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## CONTENTS

<b>Ionel DIDEA, Ramona DUMINICĂ, Diana Maria ILIE - INTERFERENCE BETWEEN THE INSOLVENCY LAW AND THE LABOUR LAW. CONVERGENCE BETWEEN INTERESTS - INTEGRATIVE VISION.....</b>	<b>4</b>
<b>Gheorghe CALCAN - CONSTANTIN HAMANGIU: NOTES ON JURISTS' MORALITY AND LEGISLATIVE UNIFICATION.....</b>	<b>25</b>
<b>Adrian Cristian MOISE - ANALYSIS OF OFFENCES RELATED TO ILLICIT DRUG USE IN ROMANIAN LEGISLATION.....</b>	<b>32</b>
<b>Emilian CIONGARU - SCIENCE OF LAW - SCIENCE OF KNOWLEDGE ELEMENTS OF CONSTITUTIONAL LAW (I).....</b>	<b>45</b>
<b>Andreea DRĂGHICI - BRIEF CONSIDERATIONS ON THE ESTABLISHMENT OF THE AMOUNT FOR THE MAINTENANCE DUE TO CHILDREN.....</b>	<b>53</b>
<b>Dumitru VIERIU - GENERAL CONSIDERATIONS ON UNEMPLOYMENT.....</b>	<b>58</b>
<b>Diana Cristina PÎRVU - THE LAW CONNECTED TO SOCIETY OR THE LAW BASED ON COERCION.....</b>	<b>72</b>
<b>Mihai Cristian APOSTOLACHE, Mihaela Adina APOSTOLACHE - THE PRINCIPLE OF BICAMERALISM REFLECTED IN THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT OF ROMANIA.....</b>	<b>81</b>
<b>Eufemia VIERIU - APPROACH TO DISCRIMINATION WITHIN WORK RELATIONS.....</b>	<b>88</b>
<b>Cornel LAZĂR, Mirela LAZĂR - TRENDS IN THE EVOLUTION OF THE PENSION SYSTEM IN IN ROMÂNIA.....</b>	<b>102</b>
<b>Marian ENACHE, Cristina TITIRIȘCĂ - CONSIDERATIONS ON THE ELECTORAL CODE OF PRACTICE IN ROMANIA.....</b>	<b>112</b>

# INTERFERENCE BETWEEN THE INSOLVENCY LAW AND THE LABOUR LAW. CONVERGENCE BETWEEN INTERESTS - INTEGRATIVE VISION

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## **Abstract**

*In the present scientific approach, we intend to capture the "collision", many times at the conflict limit, of some rights and interests, and the interaction between the economic sphere and the social sphere, respectively, which characterizes both insolvency, a legal institution that has successfully harmonized in an ethical and moral manner its regulation scope by balancing divergent, polar interests such as those of employees with those of entrepreneurs, those of debtors with those of different categories of creditors, those of consumers with those of professionals, interests and values that become interpenetrated at one point, beyond the economic reality and the barriers to profit, the legislator attempting to tip the balance towards a harmonious, balanced and stable social climate through common sacrifices and the awareness of the need for social responsibility while also favouring the economic development of a company and a society as a whole. In fact, by touching the area of interference between the field of labour law and that of the insolvency law, although we are witnessing some "corseting" of the labour law regulations and not only, by the specific objective of the legal regime of insolvency, we witness, however, a prioritization of social character, due to the national and Union legislators' focusing on measures to guarantee salary and social security rights and the protection of workers' rights in the event of a company transfer, taking into account the fact that insolvency proceedings may involve reductions and reorganisations of the business, the sale of some assets or parts of the enterprise, which inevitably lead to reducing the number of jobs. The core of the research remains an integrated vision, by "intermingling" the economic and social fields, evoking, as a priority, the judicial reorganization as a specific insolvency procedure meant to be a win-win instrument that gives the debtor the chance to remain in business, to creditors the chance to recover more than they would recover in bankruptcy and, last but not least, the chance for employees keep their jobs with the prospect of relaunching and creating other jobs, also taking into account the social part involved by the insolvency itself.*

**Key words:** *insolvency, labour law, interdisciplinarity, guaranteeing employees' claims, protection of the pension right, company transfer, dismissal in the insolvency procedure, judicial reorganization, CJUE jurisprudence, EU directives.*

## **INSOLVENCY LAW VERSUS LABOUR LAW. INTERDISCIPLINARITY**

Starting from accepting and assuming the fact that the law is a social phenomenon reconfigured and reshaped by the permanent and complex changes of society, the interdisciplinarity of scientific research assuring the dynamics of the norms of law in the light of an integrative knowledge so necessary in the postmodern era, we focus our attention on the convergence between a traditional branch of the private law such as the labour law and an insolvency institution that tends to form a special law[1], in its own right, after the repeal of the Commercial Code. Moreover, under the unavoidable influence of Europeanization and globalization, we are increasingly confronted with the transdisciplinary approach, in this context the classical branches of law being redimensioned by acquiring mixed characteristics. We highlight in this respect the expansion of the labour law, which, although it traditionally belongs to the private law branch, has in fact acquired the characteristics of a "mixed law"[2], which leaves the closed, rigid system specific only to the individual labour contract, and to the collective bargaining agreement respectively, reaching the public domain through the mission of targeting the public function as well, vocational training, health and safety at work, labour inspection, etc. That is precisely the reason why we are talking about "de-stiffening" and a "flexibility" of labour law with the changes at European level both in the economic and in the social policy context, the related legislation such as Law on Social Dialogue no. 62/2011, as subsequently amended and supplemented, as well as the Directives and Regulations drafted at the EU as well as the national level and implemented at national level that outline the corollary of the labour law.

In this context of the redimensioning of the traditional branches of law, we invoke the existence and the explosive and quire recent course in the finalization and implementation of the insolvency law, a mixed law. We strengthen this idea by arguing that insolvency law can be considered a result of an interdisciplinary research and an analysis of the branches of economy, sociology, psychology and of the law branches through the interference with other national and international normative acts, such as labour law regulations, the criminal law, the civil law, the civil procedural law, the

administrative law, the public procurement law, etc., which have put their mark on the evolution of the institution of insolvency and created new perspectives of analysis, new legal views, outlining, why not, a new law, a special, particular, individual law, that of insolvency, which has exceeded the boundaries of commercial law and has expanded to natural persons and to administrative-territorial units[3].

In this social and economic reality, it must be noted that the labour law is in a frontal collision with the tendencies of a globalized economy, becoming dependent on the economic dimension, hence the tendency to increase the flexibility of the employment relationship in favour of the employer, the labour law somewhat losing its character that used to be exclusively in favour of employees. Nevertheless, in our opinion, this "rivalry" between rights must be annihilated, because it is erroneously considered that the social policy is an opponent of the economic policy[4], the social dimension must be anchored in the economic reality and vice versa, due to the interdependence of the two sides in an open democratic system. The alleged balance can only be achieved by sacrifices and mutual compromises, through an open and flexible law, the reverse of the legal matrix of rights enshrined through the labour law being the impossibility of economic and social progress. Thus, part of the doctrine considers that "the bow to the fatality of the economic crisis and the solutions promoted under the effect of the economic constraints generated by the crisis, the functioning principles of market, the principles of competitiveness in the era of globalization, the rate of economic growth, budgetary balances represent only a weakening of the legal guarantees granted to employees"[5]. Indeed, the Europe 2020 Strategy - A European strategy for smart, sustainable and inclusive growth and the Euro Plus Pact – a closer coordination of the economic policy for competitiveness and convergence adopted by the European Council in March 2011, had as their primary objective the employment policy, further promoting the policy of combating unemployment, but also flexicurity as an important means of modernizing and stimulating the adaptability of labour markets, considering that "social protection systems and social inclusion policies play the role of automatic economic stabilizers and effective mechanisms to mitigate the social impact of slowing down economic growth and helping people to return into the labour market"[6]. Indeed, we cannot achieve a distortion and weakening of the labour law and, implicitly, the protection of employees by virtue of purely

economic argument, which is the reason why an effective implementation of flexicurity by the social partners within the European Union is not fully possible. For this purpose, the European Commission lays the foundation of a new strategy for 2020-2030, a strategy generically referred to as mobication (mobility and education for workers), which focuses on labour mobility in line with the continuous, complex and in-service training and at a much higher level through the possibility of retraining in all stages of their professional life. Moreover, we should also take into account how far we continue to expose the social dimension and to really weaken the system of rights and values protected by the law that loses ground to the world technological and the industrial revolution, on the occasion of the Davos meeting, held in January 2018, at the World Economic Forum where the ability of companies to adapt to the new and revolutionary challenge to artificial intelligence was brought up for discussion, making it clear that "the fourth industrial revolution will eliminate millions of jobs"[7]. It is a reality that we already live in and which also requires a "simultaneous revolution in formation and education, encouraging innovation and adaptability," while the society has already become acquainted with artificial intelligence robots, such as Sophia, considered already a citizen with full rights as a result of receiving the citizenship of Saudi Arabia[8], Erica, the artificial intelligence robot in Japan[9], able to develop psychological and emotional valences, to evolve and learn to adapt much faster than the human being, with nearly 600 uses of Artificial Intelligence in all major industries, according to analyses carried out by McKinsey Global Institute, and it is estimated that between 400 and 800 million employees will be replaced by such robots by 2030[10]. Although it seems to be a SF film, we live a reality that has reached the stage of an astonishing evolution that does not allow us either to turn time back or to stop it, but the social, ethical, legal and psychological impact can be improved by the effective awareness and preventive substantiation of an effective and robust legal framework for protecting people, and implicitly of rights arising from the labour law, the technological progress and economic prosperity cannot become in this sense the "enemy" of humanity. In this fragile context, the proposal for a Regulation of the European Parliament and of the Council for the establishment of a European Labour Authority (ELA), having the status of a new EU decentralized agency which should become operational in 2019[11], comes as a guarantee and an important step in providing effective and adequate social

protection, ensuring the necessary modernization of the EU rules on the coordination of social security systems and implementing the European Pillar of Social Rights. We highlight the fact that, through Senate Decision no. 65/2018, Romania considered that the establishment of such an entity became necessary to overcome the challenges of improving EU-wide cooperation on cross-border employment and social security[12]. This reality, which is still imperceptibly and unperceivably outlined in everyday life, has become for some time a priority of interdisciplinary analysis and approach in order to "control" new areas of research such as the ecological economy, biotechnology, globalization, intelligence artificial, digital technology, etc., fields that are present in plan of the debates, studies and recommendations of the Organization for Economic Cooperation and Development, [13] the changes and prospects of the 21st century being marked by the speed of global transformations that require an integrative vision of research and approach.

Due to lack of space, given that the debated issue may give rise to interesting, multiple and complex analyses, we will now revert to the interference between the economic field and the social field, in this case the insolvency law and the labour law, in which context we consider that the national, but also the EU, as well as the international law-maker, facing the challenge of identifying a fair balance between the interests of the actors involved, has managed to outline a system of flexible rules that would benefit both the insolvent debtor-employer and at the same time to provide protection to the employees of such an employer, respecting the principle of proportionality of the limitation of the prerogatives of certain rights guaranteed by the labour legislation in view of the effects of insolvency, the internal legislative formula being positively modelled by the new coordinates drawn at EU and international level, essentially outlining a distinctive outlining and reconfiguration of the insolvency law this oriented towards prevention and to giving a second chance while also contributing to the increase of investments and employment opportunities in the single market.

## **THE PREFERENTIAL REGIME OF SALARY CLAIMS AL IN THE EMPLOYER'S INSOLVENCY PROCEDURE. GUARANTEES**

At national legislative level, the employees of employers who become insolvent enjoy a preferential legal regime, their salary claims reflecting a strong social component. Thus, the preferential regime of salary claims is outlined by the manner in which the insolvency procedure itself is regulated - Law no. 85/2014, which provides for special provisions designed to protect employees in competition with the other categories of creditors, substantiated as follows: the ex officio registration of salary rights in the debt table by the judicial administrator/liquidator based on the employer's accounting records, the employees' dispensation of the obligation to file a debt claim, being automatically entered in the debt table, unlike the other creditors who, in the event of failing to submit such a claim, lose their right to participate in the insolvency proceedings, the right to request the opening of the insolvency proceedings if the receivables due and unpaid exceed the equivalent of six gross average salaries per employee, unlike the other creditors who have to hold a minimum claim of 40,000 lei, the fact that the salary claims are not subject to the verification procedure by the judicial administrator/liquidator, as well as the degree of priority of making payments in the procedure, given that, according to art. 161 item 3 of Law no. 85/2014, claims arising from employment relationships are in the third position. Moreover, according to art. 5 item 18 of Law no. 85/2014 of the Insolvency Code, salary claims include, in addition to salaries unpaid by the employer, any other pecuniary claims arising from the legal employment relationship and similar relationships, such as rights due under copyright or inventor rights, industrial property, etc., except for compulsory social contributions which fall into the category of budgetary claims[14].

In addition to the preferential regime of salary claims, Law no. 200/2006 on the establishment and use of the Guarantee Fund for the payment of salary claims, as subsequently amended and supplemented, which substantiated art. 172 of the Labour Code - Law no. 53/2003, republished ("The establishment and use of the guarantee fund for the payment of salaries will be regulated by a special law"), and which also harmonized, at the same time, the Community legislation through the "excerpting of the core content" from Council Directive no. 80/987/EEC on the approximation of the laws of the Member States in relation to the protection of employees in the event of the insolvency of their employer, subsequently codified for the sake of clarity and transparency in EU

law by Directive 2008/94/EC of the European Parliament and of the Council on the protection of employees in the event of the employer's insolvency[15].

The European legislator has left it to the discretion of the Member States to set the ceiling for guaranteeing the payment of patrimonial rights unpaid to employees by the employer against whom a final decision to open insolvency proceedings has been given and against whom the measure of total or partial removal of the administration right was taken, imposing in this respect only a minimum level of the amount, regardless of the number of employees of the employer, i.e. the equivalent of 3 average national gross salaries, but also a minimum period covering salary rights. Consequently, salary claims as defined by art. 13 of Law no. 200/2006 shall be borne for a period of three calendar months, a reference period established in relation to the date of the opening of the procedure, namely 3 months before or after that moment, an aspect recently clarified by the High Court of Cassation and Justice which had led to interpretations and different applications, by a Decision issued on 5 March, 2018 [16]. Without being meant to be an exhaustive presentation of the legal regime for the protection of employees' claims in the employer's insolvency procedure, we believe, nevertheless, that under this "umbrella" of rights and guarantees, there is in reality a vicious circle, and that, from the legislative point of view, it is appropriate to make an upgrade based on the equity and proportionality principle, but also by strengthening this social dimension in a globalized economy. What we would like to point out in this context is that the resources of the guarantee fund established for social protection concerns for employees are not always a viable solution to economic recovery, unemployment and increase in the job dynamics, as they must be returned later by the insolvent employer either following a successful reorganization, within 6 months from the date of the decision to close the insolvency, cases quite rarely found at national level, or in the bankruptcy procedure by selling the assets. However, these minimum measures, we are referring to them as being minimum because the national legislator has transposed the above-mentioned Directives by ensuring the minimum framework imposed by the European legislator, do not benefit the employer very much, who is only temporarily exempted from the payment of these claims, given that the guarantee fund is also established based on its regular contributions as well, or the employees who lose their jobs in a society and in an economic context where an increasing number of debtors

in difficulty are forced by purely administrative, legislative and social circumstances, such as the stigma associated to bankruptcy, to choose the bankruptcy method. De lege ferenda, in the substantiation of the new vision on insolvency, so intensely promoted in the EU and international context, coordinated by the normative instruments at European Union and also at global level, we consider that it is appropriate to re-evaluate Law no. 200/2006 within the meaning of art. 11 of Directive 2008/94 which allows Member Countries to apply or introduce more favourable legal provisions for employees and to expand the period of guarantee. A special nuance of these guarantees also intervenes in the manner of assessing the regulatory framework of Law no. 200/2006. Thus, from 01.01.2018, Emergency Ordinance no. 95/2017 amended art. 4 para. (1) letter a), defining the employer as "the natural person or the legal entity who can employ labour based on an individual labour agreement, or an employment relationship, in compliance with the law", renouncing the previously established exceptions, respectively the public institutions defined according to Law no. 500/2002 on public finance and Law no. 273/2006 on local public finance. Consequently, we understand to construe this legislative amendment as being an extension of the regulatory framework, on the one hand, to public sector employees, which was required with the entry into force of the law on the insolvency of the administrative-territorial units, but also, on the other part, we also raise the issue of natural persons as consumers, with the entry into force of Law no. 151/2015 on the insolvency of natural persons, i.e. 1 January 2018, according to Government Ordinance no. 6/2017, persons who, in compliance with the labour law, may conclude an individual labour agreement as employer. In this latter case, we refer more specifically to domestic helping staff employed by a natural person, the Directive in question allowing for an express derogation from this category, the same way it had also allowed in relation to civil servants and which the Romanian legislator initially used, while, in the situation of the domestic staff, the law did not make any mention, which is why we consider that these persons may also benefit from these guarantees under the conditions of being an employee of an employer who is a natural person who becomes insolvent according to Law no. 151/2015, interpreting the appointment of the administrator of a procedure, a measure specific to the insolvency of natural persons, as being the equivalent to the partial elimination of the right of administration, in order to comply with

the provisions of Art. 2 of Law no. 200/2006, according to which " the salary claims resulting from the individual labour agreements and from the collective labour agreements concluded by the employees with the employers against whom final decisions have been issued for insolvency proceedings and against whom the measure of total or partial removal of the administration right was taken, hereinafter referred to as "insolvent employers" shall be paid from the Guarantee Fund".

In fact, the law does not distinguish between the insolvent employer regulated by Law no. 85/2014, and the other insolvent employers covered by the other regulations, and *ubi lex non distinguit nec nos distinguere debemus*. Unfortunately, at national level, many categories of debtors are exempt from the insolvency procedure, as is the case with the liberal professions, which in their turn involve hundreds of thousands of employees. Moreover, these categories of people are also excluded from the application of Law no. 151/2015 on the insolvency of natural persons. Of course, in this context of legislative amalgamation that currently describes insolvency and which has taken over not only the private sector but also the public sector, many clarifications and internal legislative developments are necessary, as Romania has not addressed yet and has not taken into account many of the issues envisaged at EU level, such as the exception allowed by art. (12) of Directive 2008/94 to exclude from the guarantee workers who have owned a substantial part of the company in question and who are responsible for the company's insolvency and, in this respect, the CJEU decision of 10 February 2011 - C-30/10 in *Lotta Andersson v. Genome State ...* [17]. Being still in the process of legislative harmonization, the integrative vision of the area of interference between the labour law and the insolvency law in guaranteeing salary claims is primarily focused on the wide jurisprudence of the Court of Justice of the European Union, which provides the framework for the interpretation and guidance legislation in a transparent and interdisciplinary way, in situations of limited juxtaposition. [18].

## **PROTECTION OF THE PENSION RIGHTS IN THE INSOLVENCY PROCEEDINGS**

According to art. 13 para. (2) of Law no. 200/2006 on the establishment and use of the Guarantee Fund for the payment of salary claims, as amended and supplemented, "the social security contributions due by insolvent employers are not covered by the

Guarantee Fund", these compulsory social contributions being included in the category of budgetary salary claims which also benefit from a privileged chirographic position, voting the plan as a separate category of creditors, as in the case of the salary claims, and being ranked 5th in the order of the recovery of bankruptcy claims, indeed after the salary claims placed on the third place. Moreover, we cannot consider that these rights could be affected by their inclusion in the category of budgetary claims following the possibility of applying the private creditor test and approving the measure of reducing the budgetary claims, the budget creditor approving the reorganization plan, such a situation only on the basis of strict criteria which imply an optimal way of recovering the unsecured budgetary claims, as compared to the situation of the debtor's bankruptcy. Moreover, by virtue of this privileged regime held by the state in the recovery of tax/budgetary receivables, Government Emergency Ordinance no. 88/2018 amending and supplementing certain normative acts in the field of insolvency and other normative acts, published in the Official Journal of Romania no. 840 of October 2, 2018, which proposes, among the strategic objectives, the creation of the "premises for the viable business recovery and the faster recovery of the debts, including the budgetary ones, being consistent with both the budgetary interest and the general economic and social interest of Romania" , thus establishing much stricter rules for the recovery of budgetary claims.

Consequently, the minimum level of protection of employees and rights resulting from a company-level social security system set up by the employer in the event of its insolvency is supposed to be covered with the mention not all the rules laid down by the above-mentioned Directive 2008/94 have been used internally, namely the situation of employees' rights deriving from supplementary social security schemes, 8: "Member States shall ensure that the necessary measures are taken to protect the interests of employees and persons who have already left the enterprise at the time of the insolvency of the enterprise, in relation to the rights acquired or to be acquired, retirement pensions, survivors' pensions, under a supplementary social security scheme at the level of an enterprise or of a group of enterprises". In this respect, we also take into account the clarifications of the CJUE in the interpretation of Article 8, in particular the Decision *Robins and Others*, of 25 January 2007, the Member States being aware that the correct transposition of Article 8 of the Directive requires, in the context of that duty of protection,

that a worker, in the event of his employer's insolvency, should collect at least 50% of the due retirement pension. Moreover, the British Court has recently made a preliminary reference asking CJUE questions for the clarification of the interpretation of Art. 8 of the Directive, the Advocate General proposing that the answer to the preliminary questions should be whether "Article 8 of Directive 2008/94 contains an obligation on the Member States which is unconditional and sufficiently precise as to the content so that an individual may rely on it directly against a body such as the Pension Protection Fund" (The guarantee body in the United Kingdom – n. n. E.S.) [19]. Mention should be made of the fact that the Directive allows (art. 6) Member States not to ensure the establishment of the Guarantee Fund and in relation to the contributions due under statutory national social security schemes or supplementary schemes at the level of an enterprise or a group of enterprises outside the national mandatory social security schemes which the Romanian State has also made use of, which is exactly why the current measures to ensure the minimum level of protection of social security rights in the case of the employer's insolvency differ according to the social security legislation adopted at the level of each state.

## **PROTECTION OF THE EMPLOYEES IN THE CASE OF COMPANY TRANSFER MADE IN THE CONTEXT OF THE ASSIGNOR'S INSOLVENCY**

The business transfer is increasingly being promoted as a strategy for judicial reorganization, being viewed, at the level of the European Union, as a way of economic support, the creation of the premises for development and, at the same time, preservation of jobs, which can be achieved by means of highly diverse legal transactions such as the succession, sale or transfer of assets, the transfer or sale of the goodwill, the transfer of business, the assignment of business, the transfer of the enterprise, the contribution to the share capital, the merger, the division, the transfer of the patrimony or through the transfer of fiduciary property through a fiduciary contract[20]. In the case of a transfer of an enterprise, however, the problem of the protection of employees' rights is raised in the special situation of the transferor who becomes subject to insolvency proceedings and enjoys a special legal regime, by virtue of the principle of governance, with the priority of maximizing the capitalization of the assets and coverage of receivables, but also the

provision of a second chance through a successful reorganization plan, wherever possible. The current internal legislation, which has many gaps and is disseminated in many pieces of legislation that ultimately creates legal parallels and erroneous interpretations in this very poorly developed field and doctrine, does not offer very many legislative solutions, Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses[21] being transposed in a truncated way, if we can refer it as such, with the mention that the provisions may, however, be customized and interpreted coherently by reference to the CJEU case law. Thus, we are taking into account, on the one hand, the provisions of the Labour Code, which establish in general terms in the art. 173-174 of Chapter V entitled "Protection of employees' rights in case of transfer of the enterprise, of the unit or parts of it" the rights and the guaranteed protection of the employees under such circumstance, and on the other hand, Law no. 67/2006 on the protection of the employees' rights in case of transfer of the enterprise, of the unit or parts thereof, as subsequently amended and supplemented, which transposes, as we have already mentioned, the provisions of Directive 2001/23/EC. This law particularizes the special situation of the insolvent transferor, establishing in art. (1) The rights and obligations of the transferor arising from the individual employment agreements and of the applicable collective labour agreement existing at the date of the transfer shall be transferred to the transferee in full. (2) The provisions of paragraph (1) do not apply if the transferor is subject to the judicial reorganization or bankruptcy proceedings, according to the law. "By this exception, the Romanian legislator used the possibility granted by the Directive to the Member States, which stipulates in art. 5 par. (1) that 'Articles 3 and 4 shall not apply to the transfer of an undertaking in which the transferor is the subject of bankruptcy or other similar insolvency proceedings instituted for the disposal of the assets of the transferor and which is under the control of an competent public authority, unless the Member States provide otherwise", stating that Art. (3) of the Directive ensures the transfer to the transferee of the rights and obligations arising from an employment contract or an employment relationship existing on the date of the transfer and the maintenance of the same working conditions, of course within certain limits and

exceptions established by the law, while art. 4 ensures the protection of employees against dismissal due to the transfer of an enterprise. By means of internal regulation, we conclude that the legislator has only pursued the exclusion from the application of art. 3 of the Directive all the other guarantees, including the impossibility of dismissal on the grounds of the transfer of the business, generating effects in favour of the employees, these being restricted only by a possible incompatibility with Law no. 85/2014.

