Journal of Law and Administrative Sciences
No.12/2019

# BETTER THAN WE CAN IMAGINE: THE ROMANIAN RIGHT BETWEEN A PRESENT UTILITY AND A DEMONSTRATED INEFFICIENCY

**Valentin- Stelian BĂDESCU, PhD.**
Associate scientific researcher of the Institute of Legal Research of the Romanian Academy.
*valentinbadescu@yahoo.com*

**Abstract**
*The surprise and revealing of the Romanian legal creations, the surprise of the Romanity and the originality of our law - as defining elements of a Romanian legal identity - and its continuity in the spaces inhabited by the Romanians are closely related to the being of the nation. In this sense, the return to the scientific debates of the polar categories: continuity and discontinuity in the field of law was determined, not long ago, by two historical processes: the one of the post-totalitarian transition of the Central and East-European countries and the one of their European integration, leading to effective interdisciplinary efforts.*
**Keywords:** *Romania, Romanian law, romanity, continuity, European Union law*

## 1. Argument - warning

I'm worried, I love my country. What do I do? If a Romanian, that is, I declare that I love the Czech Republic, that he admires the Czechs, that he feels excited whenever he hears the Czech language, nobody is surprised and disapproves. But I do not want to write about the Czechs and their homeland, but about the fact that if a Romanian states that he loves Romania, that he admires the Romanians, that he feels emotional whenever he hears the Romanian language, it is almost certain that he will be accused of nationalism and blamed. It ended up in an absurd situation. A Romanian who loves his country can only love it in secret, with the feeling of secrecy. The American flag, with its fifty stars, is spontaneously flown by Americans, in many situations, on the facades of their houses. The Romanian tricolor flag has almost no courage to carry it under any circumstances, so as not to be considered ridiculous. The paradox works and vice versa. If a Romanian speaks with contempt of any other people than the Romanian people, he risks hurting her, being accused of xenophobia. But if a Romanian speaks with disdain about the Romanian people, everyone around him approves of it with enthusiasm or silence. Let me not be told that it is about manifesting the critical spirit, lucidity, etc. I do

not refer to these situations. I consider shameless denigrations of what is Romanian, disgraceful acts, which should happen in the privacy of the home or in a psychiatric office, not in public. "Every day we play the game of birds, of love and of the sea" and especially of our own country, with a lack of love and respect which we mistakenly believe is fashionable in the West, but which in reality , dismay the westerners. And those of us who love our country must be careful not to find out that we love her, because we may not be stigmatized. If you ask someone capable of explaining why they always throw the objection on the people to whom it belongs, you can see that the arguments are irrelevant.

Everyone has the right to love any country he wants, including his own country. If nationalism becomes legislation or political action, yes, we must be worried and opposed. The feelings that make the splendor of literature are dangerous when it becomes a political program. From feelings, led to delirium or hysteria, monstrous and fascism, and communism developed. In politics, only reason can be admitted. But an intellectual does not have to confuse the plans. Eminescu is punished post mortem because he loved his country. Blaga has been punished since life for the same guilt. Our writers today have learned the lesson, they carefully avoid stepping on the mine that might blow them. But from this precaution even their literature has lost, losing the greatness. The following text is not for those who are angry when they hear the Bible, nor for those who believe only in the seen and much less for those who believe that the destiny of a countries, whether it is Romania or any other, are decided exclusively by the power of some people, whether they are "ourselves" or "others", or they are people in the eyes of all or covered by who knows what is in our eyes. Therefore, I recommend them to avoid the following lines and to enjoy as they know better than what the "angel of Romania" offers.

You will perhaps raise your eyebrows - what does the "angel of Romania" mean? What is this? I will remind you that in the biblical tradition, it is said that God gave to each one of us an angel. It is the interpretation that many scholars have given to a Deuteronomy text that has reached us with different shades in different variants of the Hebrew, Greek and Latin texts. In support of the reading of this fragment in the sense that God gave to each nation an angel, we mention the evocations of the "angels of the nations" from other canonical books in which it is said that with the kings, the angels corresponding to the acts of the nations will be judged. There is, therefore, a solidarity

between the angel of a nation and the nation that is guarded against him, so that the angel can become the "prisoner" of his nation, because he is "condemned" to follow him in any way. The relationship between the angel of a nation and its object of activity is complex because God gives people and free will. Moreover, the tradition of the angel's solidarity with those given in his guard is solid and old: in one of the most famous Essenian manuscripts, the final battle between the Sons of Light and the Sons of Darkness is described, and in the description of the colossal battle it is shown as in the two armies, with the people of the two "empires" magnifying glass, side by side with them, the angels guarding them.

In his admirable book "About the angels", Andrei Pleşu talks about the relationship between angels and Gentiles, wondering what is the cause of interethnic wars and hatred since each people is guarded by an angel and all the angels come from God? We have, says Andrei Pleşu, three possible answers. First, that there are fallen angels who can subtly take control of the hands of the angels of God and can remove the people of God by lying to them. The Essenian myth, described above, seems to support this hypothesis; second, that people are given not only with protective angels but also with freedom. There is, from this perspective, a perfect similarity between the individual and the collective case - just as every man has an angel of his own, but that angel cannot manipulate his will nor can he infinitely protect himself from the nonsense he alone does, the nation has an angel who, however, cannot determine its path step by step. Stubbornness, delirium, or other forms of spiritual blindness can make an entire nation immune to angel urging. Finally, the third answer to the question how the Gentiles do to others or do themselves harm even though they are guarded by angels, seems to Andrei Pleşu the most convincing: Gentiles "can fail not only by turning the angel's back, but on the contrary, by idolizing him „by giving him obedience and worship, which is normally only granted to God."

Absolutizing one's own angel is a terrible mistake that a nation cannot make, and history has proven us endless and plentiful, with waves of blood and immense suffering how severe the mistake of taking the angel of your nation as God can be. "For some people today, talking about angels sounds like walnuts on the wall. But ultimately not all of us need to become political analysts, reform professionals. It is good for our mental horizon to appear, from time to time at least, and things less understood, less current.

