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CONTENTS

SOME ASPECTS REGARDING THE CONDUCT OF SEARCHES IN THE CASE OF CRIMES COMMITTED UNDER THE REGIME OF WEAPONS, AMMUNITION AND EXPLOSIVE MATERIALS

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Abstract:
The search at home or at the workplace aims to discover weapons or ammunition and explosive materials possessed without right, manufactured weapons and ammunition or certain parts that were to be assembled into a weapon, manufactured or processed explosive materials of various machines, devices, instruments, which served or were intended to serve in the manufacture of weapons, the manufacture or processing of explosive materials. The purpose of the article is to present several types of searches aimed at the discovery of the proceeds of the crime used through the use of firearms, especially game or fish obtained through acts of poaching, trees or stumps removed with the help of explosives. Also, during the preparation of these procedural activities, the search and discovery of documents that prove the origin of weapons, ammunition and explosive materials must not be omitted.
Keywords: *searches, crimes, weapons, ammunition, explosive materials.*

Introduction

The search, regardless of whether it is home, vehicle, physical or computer search, this procedural activity aims to discover weapons, ammunition and explosive materials possessed without right, manufactured weapons and ammunition or certain parts that were to be assembled into a weapon, manufactured or processed explosive materials of various machines, devices, instruments, etc., which served or were intended to serve in the manufacture of weapons, the production or processing of explosive materials.

The searches in the case of crimes committed under the regime of weapons, ammunition and explosive materials also aim to discover the product of the crime used through the use of firearms, especially game or fish obtained through acts of poaching, trees or stumps removed with the help of explosives [1].

We highlight that the judicial bodies, when preparing the searches, must not omit the search and discovery of documents that prove the origin of weapons, ammunition and explosive materials.

The legislative framework in Romania that regulates the arms and ammunition

regime is contained in Law no. 295/2004 regarding the arms, essential components and ammunition regime and the Romanian Criminal Code.

Law no. 295/2004 establishes the categories of weapons, essential components and ammunition, as well as the conditions under which possession, port, use and operations with these weapons, essential components and ammunition are allowed on the territory of Romania.

The crimes related to non-compliance with the arms, ammunition, nuclear materials and explosives regime are contained in the Articles 342-347 of the Romanian Criminal Code: failure to comply with the weapons and ammunition regime (Article 342); unlawful use of a weapon (Article 343); forgery or alteration. erasing or altering markings on lethal weapons (Article 344); non-compliance with the regime of nuclear materials or other radioactive materials (Article 345); non-compliance with the regime of explosive substances (Article 346); failure to comply with the restricted explosives precursors regime (Article 346^1). Article 347 of the Romanian Criminal Code sanctions the attempt in the case of committing the crimes stipulated by the Articles 342, 345, 346 and 346 from the Romanian Criminal Code.

Aspects regarding the authorization and conducting of searches in the case of crimes committed under the regime of weapons, ammunition and explosive materials

In the case of these crimes, in addition to the fact that the searches must be carried out only on the basis of authorization, it is necessary for the criminal investigation bodies to know in advance the places or possible places of hiding of weapons, ammunition or explosive materials, taking into account all the particularities the cause and the characteristics of the buildings to be searched.

The search can be home, body, IT or of a vehicle. Regardless of its nature, the search must be carried out with respect for dignity, so that it does not constitute a disproportionate interference in the private life [2].

Article 157 para. (1) from the Romanian Criminal Procedure Code provides that “the search of the home or of the goods in the home can be ordered if there is a reasonable suspicion regarding the commission of a crime by a person or the possession of objects

or documents related to a crime and assumes that the search can lead to the discovery and collection of evidence regarding this crime, to the preservation of the traces of the commission of the crime or to the arrest of the suspect or the defendant".

According to the provisions of the Article 158 (1) of the Romanian Criminal Procedure Code, "the home search can be ordered during the criminal investigation phase, at the request of the prosecutor, by the judge of rights and liberties from the court that would have jurisdiction to judge the case in the first instance or from the corresponding court in its level in whose constituency is located the headquarters of the prosecutor's office of which the prosecutor who conducts or supervises the criminal investigation is a member". During the trial phase, the home search is ordered ex officio or at the prosecutor's request, by the court charged with judging the case.