As can be inferred from the interpretation of the CJEU, the Ordinance of 28 January 2015 issued in Case C-688/13 - Gimnasio Deportivo San Andres SL, in which the question was raised in relation to the assessment of the debts which the transferee could be authorized not to bear following the transfer [22], Directive 2001/23/EC must be interpreted as meaning that in such a special situation of transfer of an undertaking, it is allowed that the assignments at the transfer date or at the date when the insolvency proceedings are opened resulting from employment agreements or employment relationships, including those relating to the statutory social security scheme, should not be transferred to the transferee, provided that an insurance is established for workers which at least equivalent to those laid down in Directive 80/987/EEC, mentioned in the sections above and which provides for the establishment of the Salary Guarantee Fund. However, when we return to the internal transposition rules of this Directive, namely Law no. 200/006, we note that it involves a guarantee fund only for the payment of salary claims without providing for the protection of other rights, and implicitly the social security, with the mention of the obligation to repay such amounts secured by the guarantee institution in the situation a recovery. Therefore, on the internal level, we understand that the transfer of an undertaking does not involve the payment of these outstanding amounts by the new employer (the transferee), and a Member State cannot be prevented from requiring such obligations to be borne by the transferee even in the situation of the insolvency of the transferor, as CJEU completed in its interpretation in the abovementioned case, all the more so of the contributions to the statutory social security scheme of the transferor, since such an obligation results from employment contracts which create obligations for the transferor. Consequently, in our opinion, the transposing legislation envisages the only exception to the application of the protection afforded to employees in the event of a transfer of a business by a transferor in insolvency, the

possibility of changing the working conditions by way of convention so as to guarantee employment, keeping jobs and the survival of the enterprise. Interference in insolvency becomes very delicate and nuanced since it involves many legal, economic and social consequences, for example, considering the existence of a reorganization plan that may involve such a business transfer and which can clearly influence the staffing structure and automatically the redefinition of rights and obligations which eventually, through a typical insolvency sacrifice, leads to greater job-saving potential at the expense of bankruptcy which in turn triggers the increase in the number of unemployed.

### **THE LEGAL REGIME OF EMPLOYEE DISMISSAL IN THE INSOLVENCY PROCEEDINGS. CONFLICTS, INTERESTS, SACRIFICES**

This regulatory interference between the insolvency law and the labour law concerning the special legal regime of the dismissal of employees in an insolvency proceeding remains an extremely sensitive and delicate subject that has raised the interest of doctrinal opinions and has been the subject of Constitutional Court Decisions, the jurisprudence of the CJEU having a key role to play in identifying a rational balance between the interests of the insolvent employer and the interests of employees who, by virtue of the social protection of labour, enjoys a "legal barrier" to measures ordered under a special law such as the Insolvency Code. In this regard, we are considering, on the one hand, Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies [23], as amended by Parliament's Directive (EU) 2015/1794 European Council and the Council of 6 October 2015 and, on the other hand, the provisions of the Labour Code, in particular Chapter V "Termination of the individual labour agreement, Section 5 - Collective redundancy. Information, consultation of employees and collective redundancies", transposing the provisions of the aforementioned Directive, a legislative tool which has somewhat embedded "the provisions of the insolvency law and has imposed a legislative redimensioning in order to be included in this line of social measures, 123 of Law no. 85/2014, which states the status of the contracts in progress and the possibility of their termination, implicitly also of the individual labour contracts, giving rise to antithetical interpretations [24]. Thus, initially the previous Regulatory Law no. 85/2006 on the insolvency procedure established

according to art. 86 para. (6) the fact that "by way of derogation from the provisions of Law no. 53/2003 - Labour Code, after the opening of the procedure, the termination of the individual labour agreements of the debtor's personnel will be done urgently by the judicial administrator/liquidator without the need for the collective redundancy procedure, the administrator/liquidator handing the dismissed personnel only the 15 working-day notice".

Subsequently, however, the European legislator imposed mechanisms for the protection of employees by the interpretation given by the CJEU in the judgment of 3 March 2011, following the connection of Cases C-235/10 to C-239/10, David Claes and Others [25], in the sense that the provisions on employee information and time limits in collective redundancy proceedings as provided by Directive 98/59/EC also apply to the termination of an employer's business as a result of a decision for opening an insolvency proceeding, which has also become the solution of Law no. 85/2014, the current Insolvency Code, which provides in Art. 123 para. (8): "(...) Where the provisions of Law no. 53/2003 - Labour Code regarding the collective redundancy are applicable, the terms provided by art. 71 and art. 72 para. (1) are reduced by half". Moreover, the Constitutional Court ruled through Decision no. 64/24.02.2015 [26] on the unconstitutionality of art. 86 par. (6) of Law no. 85/2006, stipulating that it is necessary to guarantee, at internal legislative level, at least the same level of labour social protection as stipulated in the binding acts of the European Union. Mention should also be made of the fact that the current regulation regarding the reduction of the terms provided by art. 71 and 72 of the Labour Code fall within the scope of the derogations provided by art. 4 para. (2) of the Directive, with the current rules of the Insolvency Code being harmonized with the EU law. We consider that the derogations provided by the Insolvency Code and the limitations of the rights guaranteed by the Labour Code to employees are minimal and, at the same time, necessary, taking into account the special nature of the insolvency law. Furthermore, the doctrine [27] recently found that the insolvency procedure has, in addition to the characters expressly mentioned in the law (judicial, collective and concurrent, unitary and general, egalitarian, remedy or forced execution), a "sacrificial" one. It is essential that insolvency sacrifices certain rights and interests in a very small proportion, with little impact on the much higher endpoints that can bring significant

benefits at a macroeconomic level in the event of a possible maintenance of the debtor in the economic circuit, the benefits also influencing employees who have the chance to keep their jobs in a reorganization process. We are also considering the Constitutional Court's Decision no. 23/2013, according to which "the basis for the dismissal must be the balance between the two parties who have concluded the individual labour agreement, on the one hand, the need to ensure the employer's freedom to dispose in relation to certain job redundancies, at the moment when economic considerations require such dismissals, and, on the other hand, the need to protect the employee from a possible abusive attitude of the employer "[28].

What are, however, the prospects for employees in such situations, which are increasingly common in Romania and not only? We know very well that theory does not always ensure the implementation of effective enforcement measures. What actual opportunities and what administrative, legal and economic measures can annihilate the effect of insolvency on the social level, given that more than 6,000 companies with approximately 64,000 employees are currently insolvent during the surveillance period? Indeed, the regulations on early notice in the event of dismissal, consultations with the trade union or employee representatives on the methods and means of avoiding collective redundancies or reducing the number of employees to be made redundant, the possibility of resorting to social measures (see, to that effect, Case C-4/08 Akavan Erityselöjen Keskuslitto AEK and Others [2009] ECR), concerning inter alia the support for the professional reconversion or retraining employees who are made redundant, and the information of the employees regarding the intention to maintain or terminate the employment agreement, regarding the economic and financial situation of the unit, so that the employees should be able to take protective measures in good time, as also the application of Law no. 467/2006 regarding the establishment of the general framework for information and consultation of employees, obligations assumed otherwise by the administrator/liquidator in case of withdrawal of the insolvent employer's administration right, as well as the regulations on the possibility of filing an action for damages under art. 123 para. (4) of the Insolvency Code by the employee whose employment agreement has been terminated or the creation of the Guarantee Fund as we have analysed in the above sections represent guarantees that can only mitigate the consequences of losing a job.

In our opinion, the recovery of companies and their maintenance in the economic circuit becomes the main tool that offers employees the real and actual chance of having a job with the prospect of relaunching and creating other jobs. Moreover, *de lege ferenda*, in order to expand the range of rights on the social protection of employees dismissed in such circumstances, the possibility of regulation in the content of the Insolvency Code could be considered, implementing provisions guaranteeing a right preferably for the re-occupation of a position in the case of the success of a reorganization plan and of a new expansion of the former employer's structure, of course within certain limits and conditions explicitly regulated at the legislative level.

## **THE HARMONIZATION OF THE ECONOMIC DIMENSION SPECIFIC TO THE INSOLVENCY LAW WITH THE SOCIAL DIMENSION AS A “COROLLARY” OF THE LABOUR LAW. INTERFERENCE EU PERSPECTIVES – A NEW EUROPEAN DIRECTIVE**

Recently, the foundations were laid for a proposal for a Directive[29] on Preventive Restructuring Frameworks, the second chance and measures to increase the efficiency of restructuring, insolvency and debt relief procedures, which aims to give a prioritization of the social dimension in the regulation of insolvency, with the European Commission playing an important role in developing a "rescue culture" at the expense of a "culture of liquidation," stating that preventive restructuring and second chance for debtors contribute to the increase in investments and employment opportunities of the Single Market.

We are mentioning that the original draft Directive has undergone numerous amendments precisely in the idea of focusing on social protection and on the identification of a balance of interests, and in this respect, the opinion of the Committee on Employment and Social Affairs, also suggests amendments, by prioritizing objectives such as: "Recognizing the social responsibility of the company, providing workers and their representatives with the opportunity to receive a warning about a worrying economic situation, as well as the focus on cases where retirees from a company threatened with bankruptcy are potentially affected (business saving plans, funds of pensions)".

In fact, the most important amendments to the Directive contained in the European Parliament's report of 21 August 2018 [30], which we have identified as being appropriate in substantiating the much invoked balance, come to convey the interference between the economic dimension and the social one, namely: "Notwithstanding the fundamental rights and freedoms of workers, this Directive will ensure that undertakings from an economic point of view will have access to effective preventive restructuring frameworks at national level enabling them to pursue their business (...) These rapid preventive frameworks should prevent job suppression and loss of know-how and skills and optimize the total amount for creditors compared to what they would have received in the case of the liquidation of company assets, as well as for the owners and the economy as a whole (...) During the preventive restructuring procedure (...) Given the need to ensure an adequate level of protection for workers, Member States should be required to exempt unpaid claims employees of any suspension of enforcement, regardless of whether these claims are generated before or after the suspension has been granted. Such suspension should be authorized only for the amounts and the period for which the payment of such claims is effectively provided at a similar level by other means by virtue of national law (...) In order to guarantee the continuity of production and employment and to fight better against tactical or fraudulent practices of the management, employees should also be informed and consulted at the initial stage of the restructuring, insolvency and rehabilitation procedures ... Entrepreneurs who violate the right to work or the right to competition are excluded from full debt repayment."

We are mentioning that in a press release [31] dated 11.10.2018 the Council of the European Union expressed its position on the Directive, considering that it offers a second chance to insolvent entrepreneurs but with a good reputation and introduces measures to increase the effectiveness of restructuring, insolvency and debt relief procedures, the objective of the three institutions, the European Commission, the EU Council and the European Parliament, being to reach a political agreement before the European elections of 2019. We hope that the proposed Directive will be transposed in the same way as it is possible for it to be adopted under Romania's presidency of the EU Council, this first mandate of Romania having a positive impact on the level of the Romanian society as a whole [32].

## CONCLUSIONS

Having an overview of the interference between the economic dimension, specific to the insolvency law, and the social dimension, specific to the labour law, the interference that tends in its evolution, as we have seen, towards perfection, rational balance and coherent legislative harmonization, we consider it appropriate to conclude by invoking the need to eliminate the stigma of bankruptcy, to streamline insolvency procedures, to prioritize early restructuring measures, and to develop a "rescue culture" involving judicial reorganization at the expense of bankruptcy by creating an economy that respects justice social. Consequently, only by removing the legislative, administrative but also common obstacles to restructuring, the effective reorganization of viable enterprises in financial distress can minimize job losses, avoiding a dramatic increase in the number of exposed persons the risk of poverty or social and professional exclusion, which jeopardizes the social and economic capacity of the society as a whole. Finally, we should not forget that behind each case of insolvency proceedings "life is throbbing", there are dreams, hopes, which imply and reflect the financial and psychological efforts and impact both on the insolvent debtor and on its own employees, as well as on the other creditors, with chain effects that are triggered. Moreover, the social component should not target only employees but should also refer to the honest insolvent debtor.

Finally, we believe it is appropriate to sound the alarm concerning the dissemination in too many normative acts of the provisions on guaranteeing employees' rights in the case of an insolvent employer, normative acts transposing EU law, which are, in their turn full of loopholes and implemented in a truncated manner, while for actual legislative solutions, the CJEU jurisprudence is reviewed. In this context there are many situations in which employees do not know their own rights and the way of application and interpretation becomes ambiguous, and it is a good idea for a legislative coherence to prefer a single regulatory instrument.

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# CONSTANTIN HAMANGIU: NOTES ON JURISTS' MORALITY AND LEGISLATIVE UNIFICATION

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## **Abstract**

*Our short study presents two aspects of Constantin Hamangiu's personality and thinking. The former aspect relates to his view on the jurists' morality, namely to the unwritten demand for their abstinence and sacrifices, so that a jurist may be a model for his fellows. The latter aspect refers to the necessity of legislative unification of the Romanian society after having achieved their unitary national state in 1918. This process was a necessary one, as each former province united with Romania used to have its own laws and legal traditions. Therefore, the absence of legislative unification could have lead, on the one hand, to the emergence of an inter-provincial law and, on the other, might have been an element that could undermine the very concept of state unity.*

**Keywords:** *Constantin Hamangiu, morality of jurists, legislative unification.*

## **1. INTRODUCTION**

In this short presentation, we aim at highlighting the personality, thinking and activity of Constantin Hamangiu. Although the topics we have chosen from his activity and conception may seem disparate, they share not only a common paternity but also a message of seriousness and professionalism. The former aspect we chose to present is Constantin Hamangiu's view on the morality of a jurist, an aspect which is still very interesting due to the actuality of the problem. The latter refers to the necessity of legislative unification of the Romanian society after the completion of the Romanian national state in 1918. We circumscribe the latter aspect to the manifestations dedicated to the Centenary of the Great Union.

## **2. CONSTANTIN HAMANGIU: BIOGRAPHICAL DATA**

Constantin Hamangiu was one of the greatest jurists of Romania, with a remarkable activity due to his efforts to systematize the law by realizing the General Code of Romania (30 volumes), a work that encompassed the entire legislation of Romania from the late 19th century and the early 20th century.

He was born in Bârlad in 1867 [1] and attended the Faculty of Law within the University of Bucharest. Hamangiu founded the magazine „Pandectele române” (“Romanian Pandecte”) and he was an honorary member of the Romanian Academy (1930) to which he left his fortune with the request for a fund to be created in order to award “the best novel inspired by the Romanian way of life, the best drama, the best poems and the best Romanian literary critic” [2]. From this fund, great representatives of the Romanian literature were awarded: Liviu Rebreanu, Lucian Blaga, G. Călinescu. Constantin Hamangiu was also concerned with the issue of the intellectual property rights [3].

Furthermore, he was an adviser to the High Court of Cassation, and in 1931 he became the Minister of Justice in the government led by Nicolae Iorga. Constantin Hamangiu died in 1932.

### **3. CONSTANTIN HAMANGIU ON THE MORALITY OF JURISTS**

Constantin Hamangiu represented a true behavioural and attitude model of his time. We consider significant in this respect his concerns about the concretization of a “code” on the moral conduct of jurists. It is worth noting that, during his office as the Minister of Justice, Hamangiu issued a circular that forbade judges to play cards. Obviously, the issue was controversial even in that era “when some ironed the concern of the minister.” Moreover, at the beginning of the 20th century the public opinion could have considered “unhealthy” even a magistrate’s gesture to ride a bicycle, to practice skating or tennis [4]. Even more so today, with an ever increasing democratization and a genuine emancipation of the society, the concern about the morality of such activities can generate passionate debates!

Eugen Petit, one of his contemporaries, agreed with the minister by asserting that it was not natural for “a magistrate to play cards or (practice) other gambling”, as around the table of such a game there would often sit people with the most different ideas on the notion of morality. “Everyone who sits at such a game has in their mind the idea of taking the money of the other.” Whatever the outcome, be it a gain or a loss, it emerged from “the same source of injustice, chastity, and even deception.” In this situation, there could

have easily appeared the dilemma “How will the trialed ones judge a judge who is said to be a master in poker or maus?” [5].

Even though in the early 20th century some people considered playing cards for money or serving “strong appetizers in places that clients left drunk” as fun, Constantin Hamangiu perceived things differently and considered that, through their private life, magistrates had to provide an example, due to their permanently observing moral principles.

In relation to his conception on the morality of the magistrates, a circular was signed at that time, by which the judges could have been recused in certain delicate situations, which concerned their own conscience, outside the “legal motives of recusal” [6]. In this respect, Hamangiu appealed to Clemenceau’s concerns and views on the responsibilities of a citizen and the attributes that may allow one to claim that they are entitled to “judge another person.” The answer was that “the privilege of some people to judge other people” resided in the “social necessity and at the expense of the greatest personal sacrifices” on the part of those involved in the act of justice [7].

In the same field of interest, namely the responsibility and honourability of magistrates, Constantin Hamangiu also addressed another aspect of the moral behaviour of magistrates, i.e. that of loans and debts. It was not about the daily, small debts that were in line with one’s income, as these were circumscribed to the civilian universe and the private life with its economic valences, common to every person. It was about the large debts that could make some magistrates indebted to creditors, and therefore vulnerable.

The debtor of large sums, exceeding their income and in “obvious disproportion with the borrower’s means”, would clearly transform the magistrate into a person “at the disposal of the creditor’s interest” [8]. The validity of such concerns, even in nowadays society, is obvious, as recent posts in the media often report questionable cases about those involved in the act of justice [9].

We consider relevant for defining the personality of Constantin Hamangiu his gesture of donating all his fortune to the Romanian Academy while still alive. His belief was that such a gesture would be beneficial for the greatest scholars of the nation who, as a consequence, would “encourage all the productions of the Romanian brain and soul”

[10]. During a conference on the radio, one of his acquaintances mentioned, one year after the death of the renowned jurist: “Everything he thought, everything he did, everything he planned was entirely for the future.” Significant for what Constantin Hamangiu meant in his epoch is also the rhetorical question of the same contemporary: “Is there any day when the name of Hamangiu is not mentioned at the university, at the bar or in the lawyers’ offices?” [11].

#### **4. CONSTANTIN HAMANGIU ON THE NECESSITY OF LEGISLATIVE UNIFICATION**

Constantin Hamangiu got involved in the issue of legislative unification of Great Romania, as this represented an important topic of our society after the unification of all the Romanian provinces that had been under foreign domination before 1918. The administrative unification was actually fulfilled in 1925, by the Law of Administrative Unification [12]. The process of unifying all legislation was a difficult one and it was achieved in stages. Constantin Hamangiu, as well as other prominent jurists of the age, such as Andrei Rădulescu, Anibal Teodorescu etc.) [13] actively advocated for this aspect.

In this respect, Hamangiu emphasized: “The unification of the law means, at a final and intimate analysis, the expression of the soul unification of a people and, more than that, the synthesis of the historical becoming of a given age within the evolution of a people [...]. The lack of unification leads, in a lethal way, to the lack of harmony, to conflicts between various existing laws in different provinces, to the sporadic and unjustifiable creation of an interprovincial right [our highlight - Gh. C.]”

Furthermore, the lack of legislative unification fatally leads to the lack of the very State’s unity [our highlight - Gh. C.] and, especially, to the “mistrust of some governors over the authority of the State” [14].

The considerations of the Romanian jurist were correct and they represented a warning about the extremely serious consequences that could result from the lack of legislative unity: this could lead to the emergence of an interprovincial law, a situation that almost existed in the real life, and, more than that, it could generate, even if only on the hypothetical level of scenarios, the very lack of the state’s unity.

Moreover, Constantin Hamangiu related the process of legislative unification to both the visible elements and the more profound, invisible ones that give a nation its consistency: "We are the ones to have fulfilled a nation's dream and, therefore, we have the duty to create a mentality that integrates this great historical achievement.

Each of us has the duty to sacrifice the best part of his soul in the realization of this ideal.

With our united forces, with the hope for the better, we have the duty to unite around the same ideal, represented by the Throne, and to make our own contribution, no matter how modest, to this sacred heritage." [15]

His patriotic feelings were interwoven with his actions and permanent appeal to action. Through this kind of energy, the man, the professional and the jurist became a role model for his contemporaries. As one of his collaborators stated, within the aforementioned conference on the radio, one year after Hamangiu's death, the legislative unification was "the achievement dearest to his heart"

At a closer look at the Statement of Reason made by Constantin Hamangiu in 1931, when he made a draft law on Romania's legislative unification, one may easily notice the depth of his analysis. Constantin Hamangiu structured his arguments in three parts, each of them being judiciously analyzed: a) The necessity of legislative unification; b) Legislative unification in other countries, c) The general concept of the project.

The first part, entitled The necessity of legislative unification, included: 1. History of the topic, 2. Interprovincial law conflicts, 3. Public order and legislative unification in other countries, 4. Unity of laws, condition of state unity. 5. France, in the early days after the Union, 6. The need for legislative unification.

The second part, Legislative unification in other countries, presented aspects such as: 1. Legislative unification in France, 2. French Law on Enlargement, June 1, 1924, 3. Legislative unification in Italy, 4. Legislative unification in Poland and Czechoslovakia, 5. Legislative unification in Romania, 6. Unification projects, 7. The constitutionality of the project, 8. Public spirit education.

The third part, The general concept of the project, included: 1. The project economy, 2. The local laws still in force [17].

The draft law on the legislative unification, entitled Draft Law for the Enforcement throughout the Country of the Civil, Commercial and Criminal Law, consisted of 19 articles, organized under three titles : I. General provisions, II. Provisions of the local laws maintained in force, III. Transitional Provisions. This project would have entered into force on September 15, 1932 and it would have marked the grosso-modo realization of the legislative unification of the country, (in spite of some still existing provisions of the old laws, applied before 1918, such as art 8 para. 2) [18]. The adoption of such a bill would have undoubtedly represented a great achievement for the legislation of the epoch, but the project did not materialize and C. Hamangiu did not live long enough to see project come true [19].

## **5. CONCLUSIONS**

The aspects presented in our study, namely the morality of the jurists and the necessity of legislative unification in the Romanian society after 1918, provide valuable keys in understanding the personality of Constantin Hamangiu. Both issues relate to the urge of seriousness in one's behaviour, as well as in legislation and documentation, respectively.

The public conduct of jurists has been a permanent theme of reflection and in the early 20th century, Constantin Hamangiu proved firm and treacherous in this respect, militating for abstinence and personal sacrifices, qualities that, in his opinion, could have given the jurists a moral status that would impose them a model for the society.

The legislative act needed solid grounds, as to the opportunity one should always add substance and fundamentals. Through his legislative initiative, Constantin Hamangiu demonstrated profoundness and thoroughness, aspects that may serve as examples for our contemporaneity, as well.

Modernity, honesty and pursuit of the absolute and the ideal are not assets of the contemporary world and they are to be sought in the past as well. Continuity must exist and, in order to make it possible, it is necessary to know the acquisitions of the past.

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# ANALYSIS OF OFFENCES RELATED TO ILLICIT DRUG USE IN ROMANIAN LEGISLATION

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## **Abstract**

*The study carries out an analysis of the offences related to illicit drug use stipulated by Articles 4, 5, 8 and 10 of Law no.143/2000 on preventing and combating trafficking and illicit drug use. For the purpose of this analysis, the provisions of Article 3 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 and the provisions of Article 2 of Council Framework Decision 2004/757/JHA of the Council of the European Union laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking. At the same time, the study aims to establish whether the provisions of Articles 4, 5, 8 and 10 of Law no.143/2000 on preventing and combating trafficking and illicit drug use have adapted to the provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 and the provisions of Council Framework Decision 2004/757/JHA of the Council of the European Union laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking.*

**Keywords:** *illicit drug use, offences, drugs.*

## **1. INTRODUCTION**

Related to the general drug type, they can be classified into two broad categories

[1]:

- Psychotropic substances, which may be subclassified according to the substances from which they derive, their natural, semi-synthetic or synthetic origin, and depending on the risks to which the psycho-physical effects may arise, and so on.
- Psychoactive substances, most commonly encountered in drug addicts (natural, semisynthetic and synthetic) can also be classified into nine key categories:
  - Alcohol
  - Opiate drugs: latex, morphine, heroin and others
  - Cocaine and its derivatives.
  - Cannabis, marijuana.
  - Hallucinogens.
  - Tranquilizers, sedatives, hypnotics (barbiturates and benzodiazepines).
  - Organic solvents.

- Psychic stimulants (amphetamines).
- Drugs used as medicines.

Another drug classification is the following [2]:

- a. Natural drugs: opium extracted directly from papaver somniferum, morphine, codeine and thebaine, extracted from opium.
- b. Semisynthetic drugs: heroin (diamorphine), hydromorphone (dihydromorphone), dilaudide, oxycodone (Eucodal).
- c. Synthetic drugs with strong effects: methadone (Sintalgon), meperidine, pethidine, demerol (Mialgin).
- d. Synthetic drugs with weak effects: dextropropoxyphene (Darvon), pentazocine (Fortral).

The main drug categories commonly encountered in drug trafficking are the following [3]:

- Opium is the leaked and coagulated latex due to the incision of the capsule of opium poppy - Papaver Somniferum - the drug itself, being the source of most analgesic narcotics (morphine, heroin, codeine). In contact with the air, opium gets brownish to brown. After harvesting, the opium is gathered in lumps or in the form of blocks, and after drying it becomes crumbly, with its soft interior. It has a bitter taste and a smell like ammonia.
- Morphine, the main opium alkaloid, was obtained chemically from crude opium and can be extracted directly, thus without passing through the middle phase of opium production. It is in the form of a fluffy powder, having a colour ranging from dirty white or yellow to brown. Morphine is also a bitter, moisture-soluble substance. Morphine can also be found in tablets or cubes of different sizes.
- Heroin is the most powerful opium alkaloid. It is obtained either by synthesis from morphine or directly from the capsules of papaver somniferum. It is in the form of a very fine, crystalline white powder with a bitter taste, soluble in water and alcohol. At present, heroin is no longer lawfully produced in any country in the world because of the World Health Organization (WHO) ban to be used for therapeutic purposes but continues to be manufactured in clandestine laboratories located in South-East Asia, Western Europe and Mexico, dominating the illicit drug market.

