockages in local administrative practice, creating the need for new legislative initiatives. Moreover, many of the regulatory issues of local public administration have not been addressed through these normative acts, which is why we will further make a series of de lege ferenda proposals.

De Lege Ferenda Proposals

As observed in this analysis, both Law no. 215/2001 on local public administration and Law no. 393/2004 on the status of local elected officials are to be republished and the texts contained in the two normative acts will receive a new numbering, which is why we propose only the legislative solution, without indicating article to be amended or supplemented.

First, we consider that the definition of local elected officials should be deleted from the law on local public administration and that from Law no. 393/2004 on the status of local elected officials should be maintained. According to the provisions of Law no. 393/2004, local elected officials are the local and county councilors, mayors, and the general mayor of Bucharest, deputy mayors and the presidents and vice presidents of county councils, also assimilating the village delegate. In connection with the village delegate, we consider it necessary to improve its status in the sense of adopting clear rules on the appointment procedure, mandate, the body that verifies the election process, conditions which must fulfilled by a person in order to be designated local elected official and their rights and duties [7].

Second, we propose that the Article of the Law on local public administration enshrined to local autonomy should specify that local autonomy, as a right, is exercised by local councils, mayors and county councils, local public administration authorities elected by universal, equal, direct, secret and freely expressed vote, and by the county council president, a local public administration authority elected indirectly from among the county councilors.
Third, we state that the plural form “competences” used in the local public administration law in relation to local authorities should be replaced by the singular form “competence”, so as to speak of exclusive, shared and delegated competence of local public administration authorities (Article 5 of Law no. 215/2001), and also to correlate the provisions of Law no. 215/2001 of local public administration with those of Law no. 195/2006, the framework-law on decentralization.

Fourth, we consider necessary a stricter regulation of the manner in which central authorities intervene in the legislative and address the problems of local communities. State practice has showed that, quite frequently, central authorities govern local issues without taking into consideration the local needs and expectations. The associative structures of local authorities are formally consulted, or, even worse, in the management of the associative structures of local authorities, the central level offers support to persons sharing the same opinion, thus the whole point of the consultation becoming useless. Precisely for the efficiency of the consultation process of local authorities by the central ones, we suggest that in the management of the associative structures of local authorities there should mostly be representatives of the opposition, and these associative structures should have the right to notify the Constitutional Court with regard to normative acts coming from the Parliament and Government that affect local autonomy.

Fifth, we believe that the association of the administrative-territorial units should be encouraged more by the Government, which is why we suggest the establishing of the rule according to which the financing of local authorities projects from national funds should be done by supporting those local authorities running projects in association, and then the projects of other authorities. Creating regional targets, regional public services facilitate the consolidation of administrative-territorial units and the administrative-territorial reform. We also propose that the distribution of funds to administrative-territorial units should be made according to a formula that would ensure the operating expenses for all administrative-territorial units, and for development, if there are funds, there should be given support to localities with ongoing projects, performance criteria should be established (attract or create investment, European
funds, the collection rate of local taxes, projects in association, penalties received from financial control bodies, employing administrative sciences graduates etc.).

Sixth, we suggest the use of the same phrase for the change from office of the deputy mayor, county council president and vice presidents, i.e. “replacement from office”. However, in the case of the deputy mayor, county council president and vice presidents, the secret vote must be expressly regulated, together with the fact that the holders of such positions can not be changed in the last six months of mandate in local or county council. We also propose the correlation of the norms from the Law on local public administration no. 215/2001 and those of Law no. 393/2004 on the status of local elected officials as regards the replacement from office of the deputy mayor, county council president and vice presidents in order to eliminate legislative duplications.

Seventh, we support the need for clearer regulation for the legal institution of the suspension from mandate of local elected officials. Currently, there are norms in the legislation that govern in a different manner the same legal institution. Thus, Law no. 215/2001 on local public administration provides that the mandate of local elected officials is suspended by law only if they are in custody, while Law no. 393/2004 on the status of local elected officials, states, in turn, a case of legal suspension of mandate when local elected officials fail to submit the declaration of personal interests. Since the local public administration law stipulates that the mandate is legally suspended only if the local elected officials are in custody, this entails that other cases of rightful mandate termination can not be regulated. However, we consider that the suspension should operate in other cases as well, that is why we suggest the rephrasing of the Law on local public administration regarding the legitimate suspension of the mandate of local elected officials.

Eighth, we consider that there should be introduced a new case for the legal termination of the mandate of local elected officials, namely the situation of conflict of interest. The special regulations concerning integrity establish the ceasing of mandate if there is a conflict of interest, but this case of legal mandate termination for local elected officials is not found among the cases stipulated by Law no. 215/2001 on local public administration and Law no. 393/2004 on the status of local elected officials. To ensure a
regulatory unit, we suggest supplementing Law no. 393/2004 with this particular case of legal mandate termination of local elected officials.

Ninth, we propose to reintroduce the 90-day period within which the Government is required to hold elections for mayor, local council and county council in case of early termination of the mandate of these authorities, together with penalties for the Government if it fails to meet this legal obligation.

Tenth, we believe that the subordination of the deputy mayor before the mayor should be removed from the Law on local public administration. The deputy mayor is appointed by the local council in office, not by the mayor, and both legal subjects benefit from popular support.

Eleventh, we propose that the persons to occupy positions of consultants of the mayor or county council president should be mainly graduates of administrative sciences. This would ensure a faster access of young persons specialized in administrative sciences in the field of training, an increase in the quality of the staff from public administration, and the investment in their theoretical training would be recovered immediately.

Twelfth, we suggest the correlation of the norms regarding the incompatibility state of the mayor comprised in Law no. 161/2003 with those contained in Law no. 215/2001 and Law no. 393/2004 on the status of local elected officials. Law no. 161/2003 provides that the incompatibility of the mayor comes after validation of the mandate, a period of 15 days being calculated in which the person with the quality of mayor must renounce the position or quality that generates the incompatibility. Given the fact that the mayor enters the mandate starting with moment of the oath, we propose that the incompatibility should intervene starting with this moment, and not from the validation date.

Thirteenth, in order to eliminate legislative duplications we suggest that, on the procedure for finding the incompatibility of the mayor, it is better to opt for the legislative solution contained in Law no. 176/2010 and to abrogate the norms contained in Law no. 161/2003. We currently find in the Romanian legislation two different procedures for establishing the incompatibility state of the mayor. One is provided by Law no. 161/2003 and states that, if the mayor in a state of incompatibility does not give up one of the two
incompatible functions within the period prescribed by law, the prefect shall issue an
order that finds the legal termination of mandate as local elected official at the expiration
of the 15 days, at the proposal of the secretary of the administrative-territorial unit. Any
person may notify the secretary of the administrative-territorial unit. These provisions
are supplemented by those contained in Law no. 215/2001 and Law no. 393/2004
regarding the termination of the mandate.

The second procedure is that established by Law no. 176/2010 on integrity in the
exercise of public office and dignities, amending and supplementing Law no. 144/2007
and other normative acts; this is a more complex procedure implemented by the
National Integrity Agency. As stated before [8], “the legislator must maintain in force
norms which offer guarantees to protect the rights of citizens and which are consistent
with the principles of modern administration and to abrogate, at the same time, those
norms that create difficulties in their implementation and whose existence leads to
legislative duplications”.

Fourteenth, we suggest the inclusion of the public administrator within the
definition of the city hall contained in Law no. 215/2001 and the development of its legal
status.

Fifteenth, we suggest that the norm contained in Law no. 393/2004 regarding the
right to holiday of the mayor, deputy mayor, county council president and vice
presidents should be supplemented by the right to parental leave. The transposition into
national legislation of the European regulations concerning the incentives for both
parents to be involved in the upbringing of the child (among which there is also the
establishment of the obligation for both parents to take care of the child until the age of
one to two years old), requires the correlation of the general norms of local public
administration with the special norms of social care.

Sixteenth, we support the need to introduce the procedure for the secret vote and
for the election and dismissal of the chairman of the local council given that it is a vote
for the appointment of a person in a certain position and the vote must be secret.

Seventeenth, we propose the introduction of a sanction for the mayor or county
council president in the event in which the ordinary assembly of the local or county
council is not convened on a monthly basis. The mayor and the county council president
represent the only legitimate subjects authorized by law to convene the ordinary monthly meeting of the local council or county council respectively. The administrative practice at local level has shown that situations may arise where the mayor or county council president does not convene, monthly, the ordinary meeting of local or county council due to the fact that the local or county deliberative body met in that respective month in an extraordinary or immediate session, and there is no need to convene the ordinary meeting.

Eighteenth, we support the elimination of the phrase “invited by the mayor” from the provisions relating to the participation of certain national or county dignitaries and other stakeholders in the local council meetings, because the rule states that these local council meetings are public, and the attendance of other persons besides local councilors must not be determined by an invitation from the mayor.

Nineteenth, we consider that the norms contained in the Law on local public administration regarding the delegation of powers by the mayor or county council president need rethinking, in the sense of reducing the number of the legal subjects to whom these powers may delegated. At the same time, we believe that the possibility of delegating the tasks set by the local public administration law, and those contained in other normative acts, should be provided for the county council president in the same way as for the mayor.

Twentieth, we consider that Government Ordinance no. 35/2002 approving the framework regulation for organizing and functioning of local councils should be revoked and a new normative act should be adopted, one that respects the constitutional requirements, with norms compatible with those contained in Law no. 215/2001 on local public administration and Law no. 393/2004 on the status of local elected officials. We have previously expressed our opinion [9] with respect to this normative act, stating that it brutally violates the fundamental law through the adoption procedure and certain provisions it contains.

Conclusions

The dynamics of social life prints a faster pace of change with regard to regulations. The administrative practice, the emergence of new European regulations,
the change in the view of local issues, a necessity to correlate certain normative acts that cover the same field all these determine the legislation on local public administration to require substantial amendments and supplements. We hope that, through these proposals, we meet this necessity and we would like them included, as soon as possible, in the legislation.

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The management of public functions and public servants

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Abstract
The diversity and complexity of public function raises the problem of their management in a coherent global system based on norms and principles common to all public functions applicable to all public servants.
As such, the current management of human resources and public functions is organized and realized within every authority and public institution by a section specialized in the domain that applies strategies and management politics of the public function contributing to the efficiency of the administrative system and improvement of the relations between them and the civil society.
The material presents specific aspects of the public functions management both on a functional plan and in an organizational one.
Keywords: public function, public administration, management of public functions, human resources sections, parity committees, professional file

Introductive considerations
The diversity and complexity of public functions, their organization and exercise on a micro social or macro social level, starting with local public authorities and institutions to the top level of public authorities and institutions raises the issue of their management in a coherent global system and based on norms and principles common to all public functions and applicable to all public servants.

As such, the ensemble of public functions must be organized and must function as a well constructed mechanism satisfying the social interest it expresses.

The status of public servants regulates [1, chap.V] the management of public functions and public servants and the specialized literature speaks of the public function management [2, 142], [3, 25].

As the administration, in general, and public administration, in particular, is defined by specialized literature both under an organizational aspect (as organizational structures) and as an activity (under the form of administrative acts and technical and administrative operations) the management of public functions can too be regarded and analyzed under these aspects, it being a determiner of administrative activity so of some structures of public administration.
In a functional plan the management of public functions implies a number of activities that mainly regard: elaborating the policies and strategies of this matter, the projects and normative acts referring to function and public servant as well as their application; the salary of public servants; evaluating their activities on objective criteria; their professional training and perfecting, the entry in the public servants corpus and their professional promotion, ensuring the application of the norms that constitute the status of public servants, in general, including some categories of public servants with special status [4, 92].

In an organizational plan the management of public functions implies the constitution of some special organizational structures to accomplish the activities mentioned above and to function together based on judicial principles and norms. Considering the above we could define the management of public functions as the ensemble of activities developed, according to law, by organizational structures specially created for elaborating and applying the politics and strategy as well as the regulations regarding the public servants [5, 483].

**The management of public functions**

For managing the public functions through the Status of public servants there has been instituted the organization and functioning of some special organizational structures subordinated to public authorities or institutions, central or local, to which it has as well stated their competence.

These are the organizational structures:

- The National Agency of Public Servants;
- the human resources sections;
- the joint committees;
- The disciplinary committees.

The application on a national level of the strategy and the Government Program in the field of the management of public functions and public servants is ensured by the Ministry of Administration and Interior as a specialized organ of the central public administration with judicial personality.
The National Agency of Public Servants

For creating and developing a professional, stable and impartial corpus of public servants there has been founded the National Agency of Public Servants as a specialized organ of the central public administration with judicial personality [6, 125].

The National Agency of Public Servants has the following main attributions:

- elaborates the politics and strategies regarding the management of the public function and the public servants;
- elaborates and approves projects of normative acts regarding the public function and the public servants;
- monitors and controls the application method of the legislation regarding public function and public servants within the public institutions and authorities;
- elaborates common regulations applicable to all public authorities and institutions regarding public functions as well as instructions regarding the unitary application of the legislation in the field of public function and public servants;
- elaborates law projects regarding the establishment of the unitary salary system for public servants;
- establishes criteria to evaluate the activity of the public servants;
- centralizes the instruction proposals of the public servants established as a consequence to the evaluation of the individual professional performances of the public servants;
- collaborates with the National Institute of Administration to establish the theme specific to the programs of specialized training in public administration and perfecting of public servants;
- draws up and administers the data base containing the records of public functions and public servants;
- approves the participation conditions and the organization procedure of the selection and recruitment for the general public functions, approves and monitors the recruitment for the specific public functions;
- redistributes the public servants whose labor relations have terminated for reasons not attributable to them;
offers specialized assistance and methodologically coordinates the human resources department within the authorities and institutions of the central and local public administration;
participates to negotiations between the union organization representing the public servants and the Ministry of Public Administration;
collaborates with international organisms and organizations of its activity domain;
annually elaborates, consulting the public institutions and authorities, the Plan of occupying the public functions which is submitted for approval to the Government;
Draws the annual report regarding the management of public functions and public servants who the Government represents.

The agency has active legal standing and can notify the competent legal department regarding:
the acts through which the public authorities violate the legislation referring to the public function and the public servants, noticed as a consequence of the self control activity;
The refuse of the public authorities and institutions to apply the legal provisions in the domain of the public function and the public servants.

The attacked act is suspended by law.

The President of the National Agency of Public Servants can also notify the prefect regarding the illegal acts issued by local public authorities or institutions.

The Agency elaborates the Plan for occupying the public functions by consulting the union organizations representative on a national level that it submits to the approval of the Government.

The National Agency of Public Servants administers the national records of public functions and public servants based on the data transmitted by the public authorities and institutions and at the same time keeps the records of public functions and public servants within the public authorities and institutions.

The Agency is lead by a president who is a state secretary helped by a vice president who is a state undersecretary.

The president represents the Agency in its relations with the ministries, the other authorities of the public central administration, the local public administration authorities,
other public central or local authorities and institutions, judicial persons and individuals Romanian or foreign as well as in justice.

While exercising his presidential attributions he issues orders with normative and individual character.

The Agency has a general secretary who is part of the high public servants category and is named according to law.

The general secretary has long duration superior studies, judicial or administrative, graduated with license diploma or equivalent.

**Human resources departments**

The current administration of human resources and public functions within every public authority and institution is made by a specialized department that collaborates with the National Agency of Public Servants and that also has other attributions established by special laws and other normative acts as well as by the Regulation of organization and functioning of the certain public authority and institution [9, 92].

**Joint committees**

The joint committees are made within every public authority or institution except those with attribution in the domain of national security by an administrative act of the leader of the public authority or institution.

The joint committee is constituted for many public authorities or institutions if within those public authorities or institutions there are less than 12 public servants, as so:

- from the members designated from within that public institution and within the public authority or institution under which it is organized according to law;
- For two or more local councils.

In the first case the joint committee is constituted by the administrative act of the leader of the public authority or institution to which it is subordinated or under the authority of which the public institution for which a joint committee cannot be constituted is organized.

In the second case the joint committee is constituted as a consequence to the decision of the local council, at the mayor's proposal, of the representatives of every local council within the common joint committee.
The joint committees are made of 4 titular members.

The members of the joint committee must be public servants within the public authority or institution where the joint committee is organized or, as appropriate, within one of the public authorities or institution for which the joint committee is organized.

The titular members of the joint committee common for more public authorities or institutions are designated by following the conditions below:

- the joint committee must be composed of an equal number of representatives of every public authority or institution for which it is constituted;
- the number of the representatives designated by the leaders of the public authorities or institutions for which the joint committee is constituted must be equal to the number of representatives designated by the union organization representing the public servants of these public authorities or institutions;
- If the union is not representing or the public servants are not organized into a union the representatives will be designated by the vote of the majority of the public servants of that public authority or institution. The election of the public servants' representatives is made through secret vote.

The representatives of the public servants within the joint committee can be designated from the public servants elected for the leading organs of the representative union or from the public servants elected to negotiate, within law, the agreements with the management of the public authority or institution.

Along with the designation of the titular members there are also designated at least 2 substitute members, following the same conditions.

The appeals regarding the designation procedure of the public servants' representatives within the joint committee can be submitted by any public servant who is interested within that public authority or institution, in writing and with reasons, within two working days from the termination of the designation procedure.

The leaders of the public authority or institution examine the appeals and if they are considered valid the result of the designation procedure is canceled, enabling its remaking.
After finalizing the designation procedure for solving the submitted appeals the members of the joint committee are named by the administrative act of the leader of the public authority or institution.

The members of the joint committee are named on a period of 2 years. Their mandate can only be renewed once.

Thirty days before the expiring of the mandate of the members of the joint committee a new committee will begin to be constituted.

The president of the joint committee is elected by the vote of the members of the joint committee from its members.

The termination and suspension of the quality of member of the joint committee take place within the conditions provided for the members of the disciplinary committees. In these situations the titular members are replaced by the substitute members by the administrative act of the leader of the public authority or institution.

Every joint committee has a titular secretary and a substitute secretary, public servant within the public authority or institution for which the joint committee is organized, who are not its members, named by the leader of the public authority or institution by the administrative act of constituting the joint committee.

The joint committee gathers at the request of:

- the leader of the public authority or institution;
- its president;
- the union representing public servants;
- The majority of the public servants.

The gathering of the members of the joint committee and the communication of the daily order are made in writing by its president, through the secretary, within two working days from the registration of the request for gathering the joint committee.

The joint committee is validly gathered in the presence of all members.

If, for objective reasons, all members of the joint committee cannot be present, the session is postponed to a date established by its president.

If all members cannot gather on the second date the joint committee is considered validly gathers in the presence of half of its members respecting the parity principle.
The public institutions and authorities have the obligation to communicate to the National Agency of the Public Servants the act of constitution the joint committee as well as the disciplinary committee and the modifications occurred in the structure of the joint or disciplinary committee.

**The professional file and the record of public servants**

For ensuring the unitary and efficient management of human resources as well as for following the career of the public servant the leaders of the public authorities or institution have the obligation to ensure the drawing, updating, keeping and recording the professional files of the public servants and of the records of the public servants [10, 105].

**The professional file**

The professional file contains data with personal and professional character.

A. The data with personal character included in the professional file are: last name, first name and, as appropriate, the prior name, date and place of birth, personal identification code, address and, as appropriate, residence, personal phone number and, as appropriate, work phone number, last name, first name and phone number of the contact person in case of emergencies, if necessary, last name and first name of wife/husband, as well as last name, first name and date of birth of the under aged children of the public servant, the situation of the military service, if necessary.

B. The data with professional character included in the professional file regard: professional training, work experience, the activity developed within the public institution or authority, the disciplinary status as well as the activity developed outside the public authority or institution.

The professional file must contain:

- a copy of the identity card;
- copies of acts of civil status;
- a copy of the service record;
- medical certificate stating a health status appropriate for exercising the public function;
- copies of the study acts;
- copies of the certificates of participation to the training or perfecting courses;
The public servant must inform the person responsible for the records of the personnel provided in the job description of the modifications regarding the address or, as appropriate, the residence as well as of the changes occurred in the civil status within five days from their occurrence.

**The records of the public servants**

The record includes identification elements of the public servants, the date of their appointment in the public function, the date and legal purpose of the modification, suspension and termination of labor relations, salary rights, for stand last name, function and signature of the person who made the record.
The public servant has the right to access the personal and professional data from his professional file and the record paper. He can request in writing the department of human resources or the person responsible for the personnel’s records as provided in the job description the issue of a certificate to valid the information contained in it and the issue of copies of the personal record paper.

To the professional file have access, in the presence of the titular and the person responsible for the personnel records provided in the job description, and can request in writing and motivated a validation of the data contained in it, within law, the following persons and public authorities or institutions:

- the leader of the public authority and institution;
- the leader of the department in which the public servant develops his activity or, as appropriate, another public servant that evaluates the public servant;
- the persons empowered of some public authorities or institutions with control attributions;
- the president and/ or the members of the disciplinary committee;
- the legal advisors within the public authority or institution where the public servant who is titular of the file develops activity when the public authority or institution is part of a trial with him and the data are relevant for solving the cause;
- the public servants of the department of human resources that have attributions in this respect;
- courts and organs of criminal investigation.

In cases of transfer or termination of labor relations the public authority or institution will keep a copy of the professional file and will hand, on signature, the professional file to the public servant.

In the case of the liquidation of the public authority or institution and another public authority or institution newly founded overtakes its attributions the professional files of the public servants taken by the newly founded public authority or institution will be transmitted to it on protocol by the public authority or institution submitted to liquidation.

If the public servant is detached the professional file is kept by the public authority or institution from which the public servant is detached.
In cases of transfer or termination of the labor relations the public authority or institution will hand a copy of the personal record paper.

Conclusions

For creating and developing a corpus of professionals within public institutions, according to common standards, the career of the public servant is organized from its beginning to the termination of the public function relation [11, 74].

The management of the public function (name under which this career organization activity is known) takes into account that the institution of public function represents an ensemble of legal competences that its titular must exercise for a general interest and not as if they were patrimonial rights that would more or less be his property, of which he can dispose as he wishes.

The management of the public function is essential for creating a complete image over an institution and can be defined in a material functional manner as a complex of judicial acts and material operations through which public servants are recruited and their professional situation is materialized – promotions, mutations, notations, advancements etc.

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Short considerations about the application of the new Code of Civil Procedure in matters of administrative disputes
Romanian - current issue of administration and justice

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Abstract
We live in a time of destructuring fundamental elements of life and obviously Romanian state institutions and almost understand that the right to remain so, a kind of Bible we relate, but we do not kill the flesh to show generations which is now formed. So provisions of the new Civil Procedure Code aims to respond to current goals, such as access to public litigants and procedural forms simple and accessible and accelerate the procedure, including the administrative courts.

Keywords: Civil Code, the Code of Civil Procedure Romanian administrative court, courts administrative dispute settlement, European Union law

1. Argumentum
We live in a time of destructuring fundamental elements of life and obviously Romanian state institutions and almost understand that the right to remain so, a kind of Bible we relate, but we do not kill the flesh to show generations which is now formed. So provisions of the new Civil Procedure Code aims to respond to current goals, such as access to public litigants and procedural forms simple and accessible and accelerate the procedure, including the administrative court. Following rigorously ensuring correct prerequisites for resolving the merits of the cases, within the national justice system, the Code is to eliminate the deficiencies in many cases, the decisions of the ECHR against Romania, both fundamentally wrong judicial solutions and for damages caused by the excessive length of judicial proceedings or for the lack of predictability resulting in inconsistent national case law. Therefore, also aimed at finding remedies and to eliminate another major deficiencies Romanian judicial system, namely non-unitary jurisprudence, due, among other things, legislative inconsistency and instability. Following the construction of a modern and balanced civil proceedings Code focuses in particular on measures likely to speed up the judicial response is achieved in a given
period, with respect, equally, the procedural rights of the parties and the fundamental principles of civil process.

This study seeks to highlight the impact suffered by the rules governing administrative litigation procedure following the entry into force of Law no. 134/2010 on the Code of Civil Procedure, shifting its focus to spot issues, especially as the time elapsed since the entry into force of the new civil procedural law until the time of writing is relatively short, we try to address theoretical issues rather than discussed practical issues, but without where it will be appropriate to make remarks, somewhat anticipatory, and in practical terms.