Reflection on angels can be a good therapeutic for combating intellectual mediocrity, the threat of which no one escapes." As for his presence, I do not think we can have doubts - the angel of Romania is relatively easily detectable. It is very close to us; he is always here, and he still has the force to take us out of the troubles we are entering. The last time was felt by all Romanians on December 1, 1918, when the Great Union was performed in a way that cannot be explained outside the angel's action. I know that this observation will annoy those who have argued that our National Day is a day of mourning for them, but the angel of Romania does not work for their own good, but for the good of Romania. In Romania, minorities must live the same way as Romanians. Any minority, wherever she comes from, if she wants to stay in Romania, she has to work and eat like Romanians, she has to speak Romanian and respect the Romanian laws. Romania needs minorities just as minorities need Romania, and we should not grant those special privileges, as we do not have to change our laws to satisfy their desires, no matter how hard they are being discriminated against.

The lack of respect for the Romanian culture should not be tolerated. We would do well to learn about how America, England, the Netherlands and France have committed suicide if we are to survive as a nation. Minorities are currently conquering those countries, but they will not be able to conquer Romania. When our legislative body will consider adopting new laws, keep in mind that Romanian national interests take precedence, and remember that Romanians are at home, and the others only guests, lusts or guests. Otherwise, when he said that, as luck is, Romania no longer needs politicians, I think that Petre P. Carp brought the most beautiful praise to the angel of this country. The fact that we exist and that we are as we are can in no case be explained by the performance of those who lead us or have led us or by our way of being, by our national features. On the contrary, if it were for the destiny of the country to be the direct consequence of who we are, I think we would have long since disappeared. We live and above all, we live incredibly well in this world because from there, from the sky of history, our angel works whirlwind for us. And to be good, we often have to work against our decisions, only the homeland remains eternal.

It is obvious that we are living in difficult times, which some of us make ourselves more difficult. Against the background of general disorientation, there are quite a few who

fish in murky waters and exaggerate provincialisms, local entities. Why am I talking about our need for identity? Not because I'm a nationalist, but because I'm talking empty. Please go out and ask some Romanians why they feel Romanians. You will see and hear the biggest bumps! And if you go to Brussels, Madrid or Rome, between serious people, the question that invariably comes is: how is Romania and who are the Romanians? Naturally, we autoflagelate and present ourselves as a kind of nothing! More recently, some have found the solution: something else is given and no Romanians are recognized anymore. This lightness in dealing with serious things may have saved us from time to time, in the past, but it may not always be a way of life for a decent, conscious people. But, I want to talk about our language and tell you my conviction about it: our language has saved us from being sprayed with history!

Our language is a permissive one and opens with generosity to neologisms, but to a point. If we force the note, we fall into ridicule and this is how we do it now, not only under the influence of English, but also digitization in English clothing. That is why the Romanian Academy would also have a weighting role here, but who cares! Romanians are now not only inventive, but also independent and free. We believe that this short trip to history would be incomplete if we did not even remember the Communist period, because the problem is very complicated. The communist regime, for more than four decades, had three major stages: one proletarian, of proletarian internationalism and of atrocious Stalinist dictatorship, when nothing of what was Romanian was good, but "rotten", "bourgeois", "decadent"; another more balanced one, in which it returned to most of our authentic values (minus the modern monarchy, Bessarabia, the diaspora, etc.); the last, nationalist-communist, in which the "genius of the Carpathians" was leading us and in which the past, present and future were hailed with glory, while dying of hunger, cold, darkness. All this is intentionally merged today, so there is no room for nuances. I got rid of the unique truth under communism and I gave in to the truths controlled today! I still believe in the reason of this people, who must wake up in these times when the "boyars of the mind", the subtle philosophers of the salon accuse us of xenophobia, nationalism and even chauvinism, we are stubborn to love strangers, even and those who hurt us! Of course, these vigilantes on the march of the nation - seen by them as a mournful gregarious, patibular mass - do not discover any danger anywhere, neither over the Prut

and the Dniester, from where we are directly threatened, without bypasses, nor towards the west, from where our carriers come from. forests and the new owners of the estates, not even over the Ocean, from which comes the news that NATO does not make any more names and that the US closes itself, no closer, where autonomous feasts are prepared. In other words, Romania has only enemies in our imagination! It is clear that this situation facilitates the work of the agents of influence in the political and public life of Romania. In any case, Romanians do not hate or hate foreigners well, but they will love their homeland and their right to sovereignty even in the context of so many European continuities and discontinuities. And Romanian law can be one of the keys to the inaction.

**2. Romanity and originality of Romanians' law**

The surprise and revealing of the Romanian legal creations, the surprise of the Romanity and the originality of our law - as defining elements of a Romanian legal identity - and its continuity in the spaces inhabited by the Romanians are closely related to the being of the nation. In this sense, the return to the scientific debates of the polar categories: continuity and discontinuity in the field of law was determined by two historical processes: the one of the post-totalitarian transition of the central and east-European countries and the one of their European integration, entailing effective interdisciplinary efforts. We will refer, in the following, to those from the sphere of the history of law and from the sphere of comparative legal sociology, dedicated especially to legal cultures. Regarding the first mentioned process, the comparison was made between a previous, post-war transition and the transition that followed, in the European space, in 1989. In this context it was emphasized that while the defeat of Nazi Germany in World War II had as an effect the imposition of legal discontinuity by the occupation authorities, empowered by their own legal regulation and which have transplanted legal solutions, ready prepared, from outside, the change in the central and eastern part of Europe is characterized by an uninterrupted legal continuity, by a guaranteed framework of the rule of law and by the prestige of the democratic constitutional order, these being the result of the action of the internal factors.