- Cannabis is the plant from which the most popular hallucinogenic drug is obtained, marijuana. The marijuana preparation is a mixture resulting from the extensive maceration of the leaves, flowering heads and fruits of female and male plants of cannabis that have been dried beforehand. Secretion of the female fertilized cannabis plant, a sticky resin, is known as hashish, and from the unfertilized peak of the flower is obtained sinsemilla.
- Cocaine is a powerful stimulant drug of the central nervous system, extracted from *Erythroxylon coca* leaves, presented as a white, crystalline substance, soluble in alcohol, ether and chloroform. When presented in the form of a powder, it can be consumed by nasal administration but is often administered by intravenous injections. Cocaine can be recognized because it affects the tongue or the tissues of the nasal mucosa, causing it to feel cold, and because of local anaesthesia these tissues are blackened.
- LSD - lysergic acid diethylamide - is a very strong hallucinogenic drug, less than 25 micrograms being sufficient to cause visual hallucinations that may take about 12 hours. Pure LSD is presented in the form of a colourless, odourless and insipid liquid, but by illicit trafficking appears as a dirty white powder, tablets or capsules of different sizes and colours.

At international level, the most important legal instruments to fight drug-related crime are the following: the United Nations Convention on Narcotic Drugs, 1961, the United Nations Convention on Psychotropic Substances of 21 February 1971 and the United Nations Convention against illicit trafficking in narcotic drugs and psychotropic substances of 20 December 1988. The offences related to drug trafficking are provided under article 3 point 1 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

At the European Union level, the most important legal instrument in the fight against drug trafficking is Framework Decision 2004/757/JHA of the Council of the European Union laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking. In Article 2 of Framework Decision 2004/757/JHA provides for offences related to drug and precursor trafficking, which resume offences under Article 3 of Convention United Nations against the illicit trafficking of narcotic drugs and psychotropic substances in 1988, with a major difference: the

Framework Decision 2004/757/JHA excludes from its scope the actions that are committed exclusively for the personal consumption of their authors.

The offences related to illicit drug use are provided in Article 4, Article 5, Article 8 and Article 10 of Law no.143/2000 on preventing and combating trafficking and illicit drug use of Chapter II, entitled Penalties for trafficking and other illicit operations with substances under national control.

The text of Article 4 of the Law no.143/2000 provides: “(1) Cultivation, production, manufacture, experimentation, extraction, preparation, transformation, purchase or possession of risk drugs for their own consumption without right shall be punished by imprisonment from 3 months to 2 years or by fine. (2) If the acts provided at paragraph (1) concern high-risk drugs, the penalty is imprisonment from 6 months to 3 years”.

The text of Article 5 of the Law no.143/2000 provides: “Making available, knowingly, with any title, of a dwelling or a place or any other arranged venue in which the public has access for illicit drug use or the toleration of illicit consumption in such places, shall be punished by imprisonment from 2 to 7 years and prohibition of certain rights”.

The text of Article 8 of the Law no.143/2000 provides: “The supply, for consumption, of toxic chemical inhalants to a minor shall be punished by imprisonment from 6 months to 2 years”.

The text of Article 10 of the Law no.143/2000 provides: “The instigation to the illicit high-risk drugs use by any means is punishable by imprisonment from 6 months to 3 years”.

## **2. THE LEGAL ANALYSIS OF OFFENCES RELATED TO ILLICIT DRUG USE**

### **2.1. *The pre-existing conditions***

- The object of the crime

The special legal object of the four offences related to illicit drug use consists in social relations regarding public health, and the secondary legal object refers to the social relations regarding the physical and mental health of the person in the case of the offence provided by Article 8 of the Law no.143/2000, regarding the minor’s health.

The material object of the offences related to the illicit drug use provided by Article 4 and Article 5 of Law no.143/2000 is constituted by the risk drugs and high-risk drugs

subject to national control. The material object of the offence of supply, for consumption, of toxic chemical inhalants to a minor, provided by article 8 of the Law no.143/2000, is composed of substances that are included in the group of toxic chemical inhalants and which are regulated by Order of the Minister of Health [4]. Regarding the offence of instigation to illicit use of high-risk drugs, provided by Article 10 of Law no.143/2000, in the literature [5] it was underlined that it is not material in nature, and agrees with this point of view because the action by which the material element is performed is not exercised against high-risk drugs of material existence.

□ The subjects of the crime

The active subject of offences related to illicit drug use can be any person who fulfils the general conditions of criminal liability. Criminal participation is possible in all its forms: co-author, incitement and complicity. We highlight that the offence of possessing risk drugs and high-risk drugs for own consumption, provided by Article 4 of Law no.143/2000 cannot be committed in the form of a co-author, as this is a personal offence [6].

The illegal drug use offences can also be committed by a legal person as an active subject of the offence, except for the offence stipulated by Article 4 of Law no.143/2000.

On the offence of possessing risk drugs and high-risk drugs for own consumption, we emphasize that the active subject is qualified, being a natural person consumer or drug addict consumer. Law no.143/2000 makes a distinction between the notion of consumer and the addict consumer. Pursuant to Article 1 (h) of Law no.43/2000, the consumer is “the person who administers or allows the illicit administration of drugs by ingestion, smoking, injecting, nasal administration, inhalation or other means by which the drug may reach the body”. According to Article 1 (i), addict consumer means “a consumer who, as a result of repeated and under necessity or need administration of the drug, has physical and psychological consequences according to medical and social criteria”.

The offences related to illicit drug use have a main passive subject and a secondary passive subject. The main passive subject is the Romanian State, as the general representative of society, protecting the health of its members.

The secondary passive subject is the drug-using individual whose health is affected or can be affected as a result of the offence committed. In the case of the offence of supply, for consumption, of toxic chemical inhalants, provided by Article 8 of Law no.143/2000, the passive subject is qualified, the person whose health is endangered being a minor.

## **2.2. The constitutive content**

### The objective side

In the case of the illicit drug use offence provided by Article 4 of Law no.143/2000, the material element of the objective side refers to the following nine activities under para.1 of Article 4: cultivation, production, manufacture, experimentation, extraction, preparation, transformation, purchase or possession of risk drugs or high-risk drugs for their own consumption. We note that these ways of realizing the material element are also found in the offence of domestic drug trafficking, provided by Article 2 of the Law no.143/2000. With regard to the material element, we note that the difference between the offence referred to in Article 2 and the offence referred to in Article 4 consists precisely in the purpose of committing one of the actions incriminated, for own consumption. The offence of internal drug trafficking, provided by Article 2 of Law no.143/2000 and the offence of illicit drug use, provided by Article 4 of Law no.143/2000 are usually committed in real crime contest, these illegal acts being committed both for the purpose of trafficking and for own consumption purposes. The second essential requirement for the existence of the material element of the illicit drug use offence set forth in Article 4 of Law no.143/2000, is that the nine activities are committed without right. We highlight the fact that some drugs can be consumed legally only on medical prescription, which are being consumed only for medical purposes.

In the case of the offence of making available a place for the illicit drug use provided by Article 5 of the Law no.143/2000, the material element of the objective side consists in committing one of the two alternative ways: making available, knowingly, with any title, a dwelling or a place or any other arranged venue in which the public has access to illicit drug use; tolerating the illicit drug use in such places where the public has access.

By making available, knowingly, by any title, of a dwelling or of a place or any other arranged venue in which the public has access, it is understood to offer, for a fee or free

of charge, to one or more persons a dwelling, or any arranged venue for use for illicit drug use.

By tolerating illicit drug use in such places where the public has access means the acceptance or permission of the owner or of the person who only administers that space, of illicit drug use.

In order to exist the offence provided by Article 5 of Law no.143/2000, several conditions must be fulfilled cumulatively [7]:

- the dwelling, the place or any other arranged venue must be open for public access; even in the case of a home, which has an intimate character and is not open to the general public, by making it available to the public, even on an occasional basis, this gets the feature to be open to public access;
- to exist activities of illicit drug use;
- illicit drug use activities must be carried out with the consent or permission of the owner or person who only administers that space;
- people who are offered the venues for meetings have to be illegal drug users.

The offence of making available a space for illicit drug use, provided by Article 5 of Law no.143/2000, is often committed in crime contest with the offence of domestic drug trafficking, provided by Article 2 of Law no.143/2000.

In the case of the offence of supply, for consumption, of toxic chemical inhalants to a minor, provided by Article 8 of the Law no.143/2000, the material element of the objective side consists of doing only one activity, namely the supply of toxic chemical inhalants to a minor for consumption. The activity of delivery can be done free of charge and for a fee. Supply activity should have as object the inhalant toxic chemicals. In accordance with the provisions of Article 1 (f) of Law no.143/2000, the toxic chemical inhalants are “substances established as such by order of the Minister of Health”.

For the existence of the illicit drug use offence stipulated by Article 8 of Law no.143/2000, we are of the opinion that the following conditions must be met cumulatively [8]: the secondary passive subject must be a minor; the material object of the offence must relate to toxic chemical inhalants; supply activity should follow the consumption of toxic chemical inhalants by a minor.

In the case of the offence of instigation to the illicit high-risk drugs use by any means, provided by Article 10 of Law no.143/2000, the material element of the objective side consists of a single action, namely the instigation to the illicit high-risk drugs use by any means.

Instigation is done either orally, through phrases, requests, gestures, by offering money, or is done in writing, or by any means.

The immediate consequence of the offences referred to in Article 4, Article 5, Article 8 and Article 10 of the Law no.143/2000 consists in creating a state of danger for the health of the natural person consuming drugs, which may also be a minor, or the possibility of becoming a drug user.

There must be a causality link between the activity of the offender and the consequence that results from the materiality of the crime.

□ The subjective side

The offence of illicit drug use, provided by Article 4 of Law no.143/2000, is committed only with the guilt form of direct intention, the criminal activity being carried out for own use of risk drugs or high-risk drugs.

The offence of making available a space for the illicit drug use, provided by Article 5 of Law no.143/2000, is committed under the form of guilt of intention, both direct intention and indirect intention. So, in the case of the provision of a space for illicit drug use, the form of guilt with which the offence is committed is only the direct intention, and in the case of tolerance of illicit drug use, the form of guilt with which the offence is committed is direct intention, as well as indirect intention.

The offence of supplying, for consumption purposes, toxic chemical inhalants to a minor, provided by Article 8 of Law no.143/2000, is committed only with the form of guilt of direct intention, since the offender must know the purpose of the supply, this being own consumption.

The offence of instigation to the illicit high-risk drugs use, by any means, provided by Article 10 of Law no.143/2000 is committed only with the form of guilt of direct intention, as the offender foresees and pursues the production of the result by committing the instigation for the illicit drug use.

### **2.3. The forms of the offence**

The preparatory acts are possible, but they are not criminalised and thus they are not punishable.

The attempt is possible and is punished according to the Article 12 of the Law no.143/2000. We note that the attempt is possible and is punished only in the case of the offence under Article 4 paragraph 2 of Law no.143/2000, and in the case of the other offences related to illicit drug use (Articles 5, 8 and 10 of Law no.143/2000), the attempt is not punished.

The consumption of the offences related to illicit drug use takes place at the moment when the material element of the objective side was achieved, which is composed of a series of actions and the immediate consequence happened. Therefore, the offences are consumed when the material element is carried out and the socially dangerous result is produced.

The exhaustion of the crimes related to illicit drug use occurs at the time of committing the last act criminalised by law. The offence can be committed in continued or continuous form.

We note that the offence of illicit drug use, provided by Article 4 of Law no.143/2000, also contains an aggravated form, within paragraph 2 of Article 4, the deed having a more serious character if the material object of the offence is made up of high-risk drugs.

Another aggravating form of the offences related to illicit drug use, only from the Article 8 and Article 10, is that provided by Article 11 of the Law no.143/2000, when the two offences caused the death of the victims.

#### **2.4. Modalities**

The offence under Article 4 of Law no.143/2000 presents the following nine normative modalities: cultivation, production, manufacture, experimentation, extraction, preparation, transformation, purchase or possession of risk drugs or high-risk drugs for their own consumption, without right.

The offence provided by Article 5 of Law no.143/2000 presents the following normative modalities: to make available, knowingly, by any title, a dwelling or a place or any other arranged venue in which the public has access for illicit drug use; tolerance of illicit drug use in such places where the public has access.

The offence provided by Article 8 of Law no.143/2000 presents the following normative modality: supply, for consumption, of toxic chemical inhalants to a minor.

The offence provided for in Article 10 of Law no.143/2000 presents the following normative way: instigation to the illicit high-risk drugs use by any means.

### **2.5. Sanctions**

For the offence provided by Article 4 of the Law no.143/2000, the punishment provided by law is imprisonment from 3 months to 2 years or a fine in the case of the variant-type and imprisonment from 6 months to 3 years, in the case of the aggravating variant.

In the case of the offence referred to in Article 5 of the Law no.143/2000, the punishment provided by the law is imprisonment from 2 to 7 years and the prohibition of certain rights.

In the case of the offence referred to in Article 8 of the Law no.143/2000, the punishment provided by the law is imprisonment from 6 months to 2 years.

In the case of the offence referred to in Article 10 of the Law no.143/2000, the punishment provided by the law is imprisonment from 6 months to 3 years.

### **3. PROCEDURAL ASPECTS**

The criminal prosecution initiates ex officio.

### **4. CONCLUSIONS**

Following the carried-out analysis, we found that the text of Article 4 of Law no.143/2000, concerning possession of risk drugs and high-risk drugs for their own consumption, has fully adapted to the provisions of the text Article 3 (2) [9] from United Nations Convention against the Illicit Traffic of Narcotic Drugs and Psychotropic Substances of 20 December 1988. We also noticed that the texts of Articles 5, 8 and 10 of Law no.143/2000 adapted to the provisions of the text of Article 3 (2) of the United Nations Convention against the Illicit Traffic of Narcotic Drugs and Psychotropic Substances of 20 December 1988. We also point out that the text of Article 3 (1) (c) (iii) [10] of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 was transposed into Article 8 of Law no.143/2000.

We also point out that the text of Article 13 [11] of Law no.143/2000, on aggravating circumstances, adapted to the provisions of Article 3 (5) [12] of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988.

We also want to point out that the provisions of Article 3 (1) (c) (iv) [13] of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 were transposed into Article 12 of Law no.143/2000, which refers to the criminalization of the attempt.

Unlike the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the European Union legislators through the Council of European Union Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, excluded from its scope the acts that are committed solely for the personal consumption of their authors [14]. Therefore, the Romanian legislators, through Law no.143/2000, did not take into account the provisions of the Framework Decision 2004/757/JHA, even though this European legal instrument is binding on national law, transposing into the national legal framework only the provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Substances psychotropic, on the criminalization of acts in connection with the illicit drug use.

Given the serious nature of the offences related to illicit drug trafficking and illicit drug use and the frequency of these offences, we believe that the European Union legislators should, in the near future, amend or supplement the provisions of the Framework Decision 2004/757/JHA, to include in its scope, also the acts that are committed exclusively for the personal consumption of their authors.

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- [10] Article 3 (1) (c) iii) from the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 stipulates: "Publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this article or to use narcotic drugs or psychotropic substances illicitly".
- [11] Article 13 from the Law no.143/2000 on preventing and combating trafficking and illicit drug use stipulates: "The following situations constitute aggravating circumstances: (1) a) the person who committed the offence was serving a function involving the exercise of public authority, and the deed was committed in the exercise of this function; b) the deed has been committed by a healthcare professional or a person who is responsible under the law in the fight against drugs; c) the drugs were sent or delivered, distributed or offered to a minor, a mentally ill person, a person placed in a therapeutic program or have performed such other activities prohibited by law with respect to one of these persons or if the deed has been committed in an institution or education, medical, military unit, prison, welfare centres, re-education or medical-educational institutions, places where pupils and students, carry out educational, sports, social activities or in their vicinity; d) the use of minors in the commission of the deeds referred to in Articles 4, 5, 8 and 10; e) the drugs were mixed with other substances that they have increased the danger to the life and integrity of persons; (2) in the case of the aggravating circumstance, stipulated in (1)c), related to the perpetration of deeds in an educational institution or in places where pupils, students and young people carry out educational, sports, social activities or in their vicinity, at the special maximum stipulated by the law may add an increase that may not exceed 5 years in the case of imprisonment or the general maximum in the case of the fine".
- [12] Article 3 (5) from the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 stipulates: "The Parties shall ensure that their courts and other competent authorities having jurisdiction can take into account factual circumstances which make the commission of the offences established in accordance with paragraph 1 of this article particularly serious, such as: a) The involvement in the offence of an organized criminal group to which the offender belongs; b) The involvement of the offender in other international organized criminal activities; c) The involvement of the offender in other illegal activities facilitated by commission of the offence; d) The use of violence or arms by the offender; e) The fact that the offender holds a public office and that the offence is connected with the office in question; f) The victimization or use of minors; g) The fact that the offence is committed in a penal institution or in an educational institution or social service facility or in their immediate vicinity or in other places to which school children and students resort for educational, sports and social activities; h) Prior conviction, particularly for similar offences, whether foreign or domestic, to the extent permitted under the domestic law of a Party".
- [13] Article 3 (1) (c) iv) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 stipulates: "Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article".
- [14] Article 2 of the Council Framework Decision 2004/757/JHA of the Council of the European Union laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking stipulates: "1. Each Member State shall take the necessary measures to ensure that the following intentional conduct when committed without right is punishable: (a) the production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of drugs; (b) the

cultivation of opium poppy, coca bush or cannabis plant; (c) the possession or purchase of drugs with a view to conducting one of the activities listed in (a); (d) the manufacture, transport or distribution of precursors, knowing that they are to be used in or for the illicit production or manufacture of drugs.

2. The conduct described in paragraph 1 shall not be included in the scope of this Framework Decision when it is committed by its perpetrators exclusively for their own personal consumption as defined by national law”.

## SCIENCE OF LAW - SCIENCE OF KNOWLEDGE ELEMENTS OF CONSTITUTIONAL LAW (I)

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### **Abstract**

*Since in philosophy and the general theory of law, as well as in specific theories of the branch the concept of law is deemed to be almost impossible to define in accordance with the classical rules of Aristotelian logic, by reference to the genus proximum et differentia specifica, it is preferable to explain the concept of law from a cultural, empirical and etymological perspective, the benefit of such an analysis consisting in showing specific constants of social perception and that of the human spirit, regardless of culture, in a broad sense, in which we place ourselves. In a modern doctrine, but inferring the attempt to define law from the point of view of impersonal will as well, in Romanian literature objective law is considered the expression of the manifestation of will of the authority, established in the state for the purpose of promulgating legal regulations. Or equating, synonymically, objective law with the rule of law itself, the law in a broad sense, objective law is deemed the legal standard itself acting in a cultural time and space and having as constituents the rule of conduct itself, social conduct as an attribute (in the sense of the quality that the regulation predicates) and the compulsory nature of the rule which is expressed in the form of the sanction.*

**Keywords:** *law; theory of law; constitutional law; comparative law; justice.*

### **THE LAW - NOTION AND CONCEPT**

The concept of law is a metaphor, the term *directum* being used in a doubly figurative sense, referring to what is, as a general rule, in accordance with the rule, with the law. The etymology from the Latin *directum* can be found in all the European languages. Thus: *drept* in Romanian, *droit* in French, *diritto* in Italian, *derecho* in Spanish, *diretto* in Portuguese, *Recht* in German, *right* in English. [1]

All these concepts, each in their respective language or language family, indicate the idea of direction (*directum*), that which directs (*dirigere*). As such, a *modus vivendi* is invoked, a totality, therefore, of rules involving an authority established in order to notice how such a social charter is applied and followed in society. Because law is a social phenomenon, it exists where we have a more or less organized society (*ubi societas ibi ius*), just as, whenever we identify a legal regulation/rule of law (in social archaeology) we

find the presence of a more or less complex societal organization (*ubi ius ibi societas*). [2]

In a very broad sense, law is considered a synonym of justice; such reporting is, however, lacking, since, in one opinion, it is considered that justice, under a certain aspect, consists in pursuance to a law, while in another opinion, it is claimed that law must be in accordance with justice [3].

In the most general meaning, the term of justice indicates a harmony, a convention, a certain proportion (*congruitas ac proportionalitatis quaedam* - Leibniz), a correspondence of states of affairs to something, to a predefined state.

Therefore, justice pertains to a certain representation of man regarding what is just or unjust, a collective representation which references both a mentality of the individual and of the group, it depends on the developmental and organisational level of a human community, on its historical and cultural experience, on how open or closed off the group/human community is, on the type of moralities [4], on the type of religiosity of social life, on the intensity of interpersonal communication, on the political power/powers, on the system of government, etc.

In a very broad sense, we can say that law translates into a collection of laws, regulations/legal rules, but is not reduced to legality. The legal regulation/rule of law must be complied with, but not fetishised, because legality, behind it is Law, Justice as a state of mind and as a collective mentality in full social movement. The foundation of the legal regulation cannot be anything other than justice, that in accordance with the Idealistic School of law. [5]

Law has its essential source in human nature, namely as subjective human nature, as being subjective consciousness. Law is a relationship between a subject and another subject, it is an inter-subjective relationship, but with a social content *vis-à-vis* one thing, more exactly a good (*res*), or an obligation, with a strongly ideologised content, because the subjects which enter into a social relationship with one another have a certain representation of the fact that the law grants them a certain power or that they have undertaken a certain obligation. [6]

Polysemy, under the aspect of the content of the term law, causes the distinction, in general terms, between five broad meanings in which the concept of law is used: objective law; natural law; positive law; subjective law; law as a scientific subject.

## **THE OBJECTIVE LAW - AN ESSENTIAL PART OF THE LAW**

The concept of objective law means the set, the collection, the totality of legal regulations (rules of law) governing a particular type, a specific area of social relationships (relations), namely the legal relations between natural and/or legal persons. Such totality of legal regulations governing legal relations, state, provide, imperatively request, allow or recommend, recognize or prohibit, in an abstract, general, mandatory and impersonal way, a certain conduct (standard conduct) to subjects entering a legal relation, in certain circumstances, conditions, states of affairs, established by the lawmaker itself, and, having a repeatable character, they indicate the conditions or circumstances in which such relations arise, are modified or extinguished. [7]

Other times, legal regulations grant the subjects of legal relations a certain autonomy of will as regards the manner in which they themselves decide to establish the conduct which they intend to follow.

However primitive a society is in terms of organisation, even at a primitive level, elements of legality are found in its regulations, even if in the types of primitive societies we can speak rather of a specific regulatory religious-moral-legal syncretism.

Such a set of legal regulations are imposed or recognised by a social authority - in pre-state societies - or, as a general rule, by an authority or a set of public authorities, in state or super-state societies - within the European Union.

Law is also included among these tools and techniques of ensuring social order and discipline, as objective law, as a set of legal rules which express the general and abstract will of the lawmaker (in the classical sense of the definition) to impose models of standard desirable conduct in accordance with a set of social values produced, defended, promoted by the society in question, with two observations of content:

a) Although in the classical doctrine the will of the Lawmakers is referred to as an abstract and general will, in fact there is no such thing, because, if we take the term lawmaker in a strict, literal, narrow sense (*stricto sensu*), as a legislative power (in

constitutional terms - the parliament), it should be noted that this power itself, in accordance with the principle of selection (elections), consists of specific individuals, each of them carrying a specific ideological message, certain general and regional interests of the segment of electors they represent, the political program of the party which they represent in Parliament, interests (economic, professional, etc.), carrying its own subjectivity as well. As a result, the general and abstract will of the state is reduced to the sum of subjective, individual wills, therefore being, in fact, a collective will, which, many times, does not always show a clear and close connection to the people who actually draft the regulation provided by the lawmaker, people whose thinking on the drafting of the text of the law is itself determined by factors pertaining to the subjectivity of the group and of culture at that moment;

b) The State represents an abstraction, in fact it represents a legal order and structure of public institutions, necessary for the exercise of power, which, functionally and in order not to generate abuse, is classically separated and according to Montesquieu's phrase, *le pouvoir arrête le pouvoir* (power stops power) - into the legislative power, the executive power, and the legal power. The separation of powers, at the same time, imposes a mutual control of the powers and even an internal control of each power, on a vertical scale;

c) *Lato sensu* (in a broad sense), the lawmaker means not only the legislative power, but also any author of one or several legal regulations. For example: the Executive, issuing government ordinances or decisions; central or local administrative public authorities which issue, on the basis of the powers which are granted to them by law, administrative legal acts of a general nature; the general meeting of the members of a commercial company which is legally constituted, who adopt a decision (in the general meeting, by following the procedure laid down in its articles of incorporation, organization and operation), deemed as a law if, in accordance with the statute-constitution of the company/foundation such a decision is valid (adopted in accordance with the procedures laid down by law); the Court of law, as, in a broad sense, the final and irrevocable decision is itself a legal regulation for both parties to the dispute, as well as for the public authorities which, by law, are tasked with applying the decision issued, in an immediate and strict manner.

In general terms, it is said that the law is a conservative instrument for maintaining public order, that it represents a certain static element of society compared to other, more dynamic methods of regulation.

In the situation in which the imperatives, recommendations or limitations of permissiveness of one of the constituent regulations of the normative set or of the whole regulatory system are ignored, rejected or violated, the logical consequence of the state created represents the activation or, at least theoretically, the appearance of the logical consequence of a sanction, applied by resorting to the public/social authority, which has the use, for a repressive-punitive purpose, of coercive public force, including *manu militari*, whenever the social order and morals - both concepts understood in a paradigmatic context in accordance with the usually average standards of the community (in order for the law to be effective as a set of legal regulations) - is or are threatened, subjected to an imminent social danger.