Entry into force of the new Code of Civil Procedure influenced and administrative litigation matter, the more that is not looming in the near future, the entry into force of the Administrative Procedure Code. Law no. 554/2004 regulating administrative disputes procedure was partially modified by law implementing the new Code of Civil Procedure, to ensure the effectiveness of the new provisions thereof, but it will keep special law rule to complement the gaps in the Code. Thus, within the scope of regulation, the new Code of Civil Procedure provides that its provisions are common in civil law, which expressly outlined in art. 2 para. Finally, the report includes any private law and public law, except of criminal law. The Code also applies in matters governed by other laws, to the extent that they do not contain provisions to the contrary, so that the Administrative Litigation Law will be completed with NCPC, to determine the procedure, a procedure is not justified derogatory in all respects. The law implementing the NCPC expressly agreed that the provisions of Law no. 554/2004 "is filled with the Civil Code and the Code of Civil Procedure, to the extent not inconsistent with the specific power relations between public authorities on the one hand and injured in their legitimate rights or interests, the the other part."

2. Specifics administrative matter

Specifics administrative matter, determined by the characteristics of the legal relationship born between authorities, public persons or between private and has led the adoption of a particular procedure, characterized by speed and balance the relationship between the parties, under the procedural aspect, since the particular is in a lower position of authority. Mostly, derogations from the rules of the common law concerns the
establishment of mandatory preliminary procedure, how instituting the proceedings, the deadlines, submission of documents required to file, how establishing procedural framework subjective judgment procedure in appeal, the judgment in its forms of advertising etc. Also, to the particular material, special procedures are in place for the plea of illegality, for action against government orders for suspension of operation of administrative or extraordinary assumptions for lodging appeals. But otherwise, the concrete procedure will be followed according to the rules laid down by NCPC, the common law, on which the special law has not. It will apply after the entry into force of the NCPC, according to the law implementing the code, for instance rules on summoning the parties, the formulation of requests in court of evidence, judgment, judicial remedies. It also matters extrinsic courts and other aspects of the application for summons, and timbrajul, will be solved by the same rule of the relationship between general and special norm. To this end, we evaluate the following report of the Code of Civil Procedure causal and the Law no. 554/2004.


This relationship between the two laws is illustrated procedural provisions of article content. 28 para. 1 of Law no. 554/2004 as amended by section. 9 of art. 54 of Law no. 76 of 24 May 2012 for the implementation of Law no. 134/2010 on the Code of Civil Procedure. According to the legal rules, the provisions of the Administrative Litigation Act is supplemented by the Civil Code and the Code of Civil Procedure, to the extent not inconsistent with the specific power relations between public authorities on the one hand, and the rights of injured parties or legitimate interests on the other. As shown in art. 50 para. 4 of Law no. 24/2000 on legislative technique for drafting laws, the reference standard envisages the enactment current legal situation that is sent. Consequently, by amending rule enshrined in Art. 28 para. 1 of Law no. 554/2004 took into account the provisions of Law no. 134/2010 knowing that both the latter law and the Law. 76/2012 came into force on the same date, ie 15 February 2013.

In fact, in terms of this Act, the rule established by Art. 28 para. 1 of Law no. 554/2004 is the legal status of a rule of reference which emphasizes actually a legal connection between the two acts. As the name marginal text art. 28 para. 1 of Law no. 554/2004 "completing common law" may be amended from this point of view, the text
containing more a norm of reference. It is noted in the text content that you comment that the reference to common law rules rectum Civil Code and the Code of Civil Procedure is not automatic, that those provisions do not complete rules of Law no. 554/2004 only if compatible with the specific power relations between public authorities on the one hand and injured in their legitimate rights or interests on the other.

It should be noted in this context, for instance that the Administrative Litigation Act, although it is a special procedural law, completing the common law civil substantive law could behave discussions or to what extent could become compatible with the substantive rules of administrative law rules materials civil law. Because this is not the subject of this study, we summarize to emphasize that such compatibility can be detected on land rights institution prescription or tort action that can be driven and administrative law matters. Regarding the ratio of the Administrative Litigation Law and Civil Procedure Code should be noted that this can be arranged for and connection with art. 2 of this law proceedings. Thus, the provisions of art. 2 of the Code of Civil Procedure establishes the general applicability of the Code, that establishes the rule that the provisions of this code is the common law procedure in civil matters and for what matters code analysis rule establishes the possibility to apply in other matters, insofar as the laws governing them do not contain provisions to the contrary.

As a corollary of this last hypothesis, the rule laid down in art. 28 para. 1 of Law no. 554/2004 establishes the application of the Code of Civil Procedure in administrative matters, namely the administrative courts but expressly provides that application related to common law procedural rules are consistent with the specific power relations between public authorities on the one hand and injured rights or legitimate interests on the other. Therefore, taking into account the specifics of these relationships ordinary civil procedural rule is not automatically compatible and thus complements Administrative Litigation Law rules but this requires effective compatibility analysis which is done by the court on the occasion of the case which was vested.

Regarding the compatibility of Law no. 554/2004 with the rules of civil procedure in judicial practice was questioned whether administrative contentious matters may be used in security institution calling application. High Court by section profile decided that "can not be used to guarantee the midst of calling procedural court litigation, other than
in the circumstances expressly regulated by the provisions of art. 16 para. (2) of Law no. 554/2004, ie where the individual who has developed, delivered and completed the contested administrative act, or who is guilty of failing to address a request regarding a subjective right or a legitimate interest sued in terms of art. 16 para. (1) of the Act, in turn warranty calls on his or her supervisor who received the written order to develop or not develop the document. "The same decision was also held that" the complaint is thus inadmissible under warranty assumption made by the applicant for administrative dismissal of its application, the claims arising from the effects of the administrative act attacked, which can be exploited in contradiction with those not included in the report as part of judicial review deduced only by an action brought on principal , the competent court after the nature of the case. "In another case, related to the compatibility with the common law, the Supreme Court ruled that" a dispute concerning the order of several institutions jointly to pay salary rights falls the jurisdiction of the court settlement determined with reference to the defendant authority had rank in the system of public administration or in the court of appeal, when at least one of the defendants has the rank of a central public authorities. In such a case, the complaint is wrong disjunction regarding lower-level public authority in order declining jurisdiction of judgments in favor of the court. "From this point of view, to analyze in the following courts judgment in matters of administrative disputes.

4. About the jurisdiction of the courts in matters of administrative disputes

4.1. Preliminary Issues

Entry into force of the new Code of Civil Procedure and matters brought Romanian administrative courts a number of new elements that we consider to be useful for specialists, and individuals. If some regulations, quite a few, in fact, direct amends Law 554/2004, considered to be the framework law of the Romanian administrative courts, other regulations directly affecting indirectly induce the Code of Civil Procedure, and matters of administrative disputes Romanian, a number new items perfectly valid given that such disputes shall be tried by civil proceedings as it expressly refers to this procedure even art. 28 (1) of Law no. 554/2004.

New Code of Civil Procedure, although not significant distance from the old regulation has brought significant changes and unusual, both in terms of some
traditional institutions of civil procedure and especially, especially, on jurisdiction and territorial attribute courts. However, the new Code of Civil Procedure, perfecting monistic conception consecrated by the new Civil Code, the provisions of civil law with the unification of commercial law, in turn unifies the legal provisions governing the rules of substantive jurisdiction of the courts, eliminating the differential regulation rules of jurisdiction in civil and commercial matters. The ambience of the new regulations introduced by the new Code of Civil Procedure, Article review the application of the new Code of Civil Procedure Romanian administrative litigation matters, analysis, due to restrictions imposed typing could not be reported to the old provisions, in order to highlight both similarities and especially the differences to regulations established by the former Code of Civil Procedure nor will include comprehensive implications (except of illegality, the principle of celerity celerity litigation process-contentious legal regulation is supported by force - the principle of finding the truth, existing civil process has its support in matters of administrative litigation, procedural exceptions may be invoked in cases of dispute, of evidence etc.) analysis comes down, as I wrote in the title section only on the competence of courts in administrative litigations.

Contentious jurisdiction of the courts is clearly defined by Law no. 554/2004 but general issues related to the expression of competence and special text are incidents that exceed, in our opinion, and matters of administrative disputes so that recent changes are valid administrative litigation matters. Therefore the new texts of the Code of Civil Procedure are applicable to the administrative courts. Given the overriding concern to ensure the celerity of solving cases, while improving the quality of justice, proposed legislative solutions aim to respond, both directly and through the expected effects, this imperative, whether it is civil process steps resistematizarea so as to lead to a judicial dialogue, in clear and honest simplify procedural forms or modifying substantive jurisdiction of courts with the relocation of the appellate system and, finally, the measures that lead to empowerment parts of the process. Likewise, the purpose of relieving the courts, which would have direct consequences on the duration of the conduct of judicial proceedings, the code provides task required the judge to direct the parties to use mediation procedure in the process, as an alternative means of dispute resolution, the course of this procedure being suspended judgment. Returning to our
statement in the preamble expressions made previously for a fair presentation logic we analyze changes made to express the Code of Civil Procedure Law. 554/2004, on the settlement courts of first instance administrative dispute Romanian.

4.2. Jurisdiction of the court of first instance on the settlement of administrative disputes

An important argument that we should start analyzing it tribunal jurisdiction of administrative litigation, is the provisions of art. 73 para. 3 letter k of the revised Constitution, meaning that the administrative court is a constitutional matters governed by organic law. So regulating administrative litigation matter, the constitutional text, referring to the law, under art. 126 para. (2) of the Constitution republished jurisdiction of the courts and trial proceedings in the matter of administrative courts are established according to Law no. 554/2004 on administrative procedure. It appears that after the adoption of Law. 554/2004 on administrative provisions of art. 1 shall be consistent with the text of art. 52 of the Constitution, republished, meaning that, on the one hand, taking into account the decisions of the Constitutional Court has replaced the term "administrative authority" of the old law, Law no. 29/1990, the concept of "public authority", as administrative acts issued and public authorities other than the government, on the other hand has widened the scope of the injury, adding to the scope of injury, in addition to the subjective right and legitimate interest. In applying these texts Constitutional Law no. 304/2004 on judicial organization by the provisions of art. 36 para. (3), as this article was amended by Law no. 76/2012, stipulates that the courts operate sections or, where appropriate, specialized for various reasons, among which are found and administrative and taxation. In the matter of administrative courts under the transitional provisions established by art. 30 of Law no. 554/2004 states that until the formation of administrative tribunals tax disputes shall be settled by the courts administrative section.

Currently, although the provisions of art. 10 paragraph. (1) of Law no. 554/2004 refer to the administrative settlement of disputes by administrative courts -fiscale, such disputes shall be settled by administrative and fiscal departments operating within the county courts and in Bucharest, the Courts of Appeal and the High Court of Cassation and Justice, followed by the date of establishment of specialized courts, administrative disputes will leave the jurisdiction of the courts of common law and enter into
specialized courts. In this context, Law no. 554/2004 on the legal provisions expressly establishes administrative jurisdiction of the courts of administrative litigation and trial procedure administrative dispute. Thus, the provisions of art. 2 letter g) [art. 2 para. (1) f) before modification] are established courts in administrative courts or the administrative and fiscal section of the High Court of Cassation and Justice departments administrative and fiscal courts of appeal and administrative courts and tax. The issue of court jurisdiction to resolve disputes in the first instance administrative court is required to be analyzed in the context of general rules established by the Code of Civil Procedure in force and by reference to the provisions of NCPC and the Law no. 304/2004 on judicial organization following amendments thereto by Law no. 76/2012 on the implementation of Law no. 134/2010 on the Code of Civil Procedure. One caveat that it must be emphasized is that after the adoption of NCPC, by Law no. 76/2012 for the implementation of its administrative contentious matters is maintained double system instance or instances substantive administrative disputes are settled, as appropriate, administrative and fiscal sections of the courts or courts of appeal being maintained also by the provisions of art. 7 paragraph. (3) of Law no. 76/2012, after the entry into force of the NCPC, the appeal of appeal against judgments of courts of first instance. It must also mention that the NCPC, art. 95 pt. 1, referring to the law on court jurisdiction, ultimately settling disputes by administrative tribunals arising as the result of which will be discussed below, the provisions of Law no. 554/2004 on administrative procedure, the specific law, under the principle specialia generalibus derogant.

In terms of substantive jurisdiction of courts, as reflected in art. 10 paragraph. (1), as amended by Law no. 76/2012 it is shared, in terms of this legal text, between fiscal administrative tribunals and cutting administrative and fiscal courts of appeal, if the organic law provides otherwise. Given the fact that besides the common law substantive jurisdiction established by Law no. 554/2004, special organic law can be established special material competence of the administrative court, derogatory material common law jurisdiction established by Law no. 554/2004, we appreciate that in a future material to be analyzed and cases provided by law conferring jurisdiction of courts special, derogating from the provisions of Law no. 554/2004 on administrative procedure. After adoption of Law. 2/2013 on relieving the courts, Section 2 of the amended and
supplemented some laws in matters of administrative litigation and tax changes aimed essentially changing material and territorial jurisdiction for the resolution of disputes covered by administrative. These 20 acts are pending following that in Chapter III („transitional and final provisions”) to be established transitional provisions concerning the applicability of laws that have been modified by Law no. 2/2013 on the powers of the administrative courts, which were analyzed in the thesis. By special acts is regulated exclusive territorial jurisdiction of the administrative court in resolving administrative disputes. It should also be mentioned Bucharest Court of First Instance in solving administrative disputes under certain provisions of special laws, some of which are modified by Law no. 76/2012 for the implementation of the NCPC.

4.3. Jurisdiction of the Court of Appeal in administrative

4.3.1. Jurisdiction of the Court of Appeal to resolve disputes in the first instance administrative

Regulating the established by the new law civil procedure (Art. 96 pt. 1), the court of appeal conferred jurisdiction express exception in this matter, but do provide explicitly that the resolution of disputes in the first instance by the administrative courts of appeal is, according to the special law. Regarding the scope of administrative acts subject to administrative dispute resolved in the first instance by the courts of appeal, the new provisions do not expressly refer only to acts of the authorities and central institutions, therefore, new provisions are put in place in accordance with the provisions of the Constitution and Law no. 554/2004 on administrative procedure. In this context, the provisions of art. 96 pt. 1 of NCPC, referring to the provisions of the special law, Law no. 554/2004 on administrative procedure, the court of appeal in matters of administrative litigation was analyzed by reference to the provisions of art. 10 paragraph. (1) of Law no. 554/2004 on administrative procedure, the contents of which that disputes concerning administrative acts issued by central public authorities and those relating to taxes, contributions, customs duties and accessories thereof greater than 1,000,000 lei shall be settled in fact, the polling administrative and fiscal courts of appeal, if the organic law provides otherwise. The contents of this legal provision that, if the object is not contested administrative represented by a tax, fee, contribution or a customs debt, the competent court shall be determined by the central or local
positioning the body in the public administration system, irrelevant amount of the stated therein, the same rule is applicable to administrative contracts. A substantive change brought on jurisdiction background material litigation by the administrative courts of appeal is established by par. (11) art. 10 newly introduced by Law no. 76/2012, which confers exclusive jurisdiction background material polling administrative and fiscal courts of appeal in respect of all requests for administrative acts issued by central public authorities which involve considerable amounts of the grant from the European Union regardless of value. The power station administrative and fiscal appellate courts to resolve disputes in the first instance administrative jurisdiction is established and some special acts.

4.3.2. Jurisdiction of the Court of Appeal to resolve appeals against decisions by the courts of first instance in matters of administrative disputes

In the category of judgments by the courts of first instance, without appeal, which can be appealed to the department's administrative and fiscal courts of appeal are rulings by administrative and fiscal departments of courts in matters administrative disputes, according to art. 10 paragraph. (1) of Law no. 554/2004 on administrative and according to art. 20 para. 1 of the law may be appealed within 15 days from notice. As such, following the entry into force of the NCPC, the appeal against the judgment of first instance shall be exercised in accordance with art. 20 para. (1) of Law no. 554/2004, within 15 days of communication, which is suspend the execution. Jurisdiction of the Court of Appeal to settle, in accordance with the provisions of Law no 554/2004 on administrative appeals against decisions given by the departments of administrative and fiscal tribunals of first instance is devoted to legislative and 22 special acts recently modified by Law no. 76/2012 for the implementation of the NCPC.

Regarding the solutions we can appeal the court ruling, the provisions of art. 496 of NCPC does not differ from the provisions of the old Code, stating that if the appeal was admissible in principle, the court, checking all the reasons given and judging the appeal, it will be admitted, it may reject or cancel or lapse can be seen by . In case of admission of the appeal, the judgment under appeal be quashed, in whole or in part. In agreement with the solutions pronounced by the court of appeal established by art. 496 of the NCPC, amended by Law no. 76/2012 and the provisions of art. 20 para. (3) of
Law no. 554/2004. It should also be remembered and exclusive jurisdiction of the Court of Appeal in solving administrative disputes, conferred on the basis of special laws, some of which were modified with the entry into force of the NCPC. It should be considered and jurisdiction of the courts in other materials, it is necessary to analyze the context, courts in matters of dispute resolution processes derived from land by reference to the provisions NCPC or complaints made against decisions of county committees for the implementation of Law no. 18/1991 of the land, and that complaints directed against the order of the prefect or any administrative act of an administrative body refused allocation of land or land proposed award, which shall be settled by the court of first instance, according to art. 53 para. (2) and art. 54 of Law no. 18/1991 of the land and subject only to appeal. In this respect, it can be concluded that after the entry into force of the NCPC, courts competent to resolve such disputes returns. In respect of appeals against sentences handed down by judges, their sentences handed down in the matter of land processes that NCPC according to the competence of courts shall be subject to appeal, and courts handed down sentences in matters of land processes derived from the application of the Land Law no. 18/1991 shall be subject to appeal under the special law.

4.4. Jurisdiction of the High Court of Cassation and Justice administrative litigation

They are subject to appeal to the High Court of Cassation and Justice, pursuant to art. 97 pt. 1 of NCPC, judgments of the Court of Appeal in the first instance for litigation administrative acts of central public authorities (Art. 96 pt. 1). In this context, Art. 10 paragraph. (2) of Law no. 554/2004, states that the appeal against sentences handed down by administrative tribunals tax departments are judged by administrative and fiscal courts of appeal, and the appeal against the sentences imposed by sections of administrative and fiscal courts of appeal shall be heard by Department administrative and fiscal High Court of Cassation and Justice, unless the special organic law provides otherwise. Thus, in terms of solutions we can deliver High Court of Cassation and Justice after the appeal, the rule is quashed by reference, with the exception of administrative disputes resolved by administrative and fiscal section of the High Court of Cassation and Justice, when it will retry dispute on the merits. Also, given the transitional and final provisions of Law no. 2/2013, in view of the fact that this law
was changed competent to resolve administrative litigation department of administrative and fiscal High Court of Cassation and Justice at polling administrative and fiscal courts of appeal, the appeals are the High Court of Cassation and Justice - Department of Administrative and Fiscal entry into force of this law and that, under this Act, the competence of the courts of appeal shall be sent to the courts of appeal.

5. Conclusions

This paper has attempted to highlight the impact suffered by the rules governing administrative litigation procedure following the entry into force of Law no. 134/2010 on the Code of Civil Procedure, especially as the time elapsed since the entry into force of the new civil procedural law until the time of writing the present study is relatively short, and scientific research approach was more theoretical than practical, not missing and some remarks somewhat anticipatory, and in practical terms. The current issue of administration and justice on the application of administrative litigation matters Romanian NCPC remains open both critics and expert judgment of our doctrine on the subject, as well as our legal practitioners, especially individuals who want a quick and efficient justice, especially that the existence of a state-level governments and development involves legislation as support. This legislation, generically grouped in a branch of administrative law, must take into account the specificities of each report involving people with special status. Adding the specific national or regional, we can reach a complexity of cases in administrative litigation matters Romanian can easily lead to successful conclusion of justice, effective and valued by individuals.

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Legal Requests of the Authority Administrative Act

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Abstract:  
The administrative act can be defined as the unilateral and express manifestation of the will of the public authorities realized with the purpose of producing legal effects for the public power.  
Besides, the law of the administrative contentious defines the administrative act as being a unilateral one with individual or normative character that is issued by a public authority to execute or organize the law execution and that makes, modifies or terminates judicial relations.  
The current material tries to approach in an integrated manner the process of elaborating the administrative act relative to requests of legality as well as the procedures of issuing and enacting them.  
Keywords: administrative authority at, competence, the actuality of the administrative judicial act, the opportunity of the administrative judicial act.

Introductive considerations

The authority administrative acts represent a category of administrative acts through which the authorities of the public administration exercise most of their attributions. Including a unilateral, imperative will, these acts ensure in the highest degree the organization of the law execution by the issuer of the act.

For the authority administrative act to have this role it is necessary that it meets some legal requests. These requests are mainly about: the competence of adoption or issue, compliance to law and its purpose, the form of the act as well as its actuality and the opportunity of issuing these authority administrative acts [1, 37].

Competence

The competence represents the ensemble of rights and obligations of a public administration authority or of a public servant for the realization of which it also has the ability to adopt or issue judicial administrative acts.

The competence of adopting or issuing administrative acts is given by law and is strictly tied to a certain function. It occurs at the same time with that certain function and exists even if this function is not occupied by a person. It can be: material, territorial and personal.

The material competence usually determines, mostly, the right of a public authority to adopt or issue an administrative act.
The territorial competence determines the authority of the public administration to adopt or issue the authority administrative act. In principle, the local public administration authorities have a territorial competence limited to the administrative-territorial unit in which it functions, according to law, it cannot issue judicial acts of which effects to happen and to be compulsory for legal subjects of other administrative – territorial units.

The personal competence (the person’s quality) determines in few cases the competence of the authority of the public administration that adopts or issues the act. This is, for instance, the case of military that have committed a contravention, situation in which the solution of the complaint against the minutes of acknowledging the contravention and the application of the sanction as well as executing it are made by the commander of the military unit not by the court, as in the case of other people.

The competence of adopting or issuing an administrative act being established by law constitutes at the same time a right and an obligation of the one to whom it is offered [2, 205].

On the other hand, exercising some attribution and adopting or issuing, in this purpose, of some administrative acts, while not respecting the competence, usually causes the nullity of those acts. When incompetence is determined by the quality of the person or by the material or territorial competence it usually has the form of misuse of authority and is sanctioned according to the provisions of criminal law besides the sanction of annulment of the administrative act issued while not following the competence rules.

A characteristic of competence is that authorities or public servants that have it cannot usually give it up or give it to another authority or public servant without following the provisions of the law.

**Substitution and delegation of competence**

Substitution and delegation of competence occurs in exceptional situations when its holder is not able to do it, in order to ensure the continuity of exercising the competence and the well functioning of the public service.
Substitution in the exercise of competence constitutes of replacing its holder with another person while the first one cannot exercise it. This substitution is a legal substitution, the law providing this possibility.

The delegation of competence constitutes in designating by the holder of the competence another authority or person that is to exercise certain attributions of the holder of the competence.

What distinguishes the institution of substitution from the one of delegating the competence mainly regards the sphere of the attributions transferred to another: in the case of substitution this transfer is referring to all the attribution of the holder of the competence while in the case of delegation the transfer refers only to some attributions, expressly established.

Specialized literature also speaks about “the competence contest” in adopting (issuing) of the same administrative act, distinguishing the competence contest “in direct form” and the competence contest “in indirect form”.

The competence contest in direct form occurs when the administrative act is adopted or issued through the agreement of more authorities of public administration of different domains and branches of activity.

The competence contest in indirect form can be made by “assent procedure” by which there is expressed a point of view of an authority of public administration this assent being compulsory for the one who issues the administrative act.

**The compliance with law of the issued administrative act**

The second condition of legality of the administrative acts is the necessity that their content is in compliance with law. This compliance to law is analyzed in relation to each of the structural elements of the judicial norms included in the act – hypothesis, disposition, sanction.

Noncompliance with the law of the content of the administrative act can regard only one of the structural elements of the judicial norms or all of them. Thus, noncompliance of the administrative act with the hypothesis can consist of the fact that the authority of the public administration competent to adopt or issue that act will not adopt/issue although the conditions provided in the hypothesis of the judicial norm exist.
Noncompliance of the content of the administrative act with the disposition can have certain aspects: the authority of the public administration applies another legal disposition than the one that must be applied or applies the certain disposition but not with its true meaning.