According to the Article 157 (2) of the Romanian Criminal Procedure Code, "domicile means a dwelling or any space delimited in any way that belongs to or is used by a natural or legal person. The home search can be carried out in the home or residence of the suspect or the defendant, but also in other homes or spaces belonging to other people, such as, for example, relatives of the suspect, the defendant, witnesses".

During the search, attention must be paid to things such as: the walls, the door frames, the floor, the furniture, the stairs and their railings, the bathrooms, the electrical installation, as well as the annexes of the building - bridge, stable, shed, barn and the surrounding land [3].

Judicial bodies must observe the way in which the discovered weapons, ammunition and explosives were packed and preserved [4].

If they were packed in newspapers, the publication, the date of publication, will be mentioned, they being at least an indication of the date when the perpetrator came into their possession, packed them, walked with them.

Likewise, newspapers, paper and other packaging must be preserved with care, and papilar evidence belonging to the person on whom they were discovered can be taken from them, in this way removing the possible claims of the perpetrator regarding the fact that he had no knowledge about the existence of those discovered during the home search.

The rules regarding the description, handling and transport of weapons, ammunition and explosive materials must be strictly followed, both to eliminate the possibility of destroying traces and micro-traces, and to prevent accidents [5].

Another search that is carried out in the case of crimes committed under the regime of weapons, ammunition and explosive materials is the body search.

According to Article 165 para. (1) of the Romanian Criminal Procedure Code, “the body search is that evidentiary procedure that involves the external physical examination of a person, the oral cavity, nose, ears, hair, clothing, objects that a person has on him or under his control, at the time of the search”.

According to article 165 para. (2) of the Romanian Criminal Procedure Code, “if there is a reasonable suspicion that by carrying out a body search, traces of the crime, bodies of crimes or other objects that are important for finding out the truth in the case will be discovered, the judicial bodies or any authority with powers in ensuring public order and security proceeds to carry it out”. Unlike the home search, the authorization given by the judge is not necessary to carry out the body search, there is the possibility of resorting to this procedure every time it is necessary in the interest of the criminal prosecution phase. The body search must be carried out only by a person of the same sex as the searched person [6].

The search of vehicles is the activity carried out by the judicial body whose purpose is to thoroughly check them, including the trunk, the documents of the driver and, as the case may be, of the travelers and passengers, the luggage they have on them, as well as the legality transport of goods or people.

According to the provisions of the Article 167 para. (1) of the Romanian Criminal Procedure Code, “the search of a vehicle consists in examining the exterior or interior of a vehicle or other means of transport or their components”. The search can be carried out by the judicial body on vehicles running in traffic, those stopped or parked in public places.

Stopping and controlling a vehicle in road traffic can be carried out when there is data and information that the targeted vehicles are carrying weapons, ammunition and explosive materials or other values derived from crimes or wanted persons [7]. The judicial body will proceed to search the vehicle, it being indicated that this activity should

be performed by at least two or three people, of which one person will supervise the occupants of the vehicle, and the others will perform its control.

The places that must be searched when searching vehicles in the case of crimes committed under the regime of weapons, ammunition and explosive materials are the following: bumper; the engine; counterwings; tires and wheel covers; ventilation system; the interior of the doors; deck; side pillars for supporting the ceiling; the ceiling; the passenger compartment of the vehicle; the petrol tank; the trunk; the body sills.

In the case of crimes committed under the regime of weapons, ammunition and explosive materials, computer searches may also be carried out.

During the criminal prosecution phase, the judge of rights and liberties from the court that would have jurisdiction to judge the case in the first instance or from the corresponding court at its level in whose district is located the office of the prosecutor's office of which the prosecutor who carries out or supervises is a part the criminal investigation can order, through a reasoned conclusion, the performance of an computer search, at the request of the prosecutor, when it is necessary to search a computer system or computer data storage medium for the discovery and collection of evidence.

During the trial phase, the computer search is ordered by the court through a reasoned conclusion, ex officio or at the request of the prosecutor, the parties or the injured person.

Computer systems and computer data storage media may contain data related to the expiration of the weapon permit or data related to the purchase of lethal or non-lethal weapons, such as tax receipts or tax invoices.