Thus, objective law can be regarded as a normative order, i.e. a set of powers and obligations which organise social relations, the creation, modification or extinction of which represents the expression of the creative and regulating or moderating factor, called the legal regulation.

As a set of legal rules, the law, in an objective sense - as a phenomenal existence that can be perceived, known and measured sociometrically or by other specific methods and procedures of legal sociology - has a multiple functionality in an existing social order.

As such, objective law can be regarded as a technique of human cohabitation, starting with the elemental form, namely the ritual cult of death as a means of strengthening intra-tribal relationships - where the model prohibition exists simultaneously with the idea of the sacred-profane - legal regulatory pluralism especially as a result of change revealing itself, in all the richness of its manifestations, in our contemporaneity, going from a primary society to a secondary society.

The idea of legal pluralism underlies the doctrine of the Viennese professor Eugen Erlich and begins to be developed through a series of philosophers and sociologists of the legal phenomenon, such as Max Weber, Georges Gurvich, even being a collective research theme for Belgian and French researchers or for those of French culture. For Professor Jean Carbonnier, legal pluralism signifies a double aspect:

- from the point of view of the reality of the legal phenomenon, therefore, from the perspective of the sociology of law, "diversity has invaded the legal environment", because the industrial societies have produced volens-nolens, new centres producing laws, genuinely autonomous areas of law, on the one hand, and on the other hand, a strong rivalry was created between them and state law (the legal normative system legally promulgated/issued by the public authorities/powers of the state) (such as a special, corporate, statutory law, is created within trade unions, commercial companies and other groups of private individuals, or as lay law and canon law coexist in an internal legal order;
- from the point of view of the individual, legal pluralism can manifest as a collective phenomenon, possibly as a mental collective phenomenon, as well as an individual phenomenon .

In other words, legal pluralism consists of the coexistence, of the parallel functionality of two distinct, different bodies of rules of law, but which often tend to regulate the same problem. Legal pluralism can thus be both a material pluralism, and/or a formal pluralism.

As a set of legal rules, objective law is the expression of a general and abstract will of the lawmaker which promulgates or issues, or adopts rules of law, is stated as a general rule. It is the point of view of the classical doctrine of law, in particular that of the jurists of the French school or those influenced by the ideas of this school, jurists who have the Caesarian cult of the Napoleonic Code. It is true, there are also deviations from such a way of understanding of objective law, it being seen, even in the classical French doctrine, as being "the collective consciousness and will substituting individual knowledge and wills, for the purpose of determining the prerogatives, the subjective rights of each".

In a modern doctrine, but inferring the attempt to define law from the point of view of impersonal will as well, in Romanian literature objective law is considered the expression of the manifestation of will of the authority, established in the state for the purpose of promulgating legal regulations. Or equating, synonymically, objective law with the rule of law itself, the law in a broad sense, objective law is deemed the legal standard itself acting in a cultural time and space and having as constituents the rule of conduct itself, social conduct as an attribute (in the sense of the quality that the regulation

predicates) and the compulsory nature of the rule which is expressed in the form of the sanction.

As a matter of fact, we must insist on the compulsory nature of the rule, since this represents the defining feature which delimits law from morals, at least for the European legal mentality, whereas the emergence of legal obligations makes it possible, in historical cultural time, to have an increasingly more coherent intervention - in conceiving a differentiated and flexible system of sanctions - of the state in order to ensure public order and the legal safety of the person, the public will of directing social discipline acting together with the public will to enforce the law.

In general, different reactions to the position, of Caesarian influence, based on which the law represents the expression of the general and abstract will of the lawmaker (of the state, in the legal doctrines of authoritarian systems, as well as of totalitarian ones, if not the will of the single ruling party), emerged, which, in one cultural context or another, gave a different meaning to objective law.

Thus, for example, the historic School of law - a German theoretical orientation that responds to the idea of encoding German law of Napoleonic inspiration and represented by Gustav Hugo, Friedrich Carl von Savigny and Antoine Thibaut - believes that the law reflects national genius of the people to which it belongs.

Other legal paradigms of legal thinking, contemporary to us, consider, however, that objective law is nothing more than the legal order, either seen by itself, or by reference to an international legal order, such as, for example, the School of legal normativism.

However, the main objective in understanding the doctrine of objective law [8] is and will remain subordinated to the line inaugurated by Im. Kant and Hegel, who both see the law under its aspect of rationality.

## **CONCLUSION**

As a set of legal rules, objective law is the expression of a general and abstract will of the lawmaker which promulgates or issues, or adopts rules of law, is stated as a general rule. It is the point of view of the classical doctrine of law, in particular that of the jurists of the French school or those influenced by the ideas of this school, jurists who

have the Caesarian cult of the Napoleonic Code. It is true, there are also deviations from such a way of understanding of objective law, it being seen, even in the classical French doctrine, as being the collective consciousness and will substituting individual knowledge and wills, for the purpose of determining the prerogatives, the subjective rights of each.

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## BRIEF CONSIDERATIONS ON THE ESTABLISHMENT OF THE AMOUNT FOR THE MAINTENANCE DUE TO CHILDREN

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### **Abstract**

*Within the family relations, the legal obligation to maintenance between parents and children is considered as the most important. It is seen as a specific debt, given its finality, namely to insure the material conditions necessary for the fulfillment of the duties related to children's growth, education and training. Starting from these aspects, the current article aims to analyze the legal provisions and practice in the area of the establishment of the amount for the maintenance.*

**Key words:** *family relations; parents; children; the obligation to maintenance; the amount of the maintenance; jurisprudence.*

### **INTRODUCTION**

Throughout history, the family in its ensemble, finds its roots and justifies its reason to be present in the spiritual connections shaped between its members, connections arguing the mutual material and moral support.

Starting from the fact that the existence and evolution of family relations is part of the social life, the legislator has found appropriate to expressly state the personal relations, such as the patrimonial ones between the family members, thus proving the care of the state for the protection of these social relations.

By the express statement of the legal obligation for maintenance between parents and children in the historical succession of the legal provisions (Civil Code of 1864 [1], Family Code [2] and the current Civil Code [3]) it is underlined the importance of the family and the general interest of the society in order to protect the family, and mainly the children.

Currently, the legal obligation for maintenance between parents and children [4] is stated by the Civil Code both in the chapter dedicated to the parental authority, specifically in Art 499 Para 1 stating that "both the mother and father are compelled to provide maintenance for their minor child, by insuring the necessary elements for life, as well as

for education and professional training”, but also by Art 500, Art 510, Art 516 Para 1, Art 525 and Art 529 of the same Code.

### **SPECIFIC ELEMENTS FOR THE ESTABLISHMENT OF THE AMOUNT FOR THE MAINTENANCE DUE TO CHILDREN**

Reiterating Art 94 Para 1 of the Family Code, Art 529 Para 1 of the Civil Code states the general criteria based on which it is determined the amount for the maintenance due to children, namely: the need of the person requesting it and the means of the debtor to support it [5].

For the maintenance due by the parent, its amount shall be determined based on the criteria stated by Art 529 Para 2 of the Civil Code, namely up to a quarter of his monthly net income for one child, a third for two children and a half for three or more children, regardless if they are resulted from marriage, from outside the marriage or adopted or that only some of them have requested alimony.

The guardianship court shall be able to establish an amount for the maintenance, even under this threshold stated by the law, under the conditions in which the creditor’s needs are below and in the same time, it shall take into consideration all the other obligations of the debtor.

If the debtor of the obligation for maintenance has other goods and incomes, beside the continuous ones, the pension shall be calculated also considering these means, thus becoming possible a pension above the thresholds stated by the legislator [6].

The amount of the maintenance due to children, together with the maintenance due to other persons, according to Art 529 Para 3 of the Civil Code, shall not overcome half of the monthly net income of the compelled person.

Unlike the former regulation which referred to the “earnings from work” of the debtor, it can be noticed [7] the fact that the actual law uses the wording “monthly net income”, trying to eliminate the contradictory interpretations given by the jurisprudence for this concept until the entrance into force of the Civil Code.

Thus, in the establishment of the amount for maintenance shall be taken into considerations all cases from which the debtor has permanent incomes (earnings from

work, copyrights, disposal of the use of goods, profit participation, commercial activities, fees etc.), and not random incomes, transfer indemnities, mission allowances, redundancy indemnities [8] or the food norm.

Regarding the latter one, the recent jurisprudence [9] has stated that the intent of the legislator regarding the purpose of the food norm was to insure for certain categories of employees, due to their activity, a certain amount of calories by two means: the insurance of food or an amount of money for the purchase of food. If the equivalent of the food norm would be added to the monthly incomes used for the calculation of the alimony, we would be altering the legislator's purpose by which this indemnity with special destination has been established for.

Also, it has been argued that [10] the food for protection shall be mandatory and free provided by the employer for the employees who work under conditions demanding it. As such, the value-equivalent of this allowance may be considered as a special purpose allowance, which is exempt from any type of pursuit, according to Art 728 Para 7 of the new Civil Code. The purpose of this allowance is for the employee to enjoy a better health condition in order to provide the economic activity, from which the obligation to maintenance due to children be fulfilled.

It has also been shown [11] that no increase in the wages of employees working under special working conditions or the payment of overtime will also be taken into account, since the person who benefits from them takes a risk and an additional effort and they do not give certainty and continuity.

The parent may be compelled to pay the alimony even if he is not employed, but he is fit for work. Therefore, the judicial practice [12] has referred that for as long as the plaintiff is fit for work, he shall not be exempted from the obligation to contribute in the expenses for the maintenance and education of his minor child, found in need, according to the presumption stated by Art 525 Para 1 of the Civil Code. In such case, the amount of the maintenance shall be established by relation to the minimum income level on the national economy, the only objective and general criterion, representing a minimum standard in the area of work incomes which can be earned by the debtor of the obligation for maintenance who is not employed, but has the capacity to work [13].

But, for the case in which the creditor shall prove the incomes registered by the debtor to a different level than the one of the minimum wage, even outside the existence of an individual employment contract [14], and the debtor does not prove otherwise, then the alimony shall be established considering the amount of the incomes proved by the creditor, and not at the level of the minimum wage.

Though, if the parent, even if fit for work, cannot pay the alimony for justified reasons, for instance is registered as student to daytime education, the court shall not be able to compel him to payment [15], for which case the alimony shall be requested from the persons owing it in subsidiary, according to Art 519 of the Civil Code.

Finally, Art 530 Para 3 of the Civil Code states that the alimony may be established as a fixed amount or in a percentage share of the monthly income of the person owing it.

Regarding these provisions, the recent doctrine has justified that the “establishment of the alimony as a fixed amount has great practical advantages and is closer to the legal spirit for the following arguments:

- The difficulty in applying the judicial decision whereby the percentage of the alimony has been established, for the case in which the debtor of the maintenance also benefits from sums not included in the calculation of the net income from which the alimony is being established, namely those non-continual incomes (e.g.: travel allowance);
- There could not be established a percentage for the case in which the debtor is unemployed, has periodical working places or is employed by multiple economic entities;
- The establishment of the alimony as percentage would transfer to the enforcement bodies an attribute of the court, namely to determine the level of income of the debtor of the obligation;
- For the case in which the alimony is being established as fixed sum, it shall be quarterly indexed, according to the inflation rate [Art 531 Para 2 of the Civil Code] [16].

## **CONCLUSIONS**

By the means in which the legislator has drafted in the Civil Code the legal obligation for maintenance between parents and their children, it has aimed to provide a

guarantee of the fair application of the legal provisions and a means to remove the elements which could influence the separation of the family. Though we appreciate the novelties inserted by the current regulation in the area of the establishment of the alimony due to children, we consider that there is room for new additions or modifications.

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## GENERAL CONSIDERATIONS ON UNEMPLOYMENT

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### **Abstract**

*Unemployment is considered to be a negative element of economic development that affects all market-economy countries in varying proportions. There are various ways of estimating unemployment and implicitly different ways of quantifying it.*

*In general terms, unemployment is the negative state of the economy that affects a part of the available active population by not finding jobs. Thus, unemployment can be defined as a surplus of labor supply compared to the level of labor demand, and the unemployed can be considered as working people, who are not able to work, which is a surplus labor force.*

*This paper attempts to briefly present elements relating to fluctuations in the labor market and unemployment, unemployment insurance, the functioning of the labor market, the notion of the unemployed, the forms of unemployment and the natural rate of unemployment.*

**Keywords:** *the labor market, unemployment, forms of unemployment, the causes of unemployment, the consequences of unemployment, the fight against unemployment*

## INTRODUCTORY CONSIDERATIONS ON THE LABOR MARKET AND UNEMPLOYMENT

The labor market is the virtual space where labor relations are organized and carried out, that is, those of the holders and buyers of labor. The good trade on this market is the labor force.

The labor market is the place where the supply and demand of products meet. It has two components: the demand for labor and the supply of labor.

Demand and supply of labor are the effects of the relationship between economic agents and employees, the negotiation of the labor price is done through the nominal and real salary, as well as other mechanisms.

Unlike the other markets, which deal with different categories of material goods or certain values, the labor market is at the center of man as a bearer of physical and intellectual skills, which are components of his work potential. He is, above all, a social being, not just a factor of production, who, besides his needs of existence, has a certain value and personality, is aware of his role in family and society, passionate about his profession or his profession. [1, 219]

The labor market is balanced when supply and demand for work are equal, full employment, but also imbalance when sub-employment occurs (labor supply is lower than demand) or over-employment (demand exceeds demand).

The labor market is by definition inelastic. In the sense that neither the demand for labor does not change in the same way as the change in the nominal or real salary, nor does the supply of labor force not always evolve in terms of price and cost. Some specialists explain this feature because demand and supply depend on many factors other than economic ones. [2, 519]

The emergence of unemployment is represented by the situation where the job offer exceeds the demand.

In the field of employment there are several processes:

- reducing the number and share of the employed population in the public sector;
- the emergence of new forms of employment and diversification of the occupational structure of the population: employers and entrepreneurs, self-employed workers, members of agricultural companies;
- employees continue to remain the main component of the employed population, although they are continuously decreasing;
- increasing employment in the primary sector does not often mean the efficient use of labor resources;
- lack of active employment strategies and policies, as well as realistic programs for creating new jobs and absorbing unemployment at the national level;
- lack of correlation between job offer, qualification, and re-qualification of the unemployed;
- The low interest of economic agents in investing in human capital, especially those in the public sector, is also due to the departure of the most skilled people in the private sector, where they are better paid.

Continuously on the labor market people:

- leave their jobs to find other jobs;
- looking for new jobs as a result of the loss of the current job;
- enters the workforce to look for work for the first time;
- return to work after periods of absence.

At the same time, employers:

- looking for workers to replace those who left, retired;
- makes certain employees available in the hope of finding more capable employees;
- looking for new workers to take up jobs created by expanding their businesses.

Processes that occur in the labor market are influenced by a range of socio-economic, demographic and social factors, both internal and external. The most important are: technical progression, labor productivity, emigration-immigration processes, demographic developments, cultural and behavioral characteristics, working time, procreation, capital, qualification level of the workforce, etc.

## **THE NOTION OF UNEMPLOYMENT**

Unemployment is an economic phenomenon caused by economic crises or recessions, which consists in the fact that part of the employees remains without work as a result of the gap between labor supply and demand; the situation of one who can not engage because of the impossibility of finding a job.

Etymologically, the notion of unemployment comes from the word "chomage" in French, in turn, taken from the Greek language "cauma", which means "great heat", due to which any activity was interrupted. Originally, the notion of unemployment was the interruption of work due to high temperatures. [3, 307]

Unemployment is today one of the least accepted phenomena that affect the economies of all countries.

By the worrying extent, through the complex structures, but especially by the dynamics that change its rhythms and meanings, unemployment has become a macro-social problem that is the subject of a theoretical, methodological and politico-ideological dispute.

In some university treaties, unemployment is analyzed as the aggregate amount of all those persons who are officially unemployed. The most commonly used definition of unemployed economists is the following: the person seeking a paid job, and who does not have such a place on a regular basis.

Unemployed are those people in the available active population who want to work and seek a paid job because they do not have such a place on a regular basis. Among the unemployed people are people who lost their job and new jobseekers who can not find a place to work.

The International Labor Office (UN organization) defines the unemployed person as fulfilling the following conditions:

- is over 15 years of age;
- is fit to work;
- does not work;
- it is available for wage or non-salary work.

In accordance with our legislation [4, article 5, point IV], consistent with that of the International Labor Organization, the unemployed person understands the person who satisfies the following conditions cumulatively:

- is looking for a job from the age of 16 and up to the retirement age;
- health and physical and mental abilities make it fit for work;
- does not work, does not earn any income or performs, under activities authorized under the law, incomes lower than the social reference indicator of unemployment insurance and employment stimulation in force;
- it is available to start working in the immediate future if a job is found. [5, 325]

The International Labor Office (BIT) considers that the unemployed person can be defined as the person who: is unemployed, is fit for work, seeks paid employment and is ready to start work immediately (within 15 days).

More often than not, the contemporary unemployment phenomenon is approached and analyzed as an imbalance in the labor market at its national level: as a meeting place and a confrontation between global demand and global labor supply. [2, 567]

From the employment point of view, three ways of combining this factor can result:

- supply and demand for work are equal, in which case equilibrium equals the full one;
- labor supply is lower than demand, where imbalances take the form of work-related shortages, full employment requiring either additional labor resources or a stronger increase in labor productivity;

- Labor supply exceeds demand, part of the labor force remaining out of work.

As a result, the balance of the labor market can be approached from several points of view:

- as a functional balance;
- as a structural balance;
- as an internal balance between work needs and labor resources.

## **CHARACTERISTICS**

Unemployment can be characterized as a negative state of the economy that affects a part of the active population available through job insecurity. Unemployed are all able to work but who can not find work and who can be employed, partially or wholly, only in certain moments of economic development. They represent a surplus labor force in relation to the number of employees, in conditions of profitability imposed by the market economy.

Unemployment can be characterized by the size that expresses both in number and relative as a rate (number of unemployed/active population or number of unemployed/occupied population), intensity, duration, and structure. [6, 456]

Unemployment rates are estimated in two ways:

- absolutely by the number of unoccupied population;
- Relatively, through the unemployment rate.

The level of unemployment reflects the number of people who do not work in relation to the number of people working

The unemployment level is determined by two indicators: the unemployed and the unemployed.

The mass of the unemployed consists of the number of people who at one time meet the conditions to be included in the unemployed category. That is, it consists of the active population available and that of the unoccupied workforce. [2, 519]

The unemployment rate is calculated as a percentage ratio between the average number of the unemployed and the active population, the available active population, the workforce, the employed population, and the employed population.

The most conclusive report on the expression of the unemployment rate is the one in which either the labor force or the available active population are used as the denominator.

Unemployment rate makes it possible to highlight the desire to fit into the work of the population and on the other hand the ability of the economy to meet this desire. The unemployment rate serves to assess the extent to which a society is able to support citizens' right and freedom to work.

Unemployment intensity is another characteristic of the unemployment phenomenon. Depending on this, one can distinguish: total unemployment, which involves loss of employment and total cessation of activity; the partial unemployment, which consists in diminishing the activity of a person, in particular by reducing the working week's duration to the legal one, while lowering the remuneration; disguised unemployment, especially for underdeveloped countries where many people have a low productivity activity. [2, 520]

Duration or period of unemployment is another feature of unemployment. This is the time that elapses from the loss of work to the resumption of work.

The duration of unemployment can be very different, from a few days to months and even years. Therefore, in the assessment of unemployment, it is necessary to determine the average duration of unemployment. The average duration of unemployment is calculated according to two factors:

- the number of unemployed;
- a rhythm of entering and leaving unemployment.

There is no duration of unemployment defined by law, but in many countries, there are regulations of the period for which the unemployment allowance is paid. This period tends to grow, reaching up to 18-24 months.

Unemployment affects to a greater extent female respondents in the age group of 50 years and over (due to the slower process of retraining and reintegration of the elderly population in general and feminine in particular) and to a certain extent those in the aged 20-25 (due to difficulties in hiring young graduates).

The existence of unemployment increases the state's expenditures for the operation of the placement offices, the payment of unemployment benefits, other social expenses related to qualification-re-qualification, and the health care of the unemployed.

## **CAUSES**

The rise and accentuation of unemployment have a number of objectives but also subjective causes. Given the high labor productivity, the pace of economic growth is no longer capable of creating new jobs so as to ensure full employment on the labor market, the gap between labor demand and labor supply being in favor of the latter. Also, economic reversals, the entry of new job seekers into the labor market, and the hesitation of companies from hiring are often quoted.

Technical progress - in the short term, generates unemployment in a higher or lower proportion, depending on countries' financial capacity to assimilate scientific research. Long-term technical progress generates new needs, which are covered by products resulting from new job-generating activities.

The economic crisis - characterized by decreases or stagnation of economic activity, increases the number of unemployed, their integration being at a low level. Absorption of as many unemployed depends on the real possibilities of each country to stimulate economic agents to increase their capital investments.

Economic developments require major job reconversions and higher mobility of workers. Production techniques need to be adapted to the new energy price, have to face the competition of countries that pay low wages and adapt to new techniques.

There are also subjective causes, which are related to the retained behavior of economic agents in hiring young people either because of their lack of experience or that they do not fall into the labor discipline. Among young people, unemployment also occurs as a result of the tendency to look for paid jobs with a higher salary, which delays their active integration.

Generally, if there is unemployment is because businesses no longer want to hire. Staff is expensive because of wages and related tasks.

The deep cause of unemployment is not the lack of work but the blocking of the initiative.

As a global macro-social flow, unemployment is generated by causes related to the economic situation of users, on the one hand, and by the social status of job-seekers, on the other.

Firstly, as a result of an unfavorable social-economic activity or as a result of the substitution of labor through the capital, job loss occurs by part of the employed population.

Secondly, the additional work demands of new generations reaching the legal age of work cannot be met by work users. The young generation faces difficulties in finding jobs for many objective or subjective reasons.

Thirdly, unemployment is on the rise as a result of job demands from second-time workers who decide to offer their work on the market. [2, 521]

In order to deepen the causes of unemployment, such as demo-economic, economic, technical-scientific processes, such as:

- the evolution of the active population;
- the dynamics of national production;
- economic growth rate and change of its meaning;
- internal and international conjuncture, etc.

According to some authors, they all put their mark on labor and on the labor market. The labor market reflects such aspects, directly or indirectly, in the short or long term.

Another cause of unemployment is the strong migration of the labor force. Expanding the eurozone without a well-correlated strategy for adopting the single currency in the candidate countries can generate a strong increase in labor migration, economic experts warn.

The rise or fall of the emigration phenomenon, according to experts, will be correlated with capital inflows, which could reduce unemployment by creating new jobs or increase salaries through productivity gains.

## **CONSEQUENCES**

Unemployment is one of the negative phenomena that occur with great intensity during the transition period. It is an inherent phenomenon encountered in any economy.

If they fall within the limits considered normal, its negative consequences affect a small number of people.

Unemployment is the opposite of occupation, reflecting man's inability to use his ability to produce economic goods. Through unemployment, work suffers a process of degradation, and cannot be preserved. By its existence, unemployment causes the loss of part of the potential output of society.

Another negative consequence of unemployment is that unemployment benefit, being borne by society's income, causes a reduction in the income of those who work. Unemployment worsens the living conditions of the population, primarily the unemployed, causing the decline in consumption of economic goods. It feeds antisocial acts, many of which are made by those who do not work.

A bad consequence of the "unemployed" status with future implications is the tendency of young people to hesitate to start their families. As a result of this trend, natality decreases.

Another consequence of unemployment is that it causes the desire to learn the future generation to be reduced; the thought of becoming unemployed is likely to diminish the aspiration towards the book, towards school.

Unemployment appears as a phenomenon that generates various physical and mental disorders. These depressive states can also be the causes of job loss at some point.

The consequences of long-term unemployment are even more painful for the individual; if a person remains in long-term unemployment, his competence and experience are further degraded, which diminishes the interest of potential employers towards that person.

Unemployment has very different negative consequences, including tense family ties, social isolation, the inability to keep up with issues of professional competence, low morale, lack of self-confidence.

Through its negative consequences, unemployment has become one of the global problems of mankind. If thousands of people, especially young people, find themselves unemployed and confused by permanent inactivity, they will be condemned to a state of frustration.

The immense costs of direct or indirect unemployment imply that this phenomenon is a waste of human and financial resources generated by the incomplete use of production funds with implications for social costs.

Direct costs are highlighted in the form of financial payments to the fund for the social protection of the unemployed, which is mainly used to pay unemployment benefit, support allowance, qualification and re-qualification of the unemployed, as well as costs, as a rule, are taken into account at estimation of unemployment expenditures as a major social risk factor; they are an essential element in estimating social costs.

Indirect costs are generated by the overall decline in production and incomes that the entire population could benefit from. They take the form of production losses caused by the neutralization of capacities and technical equipment, which implies the reduction of budget revenue generation resources, the deterioration of qualifications and the capacity to work, the discouragement of staff on a professional, social and human level.

Unemployment occurs as a result of unfavorable social and economic developments, due to the additional labor demands of the new generations or because of the job demands of the second-aged persons.

### **FORMS OF UNEMPLOYMENT**

Nowadays, as dominant forms of unemployment, we find: conversion unemployment, repeat unemployment and exclusion unemployment.

Conversion unemployment is a phenomenon that affects employees who have stable jobs up to licensing, with no longer working lives.

Repeated unemployment includes those who know a succession of periods of activity and unemployment, and those with poor qualifications are affected.

Exclusion unemployment brings together the active population, which includes older, less qualified or long-term unemployed, regardless of whether or not they receive the unemployment allowance.

We can distinguish several forms of unemployment:

- cyclical unemployment is generated by the evolution of the economic cycle;
- conjunctural unemployment is the effect of economic activity constraint under the impact of economic, political, social, domestic and international conjuncture factors.