Noncompliance with the sanction can consist of the application by the administrative act of a sanction that is not provided by law.

**The compliance of the administrative acts with the purpose of the law**

In what concerns the compliance of the administrative acts with the purpose of the law we can see that the purpose of the law is the result that the legislator wants to realize by that certain regulation. The administrative act deriving from law and being issued in order to execute the law cannot have another purpose [3, 127]. If it does not meet this request the administrative act is considered illegal.

**The form of the administrative act**

Another legal condition of the administrative act regards its form, the manner in which the judicial will of the act is expressed. From this point of view we state that the administrative act is drawn in Romanian and it is usually written.

For the administrative acts with normative character the written form is compulsory being a condition of validity.

For the administrative acts with individual character, although they are usually written, it does not constitute a validity condition apart from the cases established by law.

The conditions of the form that must be met by administrative acts can be divided in two main categories [4, 375]:

- **external form conditions** which if they are not met they annul the act: not naming the authority of the public administration that adopted or issued the act, not mentioning the date of adoption(issue), not applying the seal of the issuer, the lack of the signature of the leader of the authority that issued the act, not specifying the number of the act
- **The technical conditions** which if they are not met do not trigger the annulment of the act: ways referring to drawing the act in simple and precise terms, its internal structure.
The actuality and opportunity of the judicial administrative act

The actuality and opportunity represent accordance within law, between the tasks of the authorities of public administration and the provisions of the issued act.

The opportunity implies the right to appreciate of the administrative authority while organizing the execution of the law through which it is ensured the exercise of the legal attributions in optimum time with minimum expenses and using ways that suit best the purpose of the law.

While exercising this right it is possible that it takes an inopportune measure. In this circumstances the administrative act, although legal, will not be actual or it will be inopportune.

For this reason, the administrative acts being submitted to examination can be analyzed both from the point of view of their legality and their opportunity.

The existence of countersign

For some administrative acts the law also provides the condition of countersigning them by those that have the obligation to ensure their execution, not meeting this request leading to the nullity of the act. It is the case of some decrees issued by the President of Romania that must be countersigned by the prime minister as [5, art.100, align (2)] well as the Governmental decisions and ordinance that must be countersigned by ministers who have the obligation to put them into force.

The procedure of issuing the authority administrative act

The administrative act is the result of a rational process that starts from noticing the necessity of its adopting or issuing and continues with collecting, for this purpose, the necessary information, their processing, elaborating some variants and choosing the optimum one and ends with the issue of the act.

The procedure of adopting administrative acts includes a complex of activities developed by the clerks of the public authorities that adopt the act and of other public authorities that collaborate to it. All these activities can be grouped in three stages [6, 93]:


The preparatory activity of adopting the administrative act.

To issue or adopt an administrative act the authorities of public administration fulfill a series of documenting, informing and data and information processing operations meant to found the administrative act.

For adopting the administrative act, especially when it has normative character, a series of operations are made: drawing evidence and statistics, reports, informations, accounts, notice, authorizations etc.

Collecting and processing information practically represents the activity that has the biggest share in developing the preparatory stage of the administrative act because the collected information is the bases of elaborating the solutions included in the act.

When elaborating the administrative act project there must also be regarded the following of some conditions of legislative technique referring to the drawing of the project and its exterior form.

The normative act must organically be integrated in the legislation system. In this purpose the project must be correlated to the provisions of superior normative acts with communitary regulations and with international treaties Romania is a part of.

The projects of normative acts are elaborated by the authorities able to initiate them. The Government, the ministries and other authorityes of specialized central public administration, the public authorities that have the initiation right for other normative acts, prefectures, county councils and the General Council of the Bucharest Municipality, through the Ministry of Internal Affairs have the right to initiate projects of normative acts, according to their attributions and activity domains.

The projects of normative acts must be accompanied by the following instruments of presentation and motivation: exposures and reasons (in the case of law projects), substantiation notes (for ordinances, emergency ordinances and Government decisions) approval reports (for other normative acts).

The instruments of presentation and motivation of the normative acts must also include the requests that claim the normative intervention concerned, the principles and finality of the proposed regulation, the effects taken into account, implications, that the new regulation has over the existing regulation, the stages followed in preparing the project and the results. In the case of emergency ordinances there must
be presented objective circumstances that have determined the „extraordinary situations” that substantiates the regulation in this form.

For every project of normative act, the reason must include an express mention regarding its compatibility with the communitarian regulations and, if necessary, the imposed harmonization measures.

When the proposed regulation is elaborated in the execution of a normative act, expressly provided by it, it must include references to the act on the grounds and execution of which it is elaborated.

The normative act project assimilated by the leader of the initiating public authority is simultaneously transmitted, in copy, to the public authorities that are interested in its application regarding the object of the regulation that have the obligation to analyze and communicate to the initiator the possible observations and proposals within a term.

Notices are opinions, points of views of an authority of public administration requested by the authority that initiated a project of normative act to that project.

Notices can be:

- Optinal notices, when the authority that issues the administrative act has the right to decide to ask or not to ask the opinion of another authority and, if it requested it, has the faculty to take it into account or not. The adoption or issue of the act without this notice does not have any effect on its validity.

- The advisory notices, when the authority that issues or adopts the administrative act has the obligation to ask for another organ’s opinion but it is not obligated to take it into account. Not asking for this notice leads to the nullity of the administrative act because a request provided by law is not respected.

- Assents, when the authority that issues the administrative act has both the obligation to ask and the obligation to take into account these notices. In this situation the issued administrative act cannot disobey the content of the notice, in return, the authority competent for issuing the act, if it does not agree with the content of the notice can give up the right to issue the certain administrative act.
Notices can be solicited from a subordinate authority or from one that is part of another organ hierarchy and that is at the same level or an inferior or superior one as the soliciting organ.

The optional or advisory notices cannot come from a superior authority. This type of point of view from a superior organ takes the form of an authorization for the subordinate organ.

Notices, regardless of their category, do not cause by themselves judicial effects, although without the assent the administrative act is not valid.

In other cases, for adopting or issuing the administrative act, the law provides the consent of another organ. This consent is a will manifestation of the organ established by law through which it gives consent for adopting or issuing the act, the issuing organ not being able to take action without this consent.

The difference between “preliminary consent” and the optional and advisory notices is that in the case of notices the issuing organ can establish measures contrary to the content of the notice while in the case of “preliminary consent” such measures cannot be established. The “preliminary consent” resembles the content and effect of the assent but it is not confounded with it because this notice, although it precedes the issue of the act does not cause effect on its own. The preliminary consent produces itself judicial effects with the condition that, by its consent, to coincide with the will manifestation of the organ that issues the administrative act.

Usually the organ that gives the preliminary consent is a superior organ to that which adopts or issues the act or it is an organ that is at least equal to the organ that is to adopt or issue the act.

After obtaining the points of view of the public authorities that are to notice, the initiator finalizes the project of normative act.

If after the proposals and observations received from the noticing public authorities have modified the project of normative act the instruments presented and the initial reasons will be reformulated accordingly so as to refer to the final form of the project of normative act that will be submitted to notice.

After finalizing, the original project of normative act, along with the instrument of presentation and motivation, remade according to the operating modifications, is
successively transmitted to notice by the initiator to the noticing public authorities within 3 days from the reception of their points of view. The projects of normative acts that transpose communitarian provisions are submitted to notice to the Ministry of European Integration.

If between the initiator and the public authorities there are different points of view, the project of normative act will be noticed within 3 days from its reception, with objections that will be annexed and presented within the meeting of the Government.

The projects of normative acts are transmitted to the Ministry of Justice in original along with a copy and only after obtaining the notices of the interested public authorities. He Ministry of Justice notices the projects of normative acts exclusively from the point of view of legality, finalizing the succession of the operations of the notice stage.

The notice of the Ministry of Justice is not compulsory in the case of Governmental decisions with individual character that have as objects appointments and revocations of function, establishing some data, as well as approval of technical – economical indicators of investment that are noticed from the point of view of legality by the General Secretariat of the Government.

The projects of normative acts for which, according to law, the notice of the Competition Council are necessary are submitted to issue to the Government only after obtaining this notice. The notice of the Competition Council is obtained by the public authority initiating the certain project of normative act [7].

The projects of normative acts for which, according to law, it is necessary the notice of the Supreme Council of the Defense of our Country is submitted for adoption to the Government only after obtaining this notice.

The projects of normative acts noticed are transmitted by the initiator both in original, stamped on every page, and magnetically to the General Secretariat of the Government.

The General Secretariat of the Government will immediately solicit the following notices:

- the notice of the Legislative Council that is to be issued, according to law, within the term required by the Government that cannot be lower than:
24 hours for projects of emergency ordinances;
2 days for law projects that are to be transmitted to the Parliament with the request of debate in emergency procedure;
10 days for other projects of normative acts;
• the notice of the Supreme Council of the Defense of our Country in the case of projects of normative acts for which this notice is necessary;
• the notice of the Economical and Social Council in the case of projects of normative acts that regard the domains provided in art. 5 of Law nr. 109/1997 regarding the organization and functioning of the Economical and Social Council that is to be issued, according to law, within:
10 days from the reception of the request, in the case of decision projects, of ordinances and ordinary laws;
20 days from the reception of the request in the case of projects of organic laws.

The General Secretariat of the Government examines the fulfillment of the form conditions of every project of normative act including the respecting of norms of legislative technique provided by Law no. 24/2000 [8, 225].

Projects that do not meet the form conditions are given back to their initiators by the General Secretariat of the Government in order to be remade.

After covering this stage the General Secretariat of the Government transmits to the initiator, as appropriate, the following documents:
• the notice of the Legislative Council;
• the notice of the Economical and Social Council;
• the note containing its proposals and/or observations.

Based on these documents the specialists collective has the obligation to reanalyze and, as appropriate, to remake the project of the normative act. The remade project of the normative act will be transmitted to the General Secretariat of the Government, stamped on every page, with at least 5 days before the date of the Government meeting on which work agenda it is requested to be written.

If the initiator does not accept, total or partial, the observations and proposals of the notices, it will transmit to the General Secretariat of the Government the form of the project of normative act that is to be submitted for adoption to the Government, along
with a justified note including the arguments that lead to not accepting the observations and/or the proposals [9, 57].

The proper adoption of the administrative act

The adoption of the administrative acts by the deliberate, collegial authorities is made after an analysis within the labor meeting to which must participate usually the majority of the members of that authority. [10, 63] Within the meeting there is presented the Note of substantiation and the project of the act that is submitted to debate. The participant to the debate can agree with the project, can propose its modification or can show that there is no need to regulate the certain problem. Some normative acts include dispositions that establish both the quorum necessary for the deliberations of the collegial organ to be valid and the majority that must be met to adopt the act.

The quorum is the number of members that must be present for adopting the act, reported to the total of the members of the authority that is adopting it. For the unipersonal authorities, when the issue of the administrative act is in the competence of a single person, the problem of the quorum and of the necessary majority does not exist. This problem exists only at the authorities with collegial structures. Usually, for the act to be legally adopted, the presence of the majority of the members is required; in other cases it is provided the presence of ¾ of the number of members in what regards the necessary majority for adopting an administrative act, in some cases absolute majority is provided (of the number of those present and in other cases of the total number of the members of the organ) or the qualified majority (two thirds of the number of those present or, in other cases, of the total number of the members of the collegial organ).

The projects of normative acts to which modifications of fond have been brought as a consequence of discussing and adopting them in the Government meeting will be submitted to a new notice of the Legislative Council, of the Supreme Council for the Defense of our Country and of the Economical and Social Council, as appropriate. If, as a consequence to the new notice of these authorities some fond modifications are required or the notice is negative, the project of normative act must be reposted on the work agenda of the Government meeting.
After the deliberate authority analyses the project of administrative act and approves it, the administrative act is considered adopted.

*Activities after the adoption of the administrative act*

For it to have its judicial effects there are still necessary a series of activities in this regard. They are the following:

- the completion of the adopted normative act based on the form resulted from debate and vote;
- numbering and dating of the normative acts within the calendar year; Government acts have the date of the Government meeting where they have been adopted;
- presenting the adopted normative act to the prime minister in order for him to sign it and the ministers leading the ministries that are to apply that normative act to countersign it. Countersigning a normative act adopted by the Government is obligatory within maximum 24 hours since it has been signed by the prime minister;
- Transmitting it to the General Secretariat of the Deputee Room with the request of its publication in the Official Monitor of Romania of the ordinances and decisions of the Government along with the substantiation notes signed by the initiating minister or ministers. There may not be published decisions with military character that are only communicated to the interested institutions.

The public request of normative acts that have judicial effects for the generically determined subjects is imposed by the principle according to which “no one can invoke in his defense unawareness of the law”.

Sometimes the law provides the publication of some individual acts (for example the acts of administratively changing the name, of granting or renouncing citizenship etc.).

This kind of request is however not relevant to the moment of coming into force of the certain act. It is imposed mostly because of practical necessities, by the impossibility of it being communicated to a large mass of citizens.
Conclusions:

In principle, the administrative acts with individual character are communicated to those interested; in many cases the laws providing that only from the date of their communication there occur certain rights and obligations for the person concerned.

The instruments of presentation and motivation, the variants and the successive forms of the projects of normative acts as well as the original adopted normative act are kept by the General Secretariat of the Government as to ensure the knowledge of the whole elaboration process of the certain normative act.

Throughout the course of elaborating the projects of normative acts it is forbidden to the personnel of the initiating public authorities and the noticing authorities to provide outside those institutions data or information regarding those projects of normative acts.

All these procedural norms regarding the preparation and the adoption of draft laws concerning government apply properly and on the orders, instructions and other norms issued by ministers and other leaders of the specialized organs of the central public administration as well as by prefects [11].

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Transaction contract in insolvency proceedings

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Abstract
Among the sources of commercial obligations, an important part in the trading activity is represented by the contract. Compared to the previous regulation that emphasized the essential character of the transaction, namely that it allowed the parties to make mutual sacrifices, the current doctrine holds the fact that the reciprocity of sacrifice is essential to be able to make the difference between a transaction and a mere acquiescing. The particularity of the transaction contracts consists in the reciprocity of assignments between parties, but it is of no interest whether the assignments between the parties have an equal value.

Keywords: contract, transaction, insolvency, proceedings

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The contract is defined by art. 1166 of the Civil Code as being: „the agreement of will between two or several persons with the intention to constitute, amend or extinguish a legal report."

In the economic field, the contract is generally considered to be the main and most appropriate means to provide general welfare. [1]

In a market economy, the commercial obligations may be undertaken if they are based on the principle of contracting freedom, which implicitly results from numerous legal provisions: constitutional, of civil right, inserted in organic laws, international deeds, etc.

The principle of contracting freedom results from the fact that both individuals, and legal entities, have the right to freely enter into contracts.

The grounds of the principle of contracting freedom are based on the so-called theory of the autonomy of will drafted by the French jurist Charles Dimonliu, who, when he drafted it, he considered the need to find a solution for the conflicts of inter-province laws that had appeared in the France of the 17th century. [2]
The contract constitutes the main source of obligations. Its importance is taken into account in all the activity fields, from the simplest needs of the people, until the professional trading activities.

If any contract is fair by itself, and the obligation is born out of the parties’ wills, it is natural that they should set their contents [3] and main legal mechanism transposing the variant agreed by the parties during amiable settlement in case of conflict concerning the execution of obligations, regardless of their source. [4]

The civil code of 1864, in art. 1704, defined transaction as „a contract by which the parties finalizes a trial that has already been initiated, or prevent a trial that may be born out of mutual concessions, consisting in mutual cancellations of claims or in new provisions executed by, or promised by a party in exchange of the cancellation, by the other party, of the litigious or doubtful right” [5], particularly referring to the element of mutual concessions.

Article 2267 of the Civil Code stipulates: „(1) The transaction is the contract by which the parties prevent or extinguish a conflict, including in the stage of foreclosure, by concessions or mutual cancellations of rights or by transfer of rights from one another; (2) By a transaction, legal relations may be born, amended or extinguished, that are different from those making the object of the conflict between the parties.”

Considering that the contract freedom is a principle which materially governs the civil and commercial contracts, we believe that, on the economic market, the transaction contract is circumscribed to this principle, to its limits and to the requirement of good-faith. [4]

The effects of the opening of the insolvency proceedings against the debtor may be both of patrimony, and of non-patrimony nature: cancel the debtor’s right to administrate the wealth; suspend all judicial and extra-judicial actions and the foreclosure measures to execute the outstanding debts of the debtor or its goods; suspend the course of the prescription related to the actions required to execute the outstanding debts against the debtor; suspend the flow of interests, increases and penalties; suspend the transactions of the debtor’s shares on the regulated markets; hand-over, by the judicial manager/liquidator, of the debtor’s documents, etc.
The opening of the insolvency proceedings represents an important event for the debtor, meaning the cessation of the activity carried out until then and its entering a judicial, collective, concursual and equalitarian procedure, involving a new situation and a regulation of its special and different activity than the one that was previously applicable, and all these with the precise purpose to cover the liabilities according to art. 2 of the Law 85/2006.

In the recent doctrine, it has been appreciated that the “cancellation” of the right represents the transfer of the use of the right from the rightful managers to the special manager and, particularly, to the insolvency specialist.

After initiating the insolvency proceedings, the state of the debtor’s wealth [6] is important for the debtor’s co-contractors, who wish to satisfy their needs mainly by these means.

All the co-contractors are invited to participate in the insolvency proceedings, which will consist in short deeds and deadlines where they will be invited to participate and which they will have to observe, otherwise they will be deprived of the right to execute their outstanding debt against the debtor, for the failure to submit in due time the debt statement.

In some situations, the creditors may be satisfied by an amiable settlement with the debtor, right after the proceeding opening decision is given.

This amiable settlement of the debt recovery conflict by the creditors is called a transaction, and its purpose is to achieve a faster and, why not, a safer recovery of a part of the debt, through the mechanism of mutual concessions.

The transaction is specified by the Law 85/2014 in article 58 letter m): ,,the main duties of the judicial manager, under this heading, are: (...) enter into transactions, discharge from debts, discharge of fidejussors, waive the real securities, provided that these operations are confirmed by the judge-syndic.

In the execution of these duties, the judicial manager must show good faith, not to prejudice the creditors’ interests, because the acts considered by the law-maker have a particular impact on the debtor’s wealth. For the same reason, the judge syndic should show maximum diligence and prudence in the operation of confirmation of the acts stipulated by the legal norm. [7]
The insolvency proceedings continue to be executional, and article 2267 of the Civil Code includes foreclosure in the regulation of the transaction.

In art. 58 of the Law 85/2014, transactions occur next to other activities that the judicial manager may carry out, among which the discharge from debts, the discharge of fidejussors, etc.

All these enumerations send to the situations where the debtor has a debt over third parties, and by using the institution of transaction, it may recover something, in the frame of the principle of maximization of the debtor’s wealth.

The possibility to enter into a transaction is burdened by the specificity of the insolvency proceedings involving the order of preference to the distribution of outstanding debts registered in the table, but also, we believe, the consent of the Creditors’ Assembly concerning the transaction. We may speak of a transaction only after the creditors during the Assembly sign that they agree with the execution of a transaction.

We must consider the fact that there is a concordance between the privileged debts (salary, budget), the secured debts and the unsecured debts.

The parties cannot waive these imperative norms by signing a transaction contract, because this would violate the principle of contracting freedom, specified in art. 1169 of the Civil Code.

The transaction contract must be entered into after opening the procedure providing the transparency and legality of contract signing. To be able to provide the transparency and legality of the transaction contract in the insolvency proceedings, two objectives must be accomplished:

1) The judicial manager must justify the accomplishment of the principle of maximization of the debtor’s wealth. [8],[9].

The transaction must be indeed very advantageous for the debtor, to increase the chances to be accepted by the creditors’ Assembly.

2) Not to create violations of the concursual rights. This is why we appreciate that the creditors’ written consent from the creditors’ Assembly is imperative, to avoid any discussions between the creditors, in the sense that some of them could be disfavored.
The French law incriminates the covenants entered into by a creditor and a debtor after the opening of the insolvency proceedings.

The transparency and legality of entering into the transaction contract after opening the proceedings are also provided by the satisfaction of the condition of confirmation by the judge syndic.

This condition of confirmation is checked in the end, when the parties have agreed, the debtor obtained the written consent of the other creditors in the Creditors’ Assembly, the parties being thus able to submit to the judge the transaction to be confirmed.

Conclusions

In practice, the transaction contract in the insolvency proceedings is not very common, due to the mechanism of the insolvency proceedings, which consists in stages and deadlines that must be observed, otherwise the creditors invited in the insolvency proceedings will be deprived of their right to execute their outstanding debt against the debtor, for failure to submit in due time the debt statement.

Only the large companies, with a big number of assets in their patrimony could transact with the purpose to win something and to be able to get back on their feet than to lose everything. [10]

Also, we believe that the debtor companies that have very large outstanding debts to recover from their own debtors could benefit from this as well.

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Brief presentation of the international and European actions in the area of water protection

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Abstract
Currently, the diversification and multiplication of the sources of water pollution and their increased degree of toxicity require the finding of the most complex legal means and methods for combating them. In this context, the fight against waste, pollution and unequal distribution of the water for daily consumption must be continuous, supported and assumes the cooperation both regionally and internationally. Starting from these reasons, the present study aims to present a few of the actions performed at a European and international level in the area of pollution prevention.

Keywords: pollution, legal water protection, European regulations, international regulations

1. Introduction

70.8% of the Earth’s surface is covered in water, of which 97% are the oceans, seas and ice. Practically, we only have 1% water which can be used and consumed. All known forms of life depend on water, being a vital part in many of the metabolic processes within the organism; almost 72% of the human body is water. The ecosystems, our society and economy [1] depend on sweet water in enough quantities in order to progress.

In our century, the world water consumption is very large, which, obviously, rises the problem of preventing the risks of scarcity of surface waters, and the second problem is qualitative aiming the need to prevent water pollution.

The phenomenon of pollution is not specific to a certain state or continent, but is a generalized phenomenon. The socio-economic development, the demographic growth, technical and technological upgrading have stimulated the enhancement and diversification of different types of water pollution [2]. Either is generated by sewage, by chemical substances used in agriculture, industry, by controlled or accidental dumping of wastes, water pollution is a real problem, by the efforts unfolded for its prevention or for the removal of its negative effects when it occurred, must be supported, continuous requiring both a regional and an international cooperation.
2. The contribution of the conventional international law in the area of water protection

The conventional international law has developed a global approach for the ecologic management of water through complementary means: first by stating a right to water and then by stating the principles of the international law on environment in water management. Regarding the right to water, Art 24 of the Convention on the Rights of the Child [3] states that “State Parties shall take appropriate measures to combat diseases and malnutrition, including within the framework of primary health care, through inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”.

In the same meaning, the Convention on the elimination of all forms of discrimination against women (1979) [4] states in Art 14 Let h) that “State Parties shall take all appropriate measures to ensure to such women the right to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications”. Also, In July 2010, the General Assembly of the UN has adopted a resolution [5] recognizing the right to drinking-water and services of sanitation deriving from the right to an appropriate living standard and being strongly connected with the right to health, life and dignity. On 22 March 2010, anticipating the resolution of the General Assembly of the UN, the Council of the European Union announced that all EU Member States recognize the right to water and sanitation, reminding that “the Member States assume their obligations in the area of human rights regarding free access to drinking-water” and considering that “the obligations in the area of human rights regarding the access to a safe drinking-water and to sanitation are strongly connected to the individual human rights – such as the right to housing, food and health care services” [6]. Starting from these aspects, the right to water may be considered from now on, as a fundamental right of every person to enjoy enough drinking-water to satisfy the basic needs of his body, but also the ones of hygiene [7].

Regarding the principles of waters management, the contemporary texts have adapted the principles of the international law on environment. Thus, the Convention on the protection and use of transboundary watercourses and international lakes done at
Helsinki on 17 March 1992 [8] states the following general principles of a rational management of water resources: the precautionary principle by virtue of which action to avoid the potential transboundary impact of the release of hazardous substances shall not be postponed on the ground that scientific research has not fully proved a causal link between those substances, on the one hand, and the potential transboundary impact, on the other hand; the polluter-pays principle by virtue of which costs of pollution prevention, control and reduction measures shall be borne by the polluter and the principle according to which water resources shall be managed so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs.