In the same vein, the emphasis is integrated that, from the common history of European countries, their systems of law and their legal cultures, elements of continuity

result. These have played an important role in the process of European integration in the field of law. In continental Europe, there is the tradition of Roman law (jus commune), humanism, enlightenment and modern codifications. In a paper devoted to the transnational future of Europe, it is shown that, in general, it is regarded as a community of cultural values and the system of cultural values forms the backbone of European consciousness. Despite many cultural differences, Europe is rooted in Christianity, the tradition of Roman law and the Greek perception of beauty, a fact evident for Central and Western Europe. But as far as Russia and South-East Europe are concerned, the presence of religious, cultural and political connections with the Eastern Roman Empire and the Byzantine version of Roman law cannot be denied. It is supported by the idea that, although the countries of central and Eastern Europe have entered, after the Second World War in the field of Soviet domination, it cannot be said that the mentioned historical process meant their break from the common European history. It can be shown that, there are common constants, in all successive stages of the legal history of Europe.

The complex issue of continuity and discontinuity in law is related to the dynamics of legal cultures because the very definition of legal culture implies references to continuity. Thus, Lawrence M. Friedman, the initiator of the concept of legal culture, attributes to it a sense related to the sustainable elements of a coherent and relatively permanent legal system, as if, for example, we consider, for example, the Japanese or Dutch legal culture, viewed as a complex of attitudes and behaviors that form a model, which we can recognize. Viewed from the perspective of European integration, the relationship between innovation and tradition, the perennial values of the national legal culture, the rightful reflection of national particularities, the continuity characteristic of the behavior of the individuals that make up a people are very important aspects. Legal institutions, as well as cultural ones, reflect the specific, common features of the members of an ethnic community and make them different from those of other communities. These features ensure durability, stability that does not equate to immobility. In connection with the idea of continuity, manifested in European legal science, it is worth mentioning that the methods of interpreting the law are common to EU Member States, being recognized and experienced over the centuries. At the same time, it is interesting that the distinctive features of the Common Law system are mainly explained by the absence of the defining

characteristics of the Roman-German law systems, and the specific differences that the Scottish law presents which - geographically it is framed in the Anglo-Saxon family, they are explained as the result of the influence of Roman law. Elements of continuity were also noticed in the sphere of the legal professions, as a result of extensive research carried out in four European countries: France, England, Germany and Italy on the forms of organization, the legal regulations in this matter, the professional practices and the professionals themselves.

One of these elements was that of maintaining a significant share of national traditions, despite the process of internationalization of legal professions. Another element of continuity found in England, regarding the relations between the legal professions, and the state, the degree of autonomy of the former was the still strong maintenance of national customs, of the self-government of the legal profession. The fact was explained by the history of this profession and by the liberal tradition that had neither suffered in the ninth century nor in the twentieth century because of an authoritarian regime, while, the other countries did not have the same historical chance, the state on the contrary, trying, at different times in their history, to subordinate the judiciary, the legal professions, to keep them under control, limiting the independence of the legal professional structures. It was concluded with regard to Italy and Germany that the situation of the legal professions still bore, at the time of the sociological-legal investigation, the imprint of state control, long and pressing control, during the Nazi and fascist regimes. Finally, it was found as an element of continuity, the maintenance in the countries included in the field of research, the recruitment of professionals, with a predilection among the middle and upper social layers.

Throughout history, Europe has encountered difficulties of alternation continuity, discontinuity. Moving on to some discontinuities, we recall that after the fall of the Western Roman Empire, the superior classical culture of Roman law, as well as the revived one in the Eastern Roman Empire, meant a regress of the European legal culture. However, the Roman heritage survived. The notions of official power, official jurisdiction, law, conceived as a command of the state power, which was the basis of legalism, specific to the European legal culture and legal positivism, were maintained. The notion of "jus commune" of Europe has been maintained throughout the European legal thinking and

has proved itself capable of being reborn as happened with the classical Roman law, starting with the 12th century. Thanks to the Romanian jurists and their European successors, the ground was prepared for the great codifications of the modern era. Another element of discontinuity in European legal history was the emergence of modern law, which, by its specificity, represented a break with medieval law. Then, totalitarian regimes marked a period of discontinuity in Europe, in the evolution of its modern law, affecting, for a period, more or less prolonged, the legal culture of the countries in which they were established. The concept of the rule of law, which was formed and affirmed in Europe on the basis of Enlightenment, in the spirit of the American Declaration of Independence and the philosophy of the French Revolution, was deformed and became powerless, inoperative, under the conditions of the totalitarian regime of the 20th century. The law has lost its relative autonomy and authority, stemming from its role of control over the state. The state has gained control over the law which has become a mere instrument of state domination. The totalitarian regimes, however, could not be dispensed with by law and legal institutions.

A disruption of the evolution of modern European law, significant from the point of view of discontinuity, was provoked by postmodernism, which inevitably influenced the law. Postmodernity is presented, in sociology, as a time of social transition, dominated by the process of globalization and the search, sometimes the sharp affirmation of new forms of organization and management of new institutions and ways of life. Peter Murphy notes that postmodernism is a reflection of the modern condition, claiming that we live in a differentiated society in which different spheres coexist. Each of the spheres is made up of distinct norms, goals, procedures, processes, values, transformations and balances. Each of the spheres emphasizes one element or another, on its own perspective about a good society, about a fair or impartial treatment. As a result, in society there is not a single justice, but a multitude of justices that coexist, either in friendly or conflictual relationships. But, precisely, the advantage of postmodernism, which recognizes a plurality of rationalities and a multitude of justices, demands greater prudence on the part of the one who makes judgments about justice or norms, forcing him to judge not only by one criterion, but by more many. Postmodernism demands finding ways to reconcile different conceptions of justice and law, to adapt competing claims and conceptions. Colin

Summer pointed out that, in the post-modern period, some specific trends of modern law evolution are mitigated, while the practical purposes of the law are on the foreground. If, in the modern period, the classical liberal model of the rule of law was based on the general and abstract character of the law, the concept as a premise of formal equality, the universality of individual rights, the postmodern orientation consists in the particularization of legal regulations and in the specialization of human rights. In conclusion, the law was transformed into a system directed to profit, advantage, opportunism and instrumentalization.