- structural unemployment results from the reconversion of some economic activities;
- technological unemployment is the effect of introducing new technologies;
- disguised unemployment includes persons declared and registered at the Employment Office in the unemployed category, but who are in fact on the gray labor market. They work without a contract of employment but enjoy all the rights provided by the law on the unemployed.
- intermittent unemployment due to reduced mobility of the labor force;
- seasonal unemployment is linked to the decline in economic activity in certain seasons of the year;
- frictional unemployment that corresponds to the period of time required to move from one job to another or to search for the first job
- total unemployment means job loss and total cessation of activity (bankruptcies, restructuring of the company profile, closure of unprofitable units).
- The partial unemployment consists in reducing the working time below the statutory level with the corresponding reduction of the salary (the incomplete week or lower working day).

Cyclical unemployment is dependent on cyclical fluctuations over the medium term, unfavorable conjuncture periods increasing its size, while in the favorable ones it resorts to a good extent. In the crisis, unemployment is rising as a result of contraction, falling production, economic activity and rising bankruptcies, especially small and medium-sized enterprises.

Structural unemployment is the consequence of the deepening of the division of labor, the specialization of the economic activity and of the structure of the labor market. Structural changes may occur at the national and regional level. As a result, there are discrepancies between the required qualifications and those available to the job seekers. The extent of structural unemployment depends on three factors: the rapidity with which changes in demand and supply of goods and services occur in the economy. The faster they are, the more structural unemployment will be; the degree of regional concentration of economic activity, or the lack of diversification of products and services; the characteristic of most of the jobseekers - immobility. [2, 522]

Technological unemployment is related to the replacement of old techniques and technologies with new ones. Such an operation is conditioned both by the transition from the propulsion branches of the old technical way of production to those of the new technical production mode as well as by the process of centralization of capital and concentration of production.

Involuntary unemployment corresponds to an "unoccupied" situation of an active, working-age person who does not have a job or vocational training to provide a job but wants to change his position in a job situation by asking enrollment at a specialized office assigned to work. [7, 6\_7]

A particular category of unemployment is disguised unemployment. It includes those persons registered as unemployed but who actually work without a contract of employment while enjoying all the legal rights of an unemployed person.

Unemployment is caused by insufficient workforce mobility or discrepancies between available and required qualifications; it may also be the consequence of short-term employment contracts. Such contracts stem from business uncertainty as well as users' desire to put pressure on employees and unions. [2, 522]

Seasonal unemployment is specific to economic activities that are influenced by natural factors (agriculture, construction), which is also reflected in the demand for labor. It is, as a rule, relatively short lasting unemployment.

Frictional unemployment occurs when some people leave their service voluntarily or through redundancy and consequently for some time they are unemployed. It is possible to find another job very quickly (because these places exist), but the first job offered is not accepted for reasons on both sides. Those seeking work want a job with a higher salary, and those who offer the place, refrain from hiring the person for the reasons that led to her dismissal. It is also possible that this search and job placement will also last for lack of information.

## **COUNTERMEASURES**

Policies and solutions to combat structural unemployment focus on encouraging job seekers elsewhere (areas of activity or regions) by differentiating in pay and

encouraging retraining. These measures are taken by firms. They can also be joined by the authorities (ie intervention solutions) that consist in granting financial benefits (tax cuts) to companies that invest in those regions where unemployment is high, or by funding programs for the required activities.

Another measure to tackle structural unemployment is to set flexible pay rates, through better collaboration between the unions and the management of companies, that tariffs be adjusted according to the rate of inflation.

In order to reduce the duration of frictional unemployment, it is advisable to provide more detailed information about job vacancies and vacancies through employment offices.

Another solution is to reduce the unemployment benefit, but it is strongly contested, which is why it can be considered a controversial solution.

The method of extending pupils' education and early retirement has long been a costly and ineffective measure. Another measure to reduce unemployment was to create services shorter than 8 hours in order for a job to be occupied by two employees. [2, 116]

Active policy measures to reduce unemployment are:

- The new employees are a probationary period, while they receive a lower pay, flexibility of working time, ease of work contract termination and flexible wage rates after the economic conjuncture
- training and training the unemployed in the way they have to look for a job
- the integration of those who live in the country and have a foreign citizenship in this process
- raising the level of qualification and training of schools

In many situations, the active measures have the effect of increasing the number and intensity of barriers in the labor market, accentuating unemployment.

The elimination of all labor market barriers (labor law specific rules) would have the effect of eliminating any form of involuntary unemployment, increasing competition among employees for the best jobs (wages and higher working conditions), increasing competition between employers for the best employees, the effects being the increase in labor productivity, the reduction of bureaucracy, the generalized increase of the real incomes of the population and the desire of people to train themselves.

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# THE LAW CONNECTED TO SOCIETY OR THE LAW BASED ON COERCION

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## **Abstract**

*Starting from the premise that the law is at the same time projective and protective, it is necessary to see the degrees to which it is projective and protective. Is the law connected to society, following the social relationships, or does it have coercion at its core? To answer this kind of question, it is necessary to outline the differences between the anglo-saxon and the romano-germanic family of law. What is aimed for is the highlighting of the general traits of the two systems of law, the determination of the role of the judge in the two systems, but also the advantages and disadvantages that a lawyer has in. These problems are the aspects we will focus on in the analysis of the two models.*

**Keywords:** *projective law, protective law, systems of law, advantages, disadvantages etc.*

## **INTRODUCTION**

The law entails two types of functions: one the one hand the protection function, which defends the individual from the state, manifested through a regime of spontaneous development of the rules of law, and on the other side, the projective function of law, a traditional continental function manifested through social statism, which offers the state a primordial role in the organization and administration of the social life.

Thus, with regards to modern democracy, we are currently in the presence of a coexistence of two theories cantered on different subjects, the individual in the case of the pre-eminence of the protective [1] function and the state in the case of the projective [2] function.

Starting from the premise that the law is at the same time projective and protective, it is necessary to see the degrees to which it is projective and protective. Is the law connected to society, following the social relationships, or does it have coercion at its core?

To answer this kind of question, it is necessary to outline the differences between the anglo-saxon and the romano-germanic family of law. What is aimed for is the highlighting of the general traits of the two systems of law, the determination of the role

of the judge in the two systems, but also the advantages and disadvantages that a lawyer has in. These problems are the aspects we will focus on in the analysis of the two models.

### **THE ROMANO-GERMANIC LAW SYSTEM**

Thus, as regards the Romanian-German law system, which includes the Romanian law system, we can say that it is differentiated by the fact that it is based on the bill of law as a source of law. The existence of written law, the hierarchy of the sources of law, its separation into public and private law, but also in branches of law are other characteristics of the romano-germanic family.

States that emphasize the bill of law as the main source of law call for security as the argument of this choice. By publishing the law, it is ensured that it is known, an unrealizable aspect with the help of custom, which is ambiguous and uncertain. Written sources are considered to be factors of stability and security of the law.

However, this choice involves some counter-arguments. We can say that "the fixity of the law is a brake on the process of its adaptation to social evolution and risks a rupture between law and fact." [3] Moreover, the custom is said and applied, having an unwritten character, yet it is not incompatible with the idea of organized society.

Although in the modern times, due to the increase of the powers of the state, of the numbers of legislative and judiciary bodies, a multitude of legislation has emerged, the custom still preserves its role, as there are countries that still know the habit. Also, the law is often inspired by it. In view of this, we can say that "habit can appear as a complement to the law, when the law refers to it and can be taken into account whenever the law does not intervene, for the law cannot abolish the habit. [4]

By referring to the doctrine we can say that it helps to interpret the law. It often reveals errors in the law, highlights the inadequacy of a provision to the needs of society, and outlines the solution that should be applied to a given case.

Although in Roman-German law the doctrine is not a source of law, it has an influence on the achievement of legal norms where there is a legislative vacuum.

With the evolution of society, the role of legal sources also changes. Their position is not static. Thus, with the evolution of the legal technique, the importance of the sources of law also changes. In support of this idea, referring to Romanian law, we can bring the following arguments: [5]

1. In certain situations, custom has been established by law. For example: in matters of servitude and neighbourhood relations, in the field of house sales, etc .;
2. Although judicial practice has had only consultative value, it is in fact a true source of law. Analysing verdicts, decisions, judge orders, it is noted that the judge applies the law both in its letter and in its spirit by reference to judicial practice;
3. The doctrine, like the judicial precedent, finds its applicability, with specialist opinions being used by lawyers as an instrument in the application and interpretation of the law;
4. As regards both labour law and international law, the contract has been established as a source of law, establishing rules of a general nature.

An extra argument, in addition to the above, due to social, economic and political evolution, the traditional vision imposed by the French Revolution, in which only the bill of law is a source of law, was rethought in favour of the pluralism of the sources of law, which cancels the monopoly the state in creating the law. Thus, in the contemporary legal order, among the many sources of law are also the conventional international sources, namely the treaties.

Also referring to Romanian law as a Roman-German origin, being a state of law is based on the principle of the separation of powers in the state.

In modernity, the principle of the separation of powers in the state is adopted by more and more democratic states either at the level of the fundamental act or as a general principle of constitutional nature through the work of the constitutional judge.

The principle of the separation of powers in the state presupposes that the functions of the state are attributed to distinct organs and, at the same time, independent of one another, in such a way as to be able to aspire to the pursued goal, namely to guarantee individual freedom from the public powers.

In Romania this principle is enshrined in the Constitution. Thus, art. 1 par. (4) states that "the State shall be organized according to the principle of separation and balance of power - legislative, executive, judicial - within constitutional democracy".

Although this principle implies important regulatory consequences, we will confine ourselves to what is of interest to us from the point of view of the comparison of the two systems of law, namely the role of the judge.

The principle of the separation of powers in the state underlines the idea that the judge can only settle legal conflicts between different legal subjects, being forbidden to legislate or apply the law. The role of the judge is different depending on the legal system in which he is used, in the Anglo-Saxon law, the precedent being mandatory while the Roman-German law excludes the precedent.

In Romanian law, the consecration of the principle of the separation of powers in the state in the Constitution has, as far as the judge is concerned, the following consequences: the judge will not be able to pronounce a decision if there is no litigation in the state of judgment. Moreover, he will not be able to adopt guidance decisions or to formulate a general and binding rule for ordinary courts.

This principle is also supported by the provisions of art. 5 par. (4) of the Code of Civil Procedure, which states that "It is forbidden for the judge to lay down general binding provisions by the judgments he makes in the cases that are submitted to his judgment."

The same article provides in par. (2) that "No judge can refuse to judge because the law does not state, is unclear or incomplete." Thus, the judge will be forced to judge any kind of litigation that is subject to trial, not having the possibility to refuse, by adopting decisions of principle in order to cover the legislative void.

The interpretation of the legal norms aims to highlight the exact meaning of the interpreted rules and is therefore an intellectual process that leads to the establishment of the meaning of the legal norm, to the verification of its applicability in relation to a certain factual situation, to the exact determination of the meaning of the terms used by legislator, but also to establish the limits of the respective rules applicable to a certain factual situation.

It is thus observed that the process of interpreting the legal norms entails two stages: first, the one in which the authentic sense of norm is sought, and second, the stage in which one seeks to apply and connect this authentic sense with the concrete case. The need to interpret the rule is thus outlined.

Speaking of the necessity of applying the norm, we can state that this is based on the following situation: although the law enforcement body faces a system of rules of a general and impersonal nature, it must clarify as clearly as possible the text of the legal norm and achieve the compatibility between the norm and the case. The necessity of this

is also due to the fact that the legal system has gaps, to the specificity of the legal language, to the internal contradictions that arise in the legal system, and to the dynamics of the finality of law [6].

Therefore, as interpreting by a judge when a dispute is settled, the effects of judicial interpretation are not mandatory, they apply only to the litigants.

Moreover, in his / her work, the judge will be able, when dealing with a case, to carry out only a review of the legality of acts issued by the administration. The judge will not be able to force the administration to issue a specific administrative act. However, court judgments must be motivated, so the judge can also be an interpreter, the law defining only the framework and providing only the directions.

With the development of society, the law must keep up with it to predict and prevent the directions in which it develops. The law should be a step forward, so there must be a spontaneous development of rule of law. In modern times, the bill of law no longer represents all of the law, and the judge cannot be the one who issues the law. He holds the power of interpretation, of adapting the texts, which implies a certain normative power.

In Romanian law, the judge is not the central figure, however, the principle of the independence and immovability of judges is enshrined in the law of judicial organization. Moreover, we encounter a hierarchy of jurisdictions, which helps to elaborate the law freely, without restrictions and without subordination.

### **ANGLO-SAXON LAW SYSTEM**

As far as the Anglo-Saxon law system is concerned, unlike Roman-German law, where the basic source of law is the bill of law, the basic source of law is the norm formulated by judges and expressed in judicial precedents. Therefore, it is a common law-based court system. The common-law rules, less abstract than those of the Roman-German family of law, refer to instances of a case and not general rules, which may apply in any case. So the judge is the central figure of this type of law. It is he who reveals the right and protects individual rights.

Common-law comprises a set of rules of law established by judicial precedents. Judgments do not limit their effects only to the parties to the litigation which are the subject of the judgment, but they bind both the court which has ruled them and the lower courts, and they are obliged, in similar cases, to pronounce the same solution.

Anglo-Saxon family is also part of English law. It appears as a judicial right, developed by judges in the process of examining individual cases. Within it, the law does not divide in public and private, but in common law and equity law. Due to the fact that English law has gradually developed through judicial practice and legislative reforms and that the courts have a common jurisdiction, the other branches of law are not so well articulated within English Law. For example, there are no European-type codes in England, and the English doctrine does not address the issue of structural divisions of law, putting more emphasis on the result than on theoretical arguments.

There are also differences in the identity of some fundamental institutions, concepts and techniques. English law uses some completely different concepts. Thus in English law there are terms such as "trust", "real property", "personal property", and "consideration" that do not exactly correspond to the Roman-German law.

As regards the differences of perception regarding the protection of the rights of individuals and private collectives against governmental intervention between the British and the French or German systems, there is a clear outline of them since Enlightenment. An undeniable source of these differences is closely related to how human nature is perceived. British Illuminists, compared to the French or German, believe that interests, passions or desires are those that govern human conduct rather than pure reason.

As an argument in support of the idea that the law is connected to society, following the social relations we bring the following quote that outlines the political and moral philosophy of England through the Enlightenment: «The thinkers trained in this spiritual tradition do not regard the social arrangements - laws, rules, institutions - as materializations of rational anticipations or abstract projects, nor as results of deliberate conventions made by "rational" individuals. They always insist that the moral and political order of society grows spontaneously, through the interaction of individuals who pursue their own interests without subsuming common common ideals. The result of this interaction is always profoundly different from what is expected and consciously pursued by participants in "social play". The life of the community (its success as a whole) therefore does not depend on any "good intentions" of any "rational", "beneficial" or "ideal" nature of some theoretical schemes whose application would be required. It is too complex to be foreseen or planned; particular circumstances and involvement play a too

much role for reason to control or direct things. Therefore, neither the individuals - no matter how wise they are - nor the political power can and should never aspire to the establishment and imposition of a social, economic, political or moral order considered a priori "optimal". The only way to achieve a collective "optimal" human is to encourage individual freedom (within the limits of the natural legislative framework), tolerance of the personal initiative and acceptance of the "naturally" occurring outcome through the legal cooperation of all the participants in the game. Experience, and not the abstract criteria, indicates the best final form that the life and work of the community have to wear. The choices of people, but especially the habits, traditions and institutions that have been verified over time, which have grown - as we would say today - "organically" must always be respected, because they only guarantee the success of social cooperation. Any mixture based on preconceived ideas on theoretical principles, whether they are "generous" in the spontaneous evolution of the social "organism", is in fact a dangerous abuse. Limiting the interference of the political power of the state, in the life of society, refraining from any attempt of "brutal change" of the way people are the first condition of the welfare and happiness of a community. » [7]

The idea that the right has to follow social relations rather than constrain it is also apparent from David Hume's assertions in *A Treatise of Human Nature* that "The more the principles that support a particular kind of society are less natural, the greater the difficulties that a legislator will have to face in their cultivation and promotion will be. The best policy is to conform to the usual propensity of the people and to add to that nature all the improvements that it is capable of" [8]. He also states that the only rule of leadership that is known and accepted by people is custom and experience because reason is so uncertain that it will constantly be subject to doubt and controversy.

A criticism of excessive reasoning is also supplied by Edmund Burk through supporting the idea that "the reason of the individual, and the thinking of a generation, communities, or epoch, is not infallible and therefore cannot constitute the sole foundation of collective existence. Tradition and even preconceived notions (which still contain a kind of practical wisdom, useful as an expeditionary tool) are called upon to help reason." [9]

Moreover, in his claims, "not even the most eminent people, nor the political geniuses produce perfect plans and projects, and as such no society can be based solely on the theoretical wisdom of a single generation or doctrine." [10]

## **THE ACTIVITY OF COMMON LAW LAWYERS AND LAWYERS IN ROMAN-GERMAN LAW**

Taking into account the activity of lawyers qualified in common-law and those of Roman-German law, we can say that the differences between the two systems of law also influence and the way in which the lawyers operate. The two legal cultures have different styles of solving of concrete cases. A highlight of these is made by Neil McGregor, managing partner at McGregor and Partners S.C.A. in an interview with Bizlawyer. [11]

A first difference is that continental law only limits contracts to the code of law and other normative acts as opposed to common-law. The latter offers greater freedom of creation, especially since the volume and speed with which contracts are created nowadays lead to an impossibility of legislation to keep up with the needs of the market. Starting from the idea that jurisprudence is not a source of law in continental law, one can notice the main differences of mentality of lawyers in both jurisdictions. Thus, they start from different principles of how the judge will interpret certain contractual clauses, in common-law, emphasizing the principle of priority of external behaviour over the internal will of the parties, which leads to greater flexibility of the English lawyer as opposed to the continental lawyer who is rather technical, seeking to cover his arguments with the help of laws and documents. While the Continental lawyer is paying close attention to complying with the legality of the contract in order not to introduce a null or void clause, the English lawyer is more focused on how to execute obligations in order to get the most benefit for his client.

In British law, it is not necessary to enter into the contract in a certain form. What matters is the clear wording of the rights and obligations that the parties have agreed upon. From this point of view, the position of the English lawyer is more advantageous, and he has the possibility to negotiate clauses that clearly highlight the will of the parties.

Another difference is that in English law priority is given to the reparation of the damage by providing material damages, while continental law prioritizes the natural execution of obligations

## CONCLUSION

In view of the above, it is noted that the features of each system create a specific legal mentality. This idea is also supported by René David's statement that "When a lawyer formed in the school of a particular legal system feels he does not understand anything from a foreign legal system, that is the best sign that he belongs to a different law family" [12].

It is noteworthy that due to an accelerated globalization, the two systems of law are increasingly intermingling, so that the Roman-German law has begun to reconsider the judicial precedent, while in the law system based on common-law, juridical legislation is becoming more and more important.

Considering this, we conclude by saying that the approach to this issue was done in a balanced manner without exaggerating one idea or another in the desire to emphasize that the right is a social phenomenon that has the role of protecting the individual by adapting to the individual. Law is a person's defender by following social relations, not constraining them.

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# THE PRINCIPLE OF BICAMERALISM REFLECTED IN THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT OF ROMANIA

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## **Abstract**

*The paper aims to highlight the practice of the Constitutional Court regarding the principle of bicameralism, a principle enshrined in Article 61 paragraph 2 of the Romanian Constitution. This principle was recently invoked by the Constitutional Court when it declared the Romanian Administrative Code unconstitutional as a whole. The bicameral structure of the Parliament has implications not only on the organization but also on the way the country's legislative authority works. The law, as a normative legal act [1], the result of the will of the legislative power, must be adopted in compliance with the constitutional, legal and regulatory conditions of the legal technique and procedure. Under these conditions, the principle of bicameralism is included, a principle whose content has been outlined by numerous decisions of the Constitutional Court.*

**Key-words:** *Parliament, law, Constitutional Court, decisions, the principle of bicameralism*

## **1. INTRODUCTION**

The Romanian Parliament has a bicameral structure, comprising of the Chamber of Deputies and the Senate. It is the supreme representative body of the Romanian people and the only legislative authority of the country; its statute being regulated by Article 61 paragraph 1 of the Constitution. The Parliament has a general material competence, having the possibility to primarily regulate any matter of public interest [2]. By adopting the Romanian Constitution in 1991, the tradition of the bicameral parliament was restored. The bicameral structure of the Parliament was first regulated in 1864 by the Development Status of the Paris Convention, which was also taken over by the Constitutions of 1866, 1923 and 1938. Bicameralism was eliminated during the communist period, when the role of legislative authority was played by the Great National Assembly, a unicameral body.

By its place and role within the constitutional architecture, the Parliament is regarded in the literature as “a central institution of the development of democracy” [3]. Until the revision of the Constitution in 2003, the legislative power functioned in a genuine or integral [4] bicameral system in the sense that the two Chambers had the same legitimacy, the same way of organization and the same attributions in the legislative and parliamentary control plan [5]; the modification and completion the fundamental law made the system conceived by the Constituent Assembly in 1991 to lose its significance or, as one author [6] argued, “following the constitutional review, the Parliament of Romania has turned from a bicameral Parliament into practically three unicameral parliaments”. With the revision of the Constitution in 2003, a functional bicameralism system has been put into operation.

The Constitutional Court, in its jurisprudence [7], has appreciated that the bicameral system concretizes the separation of powers not only among the classical, legislative, executive and judicial powers, but also within the legislative power.

The principle of bicameralism, as a principle of organization and functioning of the institution of the Romanian Parliament, is found regulated in Article 61 paragraph 2 of the Romanian Constitution. The rules contained in Article 61 paragraph 2 of the Constitution must be, however, corroborated with those contained in Article 75 of the Fundamental Law on the Legislative Powers of the Chambers of the Parliament, rules which establish, for each of the two Chambers, either the status of the first Chamber to be notified or that of decisional Chamber. The content of the principle of bicameralism has evolved over time, a key role in clarifying its significance belonging to the Constitutional Court, which, through its decisions, emphasized its importance within the legislative mechanism.

## **2. THE PRINCIPLE OF BICAMERALISM REFLECTED IN THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT OF ROMANIA**

Before moving on to analyzing the issues of the bicameralism principle, we appreciate the importance of highlighting the advantages that the Constitutional Court has identified in the case of the bicameral structure of the legislative forum. These were included in the Constitutional Court Decision no. 799 [8] of 17 June 2011, a decision

adopted following the analysis of the draft law on the revision of the Constitution of Romania and which is a reference document for the analyzed matter.

The Court considers that the bicameral system avoids the concentration of power in the Parliament, because the two Chambers of Parliament (the Senate and the Chamber of Deputies) prevent each other from becoming the support of an authoritarian regime. At the same time, there are debates and a framework for successive analysis of the laws by two different bodies of the legislative forum, which offers a better guarantee of the quality of the legislative act. In the bicameral system, the second reading of the law is made by another assembly, compared to the unicameral system in which the reading of the law is made by the same body, and even if it is done several times, there is the risk that the second reading becomes a formality or even be removed for urgent reasons. Another advantage identified by the Constitutional Court is that bicameralism minimizes the risk of domination of the majority, favoring dialogue between the two Chambers, as well as among the parliamentary groups.

Returning to the principle of bicameralism, it is often invoked in the petitions submitted to the constitutional court, being an element of analysis in the extrinsic control of constitutionality, the principle of bicameralism falling within the constitutional norms related to the legislative procedure.

In Decision no. 710 [9] of 6 May 2009, the Constitutional Court has shown that the principle of bicameralism materializes in the institutional dualism at both parliamentary and functional level, the norms contained in Article 75 of the fundamental act establishing the legislative competence according to which the two Chambers have, in the cases expressly defined, either the status of the first Chamber to be notified or the Chamber of Reflection, or the Chamber of Decisions. At the same time, the Court considers that in view of the indivisibility of the Parliament as the supreme representative body of the Romanian people and its uniqueness as a legislative authority of the country, the law, as a specific act of the Parliament, must be the result of the concurrent consensus of both Chambers of the Parliament. The Court considers [10] that the deliberative function of the Parliament can only be achieved in a real and effective manner to the extent that both Chambers express their views on the normative content of the laws they adopt.

Even if the Chambers have, in the matters of the Constitution, their own right of decision the rigors of the principle of bicameralism require both Chambers of the Parliament to debate and express their position on the same content and the same form of the legislative initiative. This latter aspect is also underlined in Decision no. 472 [11] of 22 April 2008, which states that the parliamentary debate on a draft law or a legislative proposal can not ignore its assessment in the plenary session of the two Chambers of our bicameral Parliament. To substantiate this assertion, the Constitutional Court of Appeal states that the amendments and additions brought by the Decisional Chamber to the draft law adopted by the first Chamber notified must relate to the matter envisaged by the initiator and the form in which it was regulated by first Chamber. Otherwise, it is the case that a single Chamber, namely the Decisional Chamber, to legislate, which is in conflict with the principle of bicameralism.

On the same line of ideas is Decision no. 1093 [12] of 15 October 2008 stating that, when debating a legislative initiative, the Chambers have a right to decide on it, as long as both Chambers of Parliament have debated and expressed on the same content and form of the legislative initiative.

By Decision no. 413 [13] of 14 April 2010, the Constitutional Court set the initial criteria, which are essential to determine the cases in which the principle of bicameralism is violated by the legislative procedure.

These cumulative key criteria are:

- a) the existence of major legal differences between the forms adopted by the two Chambers of the Parliament;
- b) the existence of a distinct, significantly different configuration between the forms adopted by the two Chambers of the Parliament.