Nevertheless, we are still far away from offering water the statute as common good of humanity, as it is expected and presented by the doctrine [9], but at least in the plan of the legal thinking, the concept and strategy accompanying the international treaties have progressed without any doubt.

Generally, the international regulations regarding water protection are classified, depending on their area of application, into three categories: international regulations, regional and bilateral regulations [10].

Together with the Helsinki Convention, another document in this area with an international feature, is the United Nations Convention on the Law of the Sea [11] concluded at Montego Bay (Jamaica) on 10 December 1982, stating the issues regarding the law of the sea, the equitable and efficient use of the seas and oceans by preserving the biological resources, the protection and preservation of the marine, as well as the use of the International Tribunal for the Law of the Sea, established, in this purpose, in Hamburg, at the International Court of Justice, of the special arbitrage or international conciliation for solving different litigations regarding its application and interpretation. This Convention is considered to the “the most important work for codifying the customary law and progressive development of the law of the sea” [12].

From the category of the regional regulations which are of interest and have been ratified by our country, we mention:

- The Convention regarding the Regime of Navigation on the Danube and its additional protocols [13], adopted on 18 August 1948, during the Belgrade Convention,
which has as objective the insurance for all states of free movement of commercial ships and merchandises, as equals regarding the port charges and taxes on navigation, the maintenance in good conditions of the waterways and the insurance and improvement of navigation on the Danube;

- The Danube River Protection Convention [14] signed on 29 June 1994 in Sofia promoting the international cooperation in the area of the fundamental issues regarding water management, of maintenance and improvement of the actual condition of the environment and of the quality of the Danube river;

- The Convention on the Protection of the Black Sea Against Pollution [15] signed on 21 April 1992 in Bucharest aiming the achievement of a progress in the protection of the Black Sea ecosystem, the prevention, reduction and control of pollution of the marine environment and the preservation of its living resources in accordance with the general accepted international rules and standards.

Also, our country has concluded bilateral agreements with different states, of which we mention: the Convention between Romania and Bulgaria on the cooperation in the area of environmental protection, signed on 9 December 1991 in Sofia; the Agreement between the Romanian and the Ukrainian Governments on the cooperation in the area of transboundary water management, signed on 30 September 1997 in Galați; the Agreement between the Romanian Government and the Government of Republic of Moldova signed on 1 August 2003 with regard to the cooperation in the area of protection of the fish resources and the regulating of fishing in the Prut River and Stânca-Costești Artificial Lake, based on the sustainable development purposes and principles.

3. **Actions performed by the European Union in the area of water protection**

The action performed by the European Union in the area of water protection are reflected in different directives [16] which have as main objectives the insurance of the drinking-water supply, the proper management of water resources, the battle against drought and floods, the battle against water pollution.

Thus, the rational protection and management of water resources, as well as the insurance of their quality is an important part of the environmental policy of the European Union. Inserted in 2000, the Water Framework Directive (WFD) [17] was the
first act which approached this objective in an integrated manner, establishing a framework for the protection of the integrated river basins, subterranean waters, transition waters and coast waters. The current Directive also aims the prevention and reduction of pollution, the promotion of a sustainable water use, the environmental protection, the improvement of the marine ecosystems and the attenuation of the effects of floods and of drought periods, its final purpose being the insurance of an ecological and chemical “good condition” of all communitarian waters until 2015.

With all the efforts laid, almost half of the European hydric systems shall not fulfil this objective, considering the reality that water is under a permanent threat from a wide variety of pressures exposing the sweet aquatic ecosystems and the forms associated to them to the deficits caused by men, pollution and excess of water, a situation known under the name of “vulnerability”. In the same time, the use of lands, the intake of waters and climatic changes are changes generated by men modifying the natural “flow” of water systems. As resulted from the Report No 11/2012 of the European Environment Agency, in Europe there is a frequent lack of balance between surface and subterranean waters. The use of water also exceeds the available resources, generating the so-called “hydric stress” in many areas of Europe [18].

For the optimization of the application of the actual regulation in this area, as well as for the integration of the objectives of the policy on water within other policies, in 2012, the Commission has published the “Blueprint to Safeguard Europe’s Water Resources”.

which has the purpose to promote the plans for management of flood risks and to consolidate the WFD objectives.

An important role in the application and assessment of existing and future policies of the EU concerning water is played by the European Environment Agency (EEA). As already shown, in 2012 the EEA has presented a series of evaluations of the European waters’ condition [24], emphasizing aspects regarding the use of water resources, the ecological and chemical conditions, hydro-morphology, vulnerability and biodiversity.

In its activity, the Agency is supported by the European Topic Centre on Inland, Coastal and Marine waters [25]. For the collection and storage of information regarding water is responsible the Water Information System for Europe (WISE) [26] which functions as a partnership between the European Commission and the EEA, being considered the most complex multi-institutional access point in the area of information on water.

Not at least, we mention that the improvement of the application of the policy existing on waters and taking new measures for the efficiency of water management and preventing its pollution are problems mentioned by the 7th Action Program for Environment which entered into force in January 2014 and has three key objectives: protecting, preserving and increase of the Union’s natural capital, the transformation of the Union’s economy into a green economy, efficient from the perspective of resources and competitive from the perspective of the low level of carbon and protecting the citizens of the EU from the pressures related to environment pollution and the risks over their health and welfare.

4. Conclusions

The generalized impact of pollution, the need to unfold certain joint action for the protection, preservation and improvement of the quality of waters on which two or more states share sovereignty and the need to protect this environmental component are two of the most important aspects which have determined the international, regional and sub-regional cooperation in the area of water protection. Since 1987 when the Single European Act has entered into force, which has inserted for the first time in the area of the communitarian preoccupations the environmental issues and until nowadays, the
European Union, through its institutions, has had and still has among the main objectives of its environmental policy the adoption of measures for the protection of water resources [27]. Also, the international efforts in this area are supported, aspect confirmed by the large number of international treaties regarding water protection.

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The role of domestic courts in applying international law

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Abstract
The study exposes the view according to which domestic courts may prove an essential element in ensuring State compliance with international law, thus contributing essentially to the rule of law on international level. The functions of domestic courts are often dependent upon constitutional provisions, and, for this reason, the paper examines consequences of theories and techniques which may be relevant for drawing constitutional texts relevant for the relation between international law and domestic law. Thus, the first part of the study focuses on theoretic models and their relevance. National constitutions are rarely perfect. For this reason, the paper examines inherent deficiencies in the national constitutions that may lead to “gaps” in the way in which national courts may enforce international law. In this situation, courts are faced with an interpretative dilemma: choosing between “literal” interpretation and “purposive” interpretation. The former would lead to the possibility of applying domestic law that runs contrary to international obligations, while the latter might ensure primacy of international law, even in the absence of an express constitutional provision. The paper argues in favour of the “purposive” interpretation of domestic constitutions, based on the general principle pacta sunt servanda.

Keywords: priority of international law, rule of law, pacta sunt servanda, constitutions.

Introduction

International law is a de-centralized system, characterized by the lack of a compulsory jurisdiction [1]. International law relies essentially on the will of the states, and its execution, rooted in the well-known dictum pacta sunt servanda [2], is ensured by the general principle of good faith. In international law, good faith may enjoy a far greater importance than in domestic law, as the international system does not provide for enforcement possibilities, as it is the case in domestic law systems.

The answer to the question “why do States chose to comply with international law?” is often a very complex and difficult one [3]. In certain cases, it is a matter of principle that, even if international law may impose restrictions on State behavior, a State will never declare that it chose to ignore international law: the authorities of that State will find the necessary arguments in order to propose an interpretation favouring their view on the respective norms of international law. Therefore the question of
enforcement in international law refers is linked in only very rare cases to the question of whether States comply or not with international law, but more often with respect the question about what the law really is or how it should be interpreted. Thus, the principle of good faith appears to be essentially important not only in execution, but also in interpreting international obligations [4].

International courts rarely deal with the core issues of international law. Nevertheless, in an important number of cases, international law obliges States to adopt a certain conduct that is reflected through domestic law. On one hand, the execution of international obligations is done through the adoption of domestic law; on the other hand, a certain domestic norm can be seen as evidence of breaching an international obligation. International case-law has constantly held that domestic law represents, in international law, a simple element of fact. Thus, the principle pacta sunt servanda in international law imposes also that a State cannot invoke its domestic law in order to justify the non-execution of an international obligation [5].

Nevertheless, the question concerning the legal consequences of domestic law in international law is rarely put to an international court. More often, it is the role of domestic courts to analyze the effect of international law in the domestic systems. This is why it may be considered that domestic courts – while ensuring an objective and impartial overview of State behavior - represent an essential link in the international enforcement of the rule of law. Thus, in certain conditions, “the national courts can fill the missing link in the international rule of law by providing relief when public powers act in contravention of their international obligations” [6]. It does not mean that national courts may “replace” what could be seen as a utopian world under international mandatory jurisdiction: national courts may help achieving the compromise of creating a “world under law” without affecting national sovereignty of States [7].

However, the effect of international law in domestic law depends largely on the system adopted by the respective States and on the provisions of its constitution. Traditionally, the doctrine has advocated for the systems of monism and dualism. A legitimate question may be: is a constitutional system helpful for the correct enforcement of international law in the domestic system?
This study proposes to outline the importance that the domestic courts may have in international law enforcement by referring to the way in which these courts may interpret the constitutional system in order to give effect to international law. Thus, it will first propose a new pragmatic approach to the traditional “divide” between monism and dualism (A). The study would also use the case of the Constitution of Romania in order to exemplify certain inherent deficiencies (B). Thirdly the study will offer some examples of the way in which interpretation by domestic courts may be very important for good faith execution of international obligations (C).

A. Beyond traditional theoretical models [8]

Monism and dualism represented, traditionally, the two “opposite” theoretical models related to the relation between international law and domestic law [9]. Indeed, it is important to point out that the origin of these systems lies in the mere conceptions about the nature and features of the systems of international law and domestic law. Do the theories have any impact on the way in which national constitutions are written? Indeed, someone may speak about a “monist constitution” or a “dualist constitution”. The fact that the theoretic models have an impact on the way in which constitutional provisions concerning the relation between international law and domestic law are drawn cannot be denied [10].

Dualism (also called „pluralism”) postulates that the rules of the system of international law and domestic law exist separately and, for this reason, there is no possibility that they overrule each other and there can be no influence between the two legal orders [11]. The two systems are different through their sources, through the scope of the relations they attempt to regulate and through the substance of the regulation [12]. For these reasons, the mere nature of international law does not allow its rules to be by themselves applicable within domestic law. According to Anzilotti, one of the „fathers“ of this theory, two conditions are needed for an international law norm to be applicable within the domestic law: first, a decision of the State authority should ensure that the norm enters the domestic law system – practically, it is the State that decides to apply the internaitonal rule in its domestic law; and, second, a transformation of the rule, which should be done though a domestic act; such an act should not only „copy“ the substance of the international rule, but also must „adapt“ it: a rule designed
for governing inter-State relations should be made applicable to relations between subjects of the domestic legal order [13].

Monism is the theory which stresses the unitary character of the legal system, notwithstanding its international or domestic nature. On one hand, monism has been supported by the general concern about the well-being of individuals. According to this view, international order is characterized by the sense of moral purpose and justice founded upon respect for human rights and welfare of individuals [14]. Both international law and domestic law are rooted on the same concept of justice and rule of law [15]. On the other hand monism is grounded on the Kantian view that law is an order which lays down patterns of behaviour that ought to be followed. The same definition applies both to international law and domestic law. It is international law that postulates State sovereignty and that formulates the "basic norm": either sovereign equality, or the rule according to which States must behave as they ordinarily use to [16]. Notwithstanding the fundamentals the theory, monism has the merit of arguing that international law is per se and must be applied directly within the sphere of domestic law and is a superior legal order (that should have precedence in case of conflict between the two orders) [17].

Do the theoretical models have an impact upon how constitutions are written? Can we speak about “monist constitutions” or “dualist constitutions”? The Romanian constitution is a good example of generating different views between scholars: on one hand, it has been argued that the Romanian constitution represents a “dualist” model, based on the argument that “ratification” is a condition for a treaty to become a source of domestic law: thus, ratification is the process by which the international norm would be “incorporated” within the domestic law [18]; on the other hand, it may be argued that the Romanian constitution reflects a monist view, because, firstly, international treaties are sources of domestic law per se, according to article 11 (2) and, secondly, ratification represents the way by which Romania expresses its consent to be bound by a treaty: without ratification, the treaty is not binding neither in international law, nor in domestic law [19].

However, qualifying a constitutional system as "monist" or "dualist" would have little impact on the concrete result in case of a conflict between an international norm and a domestic one. What really would matter would be the way in which the relevant
constitutional provision works. Thus, what should be proposed is a pragmatic analysis and interpretation of constitutional provisions (or systems) of each State.

It is argued that international law is "neutral" with respect to the way in which it should be made valid within the domestic law [20]. International law does not make its rules automatically part of domestic law [21]. Based on this "freedom of choice", two patterns have developed in State practice.

The first pattern may be called “automatic incorporation”: the domestic law – often constitutional law – of a State provides that international law is generally authorized to be part of the domestic legal system, without any further formality. There is no need for transposition, implementing legislation or transformation of the norm [22]. Indeed, it is only a technique: international law is not part of domestic law per se, but on the basis of the State will. However, the incorporation is “general”. The following examples may be given: Benin (art. 147), Cape Verde (art. 11), China (case-law), Ivory Coast (art. 87), Czech Republic (art. 10), Dominican Republic (art. 3), Egypt (art. 151), Ethiopia (art. 9 (4)), France (art. 55), Japan (case-law), Netherlands, Portugal (art. 8(2)), Russian Federation (art. 15 (4)), Senegal (art. 91), Switzerland (case-law), Turkey (art. 90 (5)), United States (art. VI) [23].

A second pattern would be called “transformation” of the international obligation, in order to be adapted to fit the domestic law system. In certain States, domestic Courts may apply international law only after the legislature has adopted a specific act giving effect to an international act [24]. Indeed, in various systems there may be differences according to the source of international law: for example, in the United Kingdom, treaties that are not subject to “transformation” are not sources of domestic law, while the doctrine of incorporation operates with respect to customary international law [25]. In any case, the following States have been quoted as embracing the “transformation” technique: Australia, Botswana, India, Israel, Italy, Kenya, Malawi, Norway, Uganda, and Zambia [26].

The question that remains is whether the identification of the two patterns in the way in which constitutions are written is sufficient to determine the real effect of international law in domestic law. As the following section will expose, it could be argued that this is may not be the case.
B. Inherent deficiencies in constitutional texts

In an important number of cases, the techniques of „automatic incorporation” or „transformation” apply only with respect to limited sources of law. For example, the constitutions of Italy (art. 10) and Germany (art. 25, 59) opt for „automatic incorporation” of international custom, while leaving the technique of „transformation” applicable for international treaties [27].

In many cases, constitutional systems opt for the automatic incorporation, targeting only treaties for which consent has been expressed by ratification. For example, in Lithuania „international treaties ratified by the Seimas shall be constituent part of the legal system of the Republic of Lithuania” [28]. Is the incorporation limited to treaties which are “ratified”? The same situation may be encountered in Poland, on the basis of article 87 of the Constitution: As decided by the Supreme Court, only treaties subject to ratification are part of domestic law [29].

In Romania, article 11 (2) refers to the fact that “treaties ratified by the Parliament, according to the law, shall be part national law”. This text may be regarded as reflecting the technique of automatic incorporation. The question that persists is whether this text should be interpreted: either in the sense of limiting the incorporation to treaties subject to ratification (based on a “literal” interpretation of the Constitution) [30]; or in the sense that the phrase should be interpreted in correlation with article 11 (1) [31] which deals with treaties “to which Romania is a party”, thus covering all forms by which consent to be bound is expressed [32]. However, article 11 of the Romanian Constitution deals essentially with treaties. It is article 10 that may be argued to deal with international custom: however, its wording does not lead towards a firm conclusion of incorporating international customary law [33]. It may be left for case-law to determine the effect of international custom.

One of the most important questions is whether a constitutional provision aiming for „automatic incorporation” offers sufficient guarantees for ensuring enforcement of international law in case of a conflict between an international norm and a domestic one. The difficulty is proved by the system embraced by the Romanian Constitution. Even if treaties are incorporated into domestic law, an express provision ensuring priority of international treaties over conflicting domestic law exists only with respect to
treaties in the field of human rights and fundamental freedoms, according to article 20 (2) [34]. What would happen in case of a conflict between domestic laws and “other” treaties? More concretely: if there is no express indication, can it be assumed that treaties have a superior legal force than ordinary laws? Two different opinions have been expressed in the doctrine. Firstly, on the basis of a literal and per-a-contrario interpretation of article 20 (2), it was assumed that treaties other than ones in the field of human rights have the same legal force as laws. One argument in this sense is the fact that ratification is done by the Parliament, through the adoption of a law [35]. Secondly, a different opinion has been expressed in the sense that treaties would enjoy implicit superiority over domestic law, by applying the principle pacta sunt servanda which is enshrined, inter alia, by article 11 (1) of the Romanian Constitution itself [36]. What would be the correct interpretation? Even if the second variant should be retained as being in line with the rule of law goal at international level – it should be for the case-law of domestic courts to establish it.

A comparative study would reveal the fact that besides “automatic incorporation”, certain constitutions introduce “priority clauses” by which treaties (or generally, international law) are given primacy in case of conflict with domestic law. As mentioned above, the Romanian “priority clause” is limited to human rights treaties. For example, the Constitution of the Czech Republic provides that “Promulgated international agreements, the ratification of which has been approved by the Parliament and which are binding on the Czech Republic, shall constitute a part of the legal order; should an international agreement make provision contrary to a law, the international agreement shall be applied”. [37] Another example may be the Constitution of France, which provides that „Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party” [38]. Other examples of this kind may be represented by the Constitutions of countries like Bulgaria (art. 5 (4)), Cyprus (art. 169.3), Greece (art. 28 (1)), Estonia (art. 123), Poland (art. 91 (2)), Croatia (art. 134), Germany (art. 25 – special case, referring only to general rule of international law, not to treaties) Spain (art. 96), Slovenia (art. 153 (2)) [39].
As a preliminary idea, two main inherent deficiencies could be envisaged within national constitutions. These may be illustrated plainly by the system established by the Constitution of Romania. Firstly, there is a difference between “automatic incorporation” and “priority clauses”. A combination of these two would be ideal. However, the first is not sufficient to ensure, without any doubt, priority of international law in case of conflict with domestic law. Secondly, there is a difference between sources of international law (treaties and custom), and, sometimes, between categories of treaties (as treaties in the field of human rights or treaties subject to ratification).

C. Solutions provided by domestic case-law

The establishment by case-law of the priority of international law in case of conflict with a domestic provision, even in the absence of a “priority clause”, represents a viable solution for ensuring effective enforcement of international law within domestic law. This would be the solution towards which the Romanian constitutional case-law may aspire.

An interesting analogous example was provided by the Constitutional Court of Latvia in the case of Linija [40]. The applicant requested the invalidation of a law (Code of Administrative Penalties), providing for fines to be imposed on shipping companies, arguing that it was running against the obligations assumed by Latvia by the Convention on Facilitation of International Maritime Traffic of 9 April 1965. It could be noted that the Code of Administrative Penalties was lex posterior in Latvian law, in relation to the Convention. Even if the Latvian Constitution did not contain a “priority clause” [41], the Constitutional Court held that:

“Article 68 of the Constitution of the Republic of Latvia provides inter alia that all international agreements which settle legislative matters need to be ratified by the Saeima. When the Constitutional Assembly included this norm into the Constitution, it did not envisage it to be possible that Latvia shall not perform its international obligations. The requirement to have the respective international agreements ratified by the Saeima was included into the Constitution with an objective to preclude such international obligations, which regulate legislative matters, without the approval of the Saeima. Thus, it is evident that the Constitutional Assembly has been guided by the
presumption that international obligations “settle” issues and that they must be fulfilled. […]

Therefore, it is evident from the national legislation as well as from the international obligations of the Republic of Latvia under the Vienna Convention on the Law of Treaties, in particular, the obligation to perform treaties in good faith, that in case of a contradiction between rules of international law, which have been approved by the Parliament, and national legislation, provisions of international law must be applied. Moreover, international obligations, which Latvia has undertaken by international agreements approved by the Saeima are binding also on the Saeima. It may not adopt legislation that contradicts these obligations”.

It can be observed how the Latvian Constitutional Court applied a „purposive” interpretation of the constitutional text, in order to give effect to the principle pacta sunt servanda in international law.

Nothing would prevent the Romanian Constitutional Court for adopting a similar interpretation, even without an express „priority clause” Moreover, as opposed to the Latvian Constitution, the principle pacta sunt servanda is mentioned in the Romanian constitutional text article 11 (1). Nevertheless, certain developments could be mentioned as important signs of „opening” of the Romanian Constitutional Court to an interpretation in accordance with the principle pacta sunt servanda.

As mentioned above, automatic incorporation and primacy of customary international law is not expressly regulated by the Romanian Constitution. Article 10 refers generally to the conduct of international relations [42]. However, in its Decision no 1292/2002 SDG v Canada [43], the Supreme Court held that jurisdictional immunity of States is binding on national courts, as „it expresses the principle par in parem non habet jurisdictionem” and because „this rule was recognized by various national tribunals of States and was applied as of customary nature”. In practice, the Supreme Court ordered that the customary international rule of State immunity should apply before domestic courts.

Implicit priority of international treaties (other than human rights treaties) over domestic legal provisions appears to be firstly envisaged in a Constitutional Court Decision of 2014. Decision 2/2014 [44] concerned the alleged unconstitutionality of an
amendment to the Criminal Code (which attempted to restrain the scope of certain corruption crimes). The Constitutional Court invoked the United Nations Convention [45] against Corruption and the Council of Europe Criminal Law Convention on Corruption [46] in order to rule on the unconstitutionality of the domestic law [47]:

The privileged legal status created for elected persons that are accepted from art. 147 of the Criminal Code in force and from article 175 of the New Criminal Code runs against the provisions of article 11 (1) of the Constitution, according to which “the Romanian State pledges to fulfil as such and in good faith its obligations as deriving from the treaties it is a party to”. Thus, ratifying or acceding to the above mentioned international conventions, the Romanian State assumed the obligation to comply with international provisions and to implement them into the domestic law, in particular with respect to the obligation to criminalize active corruption of persons that fall within the categories of “public agent”/”member of national public authorities”/”national civil servant”/”public officer”, notions that correspond, in Romanian criminal law, to the ones of “public officer”/”officer”.

Even if this case did not concern an actual dispute between private persons, but an ex ante constitutional review, it is very important for exposing the general argument that a domestic law that runs against an international treaty is contrary to article 11 (1) of the Constitution, which embraces the principle pacta sunt servanda. It is an important development in Romanian Constitutional case-law that may prove crucial for ensuring priority of international treaties over domestic law in all domains – not only in the field of human rights. Of course, it remains for further case-law to establish the priority of international treaties in a concrete case involving a dispute between the parties.

Ground for such further development may be encouraging: even if „direct effect“ [48] of international law is not provided expressly by the Constitution, Romanian courts have already accepted the concept: the High Court of Cassation and Justice ruled that „International treaties ratified by the Parliament are integral part of national law, according to article 11 of the Constitution, and are applicable upon natural and legal persons“ (emphasis added) [49]. Indeed, the „direct effect“ may also be a „jurisprudential creation”, based on the purposive interpretation of the domestic Constitution, as inspired by the principle pacta sunt servanda. An analogous example
may be the Supreme Court of Justice of the Dominican Republic, which held that 
"tribunals must apply treaty provisions that are relevant to the resolution of a legal 
dispute") [50].

It is true, not in all cases domestic courts have upheld primacy of international 
law, especially when the relation between the Constitution and an international norm is 
at issue. The German Constitutional Court decision related to the Lisbon Treaty could 
be an eloquent example envisaged the possibility that the State “exceptionally” 
disregarded treaty obligations, as long as this was the only means of safeguarding the 
structural principles of the Constitution [51]. Nevertheless, for a large spectrum of treaty 
obligations, developments of domestic case-law could be very useful for 
“supplementing” the constitutional techniques aimed at ensuring correct enforcement of 
international law within the domestic legal order.