Boaventura de Sousa Santos wrote in 1989 that, starting with the 19th century, modern state law represented a unique, autonomous, autocratic and endowed power with modeling and social innovation, planning for the future. In the last decade of the twentieth century, however, the aging of state law and the emergence of fluid, ephemeral, negotiable and renegotiable forms of law, some regulation of relations between corporations, a community regulation, a postmodern legality, in accordance with the interests of moment of the parties involved. The reduction of the role of the law, the desacralization and trivialization of the law, especially the state law, the end of the legal fetishism, the monopoly of the state in the area of the elaboration and even the application of the law, as well as the emergence of the legal minimalism were observed. He pointed out that, legal minimalism means that, legal relations are increasingly subject to power relations, it means the disarmament of powerless social groups, which are signs of a deep crisis of democracy. He proposed as a solution the renewal of participatory democracy, in order to strengthen the representative one, assuming a concept of law, based on legal pluralism, combining state law, with non-state forms of law. Very interesting was, in the same order of concern, the detection of paradoxes that accompany, inevitably the radical renewal that represents the transition from modernism to postmodernism.

A first paradox is that of the universal and the private. When modern law systems were formed, they were conceived on a universalistic, individualistic basis, which allowed the elaboration of the notion of human rights which, however, were over-developed, which led to their over-ideology, with negative effects. Subsequently felt. A second paradox is that of deregulation and regulation. Although the jurists have endeavored to demonstrate the benefits of legal deregulation, in fact, there has been a growing demand for the

regulation of some areas of great danger, such as the field of bioethics. The next paradox is that the emergence of alternatives to state law risks producing perverse effects, meaning that, instead of ensuring the relaxation of relations within civil society, alternative solutions sometimes cause a reinforcement of state control. The fourth paradox reported is the paradox of equality in rights of the subjects of law, under the conditions of a differentiated society. At the same time, more justice, more equality and more citizen participation are required in social life, and on the other hand, there are some regulatory systems that represent alternatives to legal regulation or judicial settlement of disputes, under the conditions of a differentiated society. , consisting of subsystems generating their own regulations. However, it is good to have a certain dose of pluralism and a certain kind of pluralism that allows the fight against state law. But, it is not necessary to accept any pluralism that introduces differentiations that, the right of sole origin, could alter in the continuity of national law.

**3. Continuity and discontinuity in the history of Romanian law**

We dealt first with the continuity and discontinuity in the field of law, in Europe because we considered it necessary to precede this analysis to the one dedicated to the subject, at national level, as Romania remains in perpetuity a continental-European country, which became 2007 and EU member state. In order to highlight the particularities presented by the continuity-discontinuity alternation in Romania, it was absolutely necessary to consult reference works on the history of Romanian law. From the inevitably incomplete research, few and significant conclusions regarding the Daco-Roman legal system, the Roman-Byzantine law, the old Romanian law, the medieval law stage, the modern law stage, the codifications made, especially conclusive for the belonging of the national law system to the sea, have resulted. German Romance family. Regarding the origins of the old Romanian law, it is noted that the opinions they support, either the Daco-Roman origin or the exclusively Roman origin, prevail and belong to predecessor illustrators, such as Miron Costin, Dimitrie Cantemir, Nicolae Iorga, Andrei Rădulescu, as well as prestigious law historians who followed. Attention was drawn to the fact - which could be interpreted as an interruption of continuity - that, in the absence of an autonomous organized state body and a strong own governing blanket, during the

barbarian population outbreak, the non-application of Roman law to pilgrims from Roman Dacia and the partial use by the colonized Romanians of the provincial Roman law determined that, the persistence of the Romanian legal system acquires particular aspects. To the question whether for long or short periods, one would not find, from one legal system, to another, apart from the fundamental elements of differentiation, elements of continuity, if it could not be found, at different legal systems points common we find the answer according to which the formation of the modern Romanian law represented the break with the feudal law.

During the disintegration of the medieval structures and the emergence, as well as the development of new social relations, codes were developed, with inherent limits. For example, the Calimach Code was developed (1817), inspired not only by the Roman-Byzantine legions and by the custom of the land, but also by the Napoleonic civil code of 1804. The transformations that marked the beginning of the modern era in the Romanian Countries had direct effects on the of the state and the law, acquiring a greater character after the creation of the Romanian national state, in 1859. In the second half of the nineteenth century, the Parliament occupies a central place in the system of state organs, having a representative character and carrying out a remarkable activity destined to the preparation and elaboration. Modern European legislation. As noted by Valentin Al. Georgescu, in the process of accelerating the modernization of Romanian law, was increasingly felt in the three Romanian countries, the need for codification, the process of knowing the three phases: the first, a synthesis phase, in which, the selective and adapted transformation took place. of the Byzantine praviles, in the internal law of the kingdom, the valorization of the customs of the earth; the second phase initiated in Moldova by the Calimach Code in which, in a necessary synthesis, a western and jusnaturalist type right is introduced and the third phase, the one inaugurated by the Organic Regulations through the provisional translation of the French Commercial Code of 1818 and by the requirement of elaboration to modern codes to which it was only partially answered, until 1859.