The law must represent the work of the whole Parliament. This means that each Chamber should make its own contribution to the implementation of the legislative approach, in which case the legislator must respect the constitutional principles under which a law can not be adopted by a single Chamber [14].

By Decision no. 1 [15] of 11 January 2012, the Constitutional Court states that the application of this principle can not have the effect of “diverting the role of the Reflection Chamber of the first Chamber to be notified [...] in the sense that this would be the

Chamber which would definitively fix the content of the draft or the legislative proposal (and, in practice, the legislative content of the future law), which means that the second Chamber, the Decisional Chamber, will not be able to amend or supplement the law adopted by the Reflection Chamber, but only the possibility of approving or rejecting it". Under these circumstances, "it is indisputable that the principle of bicameralism presupposes both the cooperation of the two Chambers in the process of drafting the laws, and their obligation to express their position on the adoption of laws through vote (...)".

A legislative initiative, ruling the Court in another decision [16], may be amended or supplemented by the first Chamber seized without its decision being limited by the content of the legislative initiative in the form submitted by the initiator, as the Decisional Chamber has the right to modify, complete or renounce the initiative in question.

Further to its argument, the Court held [17] that Article 75 paragraph (3) of the Constitution using the expression "decide definitively" on the Decisional Chamber, does not exclude but rather presupposes that the draft law or legislative proposal adopted by the first Chamber notified be debated in the decisional Chamber where amendments and additions may be brought to it, but the decisional Chamber can not substantially alter the subject matter and the configuration of the legislative initiative, with the consequence of misappropriation from the aim pursued by the legislator.

In Decision no. 619 [18] of 3 October 2018, the Court emphasizes the fact that bicameralism is not based on the idea that both Chambers must decide on an identical legislative solution. In the Decisional Chamber, deviations are admitted, which are inherent, from the form adopted by the first Chamber notified, without, however, changing the essential subject of the draft law/legislative proposal. The decisional Chamber has the possibility to set aside from the vote in the first Chamber notified, because otherwise it would limit its constitutional role and the decision-making character attached to it would become illusory. However, the changes to the form adopted by the first Chamber notified must include a legislative solution that preserves its overall conception and being properly adapted [19].

From the analysis of the jurisprudence [20] of the Constitutional Court, there arise the main elements of the principle of bicameralism in relation to which one can decide its observance. These elements are as follows [21]:

1. If there are major, substantial, legal differences between the forms adopted by the two Chambers of the Parliament;
2. If there is a significantly different configuration between the forms adopted by the two Chambers of the Parliament;
3. If the original purpose of the law has been seized, in the sense of the political will of the authors of the legislative proposal or philosophy, the original conception of the normative act.

If, initially, in the process of verifying the violation of the principle of bicameralism, the Constitutional Court insisted on the need for the cumulative existence of the first two criteria, in time it added to the already established ones a third criterion, that of the original purpose of the law. Therefore, only if the three criteria resulting from the jurisprudence of the Constitutional Court are cumulatively met, the constitutional principle of bicameralism is affected, a principle which governs the legislative activity of the Romanian Parliament [22].

### **3. CONCLUSIONS**

In its activity of controlling the constitutionality of the law, namely the extrinsic constitutional control, the Constitutional Court verifies, first of all, whether the principle of bicameralism is respected, given the existence of major, substantial differences of legal content between the forms adopted by the two Chambers, and then looks at whether there is a significantly different configuration between the forms adopted by the two Chambers of the Parliament, as an essential element in respecting the principle of bicameralism, and finally verifies whether the original purpose of the law has been respected. If the three criteria are found to be met, the Constitutional Court declares unconstitutional the normative act analyzed in its entirety. Therefore, the defect of unconstitutionality related to the way of adopting a law affects in its entirety the validity of that normative act in its entirety and the consequence is the termination of the legislative process regarding the respective law.

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# APPROACH TO DISCRIMINATION WITHIN WORK RELATIONS

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## **Abstract**

*The subject of this paper is wholesome, current is approached by the internal legislation of the Romanian state, by community law and by other international regulations that prohibit discrimination within work relations.*

*This paper briefly presents the theoretical concepts of the discrimination notion, the principles of non-discrimination and the legislative acts that regulate this principle both nationally and internationally and concludes with a short analysis of the mobbing phenomenon as well as with a series of conclusions taken from the specialty literature on this subject.*

**Keywords:** *discrimination, equality of chance, the principle of non-discrimination, mobbing*

## **INTRODUCTIVE CONSIDERATIONS**

Discrimination is any difference, exclusion or preference based on race, nationality, ethnicity, language, religion, social class, convictions, gender, sexual orientation, age, disability, noncontagious chronic disease, HIV infection, membership to a disadvantage category as well as any other criteria that has the purpose or effect restraining, removing recognition, use or exercise, inequality conditions, of the human rights or fundamental liberties or rights recognized by law within the politic, economic, social and cultural field as well as any other fields of public life. [1, art. 2]

Discrimination has several forms: direct discrimination, indirect discrimination, harassment and instigation to discrimination.

The most frequent types of discrimination are:

- age discrimination,
- wealth discrimination,
- discrimination based on political conviction,
- nationality discrimination,
- racial discrimination,
- gender discrimination,

- discrimination based on religion,
- discrimination based on sexual orientation.

Discrimination can mainly appear in the following fields:

- closure, suspension, modification or termination of the work relation,
- establishment and modification of work attributions,
- establishment and modification of the workplace.
- establishment and modification of salary,
- granting salary rights or others than the ones regarding salary,
- applying disciplinary measures,
- exercising the right to adhere to a union and the access to its facilities,

Any other condition for work performance according to the legislation in force.

Work relations function on the principle of equality of treatment towards all employees and employers, a principle that is supported and provided by the Labor Code.

According to the provisions of the Labor Code, any direct or indirect discrimination towards an employee based on gender, sexual orientation, genetic features, age, nationality, race, color, ethnicity, religion, political view, social origin, disability, family situation or responsibility, union membership or activity, is forbidden.

The Labor Code clearly differentiates direct and indirect discrimination.

There are considered direct discrimination the exclusion, difference, restriction or preference that have a purpose or effect not granting, restraining or removing recognition, use or exercise of the rights provided by the Labor Legislation. [2, art.5, paragraphs 1-2]

The principle of equality of treatment is regulated by the Labor Code. [2, art.5] According to the European provisions regarding the prohibition of any form of discrimination, the current code provides that any direct or indirect discrimination towards an employee based on gender, sexual orientation, genetical features, age, nationality, race, color, ethnicity, religion, political view, disability, family situation or responsibility, union membership or activity is forbidden.

Moreover, the code also classifies as direct discrimination the exclusion, difference, restriction or preference based on one or more of the criteria mentioned above that have the purpose or effect of not granting, containing or removing the recognition, use or exercise of the rights provided by the Labor Legislation. Direct discrimination is

also represented by actions that are apparently based on other criteria than those mentioned above but has the effects of direct discrimination. [3,29]

Also, the speciality legislation shows that indirect discrimination occurs in the situation where a disposition, criterion or practice that is apparently neutral, especially disadvantages people of a certain gender as opposed to people of another gender excepting the cases in which this disposition, criterion or practice is objectively justified by a legitimate purpose and the means of achieving this purpose are appropriate and necessary. [4, art.4, letter b.]

The principle of non-discrimination within work relations is closely connected by the principle regarding the restrict us of the right to work or labor liberty. [5,21]

The principle of equality or non-discrimination must be equally kept by every individual or judicial person.

Starting with the provision of the Romanian Constitution, the fundamental law of the Romanian state, a series of normative acts from the field have applied this fundamental principle in almost every issue occurring within work relations.

The Constitution, the fundamental law of the Romanian state, establishes the non-discrimination principle thusly: Romania is the common and indivisible country of all its citizens, regardless of their race, nationality, ethnicity, political view, wealth or social origin. [6, art. 4, paragraph (2)]

The Constitution also states that every citizen is equal before the law and the public authorities, without privilege or discrimination. [6, art.16,paragraph (1)]

Starting with this provision the legislator states that the right to work cannot be constrained and every citizen is free to choose its own profession, craft or occupation and is ensured social protection measures that regard their security and health, the work schedule of women and youth, weekly rest, paid leave, work performance under special circumstances, professional training as well as other situations established by law. [6, art.41]

From the need of ensuring the equality of every citizen before the law, the state authorities, the Romanian Constitution provides that the state recognizes and ensures for people of national minorities, the right to keep, develop and express their ethnic, cultural, linguistic and religious identity. [6, art.6, paragraph (1)] The protection measures taken by

the state in order to keep, develop and express the identity of people of national minorities must be in accordance with the principles of equality and non-discrimination in relation with the other Romanian citizens. [6, art.6, paragraph (2)]

The public functions and dignities, civil or military, can be taken, according to law, by people who have Romanian citizenship and live within the state. The Romanian state ensures the equality of chance between men and women for occupying these functions and dignities. [6, art. 16, paragraph (2) and (3)]

In the context of the constitutional provisions, imposing the exigencies of the state of right implies taking more detailed internal regulations that regard work relations. Thusly, according to the provisions of the specialty regulation of our country regarding the prevention and sanction of all forms of discrimination, the principle of non-discrimination is treated as a mean for exercising rights. It is thusly shown that the principle of equality among citizens, the exclusion of privilege and discrimination are especially ensured during the exercise of the fundamental human rights and liberties.

Among them there are:

- the right to equal treatment in court and before any other judicial organ;
- social, economic and cultural rights;
- the right to work, to freely choose an occupation, to have equitable and satisfactory work conditions;
- the right of protection against unemployment;
- the right to equal salary for equal work;
- the right to health, to an equitable and satisfactory remuneration;
- the right to found unions and to adhere to a union. [1, art.1]

## **THE SOCIAL REACTION REGARDING DISCRIMINATION**

The provisions regarding the equality of treatment within work relations are also debated and provided in Law no. 202 of April 19th, 2002, regarding the equality of chance and treatment between men and women, pursuing the elimination of all discrimination forms based on gender within all the fields of public life in Romania.

Thus, from the legal provisions mentioned above, it is observed that the elimination of discrimination forms is done by:

- preventing any type of discrimination by imposing special measures and affirmative actions in order to protect the disadvantaged people that do not benefit from equality of chance;
- mediation by amiably solving conflicts that emerged after some discriminatory actions;
- punishment of discriminatory behavior. [1, art.2]

In the case of public clerks, their work relations belong in the interference zone between labor law and public law (mainly administrative law). [5,123] Within the law regarding the status of public clerks there are provisions regarding the prohibition of any form of discrimination among public clerks based on politics, union membership, religious belief, ethnicity, gender, sexual orientation, material status, social origin or any other criteria of similar nature. [7, art.27, paragraph 2]

The Romanian legislation regarding equality of treatment and the prohibition of discrimination within work relations is connected to the requirements of the European Union ever since Romania's adherence in 2007 and it is completed by a series of normative acts meaning the implementation of European Directives within the national legislation. Thus, on the European level, there is a sole system of laws referring to discrimination.

Our country must conform its labor legislation with the community regulations, firstly with the ones nominated in the White Book in 1995 for preparing the associated countries of Central and Eastern Europe for adhering to the internal market of the Union. [5,30-31]

Every person has the right to equality before the law and to protection against discrimination, these representing an universal right recognized by the Universal Declaration of Human Rights, by the Convention of the Organisation of the United Nations regarding the elimination of all forms of discrimination towards women, by the pacts of the Organisation of the United Nations regarding civil and political rights and economic, social and cultural rights and by the European Convention of Human Rights and the fundamental liberties signed by every state.

The principle of non discrimination is consecrated by several international sources of labor law such as: the European Convention of Human Rights and fundamental

liberties adopted by the European Council, the European Social Charter, the acts adopted by the International Organization of Labor [8], The Charter of the fundamental rights of the European Union, the international Pacts regarding the human rights approved by the General Gathering of the Organization of the United Nations. [9] The Conventions that, by their judicial force, firmly make the states that have adhered to respect and promote those rights, are of great importance. [5,47]

The European Convention on Human Rights, also approved by Romania in 1994, has been put into force in 1953. This provides that the exercise of the rights and liberties that are recognized by the convention must be ensured without discrimination based on religion, political opinion or any other opinion, national or social origin, membership to a national minority, wealth, birth or any other situation, the enumeration of this article representing not a limitation but a mere example. [10, art.4]

Thus, the legislative provision states that for an effective exercise of the right to equality of chance and of treatment regarding employment and profession without discrimination regarding gender, the parts are obliged to recognize this right and to take the appropriate measures in order to ensure and promote its application within the following fields:

- the access to employment, protection against dismissal and professional reintegration;
- professional orientation and training, professional requalification and rehabilitation;
- employment and labor conditions, including remuneration;
- Career evolution, including promotion.

The revised Charter has been named „The Social Charter of the XXIst century". [5, 228-229]

By the meaning of the Convention no. 111/1958, discrimination means: any difference, exclusion or preference based on race, color, gender, religion, political conviction, descent, nationality or social origin, that has the effect of suppressing the equality of opportunity or treatment regarding employment and the exercise of the profession [8, art.1, paragraph (1)]

At the same time, the International Organization of Labor forbids discrimination regarding employment and imposes certain standards for protecting people against discrimination.

For the first time in the history of Europe, the Charter of fundamental rights of the European Union gathers within a single document the whole area of civil, political, economic and social rights. [11, 72-73] Within the Charter, that respects the competence and duties of the European Union and also the principle of subsidiarity, there have been recognized, reaffirmed and developed fundamental judicial norms regarding human rights, the right that especially results from the common constitutional traditions and international obligations of the member states, from the European Convention regarding the protection of human rights and fundamental liberties, from the social charters adopted by the Union as well as from the jurisprudence of the Judicial Court of the European Union and the European Court for Human Rights.

Discrimination of any kind, based on reasons such as gender, race, color, ethnic or social origin, genetic features, language, religion or political opinion or any other kind of opinion, membership to a national minority, wealth, birth, disability, age or sexual orientation is forbidden. [12, art.21, paragraph (1)]

The Charter of the fundamental rights of the European Union provides that every employee has the right to labor conditions that respect their health, security, and dignity. [12, art.31, paragraph (1)]

The Universal Declaration of Human Rights, adopted on 10th of December 1948 and the Convention of the United Nations regarding the elimination of all forms of discrimination regard the right to equality before the law and protection against discrimination as being universal rights.

The principle of equality of treatment between men and women regarding the access to employment, professional training and promotion and labor conditions is consecrated on an European level by Directive 76/207/CEE regarding the application of the principle of equality of treatment between men and women regarding the access to employment, professional training and promotion, as well as labor conditions and the internal legislation plan, by Government Ordinance no. 137/2000 and Law 202/2002 [4], is an application of the more general principle of non-discrimination within work relations.

Directive 89/391/CEE of 12th of January 1989 regarding the introduction of measures for promoting the improvement of the security and health of employees at the workplace, ensures the minimum requirements in what regards security and health at the workplace throughout Europe and gives the employers the responsibility to prevent injuries of any type, including the ones resulting from moral harassment. According to the provisions of this normative act, for diminishing or reducing the risk of psychological harassment, employers must prevent moral harassment, must evaluate the risk of being morally harassed and must take appropriate measures in order to prevent this phenomenon and its consequences.

Directive 2000/43/CE of June 29th 2000 regards the implementation of equality of chance of people regardless of their ethnicity or race and states that the member states are obliged to enforce within their national judicial systems the necessary measures for people protection towards any unfavorable treatment or towards any means that affects them as a reaction to a complaint or procedure that is meant to impose the keeping of the principle of equality of treatment. The principle of equality of treatment is taken into account throughout the member states of the European Union.

Directive 2000/78/CE of 27th of November 2000 establishes the directive measures regarding equality of treatment during employment and throughout the profession, stating that the member states have the obligation to take the appropriate measures to favor dialogue between social partners in order to promote equality of treatment, including the supervision of the practices present at the workplace, by collective conventions, conduct codes and research or exchange of experience or good practices.

The European Parliament has also adopted a motion for a resolution regarding moral harassment at the workplace that invites the member states, in order to counter moral and sexual harassment at the workplace, to examine and, if appropriate, to complete the existent legislation, to reinitialize and standardize the definition of moral harassment. [13, art.33, paragraph (1)]

The Council Directive 2004/113/CEE has the purpose to form a frame for combating sex discrimination in what regards the access to goods and services by applying the principle of equality of treatment between men and women. The principle of

equality of treatment between men and women states that there cannot be any direct discrimination based on gender including the less favorable treatment of women on reasons of pregnancy and maternity and that there cannot be any indirect sexual discrimination either. [14, art.4, paragraph 1]

Recruitment based on physical aspect, height or marital status, requiring sexual relations in exchange for an employment promise, requiring an agreement regarding the current and future pregnancy status, promotion, masculinizing certain fields such as IT, different salaries for the same qualification and experience, exhibiting a male reference standard, placing "obstacles" after returning from maternity leave such as: returning for another post, transfer in another location or city are just a few of the discriminatory situations confirmed by women throughout time.

This discrimination can also be harmful because it is an obstacle for the total integration of men and women in social and economic life. As is the case for the other mentioned Directives, the objective can better be achieved through community legislation.

Within the national legislation, legal contraventions for not keeping the principle of equality of treatment within work relations are mentioned in the provisions of the Government Ordinance no. 137/2000 regarding the prevention and punishment of all discrimination forms, thusly the Romanian legislator has created by art. 19 a national authority that investigates and punishes the discriminatory acts or deeds provided by the Ordinance, namely the National Council for Combating Discrimination.

The right to an equitable trial, provided by art. 6, paragraph 1 of the European Convention of Human Rights, states that every person has the right to be publicly judged within a reasonable term for his cause by an independent court that is partially instituted by law, that will make a decision regarding the violation of his rights and liberties, having a civil character, or over the truthfulness of any legal accusation brought against that person.

In order to solve possible litigations, the law firstly provides the possibility for employees to submit notifications, requests or complaints towards their employer or against them, if they are directly involved, and to request the aid of union representatives in order to solve the conflict at the workplace.

It is possible that harassment acts and the acts of instigation to violence, besides the fact that they represent discrimination, are under the incidence of the national criminal law, especially when they are related to race or ethnicity.

## **MOBBING**

Another type of discrimination within work relations, a phenomenon that is frequent and is gaining momentum in this century, is mobbing, a form of psychological harassment in the workplace, also named psychological terror. According to the one who created and impose the mobbing term within work environments and organization, defines a destructive process; it is constituted by hostile actions which, if isolated, can appear harmless but through constant repetition have dangerous effects. [15,26-27]

Psychological aggression toward people can affect their health and can even have social and psychological consequences.

During the eighties, professor Heinz Leymann introduces the mobbing concept within the organizational environment, separating it from bullying, a term which is sometimes used as a synonym by certain authors. By his understanding, bullying is mainly physical aggression and threatening whereas with mobbing the aggressiveness is most times subtle, occurring by social manipulation, its existence being potentially observed late. What made this pedagogic specialist and doctor in psychiatry particularly interested in this phenomenon were the results of a medical research that concluded that sometimes there is such powerful psychological stress at the workplace that they induce serious physical and psychological illness.

Studies in this field, many of them conducted or done by Leymann himself, have demonstrated that mobbing is a psychological phenomenon that occurs throughout the whole world, especially but now only within large organizations.

Although easier to notice at the workplace, this type of aggression has been also seen in informal groups (eg. teenager gangs). The name of the phenomenon has been thusly chosen so as to make a clear distinction between this and a conflict of another type namely the compulsory implication of a group.

The mobbing term has two meanings for the scientific community, a moderate and a radical one, according to the effects that they have on the target individuals. The moderate understanding of mobbing refers to warning mobbing (of low intensity and

lasting until the victim "understands" to abide by the values and conduct adopted by the group). The radical meaning regards the proper mobbing, seen as "psycho-terror at the workplace" or, according to some researchers, "psychological torture at the workplace".

#### Legislative measures for preventing and countering mobbing

Studies made on this subject have brought into the attention of the European institutions the stress factor at the workplace, in all its forms, as a highly damaging factor for the staff. The norms issued on this subject refer to psychological harassment as "moral harassment" and establish directive measures for ensuring the minimal requirements for labor security. They do not imply any restriction exercised by community organs of the states in any way that means the adoption of a certain set of laws. The Member States have the liberty to choose the implementation method and also can have harsher norms than the ones present in community documents.

Of the European Documents that refer to work relations, the psychological climate and moral harassment the most important are:

- The Charter of the fundamental rights of the European Union that states in art. 31 that „every employee has the right to labor conditions that respect their health, security, and dignity".
- Directive 89/391/CEE of 12th of January 1989 regarding labor security and health ensures the minimum requirements in what regards labor health and security throughout Europe and gives the employers the responsibility to prevent any type of harm, including the one resulting from moral harassment. According to the provisions of this normative act, to diminish or reduce the risk of psychological harassment employers must have the objective to prevent moral harassment, to evaluate the risk of being morally harassed, to take appropriate measures to prevent this phenomenon and its consequences.
- Directive 2000/43/EC regards the implementation of equality of chance of people regardless of their ethnicity or race and states that the member states have the obligation to include in their national judicial systems necessary measures to protect people of any treatment that is not favorable to them or of any means by which they are affected, as a reaction to a complaint or a procedure that is meant to impose the keeping of the principle of equality of treatment (art.9)

- Directive 2000/78/EC establishes through art. 13 paragraph (1) the directive measures regarding equality of treatment upon employment and during profession: the member states take appropriate measures in order to favor the dialogue between social partners in order to promote equality of treatment, including by supervising the practices at the workplace, through collective conventions, conduct codes and research or experience and good practice exchange.

The European Parliament has also adopted a motion for a resolution regarding moral harassment at the workplace by which it invites the member states, with the purpose of countering moral and sexual harassment at the workplace, to examine and, if appropriate, to complete the existence legislation, to reanalyze and standardize the definition of moral harassment.

Adopting a special law, in what regards moral harassment at the workplace, has different standards throughout the member states of the European Union. While some states have already initialized regulatory actions by adopting normative acts (statuses, guides, resolutions), in other states the issue is still being studied. Taking the terminology of the directives above, most states that already have their own regulations for combating mobbing refer to it as "moral harassment" and only a very small number have included the mobbing term in their legislative documents.

Of the community states, France, Belgium, the Netherlands, Denmark, Finland, and Sweden have thought necessary to adopt a specific legislation. Other member states such as Italy, Spain, Germany, Great Britain, and Ireland have decided that the current legislation has provisions regarding the prevention and punishment of mobbing and that specific laws are not necessary.

In Romania, the institutional frame on the problematic of politics of prevention and combat of discrimination forms has developed through:

- G.O. no. 137/2000 regarding the prevention and punishment of all discrimination forms that offers general landmarks of public politics in this domain; this ordinance has been adopted in order to prevent and punish all forms of discrimination including the ones regarding work relations and union right. [3,232]
- H.G. no. 1194/2001 by which the National Council for Combating Discrimination was founded having specific attributions regarding the prevention of discrimination,

mediation of parts in case of discrimination, investigating, establishing and punishing discrimination, monitoring discrimination cases, special assistance to discrimination victims.

- Law no. 202/2002 regarding equality of chance and treatment between men and women. With specific attributions for implementing legal provisions, it is founded by the National Agency for Equality of Chance between Men and Women.
- G.O. no. 84/2004 for the modification and completion of Law no. 202/2002 adopted in the second half of 2004 through which Directive 2002/73/EC of amending Directive 76/207/EEC was wholly transposed regarding the application of the principle of equality of treatment between men and women referring to access to employment, professional training, promotion, as well as labor conditions.

However, a specific legislation regarding the mobbing phenomenon is nonexistent but only indirect mentions and incipient elements addressed by public politics. The Labor Code (art. 5 and 171) has specifications that can also include in their interpretation the managing of mobbing phenomena.

In some private organizations, especially multinationals, there are redacted an implemented codes of good practice within work relations that also include elements of preventing and combating mobbing.

In order to be supported during these situations, one must appeal to the National Council for Combating Discrimination and to an Anti-Mobbing Center.

In conclusion, there must be emphasized that the most important, fundamental and essential objective of every democratic society is a society where all people are equal, have equal chances, have the same opportunities, the same rights and duties within different domains of the social life, all the more that international security itself is connected to the keeping of the fundamental human rights and liberties.

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# TRENDS IN THE EVOLUTION OF THE PENSION SYSTEM IN IN ROMÂNIA

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## **Abstract**

In terms of demographic aging, falling employment rates, the economic and financial crisis, many European countries have problems in ensuring the sustainability of the pension system. In the case of Romania, between 1990 and 2017 there was a sharp increase of the number of pensioners, from 3679 thousand persons in 1990, to 5257 thousand persons in 2017, while the number of employees, who currently support the pension fund, decreased from 8156 thousand persons in 1990 to 4759 thousand persons in 2017. It has thus come to the fact that in Romania the number of pensioners exceeds the number of employees, which raises serious questions about the sustainability of the pension system. The paper highlights some aspects regarding the dynamics and structure of the number of pensioners in Romania during 1990-2017.

**Keywords:** pensioners, public system of pensions, employees/pensioners ratio

## **Introduction**

Ensuring, currently and in the future, adequate and sustainable pensions for EU citizens represents a priority for the Member States of the European Union [1]. In the conditions of aggravating of the demographic aging process that manifests in most European countries, reaching these goals is a major challenge. Member States have tried to prepare for this by reforming pension systems. The financial and economic crisis since 2008 has aggravated and amplified the impact of the strong aging trend on the public pension system.