Conclusion

As concluding remarks, it would be useful to point out that enforcement of 
international law through domestic courts may represent an essential element in 
reinforcing compliance with international law. Even if the State applies the 
“dedoublement fonctionnel” by establishing an independent and impartial control 
through domestic courts, it is very important to see whether these Courts have the 
necessary tools for enforcing international law, sometimes against the State itself.

The way in which domestic constitutions are written and are interpreted is a key 
element in understanding the role of national courts. Even if, traditionally, scholars 
presented the theoretical models of monism and dualism, it has been argued that, in 
practice, Constitutions use “techniques”, not theories. It is true that in certain cases the 
techniques may have their source of inspiration in theoretic models. Thus, constitutions 
chose either “automatic incorporation” or “transformation” techniques.

However, the option towards one of there might not be sufficient to determine the 
legal effect the international norm enjoys in domestic law. In certain cases, in addition to 
one of the incorporation techniques, Constitutions may choose to have a “priority 
clause”. In many cases, such priority clause may not be covering all situations: for 
example in may refer only to treaties, or to certain categories of treaties (in the field of
human rights – as in Romania – or treaties which have been ratified – as in Poland and Romania).

In the absence of a “priority clause”, the role of case-law of domestic courts may be essential to establish the effect of international law. The domestic Court may choose between a “literal” interpretation, which may lead to the possibility of international norms being superseded by domestic laws, and a “purposive” interpretation, which would ensure primacy of international law even in the absence a priority clause. Such an interpretation would be based on the assumption that giving priority to international law in case of conflict with domestic law is self-understood in general principles of both international law and domestic law, such as *pacta sunt servanda* and good faith.

It is this latter “purposive” interpretation that we are advocating for. Good faith is an essential element of the rule of law: State power must be exercised within limits prescribed not only by law, but also by common sense. Therefore, respect for international law might be seen as a value *per se*. Such an affirmation would not be void of legal consequences: by purposive interpretation techniques, the principle of *pacta sunt servanda* should lead the way in which domestic Courts exercise their control on State actions, enforcing the limits the State itself had assumed through international law.

Recent case-law of the Romanian Constitutional Court, as well as examples by way of analogy from other States, confirm this assumption. Of course, it would be desirable for the Romanian Constitution to have: a general “automatic incorporation” clause, covering both treaties (notwithstanding the way in which consent was expressed) and customary international law; a general “priority clause”, providing priority in case of conflict between international law and domestic law; and, desirably, a “direct effect clause”. However, Constitutional amendment may often be difficult to achieve in practice. For this reason, jurisprudential confirmation of primacy of international law and of its direct effect may represent a pragmatic and, maybe better solution, than the amendment of the Constitution itself.

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Establishing the facts in the process of legal qualification

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Abstract
Establishing the facts is a preliminary stage of the legal norm qualification. In determining of facts, evidence plays an important role. The proves are not only a logical mechanism that allows to verify the reality of a fact or an argument. Background and scope of the judicial probation is to identify the correct legal standard which has to be applied in the legal process. One fact can not produce legal effects by it qualities, but legal rule has to assign a certain quality, a certain special significance and legal effect. An established fact should receive a legal qualification, taking into account all circumstances. Legal classification is an assessment which involves both facts and elements of law.

Keywords: the facts, the prove, legally qualified legal, elements of law, probation, legal effects, logical mechanism;

The establishing of facts is a preliminary phase on matching or choosing the applicable law. In order to be reported to a norm of law, the actual situation must be exactly determined. From here appears the first difficulties for the law enforcement process, because, while the primary recipient of the legal norm, lived directly in a certain situation, being aware of the situation elements that can be perceived globally by one who applies the law, the competent authority knowing the facts cannot see them directly, but only through primary and direct recipients of the norm they apply.

If we identify the place and the role of the legal norm in determining the state of law in relation to the facts, we can mention that, the legal norm does not take into consideration an accidental event „but it is considering a generality of relationships and a behavior average“ [1].

However, only the legal norm cannot cover all cases which might arise in social relations. It includes the most common ones.

In a trial, the parties are situated on the opposite sides, relating the facts according to their contradictory interests. The first obligation of a judge is to determine which of these two versions are true. Otherwise, the conflict between the parties could not be solved [2].
The legal qualification is the meeting point of the facts and the law. The qualification is the first tool to identify the norm of law. [3]

In the legal qualification process is important to determine the case facts, in this way they are perceived by the judge, only through a strict probation regulation. For example, the proof of the end of a marriage is made by presenting the marriage certificate, registered in the civil status register. The judge must follow the probation regulations established by law. Thus, the judge can accept only the evidence provided by law to prove the contracting of the marriage. There are domains in which the judge has a big freedom of action, meaning that he is allowed to use any evidence that is necessary for the formation of his conviction, with the condition, that they are not contrary to law.

If the trial documents submitted by the parties contain conflicting information, the judge must decide, but to decide, he must assess the situation, by his reasoning, in global terms.

The establishing of fact situation and choosing the legal norm represent the phases of law enforcement, which are the essential and necessary steps in conducting the process of applying legal norm. [4]

In determining the fact situation, the probation plays an important role. The proof is not only a logical mechanism that allows the verification of the reality of a fact or an argument. This representation of the form is incomplete, because it is neglecting the context and the purpose of the judicial probation. The judicial probation differs from the scientific probation. In the legal field, the proof has as a scope more than the judge convincing, rather than establishing the objective reality. It is related to the climate specific to the process and not to a laboratory one.

In judicial matters, the proof is taken in a reasonable term, necessary for the intervention of a decision and must be considered as sufficient, or insufficient, because the judge cannot under penalty of denial of justice, to abstain from judging.

In judicial matters, the proof results from the joint action of the judge and the parties in the process” [5]. The probation problem is crucial in case of a dispute. It is not enough to be right, to be the holder of a right or to be in a particular legal situation. You have to prove all of these.
As the legal regulation of the evidence is supple, the more it allows being near the truth. The task of proof presenting lies on parties. The object of proof is only the fact elements. The parties do not have to prove the legal norm existence. The judge is the one who knows the law. However, raises the question of right’s proof, when we talk about common law, autonomous law and foreign law.

If we refer to the fact elements, consisting of facts and legal acts, when, the elements of law are those legal norms serving as a basis for the parties and on which depends the solution to be given by the court. Presumption is a way of reasoning whereby from the establishment of a fact is induced another fact that is not proved. The presumptions are conclusions which the judge takes from a known fact, to an unknown fact. The presumptions are related to the particular acts and facts and consist of moving the proof object. By moving the proof object it’s introduced a greater uncertainty than the uncertainty of the direct proof. That’s why, it should in this case always be upheld the contrary proof, but only when necessary. These presumptions allow to deduce the truth about the existence of another fact, actually easier to prove.

The presumptions concerns the positive element of the human behavior in which a legislator or a judge is interested in.

They are related to standards, because the overthrow of a presumption cannot occur unless if there are enough clues against its recognition, the disproportion characterizes the instability and is considered the dynamics of this standard [6]

The standard is not a norm, but a measure instrument, a formulation technique of the regulation of law - norm, so it does not matter if it was used in a provision of law issued by the legislature, other responsible regulatory body or the judge (being of a common or a constitutional jurisdictions). [7] Thus, the presumption of good faith imposes the person who claims it, to prove the bad faith. The presumption of innocence in criminal law protects the individuals against arbitrariness.

The legal presumptions are based on the most probable situation or on the idea that if it is not presumed, certain facts would be impossible or very difficult to establish. The legal presumptions must be prescribed by law. They make the difference between the proof tasks and/or move the proof object. For example, when the law presumes that a child born in a marriage period has as father his mother’s husband, it dispenses to
establish that he is the son of his mother’s husband, at the same time, the proof object moves on, meaning that instead of determining parentage of the child, the law requires only to establish that he was born in the mother’s marriage period and it’s deducted her husband parentage. The legal presumption on which we referred favors the legitimate family. It prohibits parties to the trial to refer again the court, to subdue a claim that it has resolved by a decision, which became definitive.

However, it attracts the attention that in fact we are in the presence of practical regulations preventing the rebirth of the disputes and making the court decision unquestionable. Preferable, it was considered to state that the authority judges in the measure in which the unquestionable court decision has the same effect as an unassailable truth, although it has no nature.

An act has legal value if the legal norm typically provides that the existence has legal consequences. The act received from the legal norm is a qualified act. The legal norms include in their core legal values, justify other values, guarantees, defend, and protect values [8].

The transition from facts to the law is carried out through a mechanism, apparently very simple: the law takes into account a fact, a complex of circumstances in which it is placed the person: from this, based on the causality relation, are connected the legal effects, which as applicable, have been followed, deliberately, or, conversely, were not desired. Producing legal effects suppose often the fulfillment of a lot of complex conditions.

Contrary to what happens with natural phenomena, the legal effects related to the condition fulfillment, does not happen automatically. In the judicial life, the effect does not follow inevitably the case. Once established, the facts must be faced with the legal concepts, to see with which of them it is identifying and to choose the legal norm to be applied. The qualification is the operation in which the established fact situation is framed in the judicial norm hypothesis.

The qualification operation is the one, which allows the judge to move from the fact, to law, from the hypothesis in which is framed the established fact situation, being related a certain solution. If we were to refer to one of the principles of the civil trial the judge obligation is to know the law and apply it correctly to the facts of the dispute. It
comes from the assumption that the court knows at an advanced level the regulation of law, knows the practice, national and international jurisprudence, being aware of any new regulation. A rigid interpretation of this principle appears to lie on one side the right and on the other side the fact. The principle suggests also the distinction between judge functions and parties function in the process.

The judge is the one who requires from the parties to relate the facts, and allows them to present them to him, to give a legal solution.

A fact cannot itself produce legal effects, so it is important to appreciate the fact situation in relation to the legal norm regulations, related to the judicial standards in the field.

The set fact should receive a judicial qualification, taking into account all the circumstances that have led to that fact situation. In order to get to the norm of law application, it is necessary to establish the facts, then to choose the norm. The judicial qualification is an assessment in which are involved both, fact and law elements. The lawyer stops only on those effects that allow, or prevent the application of the legal norm.

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The cancellation of administrative acts.

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Abstract
The cancellation is a specific form of termination of the legal effects of administrative acts, it can not be applied to material legal facts that produce changes in the material world because the good transformed through a material fact can not be restored to its original state by an act of cancellation but possibly also by a juridical material fact. Contrary, the legal act is a manifestation of the will and it will be disbanded in its legal effect also through a manifestation of will. In this article are examined the following forms of cancellation of administrative acts: absolute nullity, relative nullity, absence of administrative acts.

In legal doctrine, the cancellation is defined as a legal operation that consists of a manifestation of will in order to determine, directly, the dissolution of act and therefore definitive cessation of legal effects produced by it.

In terms of its nature, the nullity of a legal act, and also of an administrative act represents a sanction that occurs when the act is hit by some legal flaws. A definition in this regard we find to Professor M. Orlov that considers the cancellation as a penalty imposed to the administrative acts issued / adopted by breaking the law and consists in depriving them of the legal effects for which they were issued / adopted.

Cancellation is a specific form of termination of the legal effects of administrative acts, it can not be applied to material legal facts that produce changes in the material world because the good transformed through a material fact can not be restored to its original state by an act of cancellation but possibly by a legal and material fact. On the contrary, the legal act is a manifestation of the will and it will be disbanded in its legal effects also through a manifestation of will.
The defects of illegality that affects a legal act can be more or less serious. Sometimes they jeopardize the general interests, sometimes only affect their personal interests. Sometimes the illegality is so obvious that the manifestation of will does not even have the appearance of a legal act, sometimes the act presents external signs of a valid manifestation of will, although it is made in breach of some legal provisions.

Still the reputed Romanian Professor P. Negulescu recognized the following categories of nullity:

a) non-existent acts, which do not require any finding;

b) null and void acts that have legal appearance but are hit by a defect of a such depth that it can be found anytime, and it can not be covered by the passage of time;

c) canceled acts, when the act presents only some formal defects that can be invoked in a determined period of time and only for those subjects of law, authorities or individuals that have a direct and personal interest.

In the analysis of the nullity of the administrative act we have to start from the substance and form conditions which the legislator sets aut, from the research of the influence of non-compliance with a condition on the validity of the act, who and how long he may invoke the respectively defect. The Professor V. Vedinas distinguishes three categories of interest of which the law must take into account and reconcile them:

- general interests, ie the interests of the collectivity represented by the state;
- Local interests, represented by administrative-territorial units;
- Individual interests of the private individuals, of the administrations.

In the doctrine it admits the idea that in matters of administrative acts operates the absolute nullity and the relative nullity according to the interest protected by the legal rule infringed by illegal administrative act, by the seriousness of the illegal defects or by the opposition that exists between the device laws and imperative laws.

Regarding these nullities were supported two views: bipartite and tripartite opinion.

Bipartite theorists argue that administrative acts may be null and cancelable. The cancelable act is characterized by the fact that the defect of illegality does not affect the presumption of legality of what generally enjoyed the administrative acts, and the act in question continues to produce legal effects until it is canceled by the competent
authority. The null act is struck by a defect so serious that the presumption of legality can not operate in his favor and therefore this act can not produce any legal effect.

Tripartite theorists argue that administrative acts may be absolutely null and void, may be relatively null or may be nonexistent. The common feature of absolutely and relatively null acts is that they enjoys of the presumption of legality until such time as these nullities are found or declared by competent authority. While thus acts were not canceled, they shall be considered binding, only in the absence of the act does not exist the condition of finding the defect, to deprive it of legal effect. We, personally agree with that opinion that presents fairly the cancellation situations of the effects of the administrative act.

In Republic of Moldova, provisions on cancellation of the administrative acts we find in the Constitution: "The person aggrieved in his legitimate right by a public authority through an administrative act or failure to solve in legal term of an application is entitled to obtain the acknowledgment of alleged right , the cancellation of the act and remedies for the damage. "More detailed provisions we found in the Administrative Litigation Law: "Any person who is considered harmed in his legitimate right, recognized by law, by a public authority through an administrative act or through failure to solve in legal term of an application, it may address to the competent administrative court to obtain the cancellation of the act, the recognition of the alleged right and repair the damage that was caused".

**Full invalidity** has as specific the fact that it sanctions the non-observance, when concluding a legal document, of a standard which protects a general, social interest. [1] It occurs when some basic conditions as to the content of the document, [2] essential conditions for the act validity, are violated. In this situation, the invalidity is considered as a sanction and may be invoked by any interested person or ex officio. [3]

**Partial invalidity** sanctions the non-observance, when concluding a legal document, of standards which protect a particular, individual or personal interest. [4] It occurs in order to sanction the non-observance of some conditions of form. In such situations, the invalidity may be invoked only by persons whose rights are legalised by a document or ex officio.
There are situations when the law sets that the non-observance of some procedural forms results in full invalidity of document. It is the case of the art. 445 of the Contravention Code, which establishes the invalidity of minutes as to contravention, if some data or facts not registered. These data refer to:

a) date (day, month, year) and place when the minutes concluded;

b) quality, surname and first name of official examiner, name of authority he/she represents;

c) surname, first name, domicile, occupation of offender, his/her identity card data, as to a legal entity, the name, address, fiscal code, data of private person he/she represents;

d) offense, place and time when committed, circumstances on the cause that are important in order to establish the facts and their legal consequences, evaluation of possible damages caused by the offense;

e) legal inclusion of the action, contravention material standard and qualifying clues of elements constituting the offense;

f) informing the offender and victim about their rights and liabilities provided by the art.384 and 387;

g) objections and evidences which the offender provides as to his/her defence, as well as objections and evidences of victim. [5]

The specialised legal literature highlighted that there is a rather small differentiation as to importance between full and partial invalidity, by taking into consideration their similar juridical regime and situation when invalidity is decided by administrative authorities.

In order to support the opinion as to the similitude of juridical regime is also provided the legal standard – contested administrative act may be annulled fully or partly in situation when:

a) is basically illegal, by being issued against the legal provisions;

b) is illegal, by being issued by violating competence;

c) is illegal, by being issued by violating the set procedure. [6]

Partial invalidity of an administrative document is in principle possible, but only if „the part“ from the document which was annulled has no organic or intrinsic connection
to the other clauses of the document, which might exist independently and may be adopted even if the cancelled clauses do not exist. The competent body has to take measure of full invalidity of administrative document or this measure implicitly intervenes by impossibility to implement the part of the document which has not been expressly cancelled. [7]

Regardless of the fact if the administrative document has violated a standard which protects a general or personal interest, these authorities may annul the legal document ex officio.

The cancelling of administrative document as sanction may be ordered by a hierarchically superior body (in the virtue of report on hierarchical subordination) or by court (under art.6 of the Contentious Administrative Law). The procedure of invalidity will be different depending on the body which orders the invalidity. If the annulment ordered by the hierarchically superior body, the legal instrument by which it is ordered the invalidity will be the administrative document, which means that the procedure will be the one specific to the issuance of an administrative act. In situation when the court rules the invalidity of document, the procedure will be the one set by chapter IV of the Contentious Administrative Law.

As regards the effects of invalidity, when an administrative document invalid, usually these produce ex tunc effects, meaning – retroactive for the past. In case when the document was annulled on the ground that it is illegal, the effects produce only for the future (ex nunc), as well as for the past (ex tunc), respectively, once issued, - the document is abolished as it has never existed. [8] However, as the doctrine stresses, only the legal effects of the cancelled document are abolished, as material consequences, which in fact are a reality which happened in the past and cannot be ignored. [9]

Professor R. Ionescu [10] says that when the invalidity is decided due to reasons of inopportunity, the produced legal effects are ex nunc, namely for the future – opinion which in fact I share with most of authors. [11] In other words, the invalidity document produces effects only since the date of issuance, by maintaining the effects produced before the annulment.
Professor A. Iorgovan develops the principle of right *quod nullum est, nullum prodicit effectum* and proposes to remember a rule referring to the legal regime of invalidity of administrative document, namely: „the invalidity of an administrative document results in annulment of all documents the legality of which is conditioned by legality of cancelled administrative document”. [12]

The cessation of legal presumption when contesting the illegality of administrative document has also to be included in the category of effects.

**Non-existence of administrative documents.** The theory of non-existent documents has been worked out by French and Romanian authors in the interwar period and the court practice of these states devoted to the category of inexistent administrative documents.

The inexistence means that the issued document did not observe certain legal, form, content and procedural requirements etc. and results in lack of a legal force, which it usually has to have. Such documents cannot be taken into consideration and, respectively, cannot be executed. Behaviour towards such acts has to be as towards something that has never existed. [13]

The inexistence occurs in situations when the violation of conditions is so serious that the principle of sanction of effects of administrative document cannot be used, thus it being respectively implemented the sanction of non-existence. [14]Administrative documents, which lack essential elements regarding its nature and object, without which it cannot be developed [15] which were worked out or issued by violating the material or territorial competence (for instance, the mayor of a settlement pronounces a divorce or the local council regulates the behaviour of citizens from another settlement; or even elaboration of a document by a person who does not have the status of public servant) are inexistent. The violation of the law in such situation is so obvious that it is not necessary anymore to invoke the illegality of document and pronunciation of its invalidity. [16]

The opinion of Mr E. Demciuc is meant to underline the opinion of Professor P. Negulescu: [17] „the inexistent administrative documents do not provide at least the appearance of legality, as the violation of the law is that obvious that anyone may notify it, and, respectively, no finding is necessary”.
The present legal background of inexistence of administrative document is provided by two express constitutional provisions, which transform this institution into a constitutional one. It is about the art. 94 paragraph (1), which regulates documents by president, respectively decrees, the mandatory publication of which in the Moldovan Official Journal is set by the respective constitutional text. The same is provided by the art. 102 paragraph (4) which reads: „Decisions and ordinances adopted by the government are signed by prime minister, countersigned by ministers, who are obliged to execute them, and are published in the Official Journal of Moldova. The non-publishing leads to inexistence of decision or ordinance.”

We may identify the following dimensions [18] of the legal regime of inexistent documents:

a) Inexistent administrative documents do not enjoy the presumption of legality of administrative document;

b) Subjects recipient at law of document, which fall under its incidence, have to take advantage of the inexistence of document and, thus, to refuse to execute liabilities which result from the document. Often, in the juridical literature, both theses are gathered into a single one – in situation of inexistent documents it is not valid anymore the presumption of legality and nobody may be obliged to observe clauses stipulated by such documents. [19]

c) It arises the obligation (correlative, as to right of subjects) of other subjects at law and, especially, of public authorities to take note of occurred inexistence, which means that they will not, based on document, carry out ex officio execution and exercising the force of coercion of the state, as the document is not considered legal anymore and, respectively, it has no enforcement, does not enjoy the feature of executio ex officio.

d) Institution of inexistence of administrative document, due to its importance, enjoys the attention of law-enforcer and has an express constitutional dedication.

The French juridical literature makes difference between inexistence and invalidity through the viewpoint of moment of withdrawal: [20] The inexistent document may be withdrawn by administration at any time, whereas the invalid document may be withdrawn only within the appeal term.
As a conclusion, we believe that it is necessary to put more emphasis on this aspect of the activity of administrative authorities. It is necessary a well-defined policy as to control of administrative documents, it is necessary to pay increased attention to training of inspectors, especially within bodies who exercise express control competences. When checking documents and administrative actions, it will be taken into account all reasons: starting from legality, continuing with opportunity, regularity, advantageousness and their efficiency.

References:
Urbanism Role in Preserving the Cultural, Architectural and Civic Heritage. The Mission of Urbanism in Forming the Sense of Ownership and Community

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Abstract
An European and national objective is that the European regions to become more attractive for investments and to attract labor force, so they can capitalize on new conquests of science and technology.
Thus, this paper tries to identify links through which the application of the principles of urban planning has in creating a metropolis at the highest standards of living. In the same time, the principles of urbanism have also an impact in the preservation of cultural heritage and architectural creation that is a key factor in the socio-cultural identity.

Key-words: urbanism, architecture, identity, administration.

1. Conceptual approaches. The urbanism architecture conflict

The definition of 'urban' concept varies from country to country and, by redefining its regular can vary even in the same country over time.

This hampers the realization of direct comparisons. An urban area may be defined by one or more of the following features:
- administrative criteria or political boundaries (area under the jurisdiction of a municipality or local council, for example)
- population threshold (where usually the minimum for an urban area is somewhere around 2,000 inhabitants, although this varies globally between 200 and 50000)
- demographic density,
- economic -function (the area where a significant majority of the population does not deal mainly with agriculture or where there is surplus employment) or
- some urban features such as paved streets, electric lighting or sewage. [1]

For instance, in 2010, it was estimated that 3.5 billion people lived in areas classified as urban.
In the last decades of the twentieth century, economic development and globalization, marginalization and the threat of extinction faced by many communities and the gradual erosion of traditional beliefs and convictions were absolutely necessary to reconsider the place of international cultural heritage and its role in the future of societies.

Because "Unity in diversity" is one of the basic principles of the European Union it has become vital the formulation of strategies aligned with the aspirations and cultural realities of each country.

Documents, like "Our Creative Diversity", assumed by the UN and UNESCO, and “In from the Margins - A Contribution to the Debate on culture and Development in Europe” have revolutionized all modes of approach and definition of culture.

A third contribution to this new approach is dating from 1999, the year the International Conference organized in Florence by UNESCO and the World Bank. Unfortunately a conflict that dominates the reaching the objectives recommended by the European Union is that between planners and architects. According to some specialists, the Leipzig Charter, from 2007, would have been a moment of reconciliation in these two categories because it provides both the need for urban planning and construction on the culture of beautiful and durable quality public spaces. [2]

The Association “Save Bucharest” conducted a study entitled "Bucharest – An Urban Disaster" from which some meaningful conclusions are to be drawn. Bucharest is “suffocated by traffic" aspects revealed in many statistics. One example relates to reach average speed 2 km/h on high-traffic arteries. The cause is densification of housing, especially in the center.