Regarding the formation of modern Romanian law, it is necessary to remember that, by the Paris Convention, the Romanian Principalities were required to revise their entire legislation, in order to agree with the modern requirements. A special mention must

be made of the fact that, at the disposal of Alexandru Ioan Cuza, the codes that were the foundation of the system of modern Romanian law were adopted. The legislative work of Alexandru Ioan Cuza, located Romania, among the countries with the most advanced legislation. The temptation to capitalize, even in some matters, the national legal tradition antetotalitate, to renew the thread of history, where it was broken, by the establishment of totalitarian regimes was also present in Romania, especially regarding the constitutional law. The temptation was so strong, in some cases, that the obvious fact was ignored that, in the concern of realignment to Western standards, changes in more than half a century had to be taken into account, in the countries of origin themselves standards. We consider the Constitution of Romania of 1923, inspired by the Belgian model and very advanced for the time when it was adopted and for the area in which it was to be applied.

**4. About contemporary national legal science**

In relation to contemporary national legal science, we can affirm the existence of a Romanian legal science and culture as a single and indivisible one. Indeed, the assertion of such a postulate becomes all the more necessary and important under the conditions of European integration, including in the plane of law and reality of a globalization, including legal, increasingly accentuated and aggressive, which also implies the preservation and strengthening of the juridical identity-cultural, as an imperative of the manifestation of unity through diversity. The grounds for a unam scientum juridical are becoming more and more evident and more provocative and start only from Bucharest, not from Brussels, since in the world there are a significant number of national states based on a nation, whose name is a gate, usually. In Europe, the absolute majority of states are national. Thus, the main objective of our research cannot be other than the Romanian legal science understood as a science of Romanian law, and the purpose of this approach is not difficult to identify either: the crystallization of the doctrinal expression of Romanian law as a unitary law of the whole Romanian people, therefore, a unitary legal expression that serves as a theoretical-conceptual reference for both the laws of the Romanian state.

"Like the language, the law lives in the conscience of the people" and develops organically "through internal forces that work in silence, and not through the arbitrary will of a legislator" to impose by political decision the result of rational speculations on human nature and natural rights inalienable of the individual considered in the abstract: here is the starting point for the well-known historical doctrine of law in the formulation of Friedrich Carl von Savigny, the founder of modern legal science in the true and true sense of this term. Not first of all the politicians gathered in legislative assemblies, but the lawyers are the true representatives of the people in everything that belongs to the latter's right, and they can be either the medical practitioners in the courts, or the theorists trained in universities". Two centuries ago, Savigny was the winner, and the German legal science formed from his ideas and developed for half a century under conditions of political fragmentation reached a level that has remained imposing even for today's jurists. . On the contrary, where the accent fell not on the law of the people, but on the laws of the state, the legal science could only overcome by far the consequences of long political separation, as can be seen after the First World War in a Romanian state whose territory it covered. the Romanian historical space, but which could only solve with great difficulty the problem of legislative unification and when the times when the historical conception of the law was explicitly used by Simion Bărnuțiu in the Blaj Proclamation, or by Mihail Kogălniceanu in carrying out the major reforms societies of modernity in the Old Kingdom seemed long forgotten. As if not learning too many of these historical experiences, today Romanian legal science seems to be satisfied with the task of accompanying by exegesis and commentary an activity of legislation whose only benchmarks seem to consist, on the one hand, in punctual requirements especially of the invoice. Economic and ideological, and on the other hand, to ignore any tradition or perspective of systematic crystallization.

In addition, at the level of positive law, the codifications of the last decades have followed divergent orientations, in Bucharest taking into account the Romanian model, and in Bruxelles the union model. In the approach we allow ourselves to propose, we must start from the fact that beyond the political correctness raised by the EU on the ruins of the old glosses and comments of a Roman law accepted after a millennium of absence as a law of a long-lost society, Romanian jurists they must understand themselves as lawyers of a space in which Roman law also continued as usual and as a Byzantine law

to be alive throughout the Eastern Roman Empire, as a right of a Byzantine Commonwealth and then of a Byzantium after Byzantium. , without its popular, customary, uninterrupted base having altered its substance. In this context, we need a unitary, comprehensive vision from which to start. More clearly, the nomos of the Romanian space as an unmistakable and perpetual seal of Rome always: here is the historical right of the nation invoked by a Declaration of Independence and whose full restoration is called to contribute from now on the Romanian legal scientific community, we all concerned about the Romanian legal identity, in a Europe of integration and a World of globalization.

This approach to EU law should start from the fact that only in case of lack of local laws will the Union law and especially the EU Treaties be applied. The question is: what is meant by lack, by the so-called insufficiency of local laws? Whenever the Romanian judges do not find in the local laws the text that will resolve the dispute, be willing to count deficiency and to apply the Union law. With this system, EU law was introduced as little as possible in the area recognized by local law and it is understood that the latter would have had very little application. In fact, the judges made only a good interpretation in the situation of the insufficiency of the text of the law; and in any case it should not have been given a purely literary, abstract, tight interpretation, without assuming the consequences and without disregarding equity. The scientific method of interpretation has established certain rules and, among others, requires that the sources of the texts be taken into account. For local law in Romania, we must necessarily resort to Roman and Greco-Roman law. Even if the texts do not include the solution of the question, the arguments of logic, the general principles of law and the purpose pursued by the drafters of the rules must be used. Only when these means do not lead to the solution of the problem can it be argued that in local law there is a lack, that there is an insufficiency and - as such - to resort to EU law. However, the local law is not protected by the interpretation in favor of the union because the judges did not know very well, or at times, the European one. But there would be another cause that would make EU law less and less used: the language of this situation. We consider that the unionists do not use the Romanian language in the drafting of the normative acts, nor in the CJUE or the ECHR, our mother tongue is weakened, nothing worse for the performance of justice as this situation and older for the

justices. And our argument would continue, but we stop here, not because we might be considered Eurosceptics, but simply because of the technical-editorial constraints. However, we will talk further about the romanity and originality of Romanians' law in the context of a new legal typology, the law of the European Union: between a presumed utility and a demonstrated inefficiency.