The regress in terms of economic growth, difficulties in setting up public budgets and employment have led to the need to improve the retirement practices and the modalities of set up the pension rights. The crisis has shown that more efforts are needed to be done to improve the efficiency and security of pension schemes, which not only provides elderly

people the means for a decent life, but also represents a rewards for a lifetime work. In the case of Romania, the pension system has faced a number of problems in recent years, its sustainability being questioned [2].

### **The unfavourable dynamics of the employees/pensioners ratio in Romania**

Starting with 1990, on the background of economic and social measures aimed at restructuring the Romanian economy, there have also registered significant changes in the dynamics and structure of the number of pensioners [3]. In the context of a negative natural increase of the population, amid the sharpening of demographic aging correlated with the constant decrease of the jobs, the persons in the category of pensioners registered upward evolutions especially during the period 1990-2002. As we say, the Romanian pension system has faced multiple problems over the last two decades. According to some authors [4], four periods can be identified in the evolution of the Romanian pension system after 1990:

- *the period 1990-2000*, characterized by contradictory, isolated actions, which seriously affected the sustainability of the public pension system. The measures taken during this period had the effect of:

- doubling the number of pensioners;
- significantly reducing of the number of taxpayers to the public pension system;
- reducing the ratio between the number of employees and the number of pensioners.

- *the period 2001 - 2005*, when in the context of the restructuring of the economy, a complex reform of the pension system started, based on Law 19/2001. Its main features were:

- raising the standard retirement age to 60 for women and 65 for men gradually, until 2014;
- the introduction of the points system in the determination of the pension, which makes a direct link between the contributions and the level of benefits;
- increasing the minimum contribution period to 15 years, gradually until 2014.

- *the period 2005-2010*, characterized by the implementation of:

- the multi-pillar pension system (pillar 1 being PAYG state pensions, pillar 2 of privately managed pension funds and pillar 3 of private facultative pensions);
- introducing the guaranteed social pension;
- the spectacular increase of the pension point and, implicitly, of the average pension etc.

- *the period 2010-2017*, which focused mainly on ensuring the sustainability of the pension system under the conditions of financial, economic and demographic constraints.

The evolution of the number of employees and pensioners, between 1990 and 2017

*Table 1*

	Average number of employees	Average number of pensioners Total (I+II+III)	Employees/pensioners ratio (%)
	thousand pers.		
1990	8156	3679	221.7
1991	7574	4131	183.3
1992	6888	4292	160.5
1993	6672	4476	149.1
1994	6438	4995	128.9
1995	6160	5258	117.2
1996	5939	5417	109.6
1997	5597	5583	100.3
1998	5369	5755	93.3
1999	4761	5941	80.1
2000	4623	6153	75.1
2001	4619	6351	72.7
2002	4568	6378	71.6
2003	4591	6306	72.8
2004	4469	6233	71.7
2005	4559	6067	75.1
2006	4667	5806	80.4
2007	4885	5745	85.0
2008	5046	5701	88.5
2009	4774	5689	83.9

Data sources: Information from Data base TEMPO-on line, NIS Bucharest [6].

Thus, Law no. 263/2010 on the unitary pension system [5] was adopted, focusing mainly on the following:

- raising the standard retirement ages for men and women;

- the procedure for determining the value of the pension point;
- increasing the number of contributors to the unitary pension system with those who earn income from liberal professions, family associations, managers, etc.

It follows from the above mentioned situation the difficult situation of the pension system in Romania caused by the alarming increase of the number of pensioners after 1990. According to the National Statistics Institute [6], in the case of Romania the number of pensioners and employees registered in 1990 -2017, an inadequate evolution (Table no.1).

The evolution of the number of employees and pensioners, between 1990 and 2017

*Table 1-continued*

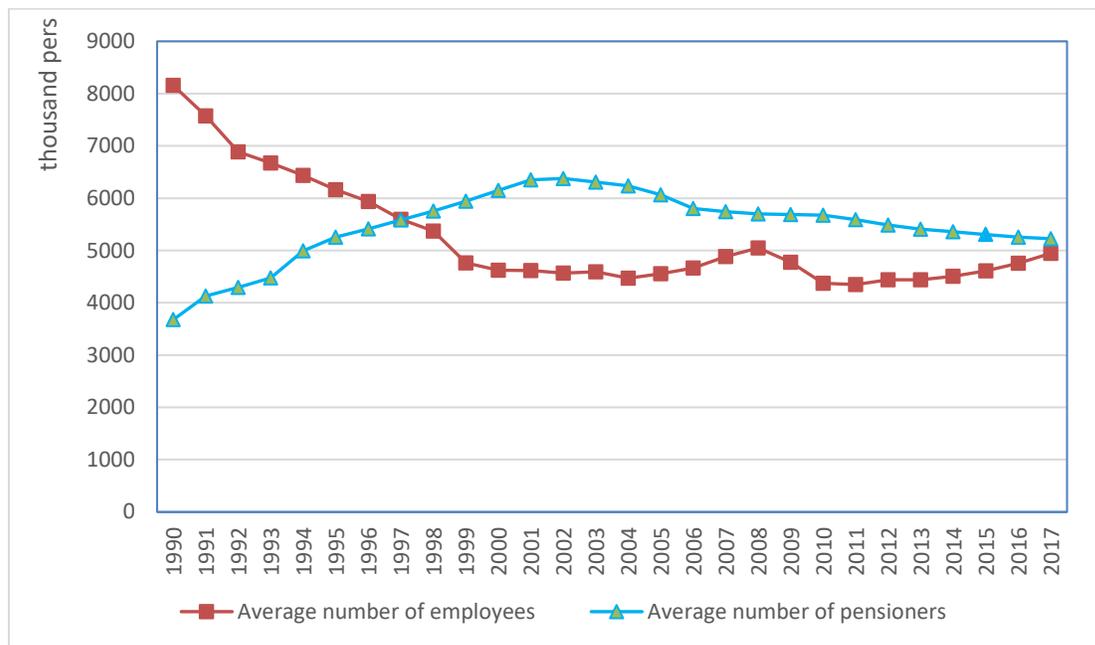
	Average number of employees	Average number of pensioners Total (I+II+III)	Employees/pensioners ratio (%)
	thousand pers.		
2010	4376	5675	77.1
2011	4349	5589	77.8
2012	4443	5487	81.0
2013	4444	5410	82.1
2014	4508	5357	84.1
2015	4611	5306	86.9
2016	4759	5257	90.5
2017	4946	5228	94.6

Data sources: Information from Data base TEMPO-on line, NIS Bucharest [6].

The statistical data from Table no.1 highlights an increasing trend of the number of pensioners in Romania from 3679 thousand persons in 1990 to 5228 thousand persons in 2017 (an increase of 42.1%). The most important increases of the number of pensioners were registered, as shown in chart no. 1, during the period 1990-2002, 2002 being the year with the largest number of pensioners, respectively 6378 thousand persons (Chart no.1).

### The evolution of the average number of the employees and pensioners between 1990 and 2017

Chart 1



Data sources: Information from Data base TEMPO-on line, NIS Bucharest, [6].

Starting with 2003, the number of pensioners is in a continuous process of reducing, the situation being determinate both by the changes in the age structure of the population (shorter generations of pensionable numbers), and especially by the change of the pension legislation.

Both Law 19/2001 and Law 263/2010 set out measures aimed at raising the standard retirement age, which contributed to the reduction of entry into the public pension system. Even if the number of pensioners decreased significantly in 2017 compared to 2002, their number is quite high, taking into consideration the number of the employees currently contributing to the social insurance funds needed to pay pensions. The statistical data from the Table 1 and Chart 1 highlight a negative phenomenon with profound implications, namely a significant decrease of the number of employees, from 8156 thousand persons in 1990 to 4946 thousand persons in 2017 (a decrease of 39,4%).

The decrease of the number of employees was caused by the restructuring of the national economy, the decline of some activities of the economy, the changes in the age structure of the population (lower generations of working age) but also the external migration of the labour force.

This situation, has important negative consequences, especially if accompanied by an increase of the number of pensioners. Thus, in 2017 the number of pensioners (5228 thousand persons) exceeded the number of employees (4946 thousand persons), which led to a great pressure on the public budget.

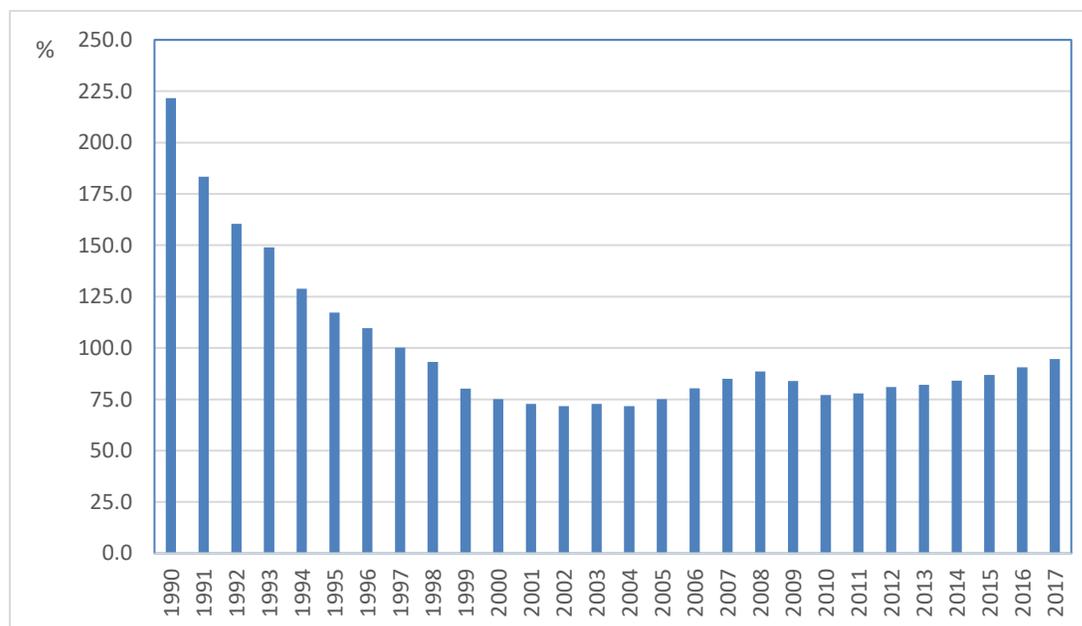
In this respect, a suggestive indicator is the ratio between the number of employees and the number of pensioners, an indicator that expresses the economy's ability to ensure the sustainability of the pension system.

Unfortunately, in the case of Romania, this ratio registered an unfavourable evolution in the last 18 years, decreasing from 221.7% in 1990 to only 94.6% in 2017 (Table no.1 and chart no. 2).

It should be mentioned, however, that over the last 7 years, there has been a slight increase in the number of employees / pensioners ratio, especially as a result of the increase in the number of jobs.

The evolution of the employees/pensioners ratio between 1990 and 2017

Chart 2



Data sources: Calculated data based on the information from Data base TEMPO-on line, NIS Bucharest, [6].

The chart no.2 emphasize the sharp decrease of the ratio from the beginning of the analysed period, until 2002 (when it reached its lowest level, respectively 71.6 employees to one hundred pensioners) after which followed a period of stabilization.

### **Changes in the structure of the number of the pensioners between 1990 and 2017**

In the analysis of the pensioners' situation not only their dynamics is important but also their structure and the share of the different categories of pensioners in total. In Romania, the statistical data for the characterization of the social pension insurance system are obtained through a quarterly statistical survey aiming to assess the average number of pensioners and the average monthly pension, by the retirement system and pension categories at national and territorial level (regions and counties).

The collection of data is done by statistical reports filled in by self-registration, by the staff of the specialized departments of the pension houses and the technical and methodological assistance is provided by the statisticians from the National Institute of Statistics. The statistical reports are supplemented by the National House of Public Pensions (for state social insurance pensioners and pensioners from the former system for farmers), the Ministry of National Defence, the Ministry of Internal Affairs, the Romanian Intelligence Service, the Ministry of Culture and the Bar Association [7]. The categories of pensioners for which statistical data are recorded are:

- social insurance pensioners;
- beneficiary of social benefit - pension type;
- war invalids, orphans, widows pensioners (IOVR).

Regarding the evolution of the weight of the three categories of pensioners, we highlight the fact that the share of social insurance pensioners has increased from 97.2% in 1990 to 99.9% in 2017, a situation determined by the significant reduction of the number of beneficiaries of social benefit - pension type and especially those in the category of invalids, orphans, widows of war [6].

Further, we will analyse the changes during the period 1990-2017 in the structure of the main category of pensioners, namely social insurance pensioners. According to the

statistical data, the number and structure of the social insurance pensioners evolved according to the data in Table no.2.

The evolution of the average number of social insurance pensioners, between 1990 and 2017

Table 2

Category of pensioners	1990		2017	
	Average number (thousand persons)	Structure (%)	Average number (thousand persons)	Structure (%)
<b>I. Social insurance pensioners - total</b>	<b>3577</b>	<b>100,0</b>	<b>5225</b>	<b>100,0</b>
<i>A. Social insurance pensioners (excluding social insurance pensioners from the former system of farmers)</i>	<i>2570</i>	<i>71,8</i>	<i>4849</i>	<i>92,8</i>
- State social insurance pensioners	2493		4678	
A.1.For age limit	1859	51,9	3629	69,5
- Whit due complete stage	1160	32,4	2753	52,7
- Whit due incomplete stage	699	19,5	876	16,8
A.2.Anticipate pension	:	-	23	0,4
A.3.Partial anticipated pension	:	-	79	1,5
A.4.Invalidity pension	208	5,8	587	11,2
A.5.Survivor pension	503	14,1	531	10,2
<i>B. Social insurance pensioners from the former system of farmers</i>	<i>1007</i>	<i>28,2</i>	<i>376</i>	<i>7,2</i>

Data sources: Information from Data base TEMPO-on line, NIS Bucharest, [6].

An important change in the structure of the number of pensioners is the significant increase of the share of the number of non-farmers social insurance pensioners, from 71.8% in 1990 to 92.8% in 2017, accompanied by a corresponding decreasing of the number of social insurance pensioners from former system of farmers, from 28.2% in 1990 to only 7.2% in 2017. This situation is due to the fact that the number of pensioners in this category decrease from year to year by the abolition of agricultural production cooperatives, where most of the pensioners came from.

During the analysed period there is a significant increase both of the number (from 1859 thousand persons in 1990 to 3629 thousand persons in 2017) and of the share of age

limit pensioners, from 51.9% to 69.5%, a situation determined also by the fact that in the last years the number and share of non-farmers pensioners included in the above mentioned category has increased. It should also be mentioned that for the age limit pensioners the share of the pensioners with complete due stage has significantly increase (from 32.4% to 52.7%) while the share of those with incomplete due stage decreased from 19.5% in 1990 to 16.8% in 2017.

We can also highlight the increase of the share of pensioners with invalidity pension from 5.8% in 1990 to 11.2% in 2017, which is quite high compared to the other categories of pensioners.

## **Conclusions**

Like other European countries, Romania faces the issue of ensuring the sustainability of the pension system. This situation is caused by the unfavourable evolution since 1990 of both the number of employees and the number of pensioners.

The reduction of the number of employees with 3210 thousand persons (-39.4%) in the period 1990 - 2017, while the number of pensioners increase with 1549 thousand persons (+42.1%), led to an unfavourable evolution of the employees/pensioners ratio, this registering a decrease from 221.7 in 1990 to 94.6 in 2017. The lowest level of this indicator was reached in 2002, when for 100 pensioners there were only 71.6 employees. The emphasized situation, clearly highlight the incapacity of the public pension system to provide the funds needed to pay decent pensions, according to the work done and contribution.

The increase of the employment rate, of the number of contributors to the public pension system, of the collection rate of social insurance contributions, the extension of the active life of people who have reached retirement age, are just a few measures that could ensure the sustainability of the pension system.

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## CONSIDERATIONS ON THE ELECTORAL CODE OF PRACTICE IN ROMANIA

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### **Abstract**

*The Romanian people exercise their national sovereignty through its representative bodies, constituted through free, regular and truthful elections, as well as by referendum. The specific framework in which the people exercise their sovereign right to mandate their representatives within the state is a technical one, namely the electoral system, the party system and the voting system. These elements fall under the scope of constitutional provisions and legal regulations, which regulate the obligations of the state bodies regarding the rules of organization and conduct of the elections, as well as those of establishing, centralizing and communicating the results of voting. Therefore, the relationship between parties, voters and electoral systems explains the natural functioning of democracy and the rule of law.*

**Keywords:** *code of practice, electoral system, parliamentary elections, presidential elections, local elections*

### **1. PARLIAMENTARY ELECTIONS. THE PARLIAMENT OF ROMANIA AND THE EUROPEAN PARLIAMENT**

Closely related to the electoral rights is the electoral system, which refers to the distribution of mandates obtained by each political party or candidate after the citizens' vote and which "is an essential tool for elections and for a democratic and representative government" [1]. In principle, the electoral system must offer equal opportunities for all citizens to influence both the policy and the practices of the Government.

Immediately after the 1989 Revolution, when adopting Decree-Law no.92/1990 [2], also known as the Election Law, resulted "the historical context that allowed the Romanian nation to express its will in relation to its own beliefs" [3]. This is an essential act of the Provisional Council of National Union [4], which regulated the main authorities

of the political regime - the bicameral Parliament, composed of the Assembly of Deputies and the Senate, the President of Romania, elected by universal, equal, direct and secret ballot, and the Government, of parliamentary origin, as well as the electoral system, based on the principle of proportionate representation. In fact, Decree-Law no.92/1990 was a "mini-constitution", a normative act of a constitutional character that anticipated some of the principles of the organization of the state established by the 1991 Constitution, such as the bicameral structure of Parliament and the principle of separation of the legislative, executive and judicial powers [5].

After the 1989 Revolution, members of the Constituent Assembly voted the 1991 Constitution according to an electoral system of proportionate representation, based on a list vote [6]. The same voting system was preserved for the 1992, 1996 and 2000 parliamentary elections, organized according to Law no.68/1992 on the election of the Chamber of Deputies and of the Senate, as subsequently amended and supplemented [7], as well as for those of 2004, organized according to the Law no.373/2004 on the election of the Chamber of Deputies and of the Senate, as amended and supplemented [8]. Thus, these regulations provided that deputies and senators were elected in electoral constituencies, based on lists of candidates and independent candidates, according to the principle of proportionate representation, and that the norm for the election of the Chamber of Deputies was a deputy to 70,000 inhabitants, and the one for the election of the Senate is a senator to 160,000 inhabitants.

The reasoning of the system of voting on lists can be found in the fact that the first elections after the Revolution had to be characterized by simplicity, because, on the one hand, the voters at that time were "less trained in democratic instruments"[9], and on the other hand, it was desired to reach the widest possible representation of the historical or newly created political forces in the legislative [10]. Otherwise, as Romanian doctrinaires have judiciously stated [11], if the uninominal vote had been held, the Council of the National Salvation Front would have been represented by an overwhelming majority, given that other political forces had not acknowledged themselves on the political scene.

In the meantime, however, this system of voting revealed some shortcomings, among which we can mention: the drawing up of electoral lists by the parties, which, thus, hold the key to the elections, the weak link or even the breaking of the connection between

the elector and the elected, the lack of accountability of the parliamentarians before the citizens, the burden of forming a government majority and the need to create alliances or coalitions, given the fact that we were dealing with a fractured Parliament, favouring political conflicts, creating a political basis for the emergence of extremist political parties [12]. Thus, more and more voices demanded the change of the electoral system, which led to the adoption of Law no.35/2008 on the election of the Chamber of Deputies and the Senate and on amending and completing the Law no.67/2004 on the election of the authorities of the local public administration, the Local Public Administration Law no.215/2001 and the Law no.393/2004 on the statute of local elected representatives, as subsequently amended and supplemented [13], on the basis of which the parliamentary elections of 2008 and 2012 were organized. This normative act provided for the election of deputies and senators in uninominal colleges, while maintaining the norm of a deputy to 70,000 inhabitants, respectively a senator to 160,000 inhabitants.

In fact, a majority uninominal vote was not reached, but a hybrid electoral system was created, with several elements that generated negative aspects in the organization and conduct of the elections, the determination of their results and the reflection of voters' will in the final electoral result. Thus, according to the law, depending on the norm of representation, electoral constituencies are divided into uninominal colleges. Only whole uninominal colleges can be constituted in an electoral constituency, while the territory of an uninominal college must be on the territory of the one and the same county or of the Bucharest Municipality, a provision that was likely to create unequal uninominal colleagues, ultimately affecting the principle of population representation and equal suffrage.

In order to organize the elections, Law no.35/2008, as subsequently amended and supplemented, establishes the organization at central level of a Permanent Electoral Authority and, during the organization of elections, of a Central Electoral Bureau, of district electoral bureaus at the county level, respectively at the Bucharest Municipality, of the electoral sector offices in the case of the Bucharest Municipality and of a constituency electoral bureau for Romanian citizens residing outside the country, as well as of electoral bureaus of the polling stations. These electoral bodies include jurists and

representatives of political parties, of political alliances and of electoral alliances, as well as of the organizations of citizens belonging to national minorities.

Another novelty introduced by Law no.35/2008, as subsequently amended and supplemented, shall be the Electoral Register. This is a centralized database in which are enrolled all Romanian citizens, including those with their domicile or residence abroad, who are 18 years of age and have the right to vote. Citizens enrolled in this register are then included in the electoral lists that may be permanent or supplementary.

Another important explanation of Law no.35/2008, as subsequently amended and supplemented, is the reference to the voters' cards. To exercise the right to vote, voters must have the identity card and the voter card on them. Although even since the Decree - Law no.92/1990 [14] it was made a reference to the issue of voter cards, the use of these documents was not made at any electoral ballot up to Law no.35/2008, as subsequently amended and supplemented, although these voter cards were developed and distributed to the population. Voter cards serve as a guarantee of the vote as exercised by the voters only once, thus avoiding the multiple voting.

In uninominal colleges, each electoral competitor may have only one application. These proposals are submitted to the district electoral bureaus, and if the nomination is made by the organizations of citizens belonging to national minorities, it is submitted to the Central Electoral Bureau. Candidates may also take part in the elections as independent, if they are supported by at least 4% of the total number of voters in the permanent electoral lists of the uninominal college where candidates, but no less than 2,000 voters for the Chamber of Deputies and 4,000 voters for the Senate.

Regarding the establishing of the election results, according to the Law no.35/2008, with subsequent amendments and completions, the minutes concluded at the level of the polling stations shall be transmitted to the district electoral bureaus, which, after centralizing the results of the voting, shall send them to the Central Electoral Bureau, with military security, within 48 hours, in the in view of establishing the electoral threshold. Based on the threshold of 5-8% required by law, one establishes if the political parties, political alliances, electoral alliances and organizations of citizens belonging to national minorities meet or not the electoral threshold.

Electoral competitors who have exceeded the electoral threshold participate in the distribution of parliamentary mandates. This division is done in two stages: one is carried out at the level of the constituency and the other at the central level. At the level of the electoral constituency, the first operation that is being carried out concerns the establishment of the electoral coefficient of that constituency. It is calculated by dividing the number of valid votes cast by the number of deputies and senators to be elected in that constituency. Then, for each electoral competitor, the total number of valid votes cast is divided on the electoral coefficient. Based on this result it is determined the number of seats allocated by the electoral constituency to the electoral competitor in the constituency, at this stage of allocating of the seats. The second stage, the distribution of mandates, takes place at the central level and considers the unused votes or the ones lower than the electoral coefficient, obtained by the electoral competitors.

It follows a summation of these votes by the Central Electoral Bureau throughout the country. Summarizing is done separately for the Chamber of Deputies and for the Senate. The number of votes thus obtained by each political party, political alliance and electoral alliance is divided by 1, 2, 3, 4, etc., making as many divisions operations as the seats that have not been distributed to the constituencies. The results, calculated with eight decimals, are placed in descending order up to the number of not allocated seats; the lowest number is the national electoral coefficient for deputies or senators. This electoral coefficient refers to the total number of valid votes cast for the respective political party, political alliance or electoral alliance. The reporting is made on the total number of unused votes and of votes lower than the electoral coefficient of the constituency.

The second phase of the distribution of mandates of deputies and senators is improper for the majority electoral systems. It is a true copy of the previous electoral system, which was based on proportionate representation. Such a system allowed the use of the unused votes cast at national level and, based on the d'Hondt system, a reassignment of mandates to electoral competitors. This is the main reason why the electoral system instituted by Law no.35/2008, with its subsequent amendments and completions, does not follow the rules of a proper uninominal vote, being a pseudo-uninominal election that results in outcomes that are not reflected in the electoral reality. This explains why, in the elections organized according to the mentioned normative act,

the winners in the competition were declared candidates who have obtained fewer votes than those who have basically won the electoral battle in electoral colleges, and the number of parliamentarians has increased considerably [15].

However, in its case-law [16], the Constitutional Court stated that “in its activity (...) it solved several cases regarding the constitutionality of some provisions of Law no.35/2008 on the election of the Chamber of Deputies and of the Senate, finding that the current regulation of the Romanian electoral system presents a series of imperfections and, as such, it needs to be reconsidered from the perspective of the parliamentary elections (...), ensuring, in all aspects, the organizing and the holding of democratic elections in Romania. In this regard, the Court considers it necessary, first, to start from the economic, political and social realities of the country, the role of the political parties in the electoral process, the need for rationalization of the Parliament and, finally, to be regulated a type of ballot corresponding to the drawn conclusions and having a correspondent in the types of ballot that are found in most European states.

Law no. 35/2008, as subsequently amended and supplemented, regulates an electoral mechanism that has nothing to do with the content elements of the uninominal majority type of voting, organized in one tour and practiced in other states. It should be noted that no electoral system regulating a single uninominal majority voting with a single ballot provides for an electoral threshold, while Law no.35/2008 provides for two types of alternate electoral thresholds.