Bucharest has a density of 9.009 inhabitants / km square, while Berlin, is 3905, Vienna and Budapest 3.674 3.850 inhabitants / km square (social comfort should not be surpassed 3,500 inhabitants per km square). Yet, in Bucharest, there are given authorizations for construction of grand building in places overcrowded, either, parking or green space, etc. [3]

Other reasons are given by the construction of hypermarkets in the city, and not outside the city, such as is normal, the location of office buildings are in the very center, so, all these generate very high traffic at certain hours. [4]
Another conclusion is that Bucharest is considered an “ugly” city, who can not keep their architectural heritage. The number of tourists coming to Bucharest is very small compared with other European cities.

Also in this study they were presented and attacks against historical monuments, including the now famous case of the Armenian Church. In addition, after 1990, in Bucharest were demolished hundreds of homes with architectural value, some historical monuments, and thousands more are in danger of being demolished.

Not even the industrial heritage has no chance of being preserved: Moara lui Assan, Fabrica de Bere Bragadiru sau Atelierele Tipografice "Cartea Romanească" should be restored, but were allowed to collapse. Markets have not kept the identity: they became either parking or “rectangular windows” (see Amzei Market) and in Sector 2, Obor market is in danger of being demolished and replaced by a mall. [5]

As a result, what was lacking Romania after 1989 was a consistent attitude of the responsible authorities, which would have meant recognition, including legal, that the cultural and natural heritage is a national priority.

To sum up, the lack of involvement in the decision-taking and the political irresponsibility in not providing protection, restoration and conservation of heritage, the consideration and financial support led to this catastrophic situation.

2. Aspects of competitiveness and welfare of regions and metropolitan areas

Ensuring competitiveness and well-being of regions and metropolitan areas is an essential coordinated to achieving the objectives of a European Convention on Territorial Cohesion, the Lisbon and Gothenburg Agendas for competitive and sustainable economic development, of the European Spatial Development Perspective [6] on urban areas and the objectives of the Third Report for social and economic cohesion. [7]

In the EU agenda, the economic, social and environmental development of European metropolises are of particular interest, which required the establishment of a European database on the subject, supporting and initiating debates intense cooperation between European cities. To this end they were launched European initiatives related to urban development Eurocities, Metrex (The Network of European Metropolitan Regions and Areas), URBAN etc.
At the European Council in Potsdam (1999), there was defined the European Spatial Development Perspective (ESDP), which proposed the Scheme of Spatial Development Perspective (ESDP) - a polycentric vision on urban restructuring in Europe.

European Spatial Development Perspective focused on competitiveness, cooperation and cohesion within the European harmonious and sustainable development in Europe. The document highlighted the fact that metropolitan areas such as London, Paris, Brussels, Randstadt, Ruhr, formed "global integration zone" similar to the USA and Japan.

To meet these new challenges, coordinated by the European Commission, was held in the city of Porto, in November 1999, a conference with the theme of development in metropolitan areas. On this occasion, were drafted and signed Metropolitan Magna Carta and the Declaration of Porto, accompanied by referential "Practice Benchmark" which included planning and territorial development indicators, periodically review the studies made for this purpose.

The documents stated that the objectives envisaged in the constitution metropolitan areas were:

- Ensuring the competitiveness of regions and metropolitan areas and welfare;
- Achieving a balance between urban planning and urban sprawl;
- The integration of land use, transport and infrastructure;
- Maintaining the vitality and viability of cities and metropolitan centers;
- Providing conditions and stimulating economic competitiveness;
- Promoting social inclusion;
- Assessing the impact of development on the environment;
- Protection of natural resources and urban heritage.

According referential "Practice Benchmark" metropolitan spatial planning is effective when the essential conditions are met related to competence, capability and processuality (competence, capability and process).

Indicators of competence refers to the conditions under which authorities may adopt, implement and promote an integrated strategy metropolitan areas (Integrated Metropolitan Strategy). Capability refers to the ability to make appropriate decisions.
through knowledge and understanding of the strategy. *Processuality* refers to the ability to monitor, consult citizens and to adapt the strategy according to the situations encountered in its effective implementation process.

Competitiveness and cohesion of urban areas are gradual, as the implementation of the strategy, according to steal indicators (Functional Urban Regions and Areas). In referential Benchmark approached the question of metropolitan governance that is subject to the requirements of the principle of subsidiarity, according to which metropolitan areas can more effectively achieve the major objectives of European territorial arrangements. From the perspective of sustainable development, European metropolitan strategies should lead to improving the quality of urban life, the social and economic integration and environmental protection.

The metropolitan governance models existing today in Europe are classified by METREX (European Network of Metropolitan Regions and Areas) in three categories:

1. Metropolitan authorities have discretion as regards the social, economic, infrastructure, and environment and spatial planning. These authorities are responsible to plan and implement strategies effectively and completely harmonious development of metropolitan areas;
2. Authority, appointed or elected, provided with essential selective powers through which to plan and apply strategies to solve key problems;
3. Appointed metropolitan agencies or bodies entrusted with additional responsibilities for strategic planning and implementing an advisory capacity.

Whichever solution is adopted, according to the specific national or regional problems facing it will be necessary authority or agency with the capacity planning, control, maintenance, preservation and application of metropolitan strategy.

The metropolitan area must have the professional resources strategic planning in the medium and long term policy analysis at the metropolitan level, the correlation or establish equilibrium between sectorial interests and those of the metropolitan area.

In recent years, at European level were more projects using development metropolitan areas. Thus, for the period 2000-2001 InterMETREX pilot project was launched in the European program INTERREG II. This project involved the metropolitan areas Glasgow, Bradford, Dublin, Lille, Brussels and Rotterdam.
For the period 2001-2003 it was launched SocioMETREX project, which addressed issues of poverty and social inclusion phenomenon.

For the period 2004 - 2006, the program included InterMETREX Central and Eastern European countries, plus PolyMETREX about the project INTERREG III C.

In 2004, at the European level, was drawn up an initiative called “Metros: socio economic implications for Europe's future”, presented by the Economic and Social Committee, the European Commission.

The document emphasized the importance of the development of metropolitan areas within the overall EU regional policy and territorial cohesion policy. EESC and other European institutions have asked for a public debate on the third report on regional cohesion and adapting EU policies to the needs of developing metropolitan areas.

Strategy reaffirmed the objectives of the Lisbon agenda related to cohesion policy and growth, with special reference to regional competitiveness and territorial cooperation. Guidelines aimed at developing regions, so as to eliminate disparities in Europe.

Conclusions

With economic growth, the pressure of real estate investments and developments has enhanced the uncontrolled destruction of what was left intact after Ceausescu demolition: the historic centers of towns, protected areas architecture, archeological sites, traditional rural architecture, sites and nature reserves, landscapes and ways to access them.

These damages are favored by maintaining- under the pretext of encouraging the development –of a extremely permissive legislation in the fields of urban planning, town planning, environmental protection and historic heritage.

The destruction or degradation of natural and built heritage means the disappearance of memory and cultural identity of citizens of Romania and, consequently, the inability to transmit this heritage to the future generations.
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Implementation the concept of social responsibility from the european legislation in national legislation

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Abstract: The concept of social responsibility has become known since 1970, although various related issues were integrated concept within the scope of organizations and governments since the nineteenth century. At EU level social responsibility is understood as a concept through which a company voluntarily integrates concerns about the social and environmental issues in business operations and in their interaction with our stakeholders. As states and international institutions have realized that the adoption of social responsibility principles by companies serving the objectives of sustainable development emerged and the need for international standards to define the social responsibility.

Keywords: Social responsibility, concept, European Union, national legislation.

1. Introduction

As it said the concept of social responsibility has become known since 1970, although various related issues were integrated concept within the scope of organizations and governments since the nineteenth century.

Since the beginning social responsibility was focused mainly on the business sector at international level, the term corporate social responsibility (CSR) is better known than social responsibility (SR) [1].

Organizations around the world are becoming increasingly concerned with the need, but also the benefits of a responsible approach to society.

Whatever form the organization its performance is closely related to the degree of development of the communities they serve and the social environment in general. Environmental impact of business organizations has become an extremely important and reflects the concern to preserve human ecosystems and pollution prevention.

The implication go further and relate to matters such as social equity and good governance organizational policies.

Besides its significant impact on social development and they have businesses, they also have a responsibility that extends beyond a simple algorithm on profit.
At European Union level social responsibility is understood as a concept through
which a company voluntarily integrates concerns about the social and environmental
issues in business operations and in their interaction with our stakeholders.

As states and international institutions have realized that the adoption of social
responsibility principles by companies serving the objectives of sustainable
development emerged and the need for international standards to define the social
responsibility.

This framework was accompanied by a number recommendations and principles
to guide states and local authorities in the formulation of public policies that promote,
ensure transparency and to support social responsibility initiatives.

2. Social responsibility concept in European and international legislation

Social responsibility is part of the European and international concept of
sustainable development [2] that was initially linked to environmental issues and
resource crisis, especially energy, but gradually evolved and was imposed in 1992 after
the Conference on Environment and Development organized by Nations United in Rio
de Janeiro.

The starting point in raising this was the Stockholm Environment Conference
1972 that addressed the first issue of environmental damage due to human activities.
We appreciate the perpetuation of such a situation that threatens the very future of
mankind [3].

Therefore United Nations General Assembly established in 1983, the World
Commission on Environment and Development (WCDE) - Bruntland Commission. Its
role was to follow closely the issue of sustainable development (Sustainable
Development).

Everything is for the Commission definitre most complete concept so pursuing
sustainable development involves meeting the needs of the present without
compromising the ability of future generations to meet their needs.

At the Earth Summit in Rio de Janeiro, 1992 were discussed issues related to
sustainable development and has developed a concrete action plan in support of such
development called Agenda 21.
At the Earth Summit in Rio de Janeiro, 1992 were discussed issues related to sustainable development and has developed a concrete action plan in support of such development called Agenda 21.

At the Sustainable Development Summit in Johannesburg in 2002, problems were taken and analyzed the progress made during this period.

In the international context, and given the close link between issues of environment, society and economic activities, especially in the long term, a new concept was imposed, namely that of social responsibility [4].

In Romania, the concept of social responsibility is still in the early stages of development. Multinational companies are those that have brought with them the concept of "mother countries", and then took the large Romanian companies that started to develop gradually its own culture of social responsibility. The concept is in its infancy in our country at small and medium enterprises and to the public authorities at central, regional and local almost always find a disinterest in promoting the benefit of communities.

Increasing popularity of this concept in Romania was felt with the integration into the European Union. The European Union was and is interested in expanding the concept of social responsibility and among the candidate countries.

The need for social responsibility activities of companies is highlighted by the realization that between them and society there is a symbiotic relationship, that means their condition depends on the company and vice versa.

European Commission’s concerns regarding social responsibility though very stringent and pulse are relatively recent. European Council in 2000, the Heads of State and Government in Lisbon, proposed a strategy designed with the aim of making Europe by 2010 "the most competitive and most dynamic in the world, based on knowledge, capable of sustained economic growth with more jobs and greater social cohesion " [5].

This strategy put accountability in public administration authorities realize they have an obligation to show greater openness to social dialogue with entrepreneurs and social partners, and on the other hand, to create the necessary legal framework to
promote a socially responsible approach and prevent negative effects the activities of organizations on communities and society as a whole.

Legal framework of the promotion and application of the concept of social responsibility at national level is a key factor for promoting economic development, sustainable development of communities and society.

The work of promoting the concept of the European Union went through a broad information campaign among Member States.

Thus in 2001 of publication of the European Commission Green Paper on Corporate Social Responsibility 2002 / C 86/03 "Promoting a European Framework Programme for Corporate Social Responsibility". The aim was to launch an open debate on the concept of social responsibility, but also to identify those ways of achieving a partnership to develop a European framework program and promoting social responsibility [6].

Action to promote the concept of European Union institutions and thus continued in the document Integrated Guidelines for Growth and Jobs (2005-2008), the EU Council recommended that Member States should "encourage enterprises to develop their social responsibility ".

To this are added other documents that highlights the European social responsibility, such as Regulation no. 761/2001 of the European Parliament and of the Council of 2001 on the voluntary participation by organizations in a Community eco-management and audit scheme (EMAS); European Commission Communication COM (2006) 136 European Parliament, the Council and the Economic and Social Committee: Transforming the Europe a pole of excellence on Corporate Social Responsibility; European Commission Communication COM (2009) 400 European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Mainstreaming sustainable development into EU policies: Analysis Report for 2009 Sustainable Development Strategy of the European Union [7].

In recent years, the high recognition of this concept was the end of 2010, when it was officially launched in Geneva, ISO 26000 International Standard on Social Responsibility.
The standard was developed by the International Organization for Standardization (ISO) to be applied by all types of organizations, not just by companies.

What is new this standard is that social responsibility can be accessible to all categories of actors in contemporary society, based on multinational corporations and state companies to small and medium enterprises and non-governmental organizations, trade unions, employers and government institutions.

The emergence of the new international standard officially marks the time of conversion concept of corporate social responsibility (CSR) in the social responsibility (SR), which involves applying the concept both at the public and private sectors.

ISO [8] provides the beneficiary with a clear and practical toolkit necessary: to define a policy of social responsibility; to integrate into its operations the principles of social responsibility; to identify groups of stakeholders and involve them in decisions that may affect them; to report social performance and grow sustainably.

Thus, ISO 26000 encourages organizations in decisions and activities that relate not only legal obligations but to all those social responsibility and the environment [9].

There are still many difficulties in adopting and implementing ISO and responsible behavior, because benefits appear after a long time, which discourages private companies and public services.

Social responsibility should rather be seen as a long term investment, so investment in citizen client of a firm or a public service, but also those living in it and society in general.

These difficulties could be countered by administrative measures correlated between the state and the European Union's Member States.

Implementing the concept of social responsibility in all forms that manifest was taken by all European countries and beyond.

Thus in several articles of the German constitution refers to the principles of justice and social solidarity. For example, Article 20 states that "Germany is a democratic and social federal state" and in Article 1 states that "human dignity is inviolable and all public authorities are bound to respect and protect accordingly."
Article 65, entitled "Allocation of responsibilities", has "fixed the Federal Chancellor policy guidelines and assume their responsibility. Within these limits each Federal Minister conducts his department in an autonomous and its own responsibility".

Belgian Constitution also refers to responsibility: "The law determines who are the agents responsible for violating the privacy of correspondence" [10].

Basic Law of Denmark in art. 13 proclaims: "The King is irresponsible; person is inviolable and sacred; ministers are responsible for their conduct to the government. The responsibility is regulated by law."

Since the first of the Spanish Constitution, identified the principle of social solidarity, social defense, and that all state powers, including the responsibility, emanates from the people "about the objective social needs" [11].

3. Conclusions

As a conclusion we can say that the foundation of accountability is found in the supreme law of each state, a law that enshrines the principles of humanism, solidarity and social defense, equity and justice, equal rights, freedom of will, the concordance between rights and obligations and between power and responsibility.

At the European level social responsibility underpins Europe 2020 strategy for smart, sustainable and including the 75% target for employment. Responsible behavior we encounter when private sector operators provide public services. Aid to mitigate the social effects of the economic crisis, including unemployment, social responsibility is part of an organization.

Social responsibility offers a set of values on which to build a more cohesive society and on which to base a sustainable system transition.

This European approach to the concept of social responsibility is part of the broader context of various international initiatives, such as the United Nations Global Compact (2000), the International Labour Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1997-2000 ) or the Organisation for Economic Cooperation and Development (OECD) [12].

Internationally we have a series of documents that formed the basis of this concept, such as the Universal Declaration of Human Rights proclaimed by the United Nations; OECD Anti-Bribery Convention (1997), but also a number of regional acts
concerning the implementation of such concept: Compendium of best practices of corporate social responsibility to promote labor market inclusion in Southeast Europe (EU-CSR-SEE); Annual report on the state level of the United Nations Development Programme (UNDP): Improved transparency and credibility of CSR Practices through Establishment of Monitoring and Evaluation Systems Performance of CSR in the new Member States, 23 July 2010; Baseline Study on CSR Practices in the New EU Member States and Candidate States conducted by the United Nations Development Programme (UNDP), 2007.

The objectives of these documents, both European and international, regarding implementation of the concept of social responsibility are generally in the economic, social, environmental protection and the education and research.

Thus the main objective is to achieve economic and financial strategies for companies as unit and other organizations that wish to strengthen competitiveness and position responsible for maintaining a relationship employees, consumers, shareholders and other stakeholders. In this way, social responsibility does not imply a conflict of interests, but communication between subjects company, in a joint effort to overcome the difficulties and stimulation of sustainable development [13].

In the social sphere primary objective would be to promote and inform people about the concept of social responsibility and increasing the capacity of public authorities and companies to address social needs.

Forbidding us to protect the environment, the objective pursued organizations aims to increase accountability on environmental protection and preservation and extension of the concept in all its activities so as to ensure a minimal negative impact on the environment.

In education and research objectives are focused on increasing awareness and training on the concept of social responsibility and to how organizations show interest in the research and development activities. State-owned companies, especially, have a greater responsibility in this respect and must develop strategies and its own research and development departments.
The negative image of globalization, the international economic crisis, multinational corporations, ownership and emergence of the concept of sustainable development has contributed to raising awareness on the issue of social responsibility.

Basically social responsibility is manifested through transparent and ethical behavior that contributes to sustainable development, health and welfare of society, taking into consideration stakeholders’ expectations, but at the same time respect the law and is consistent with international norms of behavior.

Often social responsibility was confused with acts of donation or charitable acts [14], which is wrong, because social responsibility involves developing a strategy for community involvement and partnership of which either private or public company has, in turn, gain.

Social responsibility has become internationally through a variety of standards and labels, which regulates how the company should be directed, administered and coordinated properly.

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I. Introduction

Romania’s new Civil Code, which came into effect on October 1, 2011, serves as the capstone of many years of assiduous work. Among its progressive changes, the New Code establishes trusts as a legal instrument for the first time under Romanian law. Trusts (“fiducia” in Romanian) will increase business flexibility and encourage the investment, both European and international. Trusts were originally a creation of the common law system and have subsequently been adopted by many civil law countries. Trusts are a popular legal instrument in England, the United States and Canada, as well as in France and Luxemburg (known as “fiducia”), and in Germany, Switzerland and Austria (known as “treuhand”). While fiducia are similar to trusts, there are several important differences between the two instruments. American jurisprudence has defined a trust as “a confidence placed in a person (“trustee”) by making that person the nominal owner of property to be used for another’s benefit (“beneficiary”). The trustee has the fiduciary duty of administrating the assets of the trust (“trust property”) for the benefit of another person designated by the settler. Trusts and fiducia, however, differ both in the form and the substance of the deed. A trust divides the property resulting from the legal estate into the property of the trustee and the equitable interest – the property of the beneficiary. Fiducia not only divides, but also separates the trust property from the trustee’s individual property. Thus, the trustee owns his individual property and the trust property, as two entirely separate estates. A trust is created when the grantor expresses his intent (even unilaterally), either orally or in writing, to establish the trust. The fiducia, however, is created only when the grantor enters into a written and notarized contract with a trustee. The trust can also be subject to a mortis causa deed, whereas the fiducia cannot. Finally, a judge has greater authority to alter a trust
than he would a *fiducia*. In Romania, the *fiducia* is regulated in a very similar way as under the French Civil Code.

II. Definition

According to art.773 of the Romanian Civil Code, effective since October 1, 2011, *fiducia* is defined as “the legal operation whereby on or more grantors transfer[s] real property rights, rights of claim, guarantees or other patrimonial rights or a group of such rights, present or future (fiduciary property) to one or more trustees who exercise such rights with a given purpose, to the benefit of one or more beneficiaries”. These rights constitute an autonomous estate, separate from the other rights and obligations with in the trustees’ estates. Under this definition, *fiducia* is a complex contractual arrangement, characterized by the following contractual relations: transfer of rights from grantor’s estate to the trustee’s estate; management of the respective rights by the trustee for the beneficiary’s benefit under a trust deed included in the management; and transfer of profits and benefits to the beneficiary. Under the deed of *fiducia*, a distinct and autonomous estate called the “fiduciary estate” is established.

At the conclusion of a *fiducia*, the following main obligations arise; the grantor’s obligation to temporarily transfer ownership of the assets to the trustee; the trustee’s obligation to manage and preserve the received assets; and the trustee’s obligation to transfer to the beneficiary upon expiration of the term set forth in the agreement all assets and benefits accrued. This operation differentiates the *fiducia* from other similar instrument (i.e the management agreement, the mandate, etc.) through one specific characteristic – the trustee is not simply an agent or administrator, but acquires actual temporary ownership of the assets transferred by the grantor.

III. Types of *fiducia*

Under the Civil Code, a *fiducia* can be initiated in one of two ways. First, it can be established by law. There will be several Romanian laws in the future containing a “legal” *fiducia*. In order to obtain some benefits, a party will have to use a *fiducia* provided by the law. Second, a *fiducia* can be established through an authenticated agreement, with the express purpose of establishing a deed of *fiducia*.
IV. Parties

The parties of a *fiducia* contract are: the grantor – who can be any natural person or legal entity; the trustee/fiduciary – who can only be credit institutions, investment companies, investment management companies, financial investment services companies, insurance companies, public notaries and attorneys at law; the beneficiary – who can be any natural person or legal entity, including a third party, the grantor, or even the fiduciary himself. Even though the beneficiary can be either the grantor or the fiduciary, he cannot serve in all three capacities, as this would destroy a fiduciary relationship.

V. Conditions of validity

A valid *fiducia* contract must be created in an authenticated form or it risks nullification. In addition, the deed of *fiducia* and its amendments must be registered with the relevant tax authority within a month of its creation. In the fiduciary estate contains immovable property, it is also subject to registration in the Land book, according to the common law rules.

VI. Opposability by third parties:

In order to be binding upon third parties, the contract must be registered with the Electronic Archive of Security Interests in Movable Property under art.781 of the Civil Code.

VII. Content

In order to be valid, the *fiducia* must explicitly state the following elements; the rights subject to transfer; the duration of transfer (not to exceed 33 years); the identity of the grantor, trustee and beneficiary; the purpose of the *fiducia*; and the extent of the trustee’s management and disposal powers.

At all times, the trustee must act on behalf of the fiduciary estate and, to this end, must expressly state all of his actions regarding the assets and rights of the estate. Even though the trustee acquires a temporary ownership right, he does not become a genuine owner. The trustee does not acquire the assets for himself, but only to transfer it to the beneficiary. Furthermore, the trustee has he the contractual obligation to inform the grantor of all actions regarding the *fiducia* at the grantor’s request.
In relation to third parties, the trustee has the broadest power over the estates, unless the third parties are aware of the limitation of such powers. The grantor has the possibility to limit the powers of the trustee over the estate. In this regard, the grantor may specify in the contract what acts/activities the trustee is entitled of fulfill. When a third party knows the content of the contract, he will also know the limitations of the trustee’s power. Thus, the third party will be aware of these limitations, and he will have the power to refuse to conclude a contract with the trustee. The third party must contact the grantor for the actual deed over estate.

The trustee is liable with his own estates for damages caused by preservation or management actions of the fiduciary estates, as well as any insolvency proceedings initiated against him.

As a rule, the grantor’s creditors cannot raise any claim regarding the assets in the fiduciary estate. There are two exceptions to this rule, when the grantor’s creditors are entitled to pursue these assets:

1) when there is a court order rendering the deed of *fiducia* void;
2) when the creditors have a security interest over the assets enforceable prior to the conclusion of the deed.

In case the trustee does not fulfill his obligations under the agreement, the grantor, his representative, or the beneficiary can take legal actions to replace the trustee. If the trustee becomes insolvent, the insolvency proceedings will not prejudice the assets included in the fiduciary estate.

**VIII.  Revocation and Termination. Effects**

The grantor can unilaterally terminate the deed of *fiducia* only if the beneficiary has not yet accepted it. According to art.789 (2) of the Civil Code, if the *fiducia* deed has been accepted by the beneficiary, it can no longer be amended revoked without the express consent of the beneficiary or, in his absence, with the court’s authorization.

The agreement will be terminated at the expiration of the term set forth in the contract or upon achievement of the *fiducia’s* purpose, if this occurs before its expiration. The agreement will also be terminated if all beneficiaries withdraw from the deed of *fiducia* or when a court has initiated insolvency proceedings against the trustee.
At the end of the term, all assets in the fiduciary estate will transfer from the trustee to the beneficiary or, in his absence, to the grantor.