## 5. A new legal typology. Stranger than European Union law can imagine: between a presumed utility and a demonstrated inefficiency

The European Union is a major global player, representing a great commercial power. Sometimes described as civil or normative power, this "reflects the fact that the means at its disposal are - by necessity, given the lack of its military capacity - economic, diplomatic and political in nature, rather than coercive. In other words, worldwide, the EU relies mainly on soft power. Also interesting is the proposal of States that are not permanent members of the UN Security Council for the EU to be represented in the Security Council. As the idea has already been launched, all we have to do is wait. And "comparative history teaches us that political forms are never fixed and minority models sometimes end up being imposed." The future of the EU is closely linked to the ability to operate under the Lisbon Treaty, the possibility of attracting and co-opting new Member States, as well as eliminating discrepancies between them. Although considered a unique institutional and functional model in the world, the European Union represents "a necessity and an ideal to be attained in which we will find our philosophical and cultural roots" and through which "we will participate in a collective adventure, which unites people for the good. , and not the evil ". "In order to succeed on this unique path of the European Union, we must give up nationalist ideas, in order to approach the regional vision. There is no room for "wondering by what singular aberration an adult people could thus alienate their concern to create their own right in the hands of people who are strangers and whose first mission is not the common good of French society."

Right is a struggle, as Rudolf von Ihering states. We must not forget to fight, because, “all the great achievements that the history of law has registered: the abolition of slavery, slavery, freedom of land ownership, industry, freedom of belief, etc. they were conquered at the price of fierce fighting, sometimes continued for centuries; not many

times, in order for the right to cross this road, he left behind the rivers of blood and trampled rights. Everything is in full swing, in a dynamic, we must not stop. However, we remain at the conglomerate stage, although there are steps backwards, for example the failure of the Constitutional Treaty. Unfortunately, not all the consequences were drawn from the recognition of the legal personality of the European Union by the Treaty of Lisbon. Thinking about the future of the Union, many questions arise in our minds, the answers of which are very difficult to find theoretically. As none of the Member States alone would be able to face today's challenges, would the Union break down or stall a solution in the future? How effective could a single state fight against organized crime, trafficking in human beings or drugs? What would be the influence of a state in trying to advocate for the protection of the environment or to fight against climate change? How could a state alone fight for anti-competition regulation or play a major role in international trade negotiations? We do not believe that these results can be the result of singular efforts, so that Europeans must be more innovative and powerful, either in strengthening the functioning of the European Union or by imagining a new original structure to organize Europe's future.

In this regard, we consider that the EU, since it was not founded by a nation or a people, could not be assimilated to a nation state or a constitutional structure. It is an international organization, sui generis, created on the basis of treaties concluded between sovereign states that have decided to exercise joint competences for an indefinite period of time. We find it interesting also the classification of the European Union in the category Staatenverbund (union of states), following the Maastricht Decision of October 1993, pronounced by the Federal Constitutional Court of Germany. In the Maastricht Decision, it is emphasized that the objective behind the Union was to create a "union of states as a union as close as possible to the peoples of Europe (organized as states), and not as a state founded on the people of a single European nation". However, the Federal Constitutional Court of Germany does not use an established term, its meaning being unclear, there is no equivalent in other languages, but it certainly refers to a form of confederation (Staatenbund). By this neologism, the Germans mean multi-level governance in which states cooperate more closely than in a confederation, but which, unlike a federal state, retain their own sovereignty. A more appropriate translation for the

German term Staatenverbund would be "union of sovereign national states". This meaning also brings us closer to the descriptions proposed by Great Britain "partnership of nations" or "constitutional order of sovereign states", which would have a similar meaning. It should be emphasized, however, that the United Kingdom opposing the idea of the rule of law of the EU has, by referendum, described abandoning the union, perhaps because of the specific typology of Union law. The British, in their conservatism, interpreted in another key the new EU legal order.

**6. Instead of conclusions, the typology of Union law in another interpretation key**

In order to be able to investigate the European legal phenomenon, it is necessary to observe the important legal typologies, but also to analyze the history and specificities of European Union law, with an emphasis on the features that support the idea of a new legal typology, since without such analysis, we cannot separate the features of European Union law. Which betrays the idea of a new legal typology. In this sense, it is necessary first of all to have an autonomous will that commands the legal decision-making process, different from a simple arithmetic sum of the individual wills of the states. The legal will of the Union is the essence of Union law, which is normal, because we are talking about a Union, so the question of typical features is raised, even if there are particularities. In addition to this autonomous will that commands the legal creation, the new typology also implies the existence of general principles that command the essential directions of the construction and development of the legal order of the Union. Within the complex process of developing and applying European law norms, general principles of law occupy a very important place. Most of the general principles of law are enshrined in the legal order of the Union, but in some cases we also find references to treaties. Reference to these principles can be made only when Union law is deficient, because if there are provisions in this respect, their application is mandatory. The role of European doctrine and CJEU jurisprudence in shaping the principles of law should also be emphasized here.

As emphasized in the doctrine, “the judge cannot be indifferent to doctrine and practice, when applying the law; the legislator, in his turn, cannot ignore the doctrine and the judicial practice, which leads to the conclusion that the different sources of the law expert on one another, an inevitable influence”. If, in the settlement of a case, the Court

of Justice has to refer to or apply general principles of law derived from the national legal order of the Member States or from the international legal order, the referral or application can be made only if those principles "are compatible with the Community principles and with the specific legal order enshrined in the Community texts". Also, the general principles of law gain authority in Union law through the practice of jurisprudence, "but they are always based on their consecration in a legal system organized either at the level of the Member States, or common to the Member States or resulting from the nature of the European Union". The attitude of the Court of Justice on the general principles of law has evolved greatly over the last 60 years. If at first the Court was hesitant, since 1960 it can be seen that the European court referred to principles in many areas. Of course, since the 1970s their importance, suppleness and dynamism have been realized by European judges, who have recognized them as rules of Union law. Therefore, over the years, the general principles have become very important, today, they are an indisputable part of EU law, alongside primary or secondary law. The role of the principles is to guarantee the cohesion of the law of the Union and its adaptation to the changes of the European realities. Interestingly, although the EU legal order is governed by the general principles of law, the CJEU has not always defined or applied them in the same way, but they are very broadly designed. Thus, we can see that depending on the situation of the cases, the principles play different roles in the EU legal system. Despite these differences, there is still a balance - the desire to ensure uniformity of Union law and to guarantee the achievement of the objectives assumed by treaties. It is obvious that the necessity of resorting to the general principles of law as legal sources derives mainly from the "novelty of Community law that is still in its consolidation phase, as opposed to the internal order of each state that has known for a long time in which it has its own settled".