The results of the parliamentary elections of November 2008 showed that the mechanism used for the assignment of the mandates resulted in consequences that did not correspond to those specific to a type of uninominal majority vote, consequences determined by the mathematical calculations regulated by the rules of the electoral procedure of the uninominal vote provided by Law no.35/2008. This is how the nomination of some MPs has been made based on calculations, without such a designation resulting from the elections, after the political options were voted. In the context of concerns about the revision of the electoral law, greater attention should be paid to the possibility of the Romanian citizens with voting rights residing abroad, and not only of them, to exercise their right to vote in a special procedure, including the electronic vote, which will take

place in correlation with the official hours of Romania between which the voting process is conducted” [ 17].

This mixed voting system (in which people are voted, but the proportionality of the representation of political parties in the legislature is preserved) has also been preserved for the parliamentary elections in 2012, when the total number of MPs has seen a spectacular growth, from 471 in 2008 to 588 in 2012, due to the fact that one of the alliances (The Social Liberal Union) has obtained an electoral score of more than 50% of the votes cast [18].

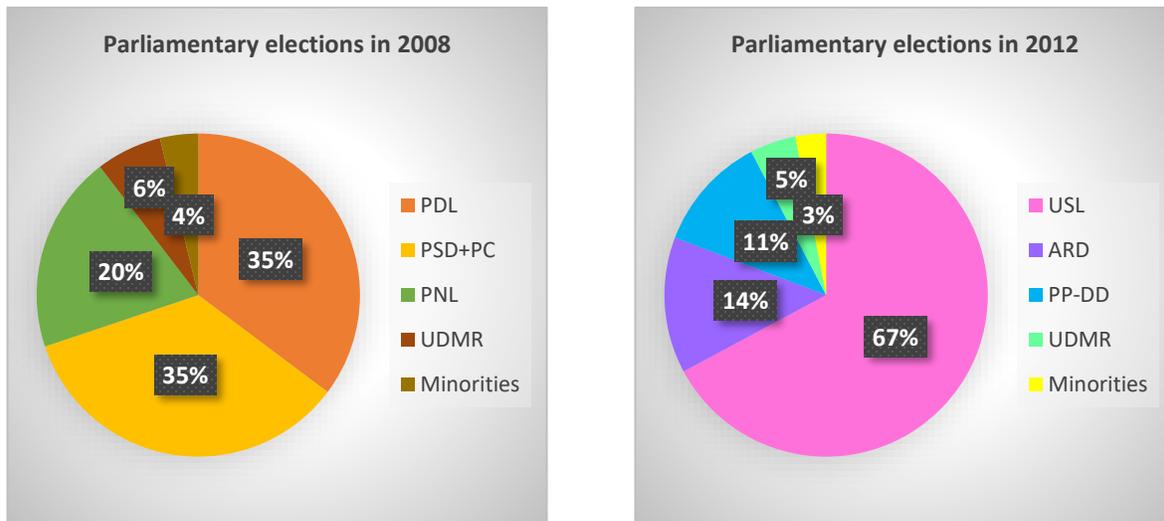
Thus, in 2008, 334 seats were assigned to the Chamber of Deputies [Liberal Democratic Party - 115, Political Alliance Social Democratic Party and Conservative Party - 114, National Liberal Party - 65, Hungarian Democratic Union of Romania - 22, and 18 mandates were assigned under article 62 paragraph (2) of the Constitution] and 137 seats to the Senate [Liberal Democratic Party - 51, Political Alliance Social Democratic Party and Conservative Party - 49, National Liberal Party - 28, Hungarian Democratic Union of Romania - 9].

In contrast, in 2012, 412 mandates were assigned to the Chamber of Deputies [Social Liberal Union - 273, Right Romania Alliance - 56, People's Party - Dan Diaconescu - 47, Hungarian Democratic Union of Romania - 18 and 18 seats were assigned under article 62 paragraph (2) of the Constitution] and 176 mandates to the Senate [Social Liberal Union - 122, Romania Right Alliance - 24, People's Party - Dan Diaconescu - 21, Hungarian Democratic Union of Romania - 9]. As such, the Social Liberal Union had 66.26% of the votes in the Chamber of Deputies and 69.31% of the votes in the Senate.

Given all of the above, as well as the popular pressure that criticised that the result of the 2009 referendum on the reduction of the number of MPs has not been taken into account, Law no.208/2015 on the election of the Senate and of the Chamber of Deputies, as well as on the organization and functioning of the Permanent Electoral Authority [19], as subsequently amended and supplemented, was passed, on the basis of which the 2016 parliamentary elections were held, a law which returns the election system to the list ballot, according to the principle of proportionate representation and only to the organization of electoral constituencies, and not of the uninominal colleagues, but

increasing the representation norm. It is currently for a deputy to 73,000 inhabitants and a senator to 168,000 inhabitants.

The distribution of mandates in the legislative body is shown below:



At the same time, the provisions of art. 62 paragraph (2) of the Constitution, also taken up by the electoral law, according to which "organizations of citizens belonging to national minorities, which fail to obtain the number of votes for representation in Parliament, have the right to one Deputy seat each, under the terms of the electoral law". Consequently, to the extent they are established as independent organizations, such organizations are assimilated to political parties and participate in the electoral process (e.g. the Hungarian Democratic Union of Romania); in this process, the organizations of citizens belonging to national minorities are entitled to submit applications and to participate in the election campaign on an equal basis with the other political forces which will be competing for parliamentary seats. If these organizations do not obtain a mandate in the Senate or the Chamber of Deputies, they enjoy a privilege, respectively to obtain a rightful place in the Chamber of Deputies, if they have obtained, throughout the country, a number of votes equal to at least 5% of the average number of votes validly expressed in the country for the election of a deputy [art. 56 paragraph (1) of the Law no. 208/2015].

With the accession of our country to the European Union, a different type of elections appeared, namely that concerning **the elections for the European Parliament**, regulated by Law no.33/2007 on the organization and conduct of the elections to the

European Parliament, republished [20], as subsequently amended. Immediately after Romania's accession to the European Union, representation of our country in the European Parliament took place without elections and based on a decision of the Parliament, who appointed the representatives of Romania among the deputies and senators [21]. The criterion used to designate them was the political configuration of the two Chambers. Subsequently, in 2007, the above-mentioned normative act was implemented, which was a premiere in the Romanian legal system, because, for the first time, the appointment of the members of Romania in the European Parliament was regulated by universal, equal, direct, secret and free ballot, expressed for a 5-year term [22].

Members of Romania in the European Parliament are elected on a list-based ballot, according to the principle of proportionate representation, and based on independent candidatures, and at the ballot boxes present themselves the European voters and the national voters. An European voter means any citizen of a Member State of the European Union, other than Romania, who has the right to vote in Romania for the European Parliament, having his/her domicile or residence in Romania, in accordance with the provisions of the law, and by national voter is understood any citizen of Romania, domiciled or residing in the country or abroad, who has the right to elect members from Romania to the European Parliament in accordance with the provisions of the same law. To elect members of Romania in the European Parliament, both the national voter and the European voter are entitled to a single vote. The eligible European citizen is any citizen of a Member State of the European Union who has the right to be elected to the European Parliament, domiciled or residing in Romania.

Romanian citizens who are 18 years of age, age reached at the reference date, have the right to elect members from Romania to the European Parliament. Persons who are not entitled to vote are offenders and alienated people placed under interdiction and persons who, on the day of reference, are convicted by a final court decision to the loss of their electoral rights. On the other hand, Romanian citizens who have the right to vote and have reached the age of 23, until the reference date, have the right to be elected to the European Parliament.

Another element of novelty introduced by this law is the term “election period”, which, in fact, replaces that of “electoral campaign” existing in other electoral laws. “Election Period” means the specific period that begins on the day of bringing the “reference day” to public knowledge and ends with the publication of the results of the election in the Official Gazette of Romania, Part I. The legislator keeps state, however, that within the “election period” is also the period between the public disclosure of the “reference day” and the start date of the electoral campaign. As such, the electoral campaign and electoral operations are part of this “election period”.

To participate in the elections for members of Romania in the European Parliament, political parties, political alliances and organizations of citizens belonging to national minorities can be associated with each other only at national level, on a protocol basis, as an electoral alliance. A political party, a political alliance or an organization of citizens belonging to national minorities can only be part of a single electoral alliance. The electoral alliance that has participated in the previous elections, regardless of their type, under a certain name, may only preserve it if it has not changed its initial composition. Also, that name may not be used by another alliance. The protocol for constitution of the electoral alliance shall be submitted to the Central Electoral Bureau within 48 hours from its establishment, which shall pronounce itself in public session on the admission or rejection of the protocol for the constitution of the electoral alliance, within 24 hours from its registration. The decision of the Central Election Bureau to admit the constitution of the electoral alliance may be challenged by any interested natural or legal person, before the High Court of Cassation and Justice, within 24 hours of its display. The decision of the Central Electoral Bureau to reject the protocol for constitution of the electoral alliance may be disputed by the signatories of the protocol before the High Court of Cassation and Justice, within 24 hours of its display.

Certain officials cannot be elected as members of Romania in the European Parliament, respectively Romanian citizens belonging to the following categories: Constitutional Court judges, People's Advocates, magistrates, active members of the army, police officers and other categories of civil servants, including those with special statutes, established by organic law. Also, the membership of the European Parliament is incompatible with the capacity of deputy or senator in the Romanian Parliament, of a

member of the Romanian Government or with equivalent functions in the Member States of the European Union. In the European electoral process, Law no.33/2007, republished, as subsequently amended, also introduces the National Integrity Agency, which is called upon to ascertain the cases of incompatibility provided by law, consequently communicated to the Permanent Electoral Authority within 15 days from its finding.

## **2. ELECTION OF THE PRESIDENT OF ROMANIA**

As regards the election of the President of Romania, ever since the Decree-Law no.92/1990, it was established the system of election of the President of Romania by direct vote, each voter having the right to pronounce himself/herself on the person who will hold the position of head of state. The system has also been preserved by the Law no.69/1992 on the election of the President of Romania, as subsequently amended and supplemented [23], and by the current regulation - Law no.370/2004 on the election of the President of Romania, republished [24], with subsequent amendments and completions.

In the presidential election, each voter is entitled to one vote in each ballot organized for the election of the President of Romania. According to art. 81 of the Constitution of Romania, republished, the President of Romania is elected by universal, equal, direct, secret and freely expressed vote. Elections for this position are held in one ballot or in two rounds. If a candidate obtains in the first round the absolute majority of the votes of the voters included in the electoral lists, he/she is declared elected. If no candidate has met this majority, a second ballot shall be held, attended by the first two candidates who have obtained the largest number of votes in the first ballot. This time shall be declared elected the candidate who obtained the highest number of votes.

It is important to note that, within the conditions of eligibility, the Constitution provides that a person who served as President of Romania for two terms cannot run for a third one. The Fundamental Law further specifies that the term of office of the President is 5 years and is exercised from the date of the oath. This term of office was established by the Constitution as revised in 2003. Until this date, the presidential term was 4 years, which made the presidential elections to coincide with the parliamentary ones.

Whithin the public opinion it has been established, however, the belief that a candidate for the Presidency who comes from a political party can influence the outcome of parliamentary elections, becoming a kind of “locomotive” of the respective party and giving it a strong popular electoral support. The Revision Assembly has endorsed this largely shared view, and, upon the revision of the Fundamental Law, it delayed the presidential and the parliamentary elections, establishing a term of five years for the President of Romania and one of four years for deputies and senators.

By creating a gap between parliamentary and presidential elections, the parliamentary majority may have a different political colour than the one which gave the presidential candidate. This way, a contradictory relationship between the President and the Parliament might appear, which may, ultimately, lead to the suspension of the President and possibly to a dismissal, following a referendum held at the national level. Also, the constitutional provisions allow the President of Romania to have a certain conduct on Parliament. Thus, the President has the right to present messages to the Parliament on the main political issues of the nation, to dissolve the Parliament and to consult the Parliament in order to organize a referendum on issues of national interest.

According to the law, the day of the presidential election is Sunday. Elections for the position of President of Romania take place in the month before the term of office of the President is reached. Elections are under the scrutiny of the Constitutional Court, which is mandated to resolve complaints about the registration or non-registration of applications, to supervise the deployment of electoral operations, to proclaim the results of the elections and, where appropriate, to nominate the first two candidates to take part in the second round of elections.

The Constitutional Court validates the result of each round, ensures the publication of the election results in the mass-media and in the Official Gazette of Romania, Part I for each ballot and validates the election result for the elected president. According to art.82 paragraph (2) of the Constitution, the candidate whose election has been validated submits before the Chamber of Deputies and the Senate, in a joint sitting, the following oath: “I solemnly swear that I will dedicate all my strength and the best of my ability for the spiritual and material welfare of the Romanian people, to abide by the Constitution and laws of the country, to defend democracy, the fundamental rights and freedoms of

my fellow-citizens, Romania's sovereignty, independence, unity and territorial integrity. So help me God!”.

For presidential elections to be held, polling stations, electoral bureaus, including the Central Electoral Bureau are set up. These electoral bureaus include lawyers or other people with a good reputation in the locality where they are set up. In presidential elections can participate, as candidates proposed by political parties or political alliances or as independent candidates, citizens who have the right to be elected, according to the law. Proposals for candidates must be signed by the leadership of the party or the political alliance or by their leaders or, as the case may be, by the independent candidate.

In the application, the name and surname, place and date of birth, civil status, domicile, studies, occupation and profession of the candidate, as well as the fact that he/she meets the requirements of the law to be able to apply, shall be specified. These proposals must also be accompanied by the declaration of acceptance of the candidature, written, signed and dated by the candidate, the declaration of assets, the declaration of interests, a declaration on the person's own responsibility, in the sense that he or she had or had not the quality of a security operative or collaborator, as well as the list supporters, whose number cannot be less than 200,000 voters.

The proposal for candidacy is filed and registered with the Central Electoral Bureau in one original file and three copies. The third copy is sent to the Constitutional Court, and the fourth copy, certified by the President of the Central Electoral Bureau, is returned to the depositor.

Voting is done at the polling stations, which are equipped with ballot boxes, cabinets and stamps with the mention “Voted”. At the polling station headquarters, voters shall vote where they are assigned according to their domicile, and those who are abroad vote at the polling stations organized by diplomatic missions and consular offices of Romania. At the end of voting, the electoral commission of the polling station shall determine the results of the voting by a minutes and send it to the district electoral bureau, which in turn sends it to the Central Election Bureau, which centralizes them and sends it to the Constitutional Court, who will either nominate the winner in the election or decide to hold a second round of voting, to which the first two candidates will participate.

We mention that there were two cases, in the 1990 and in the 1992 elections, when the candidate for the position of President of Romania was elected from the first round. In the other cases, the dispute over the position of President of Romania was completed in the second ballot.

### **3. LOCAL ELECTIONS**

Finally, the last type of election in our country is that on local elections, regulated, successively, by Law no.70/1991 on local elections, republished, as subsequently amended and supplemented [25], Law no.67/2004 on the election of the local public administration authorities, republished, as subsequently amended and supplemented [26], and currently, by Law no.115/2015 on the election of the local public administration authorities, for the amendment of the Local Public Administration Law no.215/2001, as well as for amending and completing the Law no.393/2004 on the statute of local elected officials [27].

It must first be noted that the revision of the Fundamental Law from 2003 introduced an important provision, that “after Romania's accession to the European Union, the Union's citizens who comply with the requirements of the organic law have the right to elect and be elected to the local public administration bodies” [art.16 paragraph (4) of the Constitution]. As outlined in the doctrine [28], the constitutional text is “the effort for the integration into European structures and becomes applicable under the conditions of the organic law and of the accession of Romania to the European Union”. The terminology used by Romanian Constituent is not accidental, since the right to vote may belong only to Romanian citizens, given that only they can take part in the exercise of state power in Romania, but the right to elect the authorities of the local public administration can also belong to European citizens who meet the requirements of the organic law.

At the same time, we make it clear that the organization of the local public administration is under the sign of the local autonomy. Local self-government, in accordance with the European Charter of Local Self-Government [29], means the right and the effective capacity of authorities of the local administration to solve and to manage, on behalf of the interests of the local communities they represent, the public affairs, in

terms of the law. The exercise of this right is conferred on the local councils and mayors, as well as on the county councils and their presidents, the authorities of the local public administration elected by universal, equal, direct, secret and freely expressed vote.

In the following we will refer briefly to some of the provisions of Law no.115/2015, based on which the local elections of that year were held. Thus, local councils, county councils and mayors are elected by universal, equal, direct, secret and freely expressed vote. The local councils and the county councils are elected on electoral constituencies, based on the list ballot, according to the principle of proportionate representation. The mayors of communes, cities, municipalities, sectors of Bucharest and the mayor of Bucharest are elected on electoral constituencies by uninominal vote. The presidents and the vice-presidents of the county councils, as well as the deputy mayors are elected by indirect vote, by the county councils, respectively by the local councils. The right to be elected as councillors and mayors belongs to citizens eligible to vote, who have reached, until Election Day, the age of at least 23 years, if they are not forbidden to join a political party, according to article 40 paragraph (3) of the Romanian Constitution, republished [30].

Candidates for local councils and county councils as well as for mayors are proposed by political parties or political alliances, constituted according to the Law on political parties no. 14/2003, republished. Candidatures can also be submitted by the electoral alliances established, under the law, by the organizations of citizens belonging to national minorities, as well as independent candidates. Candidate's lists for the election of local councils and county councils must be drawn up to ensure the representation of both sexes, except for those containing a single candidate. Electoral alliances can be constituted between political parties or political alliances at county or local level. A political party may belong, at the same level, to a single electoral alliance. A person can run for one local council and one county council and only for one post of mayor. A person may apply, at the same time, for the position of local councillor, county councillor and mayor. Also, a person can run, at the same time, for the position of local councillor and county councillor.

For the election of local councils and mayors, each village, municipality, city and administrative-territorial subdivision of the municipality constitutes an electoral

constituency. For the election of the county councils and of the General Council of Bucharest, each county, namely Bucharest, is an electoral constituency. The numbering of the county and Bucharest electoral districts shall be made by decision of the Government.

#### **4. CONCLUSIONS.**

Electoral systems, irrespective of their type, have both advantages and disadvantages. Thus, among the advantages of the system of proportionate representation (whose structural elements are the constituency, the voter, the vote and the technical aspects of calculation) are the faithful representation of the segments of the electorate, including the minorities, which proves the legitimacy of the Parliament and the high rate of participation to the vote and the good party discipline; the disadvantages of the system of proportionate representation are to be seen in the low responsibility of the elected officials before the electors and the political instability, as well as the continuous struggle for power, determined by the formation of the Government through coalitions rather than by majority parties. Among the advantages of the majoritarian systems (where the winner is declared the candidate with the most votes, with or without an absolute majority), we may distinguish the creation of a stable majority, which requires a good governance of the state, the reducing of the fragmentation of the political spectrum, the underrepresentation within the Parliament of the extremist parties, a natural connection between the MP and the constituency that elected him/her, the responsibility of the elected representatives towards the electors, electoral transparency; the main disadvantage of the majority system is the low representation of the electorate, a situation that can be created when an absolute majority of voters vote against the elected candidate. Finally, with regard to the mixed electoral system, resulting from the merging of the features of the majority system with those of the system of proportionate representation, the stable majority and the representation of the minorities stand out as advantages; the disadvantages lie in the underrepresentation of the minorities, namely through the use of the votes cast in favour of the minority by redistribution of mandates in a proportionate regime from a privileged position, which result in a lower number of mandates than the registered electoral score.

Choosing an electoral system or another gives expression to the political interests of a state, as they lead to the election of the governors, so that popular legitimacy is regularly reconfirmed through the elective act “towards the candidates who are engaged in the fight for the taking over, the exercising and the maintaining of power, aimed at achieving the objectives as agreed with the voters”[31].

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- [5] See Marian Enache, *Reforma constituțională din România*, in *Caietele Revoluției nr.5-6(60-61)/2015*, a journal of history and communication dedicated to the Romanian Revolution, Institutul Revoluției Române din Decembrie 1989 Publishing House, Bucharest, p. 121, available online at [http://irrd.ro/wp-content/uploads/2015/12/caiet-60\\_61\\_16-dec-2015.pdf](http://irrd.ro/wp-content/uploads/2015/12/caiet-60_61_16-dec-2015.pdf) [accessed in June 2018]; Enache, Marian, *Un sfert de secol de la adoptarea Constituției democratice a României*, in *Caietele Revoluției nr.2(67)/2017*, a journal of history and communication dedicated to the Romanian Revolution, Institutul Revoluției Române din Decembrie 1989 Publishing House, Bucharest, p. 37-38, available online at <http://irrd.ro/wp-content/uploads/2017/caietpdf/caiet-67.pdf> [accessed in June 2018]. In the same sense, regarding the nature of this normative act, also see Enache, Marian, *Natura și semnificația politico-juridică ale Decretului-Lege nr.92/1990 pentru alegerea Parlamentului și a Președintelui României*, in *Public Law Review no.2(23)/1998*, pp. 23-33.
- [6] Muraru, Ioan, Tănăsescu, Elena Simina (coord.), *op. cit.*, p. 334.
- [7] Published in the Official Gazette of Romania, Part I, no.164 of 16 July 1992.
- [8] Published in the Official Gazette of Romania, Part I, no.887 of 29 September 2004.
- [9] Muraru, Ioan, Tănăsescu, Elena Simina (coord.), *op. cit.*, p. 334.
- [10] *Idem.*
- [11] *Ibidem.*
- [12] Iancu, Gheorghe, Iancu, Vlad Alexandru, *Drept electoral*, 2<sup>nd</sup> edition, revised and added, Universul Juridic Publishing House, Bucharest, 2015, p. 71-72.
- [13] Published in the Official Gazette of Romania, Part I, no.196 of 13 March 2008.
- [14] Published in the Official Gazette of Romania, Part I, no.35 of 18 March 1990.
- [15] Moreover, regarding the number of MPs resulting from the application of this law, we recall here the referendum of 22 November 2009, organized at the initiative of the President of Romania, Mr. Traian Basescu, in which, to the question “Do you agree with the reduction of the number of MPs to a maximum of 300 people?”, answered 83.31% of the number of participants in the referendum. The results were recorded in the Constitutional Court's judgment no. 37/2009 regarding the observance of the procedure for the organization and holding of the national referendum of 22 November 2009 and the confirmation of its results, published in the Official Gazette of Romania, Part I, no.923 of 30 December 2009.
- [16] Decision of the Constitutional Court no.61/2010 regarding the exception of unconstitutionality of the provisions of art.48 paragraph (17) of the Law no.35/2008 on the election of the Chamber of Deputies and the Senate and on amending and completing of the Law no.67/2004 on the election of the authorities of the local public administration, of the Local Public Administration Law

no.215/2001 and of the Law no.393/2004 on the Statute of local elected officials, published in the Official Gazette of Romania, Part I, no.76 of 3 February 2010, *apud* Iancu, Gheorghe, Iancu, Vlad Alexandru, *op. cit.*, p. 122.

[17] *Idem.*

[18] For details on the coverage of this result in the press, see <https://www1.agerpres.ro/flux-documentare/2016/11/06/alegerile-parlamentare-din-2012-05-08-47>, as well as [http://www.romania-actualitati.ro/de\\_ce\\_a\\_crescut\\_numarul\\_parlamentarilor-46539](http://www.romania-actualitati.ro/de_ce_a_crescut_numarul_parlamentarilor-46539) [accessed in June 2018]. We also mention that that the results of the 2008 and 2012 parliamentary elections have been published in the Official Gazette of Romania, Part I, no.820 of 5 December 2008 and, respectively, in the Official Gazette of Romania, Part I, no.848 of 14 December 2012.

[19] Published in the Official Gazette of Romania, Part I, no.553 of 24 July 2015.

[20] Republished in the Official Gazette of Romania, Part I, no.627 of 31 August 2012.

[21] Parliament's Decision no. 43/2006 on the appointment of some Deputies and Senators as Members of the European Parliament, published in the Official Gazette of Romania, Part I, no.954 of 27 November 2006, whereby 35 deputies and senators were appointed as members of the European Parliament from 1 January 2007 to the date of validation of the mandates of elected European parliamentarians according to the law.

[22] By way of exception, the term of office of the Romanian members in the European Parliament, awarded on the basis of the first organized elections, ended at the conclusion of the European Parliament's 2004-2009 term.

[23] Published in the Official Gazette of Romania, Part I, no.164 of 16 July 1992.

[24] Republished in the Official Gazette of Romania, Part I, no.650 of 12 September 2011.

[25] Republished in the Official Gazette of Romania, Part I, no. 79 of 18 April 1996.

[26] Republished in the Official Gazette of Romania, Part I, no. 333 of 17 May 2007.

[27] Published in the Official Gazette of Romania, Part I, no.349 of 20 May 2015.

[28] Muraru, Ioan, Tănăsescu, Elena Simina (coord.), *op. cit.*, p. 153.

[29] Adopted in Strasbourg on 15 October 1985, when it was opened for signature by the member states of the Council of Europe, ratified by Romania through Law no.199 of 17 November 1997, published in the Official Gazette of Romania, Part I, no.331 of 26 November 1997.

[30] Art.40 paragraph (3) of the Constitution of Romania, revised: "Judges of the Constitutional Court, the advocates of the people, magistrates, active members of the Armed Forces, policemen and other categories of civil servants, established by an organic law, shall not join political parties".

[31] Alexandru, Ioan, *Democrația constituțională. Utopie și/sau realitate*, Universul Juridic Publishing House, Bucharest, 2012, p. 128.