**IX International private law provisions. Conflicts of law**

Normally, a grantor may choose what law governs a *fiducia*. The choice of law applicable to the agreement must be expressly stated in the contract must expressly result from its content or other circumstances. An example of the latter is when the parties refer to legal provisions that are well known as specific to law or if the parties refer to a proceeding provided only by a specific law. The parties may also alter the applicable law after the execution of the deed with all parties consent.

If the parties have not chosen the applicable law or if the jurisdiction chosen by the parties does not contain regulations regarding *fiducia* then the law of the state most closely connected to the deed of *fiducia* will apply. The following factors will be considered to make this determination: the place of management of the assets in the fiduciary estate; the physical location of the fiduciary assets; the residence or office location of the trustee; the purpose of the *fiducia* deed; and the location of its execution. The law chosen under these criteria will then be applied to determine the validity of the agreement, the interpretation and effects of the agreement, the parties’ rights and obligations, and the management method of the *fiducia*.

**X. Conclusions**

By introducing the new legal mechanism of *fiducia* into its legal system, Romania has taken another step to harmonize internal legislation with the requirements and trends in place across the European and international financial and business markets. *Fiducia* should allow for greater flexibility in the market and should represent an option for potential investors. Businesses should be able to use these contracts to lower transaction costs.

Companies developing a business in Romania will be able to use *fiducia* to avoid the significant costs associated with forming a separate company. These agreements may also be useful when a shareholder wants to temporarily suspend his contribution to a company by transferring the administration of his shares to a trustee for a limited period.
Fiducia can also be a solution during litigation, as an alternative to judicial seizure. If the parties agree to conclude a deed of fiducia, then the debtor will be able to continue his business activity and even earn profit.

To fully realize the benefits of introducing fiducia in the Civil Code, the Romanian legislature should take further steps to improve related laws, especially in the areas of fiscal and accounting law. Once the fiscal and accounting regulations have been improved, Romania will be able to provide clear answers relating to the tax rules and accountancy of fiduciary property.

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Considerations On Cross-Border Healthcare Services In The Context Of The Standardization Of The Legislation At European Level And The Implications On The Romanian Healthcare System

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Abstract
In the context in which EU citizens were recognized the right to get treatment abroad by the Court of Justice of the European Union in several specific cases, starting with decisions dating back more than a decade, and these decisions became part of the European acquis, this Article reviews the way in which the judgments of the Court of Justice of the European Union were refined within Directive 2011/24/EU. In the field of cross-border medical services, a certain overlap is somehow reached between the law of the Union and the national law, so that European law in many cases is essentially limited to indicating a binding objective, i.e. the achievement of the free movement of citizens patients and their equal treatment, regardless of nationality, in relation to national authorities, while preserving the competence of the member states. Against this overlap, the article aims to analyse how Romania obliged to submit to the regulatory framework imposed by primary and secondary legislation, manages to ensure the sustainability of the current model of the healthcare system, in order to increase its efficiency and effectiveness, all the more since the European Commission has established the role of healthcare as part of the Europe 2020 Policy. Keywords: European Union, patients’ rights, cross-border healthcare, the case law of the Court of Justice of the European Union, the standardization of European law, European health strategy, the Romanian healthcare system.

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INTRODUCTION

In exercising the powers which have been conferred in the interpretation of EU law, the Court of Justice of the European Union has developed over time a rich case law which has been refined with each application for a preliminary judgment submitted to the Court by the courts of the Member States. Thanks to the very rich case law in this area, the right of EU citizens to use free of constraints cross-border healthcare services, which is generally known by the term “patient mobility”, could be clearly outlined.

The Court has paved the way for the implementation of the right recognized at Article 35 of the Charter of Fundamental Rights of the European Union [1] for every person to have access to preventive healthcare and to benefit from medical treatment.
Through the case law of the Court, restrictions could be eliminated in the form of national regulations, which stood in the way of creating an internal market in healthcare delivery.

In our opinion, from the constant case law of the Court has have arisen certain important principles for the conditions in which, in accordance with the provisions on the freedom to provide services, patients are entitled to receiving medical care in other Member States and to the reimbursement of these treatment by the health insurance system to which they belong.

The principles developed in that case law were considered components of the acquis of the EU, which the European legislator has taken into account in the development of Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare [2].

THE STANDARDIZATION OF THE EUROPEAN LEGISLATION IN THE CROSS-BORDER HEALTHCARE FIELD

Given that healthcare was excluded from the Directive 2006/123/EC [3] on services in the internal market, it has become imperative that these aspects be addressed through a legal instrument in the European legal context, through which the principles established by the Court of Justice be applied generally and effectively.

The right of EU citizens to get treated abroad was recognized by the Court of Justice of the European Union in several specific cases, starting with decisions dating back more than a decade, these decisions becoming part of the European acquis. However, individual decisions of the Court have not been assimilated coherently by national legislations, practically existing many situations in which patients were forced to solve problems of access to treatment abroad on their own by taking the entire legal route to the Court of Justice. Unfortunately, often the Court's decision came only after the patient's death, although a saving treatment would have been possible in a Member State other than that of residence.

Given the fact that at European level, planned and emergency treatment costs abroad represent only about 1% of public expenditure for healthcare [4], the simplification of the access procedure to cross-border medical services has become a moral imperative.
The problem of the legislative gap between Member States has become more visible with the adoption of the Treaty of Lisbon [5]. Treaty requires common standards at the level of social and medical assistance (Articles 34 and 35) and explicitly encourages, in particular, “cooperation between the Member States to improve the complementarity of their health services in cross-border areas.” (article 152). Complementary to the rights of citizens under the Treaty, has emerged the need for a European law that clarifies the responsibilities of Member States towards the patients.

The road towards the harmonization of medical services in Europe, opened by the introduction of the European Health Insurance Card, ought to continue with a pan-European development of patients’ rights. From the earliest days of European integration and to date, the European institutions have actively promoted intra-European movement. The initiative to introduce a European Health Insurance Card to replace the prior necessary documents to access medical treatment during a temporary stay in another country falls within the same general phenomenon.

Since around the values expressed by the case law of the Court of Justice of the European Union there have been a number of uncertainties, which made them difficult to apply in practice, this development of patients’ rights did not occur ab initio, requiring the intervention of the European legislator to clarify the situation through a directive to support the provision of cross-border healthcare, both for the benefit of patients and of the national health service.

In the field of cross-border medical services, a certain overlap is somehow reached between the law of the Union and the national law, so that European law in many cases is essentially limited to indicating a binding objective, i.e. the achievement of the free movement of citizens patients and their equal treatment, regardless of nationality, in relation to national authorities, while preserving the competence of the member states.

Against this overlap member states are obliged to submit to the regulatory framework imposed by primary and secondary legislation, to the extent that they are not allowed to violate EU law when exercising their powers.

Important institution of the European Union, the Court of Justice is the one that assesses the scope of the EU legal framework established by Article 49 EC for the
exercise of the competences of the Member States. It is also incumbent on the Court, assigned by the founding treaties, that by the interpretation given to a provision of European law, to clarify and specify its meaning and scope, such as to be understood and applied from the time of its entry into force.

**THE REFINEMENT OF THE CASE LAW OF THE COURT WITHIN DIRECTIVE 2011/24/EC**

The main principles proclaimed by Directive 2011/24/EU law have their legal source in a long series of cases in which the Court identified the limits imposed by the EU legislation on the restrictions in Member States of the right of patients to use medical services across national borders within the European internal market.

Most of the provisions of Directive 2011/24/EU aim to improve the functioning of the internal market and the free movement of goods, persons and services in the healthcare field. Given this aspect, the legal basis for the adoption of Directive 2011/24/EU is found in the provisions of Article 114 TFEU. The Union’s legislation is based on this legal basis even when public health protection is a decisive factor in the choices made, Article 114 TFEU expressly stipulating that in this regard, a high level of human health protection has to be ensured, taking account in particular of any new development based on scientific facts.

Thus, patients citizens are free to choose the Member State of the European Union and the preferred institution for medical treatment, social insurance offices in the State of residence assuming treatment costs in the same proportion as in at national level.

The European regulatory framework, aiming a new scheme of monitoring the services provided, was created precisely to enhance the quality and safety of healthcare services. The free movement of patients, without the legal force of European regulation, would have produced a competition between the health systems of the Member States in order to attract more patients. There is the risk that the free access to cross-border medical services may produce a drop in the price of medical services throughout the European Union to the detriment of the quality of health services.

The new cross-border healthcare system favours rare disease patients, whose treatment requires costly investments in research. The existence on the European
internal market of health services of specialized hospitals on these diseases prevents the waste of resources due to the parallel investment in equipment and research and also provides for closer cooperation between Member States in terms of health.

The Directive clarifies the rights of citizens to access safe and good quality treatment across the EU and its reimbursement. Europeans prefer to receive healthcare close to home: no one wants to travel further than they should when they are ill. However, sometimes people have to go abroad, because experience or the medical care they need is not available within the national borders. Or simply because the nearest hospital is across the border.

However, from the application of the provisions of the Directive are exempted certain health care services such as, for example, long-term services, whose purpose is to support people who need help with daily routine tasks.

For OECD, long-term care is "a political issue of confluence, which brings together a range of services for people who are dependent on help in basic activities of daily living over an extended period of time". National definitions on long-term care vary within the European Union, and reflect the differences in the length of stay, range of beneficiaries and the often unclear boundary between health (health care) services and non-medical (social) services. Some countries prefer, for example, to focus on early rehabilitation outpatient treatment, while others focus more on providing care in hospitals or similar institutions. Long-term care can include rehabilitation, basic medical treatment, home health care, social care, housing and services such as transportation, food, occupational assistance and help in managing daily activities [6].

In the field of cross-border medical services, a certain overlap is somehow reached between the law of the Union and the national law, so that European law in many cases is essentially limited to indicating a binding objective, i.e. the achievement of the free movement of citizens patients and their equal treatment, regardless of nationality, in relation to national authorities, while preserving the competence of the member states. Directive 2011/24/EU preserves the competences of the Member States, which are obliged to submit to the regulatory framework imposed by primary law and secondary legislation, to the extent that Member States must not violate EU law when exercising their powers.
As argued in the Watts judgment, Member States are obliged to adapt their national healthcare and social security systems [7]. Moreover, the Court emphasized since its previous decisions that Member States must comply with EU law, in particular with the provisions on the freedom to provide services [8].

Those provisions prohibit Member States from introducing or maintaining unjustified restrictions on the freedom to provide of medical care services [9].

In addition, the Court case law expressly emphasized that the mandatory adaptations of national social security systems aiming to achieve the fundamental freedoms guaranteed by the Treaty should not be considered by Member States as interference in their sovereign competence in the field of public health [10].

We believe that should not remain unmentioned the fact that the European Union can exert considerable influence on the health systems of Member States, for example, by measures designed to achieve fundamental freedoms [11].

The Directive is without prejudice to the laws, regulations and administrative provisions of the Member States relating to the organization and financing of healthcare in situations not related to cross-border healthcare. In particular, nothing in this Directive obliges a Member State to reimburse the costs of healthcare provided by healthcare providers established on its territory if those providers are not part of the social security system or national health system of that State Member State.

From the interpretation of the text, in conjunction with Article 3, paragraph 1 letters (a) - (c) of Directive 2005/36/EC, follows that it does not matter whether the work performed by a qualified person (as is the sanitary field, such as the analysed case) has a temporary or occasional basis. As the promotion of the provision of services must be ensured in the context of the strict compliance with public health and safety and the protection of the consumer, Member States have special provisions in the national legislation for professions regulated at sector level with implications in terms of health.

Given the different systems established on the one hand, for the provision of temporary and occasional cross-border services and, on the other hand, for establishment, it is necessary to specify criteria for distinguishing between these two concepts in the case of the movement of the service provider on the territory of the host Member State.
THE PROTECTION OF PERSONAL DATA IN THE CASE OF PUBLIC HEALTH

The fundamental right to privacy with regard to the processing of personal data is protected in conformity with Member States' national measures for implementing Union provisions on the protection of personal data, in particular Directives 95/46/EC [12] and 2002/58/EC [13].

To analyse how these rules apply to public health in general and, in particular, on cross-border healthcare, we shall refer to the Romanian legislation relating to the activity of personal data processing and the free movement of such data, Law no. 677/2001 [14].

Thus, the processing of personal data related to racial or ethnic origin, political, religious, philosophical or similar nature opinions, the union membership, as well as personal data concerning health or sex life is prohibited. This provision shall not apply where the subject has given their express consent to such processing.

Regarding the prior express consent we believe that, regarding healthcare, the mere presentation of the patient to a health service provider, amounts to a tacit consent, so we cannot discuss express consent. It is inevitable that the supplier request personal data, even for an appointment for diagnosis, (name, address, telephone number, affection suspected or confirmed by someone else etc.).

The National Law, Law no. 677/2001, provides for special rules on the processing of personal data concerning health. According to this regulation, healthcare professionals, medical care institutions and their staff may process personal data on health status, without the authorization of the supervisory authority, only if the processing is necessary to protect the life, physical integrity or health of the concerned person.

To detail how personal data concerning health can be processed by service providers, the law provides that this operation can be performed only by a health professional or under its supervision, subject to professional secrecy.

We believe that the competent national authorities in public health should regulate more differentiated all aspects of the patient's right to confidentiality, to reduce the risks of disclosing personal data on the health of citizens. In our opinion and in the
absence of these legislative differentiations, information that normally would not be provided to the public appears in the mass media.

CONCLUSIONS

Within health systems throughout the European Union there are a number of common principles of operation [15], which have been affirmed by the case law of the Court of Justice of the European Union. These principles must be applied uniformly in national health systems, both to strengthen the confidence of patients in cross-border healthcare, a prerequisite for achieving patient mobility, and to ensure a high level of health protection.

Referring to the decisions of national authorities on market mechanisms and the pressure of competition to manage health systems, the Council was of the view that decisions about the health care package which citizens are entitled to and the respective mechanisms used to finance and provide healthcare, must be placed in the national context of the Member States.

Under the Treaty on the Functioning of the European Union [16], at the basis of all European policies lies the aim to ensure a high level of human health protection, a major goal of the whole Union. This goal is also considered when the European legislator adopts acts under other Treaty provisions.

From the case law of the Court of Justice of the European Union unequivocally results that people normally resident in a Member State operating a national health service, are entitled to receiving hospital treatment in another Member State at the expense of the national health service.

Member States may condition this right by the requirement that the person concerned should have obtained prior authorization, only if such authorization is based on objective, non-discriminatory and transparent criteria within a procedure system. In addition, applications for the authorization of treatment abroad must be analysed objectively and impartially, within a reasonable time, and the national health authority's refusal to grant such authorization can be challenged in court or out of court. The absence of such criteria and the lack of easily accessible and transparent procedures cannot deprive a person of this right. Also, if the conditions for authorization (form E112) are designed to safeguard the financial stability of the national health system,
considerations of a purely budgetary or economic nature not being able to justify the refusal to grant such authorization.

To determine whether the treatment is available without undue delay might be considered the waiting time and the priority to treatment granted by the national health authority, only on condition that they are based on concrete indications relating to the patient's condition at the time of evaluation, as well as its medical history and the prognosis for the patient seeking treatment.

Under European law, the affiliate Member State is obliged to fund the hospital treatment carried out in another Member State and the reimbursement of this treatment is based on national legislation. In the absence of tariffs or rates for calculating the amount of reimbursement, the reimbursement must be calculated at the actual cost of the treatment. Travel and accommodation costs related to hospital treatment received in another Member State are reimbursable only where this is provided for by national law for treatment on national territory.

Regarding the obligation of a Member State to reimburse the cost of hospital treatment provided in another Member State of the European Union, Article 49 EC does not allow to take into account budgetary reasons, unless it is demonstrated that compliance with this obligation on a more general scale would threaten the financial balance of the respective national health system. Moreover, in accordance with Article 22 (2) of Regulation EEC No. 1408/71 [22], budgetary considerations cannot be taken into account in decisions refusing prior authorization for treatment abroad.

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system funded by the State - Medical expenses incurred in another Member State - Articles 48 EC to 50 EC and 152(5) EC - Article 22 of Regulation (EEC) No 1408/71. Case C-372/04 Watts, paragraph 147.


[10] This idea is clearly expressed in Judgment Commission/Luxembourg (C-490/09, Rec., 2011, p. I-247, paragraph 32)


[14] Law no. 677/2001 on the protection of persons with regard to the processing of personal data and the free movement of such data, published in the Official Monitor of Romania, Part I, no. of 12 December 2001, with the subsequent modifications and completions.


Penitentary psychology- between theory and practice

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Abstract:
Inmates as part of society and as a social phenomenon, from the conducted studies, we believe that punishment which they run is a period in which the state and civil society have a duty to intervene at the psychological level, so as to back into society as citizens able to live and support by their own forces with applicable law and accepted moral norms.

Keyword: inmate, reintegration, test, psychology.

From the point of the psychological view, the prisoners from a penitentiary institution represent a human group which detains all the distinguished of such social formation.

Attachment 1

The prisoner quotient on various categories

![Graph showing the prisoner quotient on various categories]

2013 2014
Deterioration of the general chart is referred to the prisoners partition on age criteria, too. In that direction, the official statistics denote that in 2014, in the whole penitentiaries are:

- 266 persons of 18-21 years;
- 5083 persons between 21-55 year;
- 334 persons over 55 years (See attachment 2).

Attachment 2

The repartition on age of the prisoners on 2014
Out of necessity of connector at the european standards, into the penitentiary institution of RM was originated the privation, social-educational and the psychological service. This service works from 2005, but the psychological service, accordance with the national regulations – from 1999. These achieved activities of that service are centred on the multi psycho-social-educational programmes achievement. [4, p.47]:

1. The how-to programme of the prisoners in the social-legal sciencies field. It has the aim to get the informing-educational process, regarding the rights and the obligations of the prisoners in the detention performing. This programme is made by the psychological, educational-social and of taking of evidence service collaborators.

2. The newcomer prisoners work programme. It aims to study the newcomer prisoner and to ensure the psycho-social assistance and to confere help to the incarceration regime adaptation. This programme is suited on 15 days and it will begin starting of the arrival of the prisoner at the penitentiary.

3. The programme regarding the physical training with the prisoners (pro sport).

4. The absolution preparation programme. It aims to train the prisoners to resolve the problems which can appear once with the absolution. This programme heads to the reinstatement of an ex-prisoner into community. It is more promoted by the social assistants and psychologists (pro social). It lasts up to 6 months.

5. The programme regarding the employment prisoners. It aims to get involved the prisoners in remunerated and no remunerated works.

6. The psycho-social rehabilitation programme of the drugs addict persons.

7. The reduction programme of the violence in the prisoner environment. It aims to develop the social abilities of disposal of cases (made by the psychologist).
8. The resocialise programme. Promoted by the psychologist and proposed to the prisoners to develop pro-social demeanours[8].

*The functional duties of the psychologist in the penitentiary:*

- To abide by the professional – ethic code;
- To abide by the laws;
- To abide by the confidentiality principles;
- To abide by the proper use of the diagnostics methods under the person which will be administered;
- To abide by the qualitative use of the psycho-correction methods;

*The tasks with the prisoners:*

- The study of the prisoner personality peculiarities (psycho-diagnosics);
- The setting up of the recommendations, of the work procedure with the prisoner, headed to the consulting process elaboration and to psycho-correction programme elaboration;
- Detect and keep records the prisoners which need a high surveillance regime and organise the correction process;
- Study the psychological element in the penitentiary environment to prevent the conflict situations;
- Co-operate with the regime and security services to resolve the problems which can favour the murder commitments and the group excesses;
- Practise the psychological council at the prisoner investigation;
- With their consent practise the correction programmes;
- Take part in the prisoner meetings organised by the administration;
- Develop informing hours with psychological themes during the social-educational programmes or at the administration request;
- Take part in the preparation process for liberation through the liberation preparation programme;
- Co-operate with the psychiatrist and with other specialists, as the need arises [1, p.55];

All the psycho-social activities can be passed to various stages of adaptation of the prisoner at the detention conditions, as:
1. The prisoner adaptation at the detention conditions (mobilization, the prisoner guideline, the skills activity, the new work and life condition abilities);

2. The psychological assistance in the case of regime changement of the prisoner, from a penitentiary to another, the chagement of some detention conditions;

3. The psychological assistance during the liberation preparation process of the prisoners [3, p.39].

If we talk about the liberation preparation, it needs to begin at the first day of the detention and during on the punishment execution, being part of the resocialization process.

The preparation step for the liberation of the prisoner follows not only a penitentiary passed correction process, but the strengthening of the social links to his adaptation at the outside social rules and life.

Usually, that kind of prisoners become aggressive, suspicious, revengeful, looking for criminal explanations and stand as injustice victims, thinking they behave to evince the aggressiveness regard the other prisoners, the penitentiary collaborators or regard the own relatives. The preparation process for the liberation with this kind of prisoners is difficult, because the psycho-correction activities which are not organised during the punishment execution, physical, can not be done in the last 6 months.

Though, one of the Moldova prisoner problems is the limited access to the psychologist services. While the Penitentiary Institutions Departement responsibles asseverate that in all the prisons there are psychiatry and psychological assistance specialists, the statistical data deny and show that the number of specialists are not enough. According to the organisation sheets there are 29 psychologists, in all the penitentiaries, but at the moment work only 24. The Penitentiary Institutions Departament representants asseverate that, in all the penitentiaries work psychology specialists.[7].

At the same time, it seems that the international standards, which stipulate for one psychologist at 200 prisoners, are disregarded in most of the prisons. For example, in the no. 15 penitentiary of Cricova, where there are 598 prisoners, there is one single psychologist. According to the official data, at the end of the 2014 year in the
Penitentiaries of the country there were 7103 prisoners, which should have been thought minimum 36 psychologists, beside the 24 units which are in use.

In the Moldova Republic lates with the grant of the rights of the prisoners at the psychiatric and psychological assistance. The reports of the Helsinki Comitee for Human Rights show that, in the advanced democracy state penitentiaries are employed 4-5 persons which work as psychological assistent.

Apart from the statistical figures, the true role of the psychologist in the penitentiary is reflected through the adequately interventions, in time and with positive result, in the conditions in which the penitentiary life conditions cause to the prisoners to diverge from the general-human behaviour norms. The major problems with which the psychologists work in the penitentiaries are the violence and the suicides.

Valeriu has 30 years old. One third of his life spent in the prison. During this time he tried to commit suicide. "I had about 5 suicide attempts and I am still alive... Every time I cut my throat with the razor blade... Only the throat", mentioned the prisoner.

The man says that he got to escape of the suicide thought after more conversations with the penitentiary psychologist.

According with the General Prosecution data, more than 5% of the prisoners tend to suicide and selfmutilation. But not all have the access at the specialists in the psychological and psychiatric assistance.

The psychodiagnosis reffers at the knowledge of the psychological factors of the human subject which can be important in some situations or for various activities. Specifffically, the psychodiagnosis aim the knowledge of the psychological factors with importance for the normality or for deviance. The knowledge of these factors is shown by the evaluation process of the prisoner, using methods as psychological testing, or the interview (free, half-structured, structured[6, p.21].

- In the first step there are investigated and evaluated the symptoms, the possible mental disorders and of personality. It is investigated the presence of some other somatic disorders, as well as the psycho-social stresses which this face them (the social-economical conditions, the family situation, the family support, the stressed situations)At the end of this step it can be established a global performance coefficient
of the evaluated prisoner, coefficient which offers a general view on his state. An hypothetical nosological diagnosis is proposed during this stage and there are identified the hypothetical factors which initiated, favoured, predisposed and maintained the symptomatology.

- In the second step there are realised a detailed investigation of the behaviour and of the mental functions. The main aspects which can be followed during the interview and psychological testing aim the perceptive function, the social interactions changes, of the posture or of the motor behaviour, the memory state, of the thinking and intelligence, of the attention, personality, the affective disposal, the presence of some nonachieving or depersonalizing feelings, the presence of some addictions or compulsions, the orientation in space and time and the presence or the absence of the disease conscience. At the end of this step it is clarified and ended the nosological diagnosis.

- The third step of the psycho-diagnosis and of the evaluation is one of thoroughness and identification of the specified characteristics of the diagnosed person. Hereby we refer at the four levels of analyse of the human subject: emotional, cognitive, behavioural and psycho-physiological.