Although the origin of the general principles of European Union law remains the national law of the Member States, the CJEU has some freedom in their choice. The principles of the European Union are binding on its institutions, and the acts or measures adopted, whether they are of an administrative or legislative nature, which would violate any of the above principles are illegal, and can be annulled by the Court of Justice. It should be noted that these principles are applied in order to avoid denial of justice, to fill the gaps in European Union law and to strengthen the coherence of this right. Of course,

in the hierarchy of sources of Union law, the general principles play an extremely important role "as well as the constitutive treaties, especially the fundamental principles which are expressly recognized by Article 2 TEU and which must be respected by the EU and its institutions. The CJEU recognizes other general principles as they are compatible with the constitutive treaties and fundamental human rights "as sources of rights and obligations, especially since there is no Union domain that is alien to these principles. They acquire an independent normative value, ultimately representing fundamental democratic values deeply embedded in the common political and cultural heritage of the Member States. The general principles of law are closely linked. The fusion between them is not surprising because they are based on those values and pursue the same goals. As more and more domestic disputes raise questions of Union law, national courts are increasingly relying on European jurisprudence, so it is imperative for the CJEU to argue its decisions in detail.

Also related to the typology of the Union legal order would be to point out the multilingualism characteristic of the Union order. Contrary to the ECSC provisions that provided that French is the only authentic language, the EU is based on the principle that at least one official language of each Member State becomes an official language of the Union. If originally it was only six Member States and four official languages (French, German, Italian and Dutch), we are currently discussing twenty-eight Member States and twenty-four official languages (almost each Member State having its own language official). Thus, any of the Member States has its own legal system, which can be classified according to René David's typology as belonging to the family of Romanian-German or Anglo-Saxon law. Therefore, summarizing the ones discussed above, we emphasize that the various forms of expression of the law have the common purpose of creating a legal order and due to the fact that they are addressed to a region of the world that includes several states and international organizations, the problem of knowing European law is a problem. Serious from a double perspective: the accessibility of European legal norms and multilingualism. Moreover, even a lawyer has trouble understanding European law, especially being a young, constantly evolving law, he did not have time to settle, so there are two major problems at this stage: the originality and the superiority of the law. European. And in European law the question of proving the legal norm is raised. Law will

always be a topic in the center of attention, analyzed intensely and admired by some, challenged by others. And as for the European Union, the opinions on the future of this political and legal construction are divided: we meet fervent supporters of the European Union, on the one hand, but also its challengers, on the other. In this context, we can say that the relation between the law of the Union and the national law of the Member States is dialectical. On the one hand, Union law borrows elements of national law to fill the gaps in the Treaties, and on the other hand, Union law nourishes national systems in particular through national courts. This interaction of the two plans is overshadowed by the uncertainty that is an inevitable consequence of the fragmentary development of the law inherent in such a process of judicial harmonization.

In view of all the above, we emphasize that EU law is a new legal typology from the perspective of the theory of law and can be defined as the specific legal order, having an autonomous and unitary character, integrated into the legal system of the Member States, grouping all the legal norms included. in the EU treaties, as well as in the acts of the own institutions that were adopted in application of the treaties and issued on the basis of a specific procedure.

The recognition of its own legal order means that the legal norms of the European Union form a complex structure of norms that have a well-established set of sources of law, while the Union institutions have well-established procedures for notifying and sanctioning violations and skids. Similarly, the legal order of the Union is its own, being autonomous in relation to the international legal order and relatively autonomous to the national law of the Member States, but it is integrated into the legal system of the Member States and is required to their jurisdictions due to the direct, immediate and priority applicability of EU law. Thus, by reference to the legal order of the Member States, EU law is an autonomous and original legal order, which is characterized by a triple autonomy: the autonomy of its sources, the autonomy of the notions of law that do not depend on the qualifications of the Member States and the autonomy of the legal norms of the Union. Europeans that cannot be lacking in legal efficiency through the national law of the Member States. But, in relation to the international legal order, the specificity of the EU is that it was born following the treaties concluded by the Member States and the normative acts that were issued by the institutions of the Union, based on and in

application of the treaties. Although challenged on the fact that it is an "incomplete law by nature", unable to "pass neither as national law nor international law", it is precisely this "incompleteness" that has led to the finding of original solutions and methods that allow the rules and principles of the Union to interact. with the national and international environment. Some authors appreciated that "domestic law, European law and international law mix, overlap, complement, consolidate, compete with each other or cancel each other". "The permanent tension between the three major legal levels - national, regional and international - shows in any case today that the quasi-absolute autonomy of European law is a myth and that its dependence on international and national law has increased considerably during construction. European ". Moreover, in order to be able to apply European law, you must integrate its specificity into the broader set created by international law and national law.