  The psychological intervention aims, widely, the psychological factors implied in the general vision of the man (for example, the modification of the negative automatic thoughts,), behavioural (for example, the modification of the non-adapted behaviours), and psycho-physiological [2, p.73].

  This kind of intervention offered by the psychologists can aim the growing of the problem resolving abilities or of the communication abilities, the conflict solving, the self-knowledge and the personal development, etc. and they proved to be efficient in the social rehabilitation of the prisoners, too.

  The doctrine distinguish between some psychological intervention techniques useful in the prevention step:

  - The intervention procedures at the cognitive level. These procedures aim the cognitive restructuration, respectively the changing of the way in which the prisoner represents himself the reality or of the way in which he acts it dysfunctional. [5, p.57]. The dysfunctional thoughts refer, for example at:
✓ Catastrophe (the exaggeration of the negative aspects of an event);
✓ Personalization (the assimilation of the negative events, the subject have not a contribution at all);
✓ Emotional reasoning („must be true because I am feeling like that”); The excessive generalization (the conclusion of the subject covers more situation than exists);
✓ Global evaluation or labelling (for example: "I am stupid", „everyone hates me”);
✓ Reading of someone mind (he thinks that he knows what is in the other mind, without discuting with him);
✓ To maximize the negative aspects and to minimize the positive ones; Expresses in the terms of absolute „must”;
✓ The dihotomic thinking (all or nothing) etc.

In the cognitive reorganisation it uses the following techniques:

a. The identification techniques of the disfunctional automatical and/or irrational thoughts:
✓ The direct questions technique (“What are you thinking at when you are furious?”);
✓ The guided picture technique (“Try to remember or to imagine, as real as possible, a situation in which you were very furious. What are you thinking at before being so furious?”);
✓ Daily thought recording techniques (“Every time you face an unpleasant or stressed situation, please shortly describe it, record how you feel and what were your thoughts in those moments”);
✓ Free association techniques (“Which is the first thing you have in mind when you are furious?”).

b. The changing techniques of the disfunctional automatical and/or irrational thoughts:
✓ Logical techniques (”Which is the logic of this thought?”, “Can you argue that?”);
✓ Empiric techniques (“Why do you think the things stay what you want?”, “What are your proofs?”);
✓ Pragmatic techniques – The benefits-costs analyse (“Please make me a list with all the benefits and costs which this thought there is”);
✓ Figurative techniques (stories which promote a rational thinking style; songs or moral stories, which provide a rational and functional thinking style; versicles and prayers, humor).

c. The problem solve. The prisoners learn how to advance and how to approach, step by step, a problem: the problem identification, the establishing of the aims, the alternative solutions, the consequences, the decision appearance, the decision implementation, the evaluation.

d. The assertive training procedure. The prisoners learn how to express, how to ask for their rights, respecting the other rights; how they interact with the others; which are the situations when they want to be more assertive; the examination of their own behaviour in the past when they were aggressive or passive; the identification of some people which are assertive; to bill more assertive behaviours; the own imagine acting assertive; character plays which train the assertive behaviours; the implementation of the assertive behaviours in the real situations).

- The behavioural intervention procedures. These procedures aim the strengthening of some behaviours which proved to be useful, functional, respectively the elimination of disfunctional behaviours.

a. The behaviour accelerated techniques:
✓ The positive strengthening technique (the awarding of the positive strengthenings, figurative or material object rewards, activities – according to the task-behaviours achievements);
✓ The negative strengthening technique (The awarding of the negative strengthenings – critics, punishment – to non-achievement of the task-behaviours);
✓ The contract technique (making a written agreement between two or more persons which establishes which are the task-behaviours for each part and which are the consequences of fulfill or not fulfill of these);
✓ The priming technique (The environment organisation so to be present the stimulus favour the task-behaviour emergence).
b. The behaviour eliminated techniques

✓ The punishment technique (the punishment application – unpleasant consequences – right after the appearance of the behaviour which we want to eliminate);
✓ The extinction technique (the disposal of the rewards which accompany the non-adaptation behaviours);
✓ The isolation technique.

• Intervention procedures at the biological level. These procedures, as a general rule follows the inducing of the modifications at the psycho-physiological level to obtain a relaxation answer [5, p.79]. This technique is extremely useful in the fury or anxiety control.

• The auto-administered techniques. The advantages of that approach include the higher accesss of the prisoners at the psychological intervention, less significant costs, the possibility to form auto-administrated psychological intervention professionals, reducing thus the qualified personal need, etc.

• Crisis state interventions. Crisis state reffers to the fortuitous situations which one person can faces it at a given moment, situation in which that person faces one or more obstacles which can not be surpassed with his own resources.

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[1] The European Council Recommendation no.92 16, regarding the European rules on the community applied sanctions
Some aspects regarding seizin under the regulation of the New Civil Code

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Contemporary law professionals identify seizin particularly in connection with inheritance law. [1]

As a matter of fact, according to Şerban Mircioiu [2], the seizin is actually a legal institution in itself, historically acknowledged and having its own development. In the reference mentioned above, the author claims that the seizin should be seen as a central institution of European medieval law, far too less looked into, analyzed and approached in the Romanian law. [3]

Starting from the ancient Germanic law, the author sustains that the seizin has a dominant role in the patrimonial Germanic law, wherefrom it has influenced on the entire medieval law, both European and Occidental. By carrying out an interesting terminological analysis starting from the initial name of “die gewere” [4], the term that used to designate initially the handover or the weight of possession, as a term having evolved from a term meaning a physical possession over a good to a legal notion in itself.

In the Romanian legislation, the Civil Code from 1865 in art. 653 enshrined that “the descendants and ascendants have as of right the possession of inheritance from the time of the defunct dies”.

Currently, the seizin institution is regulated in the Civil Code, Book IV “About the inheritance and freedoms” title IV, “Transmission and partition of inheritance” 4th Section, title “Seizin” Article 1125 and Article 1126.

Unlike the old Civil Code from 1864, which by Article 653 established the content of the seizin without defining it, the current regulation establishes the notion, the seizin heirs and the modalities to obtain the notification by the unseizin legal heirs. If in the past, under the influence of the French doctrine was defined as “the capacity of the
heirs to be considered, ipso facto mortis, that they own the hereditament assets” [5], afterwards we can practically find different options related to this institution.

Thus, M.B. Cantacuzino, in his paperwork Elements of Civil Law from 1921 [6], mentions that seizin refers “exclusively to owning the inheritance, meaning the exercise of the rights and actions belonging to the deceased, unlike the opinion that defines the seizin as an “immediate legal assignment with the assets and liabilities of the deceased”. [7]

Trying to clarify in an unified and universally accepted interpretation, M. Eliescu proposes a definition that establishes the seizin as a “benefit of the law according to which certain heirs, being exempted of the previous court or notary’s control regarding their capacity as heirs, can take possession of the inheritance assets and, at the same time, they can exercise without any other formality the exercise of the rights and actions of the deceased”. [8]

Finally adding to the current regulation norm of the seizin the provision newly introduced by Article 1125 Civil Code, determines that “beside the determination of the exercise on the inheritance, the seizin actually confers the seizin heirs the right to prove this deceased estate and exercise the rights and actions of the deceased” following that in Article 1126 Civil Code to establish that “the appointed heirs are the husband/wife that survived the deceased, privileged descendants and ascendants”.

We have to mention in this context that the new rule generated different interpretations and naturally, even criticism. In this regard, we mention the criticism brought in the “Revista dreptul”, by the author Oana Ispas [9], criticism that concerns the adoption of new terminologies, thus drafting a text that can generate confusions between:

- seizin – possession as an actual state
- seizin – possession of the inheritance as the “exercise of the rights and actions belonging to the deceased” [10]
- seizin – possession as a heir which allows the possession of the deceased estate without certifying first the capacity as a heir.

Therefore, the seizin may be defined as a benefit, a fiction of law based on which the seizing heirs have, as of right, from the time the succession is open, the right to own
goods from the estate and to manage this patrimony, while exerting the rights and actions of the defunct. Even if it may resemble on some aspects, the seizin must not be mistaken with the possession in common law, which contains the 2 defining elements, the intention, namely the intention to own the goods for oneself (animus) and actual ownership of goods, material and physical (corpus). Practically, the seizin contains only one of the elements mentioned above, namely the corpus, the actual physical ownership of the good. One of the most interesting aspects in connection with the seizin, as enshrined in the civil code and that is worth to be looked into, is related to the attributions of the testamentary executor, who in the ancient civil code was different, according to the case in which the testator conferred or not the seizin in accordance with art. 911 of the ancient civil code. In comparison with the ancient regulation, the New Civil Code has a different approach on this matter; it no longer makes any differentiation between testamentary executors’ attributions with a seizin and those of the testamentary executor without a seizin. Art 1079 Civil Code [11], in respect thereof, it clearly sets forth that the "testamentary executor has the right to administrate the estate for a period of maximum 2 years as of the date the inheritance is open, even if the testator has not expressly entrusted it with such right. By testament, the administration right can only be restricted to part of the estate or to a briefer period of time. The term of 2 years may be extended by the court of law, on grounded reasons, by granting successive terms of one year”.

Another element of novelty imposed by the lawmaker in the New Civil Code with respect to the seizin concerns the fact that the right of administration in the new regulation has a more complex content than in the old regulation; in the old code, the seizin is a mere precarious possession aiming only at the movable assets of the estate, whilst the new regulation sees the seizin as a right of administration, granting the testamentary executor the right to initiate preservation, administration and disposal deeds as per art. 795 of the civil Code. [12]

We must state that, if in the old code the seizin aimed only at the movable assets in the succession mass, the new regulation takes into consideration the entire estate of inheritance, both the movable and the immovable assets. Art 1079 of the civil Code sets
forth, under para. 2 [13] the possibility to restrict the administration right, by means of the testamentary executor, only insofar as part of the estate is concerned.

What has been mentioned here above leads us to extract a new difference between the two legislative provisions of the old and the new civil code, consisting in the fact that in respect of an administration right that usually takes 2 years, in comparison with the seizin, the testamentary execution provided for by the old legislation, it could be performed for maximum one year.

The criticism on the new regulations in the issue of inheritance continues with the issue of determining the beneficiaries of the seizin, considering to introduce the surviving husband in the category of seizin heirs [14], as long as the ordinary ascendants were eliminated among the seizin heirs, does not increase the scope of the possible notified persons in line.

Concluding, even if the seizin, according to some authors [15], has been one of the “most confuse issues in the civil law” [16], we consider the efforts of the law-maker in giving a more exact regulation of this institution and we mention several proposals of de lege ferenda, that we can find in the current doctrine:

- extension of the seizin to all categories of heir with legal inheritance capacity;
- replacing the expression "seizin heirs" with "notified persons in line";
- rephrasing the Article 1125 of the Civil Code in line with the following text: “Beside the actual possession of the assets of inheritance, the seizin confers the seizin heirs also the right to administrate the assets of the deceased and to exercise the rights and actions of the inheritance.” [17]

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[11] Art. 1079 Administration law (1) the testamentary executor has the right to administrate the estate for a period of more than 2 years starting with the date the inheritance is open, even if the testator has not particularly granted this right to it. (2) By testament, the administration right can be restricted to only part of the estate or to a briefer period. (3) The term of 2 years may be extended by the court of law, on grounded reasons, by granting successive terms of one year.

[12] The person empowered with a mere administration right is liable to carry out all the necessary deeds in order to preserve the goods, as well as the useful deeds for such to be used in accordance with their common destination.

[13] By testament, the administration right can only be restricted to part of the estate or to a briefer period of time.


Present regulations regarding cyberrime within the Romanian and European Union law system

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Abstract:
The number of cybercrimes is increasing and this is due to the fact that more and more people own a computer and internet connection, in order to benefit from real-time information, apply modern ways of work or other various reasons. Such crimes can be practically committed by any person who owns minimum informatics knowledge although it is clear that the level of intelligence of the ones who commit them is above average. Committing such deeds can prejudice a great number of people because, although at the beginning, informatics systems were found in scientific, governmental or military sights, today they are available to the masses as a result of increasing performance and lower costs of such systems. There are several obstacles in from of efficient investigations as far as informatics crimes and prosecution are concerned, on a European level. Among these obstacles we may mention jurisdictional boundaries, insufficient capacities regarding information exchange, technical difficulties regarding locating the origin of the informatics crime authors, lack of personnel qualified for such activity but also the lack of cooperation with other interested parts, responsible for the informatics security. Within this context, law regulations regarding cybercrime need a uniform modeling within the entire community space.

Keywords: cybercrime, online crime, informatics system, investigation, act of cybercrime, sanction.

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1. INTRODUCTION: GENERAL FRAME OF NATIONAL AND INTERNATIONAL CRIMINAL REGULATION REGARDING CYBERCRIME

The evolution of information technology and informatics systems has taken place mostly during the second half of the XXth century and is still in continuous expansion, affecting all domains of social, economic, political and civic life, among other aspects. Informatics decisively impacts the evolution of humanity due to the speed with which the information is moving and the possibility of rapid communication which it provides. It is legitimate to assert that"the informatics revolution – especially conducted via the Internet – is the third (and probably the last) industrial revolution".

Cybercrime includes, among the classic infractions (such as fraud, prostitution, forgery), other deeds inherent to the cybernetic domain such as falsifying electronic pay
instruments, card stealing, infecting networks, electronic terrorism, harassing, etc. We may therefore say that informatics technology offers diverse and particular possibilities of breaking the law, in any domain which utilizes informatics systems (road, air, navy traffic, national safety, military, education, social, medical and financier services, etc.)

2. REGULATIONS WHICH SIGHT CYBERCRIME WITHIN THE ROMANIAN LEGAL SYSTEM

As a result of increasing number of cybercrimes registered in Romania as in other countries, legal actions have been approached in order to punish the deeds which are considered infractions specific to the informatics domain (Boroi, Nistoreanu, 2004). Such dispositions are met in the following laws:

2.1. Infractions sighted in Law no. 365/2002, replicated in the year 2006 regarding electronic commerce:

- The main acts presented and incriminated by the present law are:
  - Falsifying electronic pay instruments (par.24)

- Within this deed we may find, along the falsification itself, the utilization of the falsified electronic pay instruments. The active subject of the qualified forms of this infraction is the person who, based on work obligations, makes technical operation of emitting falsified pay instruments, has access to identification data of security mechanisms – par. 24, (3), lit. a, b, c.

- The ownership of equipment destined for falsification (par.25). The incrimination sights the use and ownership of equipment for the purpose of falsifying both hardware and software.

- False declarations regarding emitting or utilizing electronic pay instruments (par.26). Such declarations may be done within a bank institution – of credits or financier, in the presence of their legal representative or in the presence of an authorized law representative in order to emit foreign pay instruments.

- Conducting fraudently financier operations (par.27). Such incrimination sights operations conducted through utilizing electronic pay instruments and of identification data without owning the consent of the instrument’s legal owner. Other forms of this infraction interfere in the case of utilizing fictional identification data or unauthorized
transmission of identification data, qualified variant sighting the person who commits the infraction in accomplishing service duty (par.27, point 2-3 and 4).

Accepting financial operations illegally conducted (par.28). The section refers to the unauthorized access to an informatics system, the unauthorized transfer of data within an informatics system and modifying, total or partial, unauthorized destruction of information stocked within an informatics system.

2.2. Infractions provided in Law no.161/2003

The law distinguishes three categories of infractions:

2.2.1. Infractions against the confidentiality and integrity of data and systems
- Access without permission to an informatics system with aggravated forms respectively obtaining informatics data and breaking security measures (par. 42, align 2 and 3);
- Intercepting without permission of an informatics data transmission which cannot be published (par. 43);
- Modifying, deleting or damaging informatics data or restraining access to such data, without permission, including unauthorized data transfer from an informatics system (par. 44, align 1-3);
- The deed of gravely perturbing, without permission, the functioning of an informatics system by introducing, transmitting, modifying, deleting or damaging informatics data (par.45);
- The deeds of producing, selling, importing, distributing dispositive or informatics programs, conceived or adapted to committing the infractions from par.42 to 45 refer also to similar deeds which are connected to access codes or passwords (par. 46, align. 1 and 2).

2.2.2. Cybercrime (par. 48-49):
- the deed of introducing, modifying or deleting, without permission, informatics data or restraining, also without permission, the access to such data, resulting to other data inconsistent with the truth (par.48). The law states that: the deed of introducing, modifying or deleting, without permission, or restricting, without permission, the access to such data resulting in data inconsistent with the truth in order to be utilized for
producing a juridical consequence, represents an infraction and is punished through 2 to 7 years of imprisoning.

The regulation sights protecting law security by incriminating all those actions which may, by modifying data found on informatics support, to attack unwanted consequences by/to the persons which conceived, made and implemented or upon those who manifest the effects of modified information.

The specific juridical object is represented by social relationships included in the protection of legal circuit security.

The objective side. The material element is given by the action of: introducing, modifying, deleting or restricting the access of informatics data in order to produce legal effects.

The subjective component is characterized by direct intention.

Sanction. The infraction of informatics false is punished with 2 to 7 years of jail.

2.2.3. Child pornography through informatics system

This type of criminality is frequent and aggressively encountered, especially online.

According to this law, child pornography consists in producing in order to spread, offer or provide, spreading or transmitting, buying for one’s self or for others of pornographic materials involving underage persons through informatics systems. Also, the owning without permission of child pornography materials on an informatics system, is punished.

Such an infraction is placed on the line between crimes committed with the help of informatics systems and the ones which sight information systems. The infraction of child pornography is regulated by the Romanian criminal legislation in force.

Child pornography is regulated by two laws, namely:

1. Law 678/2001, regarding preventing and combating human trafficking which at par.18 states that: (1) The deed of exposing, selling or spreading, renting, distributing, making or owning in order to spread objects, movies, photographs, diaphragms, emblems or other visual supports which represent sexual acts or positions with pornographic nature, which present or involve underage persons – namely who have not reached the age of 18 years old, or importing or transmitting such objects to a
shipping or distribution agent in order to be commercialized or distributed represents a child pornography infraction and is punished by jail from 2 to 7 years; (2) the deeds described at par. (1) Committed by a person who is part of an organized group is punished with 3 to 10 years of prison.

2. Law 196/2003, regarding preventing and combating pornography, which within par. 12 states that: (1) distribution of materials of obscene nature which present images with underage persons showing explicit sexual behavior is punished by 1 to 5 years of prison; (2) The same punishment is also applied in the case of owning materials presented within par. (1) With the intent of sharing.

The specific juridical object is constituted by social relationships which follow protecting the underage persons.

Sanction. The infraction of child pornography through informatics systems is punished by 3 to 12 years of prison and suspending of several rights.

Other regulations available in Romania regarding informatics crime:

Normative acts which contain norms which sight this type of crime are:
- Law no. 285/2004 regarding copyright and connected rights.
- Law no. 51/2003 regarding the juridical system of afar contracts.
- Law no. 506/2004 regarding processing data with personal character and protecting the private life within electronic communications, with ulterior modifications.
- Law no. 677/2001 regarding the protection of people regarding processing data with personal character and free circulation of these data.

3. REGULATIONS REGARDING CYBERCRIME WITHIN THE EUROPEAN UNION

On November 23rd 2001 the Convention of Cybercrime has been signed.

The convention proposes to prevent acts against confidentiality, integrity and availability of informatics systems, networks and data along with illegal use of such systems, networks and data by assuring the incrimination of such conducts and by encouraging the adoption of measures of nature to allow the effective combat of such
infractions, meant to facilitate the discovery, investigation and prosecution both on a national level and international and also by applying material dispositions necessary to assuring a rapid and safe international cooperation.

The convention has been ratified by Romania by Law 64/2004 (in order to ratify the European Council’s Convention of Cybercrime, adopted at Budapest on November 23rd, 2001). After the ratifying, in March 2004, by the fifth state, the convention has taken effect on July 4th, 2004.

In the year 2012, the European Commission has sent notice to the European Council and the European Parliament regarding the necessity of instituting a European Center of combating informatics crime. Within this notice, The Commission specified that the value of world commercial exchanges conducted annually through electronic trade reaches approximately 8 trillion dollars and that because the numbers of commercial transactions are made online, the number of informatics crimes also increases.

Such deeds of criminal nature include infractions from „selling stolen credit cards for a modest sum of 1 Euro, identity theft and sexual abuse of children to severe informatics attacks upon institutions and infrastructure”.

The European Union informs upon the fact that there are numerous obstacles in the way of effective applying of investigations as far as informatics crime and prosecution are concerned, on a European level, of authorities which sight such infractions. Among these obstacles we may encounter jurisdictional boundaries, insufficient capacities regarding information exchange, technical difficulties regarding locating the origin of authors of informatics crime acts, differences of investigation and legal expertise capacities, lack of the personnel qualified for such activity but also the lack of cooperation with other interested parties, responsible for the informatics security (Paraschiv & Damaschin, 2004).

The commission thus proposed to institute a European Cybercrime Center and proposed that it should mostly focus and the following major aspects of the informatics crime:
1. Acts of informatics crime committed by organized crime groups, mostly acts which generate considerable profit obtained by committing infractions such as on-line fraud.

2. Acts of informatics crime which bring severe prejudice to their victims such as sexual exploit of children via the internet.

3. Acts of informatics crime (including informatics attacks) pointed against the critical infrastructure and informatics systems of the Union.

4. **PROPER CRIME INVESTIGATION OF CYBERCRIME**

   The main issues which need clarification within the investigation of cybercrimes which mostly refer to identifying the hardware or other ways of access which have been used or destined to serve to committing the crime, of the obtained information as a result of an illegal action, of the hardware as a result of the crime, identifying the author and possible accomplices, establishing the conditions which favored committing the crime, the deed’s consequences, etc (Paraschiv, 1998, 2001).

   The criminalistics investigation includes several steps which we will describe as follows: (1). identifying objects which have been used or destined to serve to committing the crime. No matter if they were used in this purpose or were to be used by the criminal in order to commit the deed, such sample material means represent ways of committing the infraction, being part of the „Corpus delicts”. These means are a source of proof and with the help of scientific methods and means may reveal informative elements of maximum importance.

   Even so, these do not own a priori value of proof and are to be valorized by being added to other samples; (2). The identification of obtained information as a result of the infraction. The software copies owned by these persons by violating the law of copyright are naturally sequestrated, as can be the case with any other documentation obtained by illegal means.

   During the criminal investigation, it must be taken into account that since the very beginning the software producer allows the buyer to create a reserve copy which cannot be commercialized or shared as a result of the law which protects individual property; (3). Identifying the hardware as a result of the crime. The legal procedures authorize the issuance of warrants in order to sequestrate the data, product of such
infractions and other similar materials. According to the American definition, „the infraction result” (Donovan, & Bernier, 2008) includes goods obtained through criminal activity (such as cash obtained by using a falsified credit card), and the „contraband” represents having the property of goods which a citizen cannot possess (for instance, drugs).

The criminal investigation body will examine whether the context has conducted for certain to the illicit consequences, thus the investigator can be sure that the respective object is a result of infraction or has been illegally possessed; (4).

The identification of the author and circumstances which favored committing the crime. It will be established the means in which the author had access to secured information, taking into consideration the possibility of unauthorized use of a computer.

5. CONCLUSIONS

Cybercrime is an increasing challenge for investigators, once time passes and implicitly, as technology evolves. It is known that the number of cybercrimes is increasing continuously because more people possess a computer and internet connection from the wish of being informed in real time, to work modernly or for various other reasons (Vasiu, 1998). Such crimes can be practically committed by any person who possesses minimum knowledge regarding the field of informatics although it is clear that the level of intelligence of the people who commit such crimes is above average (Voicu, Dascălu & Stan, 2002).

Committing such deeds may bring prejudice to a great number of people because, if at the beginning, the informatics systems could have been found in scientific, governmental or military sights, today they have become available to the masses, as a result of increased performance and decreased costs of such systems.

The anonymity secured by worldwide computer networks and also methods of message encryption, together with the reduced possibility of the authorities to control the information flux represent immense advantages for the criminals or for the organized crime groups in committing cybercrimes.

Certainly, such data should lead, at a near point in the future, to building a Law system of the Internet, a system extremely necessary for all users of the discussed international network.
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