The Treaty of Lisbon has made progress in the constitutionalization of the Union, "in particular by granting legal force to the Charter of Fundamental Rights, but without making a revolutionary leap that would transform the Union into a federal State". However, this treaty has been challenged by some authors, on the grounds that "it is anything but a treaty", calling it "the Lisbon European arrangement" because "it is more than another example of a hidden bureaucratic revolution, provided by the unelected bureaucracy in Brussels to a largely ignored public, avoiding democratic consultation and information, ie the process of democracy itself and, therefore, the unpleasant experience of the former European Constitution, rejected by the French and Dutch in 2005. The EU is in fact an "institutional, intermediary model" between the nation-state, confederation and federation, which has no equivalent in the world". It is necessary to "overcome the political divide, within a larger, real and necessary union between the peoples of Europe", having as its basis "what we can call the" European tradition ". In the US in particular, European Union law has often been accused of being devoid of culture because it cannot associate patterns of thought and action of a community, does not have its own language or education system, because each Member State has its own legal/political culture, but also because it is a relatively new system. The existence of a right is also appreciated in terms of its ability to be applied, not only with regard to its definition or its sources. Through its application, EU law also approximates the systems of law, observing an

approximation of the common law system to the Romanian-German system. However, at present, we are witnessing a process of "Europeanization of legal systems - jus commune - and in particular, public law". However, the functioning of the institutions of the Union must be ensured, the institutional balance must not be abandoned, and the separation of powers must still be guaranteed as we have been inoculated with the idea, which seems to be common sense in the opinion of the decision-makers in Brussels that national law must fall within certain limits. Of Union law.

The question is how and what you do to achieve this. Because the national legislators prescribe the "treatments" that they consider beneficial for the sick national state, without knowing that the state or the union has or does not have resources and to ensure this consumption for "treatments". Whose obligation is the state or the union? To achieve this objective, it is normal for the national state to introduce a control barrier so that we do not wake up that we have "consumed" more rights than we can afford. Until the accession of 2007 this control was carried out in a simplified way, the control of the constitutionality of the international treaties to which Romania acceded. The result was that I still had a national right. Now after modifying the Constitution and joining the Euro-Atlantic structures, sometimes we succeed sometimes, with the consequence of the alteration, until the disappearance of the Romanian law and, together with it and the national state, by setting up a Union of the United States of Europe.

From this perspective, the legal knowledge cannot be avoided, from the connections with the human network of knowledge, as the legal phenomenon cannot be avoided to the connections and interferences with other socio-human phenomena. This interactivity does not pay attention to the specificity of legal entities or specializations, such as branches of law, concepts, principles or legal theories. The knowledge of the law implies the use of legal concepts and categories, without which the law would be nothing more than an amalgam of heterogeneous rules, lacking any coherence and unable to regulate the realities of social life. Any conceptual system involves distinctions and relationships between the notions he uses and the realities or phenomena he encounters. Jurists are thus led to establish legal categories, that is, ensembles of rights, things, persons, deeds or acts, which have common characteristic features and are subject to a common regime. The right, thus understood, as a network of concepts and legal

categories, proceeds to classify facts, circumstances, notions, according to their similarities and their relation to certain models. The evolution of social life and the world determines the emergence of new concepts, including in the field of law, which are derived and which allow to unite around them sets of rules that must be applied to the phenomena arising from this evolution. Law is an investment made by those who have the sensitivity and power to understand what the process of forming and supporting a nation entails. You don't do the right thing to make a profit!

With modest intentions, I tried to deliver a new scientific contribution that aims to make the topic discussed become a plausible topic for the contemporary reader who is quite skeptical of the essence of law. Personally, I believe that this work does not constitute in the canons specific to the texts of the legal doctrine, but it renders the current Romanian legal phenomenon, the dignity and the existential relief that I think it deserves. I would say that this approach which is sometimes lacking in academic pedantry is the remedy for the intellectual curiosity and honesty of a reader who wants to read something else. Even though it is a work about law and justice and these should have been the main characters, the study has as its core the human being, respectively its identity by reference to the community having as legal scenography, in this case, regulating our movement between good and evil because, in the end, we are human beings. And we are - or, in any case, we should be - in a permanent dialogue with God. He tirelessly conjures, as an option, the flow of our lives, just as we would if we were in his condition.

**BIBLIOGRAPHY:**

In order to deepen the subject of our study the specific legislation can be consulted but also the following bibliographical materials:

**I. Courses, treatises, monographs**

Andrei Rădulescu, The Originality of Romanian Law, Curierul Judiciar Publishing House, Bucharest, 1933;
Andrei Rădulescu, Romanian Law in Bessarabia, with postage by Mircea Duțu, Universul Juridic Publishing House, Bucharest, 2017;
V. A. Georgescu, Byzantium and Romanian institutions until the middle of the 18th century, Publishing House of the Academy of the Socialist Republic of Romania, Bucharest 1980;
Mircea Djuvara, General Theory of Law, All Beck Publishing House, Bucharest, 1999;
Ioan Alexandru, Politics, Administration and Justice, All Beck Publishing House, Bucharest, 2004;
Albici Mihail, About Law and the Science of Law, All Beck Publishing House, Bucharest, 2005;
Constantinesco Leontin-Jean, Treaty of Comparative Law, All Publishing House, Bucharest, 2001;
Craiovan Ion, Philosophy of Law, Juridical Universe Publishing House, Bucharest, 2010;
Popescu Sofia, General Theory of Law, Lumina Lex Publishing House, Bucharest, 2000;
Legrand Pierre, Comparative Law, Lumina Lex Publishing House, Bucharest, 2001;
Malaurie Philippe, Anthology of Legal Thinking, Humanitas Publishing House, Bucharest, 1997;

**II. Articles published in specialized magazines**

Sever Voinescu, Our Angel, article taken from the website: http://evz.ro/ingerul-nostru-reflexul;
Sofia Popescu, Two polar categories: continuity and discontinuity researched from the perspective of the history of law and of the legal sociology compared in the volume "Science and Codification in Romania", Juridical Universe Publishing House, Bucharest, 2012, pp.445-456;
Alexandrina Șerban, The heuristic value of the concepts Communication presented at the Scientific Session of the Institute of Legal Research, Romanian Doctrine between tradition and reform, Bucharest, 2014.
Laura-Cristiana Negură, European Union law, a new legal typology, doctoral thesis, Nicolae Titulescu University, Bucharest, 2014, taken from the website: https://www.google.ro/sear