Conclusions

Home search, body search, vehicle search and computer search represent very important evidentiary procedures that have a great contribution in the criminal investigation process of crimes committed under the regime of weapons, ammunition and explosive materials.

The report is the main means of recording the results of the four types of searches in the case of crimes committed under the regime of weapons, ammunition and explosive materials. Along with the report, as auxiliary technical means of recording the results of

the search, photography, video recording and, when necessary, sketches or drawings of the search site are also used in the criminal investigation process. The video recording reproduces more precisely, completely, in a dynamic form, the most significant aspects of the searches and, above all, the image of the objects or documents with all the characteristics from the moment of their discovery.

Regarding the computer search report, we point out that the statements, the photos taken, the documents seized, screenshots, as well as the Forensic Investigation Report of the computer system and the storage medium of the searched computer data will be attached to it.

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PARTICULARITIES REGARDING THE NATIONAL SYSTEM FOR THE MANAGEMENT OF EUROPEAN AFFAIRS

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Abstract:
The national authorities with attributions in the fields in which drafts of legal acts are initiated (responsible ministries or specialized bodies) participate in the European decision-making process, according to the legal provisions that outline the National System for the Management of European Affairs, promoting the national positions regarding these drafts. The coordination committee of the National System for the Management of European Affairs has the task of designating the institutions responsible for the development and support of mandates and general mandates. The national system for managing European affairs with a view to Romania's participation in the decision-making process of the European Union institutions is led, in our country, by the delegated minister for European affairs within the Ministry of Foreign Affairs.
Keywords: *European affairs, national positions, mandate, general mandate, negociation*

Practical aspects regarding the national system for the management of European affairs

National participation in the European decision-making process and the transposition or application of European legislative acts are closely connected, constituting interdependent stages of the same process, which must be unique and coherent.

In Romania, the national system for managing European affairs with a view to our country's participation in the decision-making process of the institutions of the European Union is under the coordination of the Ministry of Foreign Affairs. The legal framework is GD no. 34/2017 [1], which establishes the *decision-making levels* at which the coordination of the decision-making process and the adoption of Romania's positions in relation to the issue of European affairs are carried out, respectively the Government of Romania, and the Coordination Committee of the National System for the Management of European Affairs and the working groups.

The inter-institutional coordination within this process belongs to the (coordination) Committee, made up of representatives of the ministries and other specialized bodies, with positions of secretary of state or other positions with the rank of secretary of state, with attributions in the field of European affairs, which will be accompanied by officials from the structures responsible for managing European affairs. The Permanent Representative or Deputy Permanent Representative of Romania to the EU may be invited to attend these meetings, which are held weekly and usually take place at the government headquarters. It is a working body, without legal personality, led, under the guidance of the prime minister, by the delegated minister for European affairs from the Ministry of Foreign Affairs (Art. 6, paragraph 1).

The duties they exercise can be grouped around two major directions: a) establishing the list of general mandates of Romania that will be elaborated within the national system of coordination of European affairs; b) preparation of negotiation mandates at the level of the European Union, within the Committee of Permanent Representatives of the governments of the member states (Coreper) and the Council of the European Union.

In this sense, the Coordination Committee discusses and approves projects of general mandates, which are sent for approval at the Government level, but also designates the institution responsible for the elaboration and support of mandates or general mandates. A close connection can be found between the tasks assigned to the Committee, a structure that analyzes the annual lists of draft legal acts of the European Union for which the two Chambers of the Parliament will initiate the parliamentary examination procedure.

Committee members, based on Art. 6 paragraph 2 of GD no. 34/2017, follow and can request the ministry or the specialized body that elaborates the general mandates to inform and consult the local authorities, employers' organizations, trade unions, civic organizations or other organizations active in the fields that are the object of the draft legal acts of the European Union, but also on the proposals for acts implementing mandatory legal acts of the European Union.

*The mandate projects***,** including *the general mandate*, must include *elements* [2] that refer to: a brief description of the topic on the agenda of the Council of the European

Union and Romania's objectives in relation to this topic, but also a brief presentation of the EU legal acts in force at the European level and of other international commitments previously assumed by the Romanian side in the respective field. Also included are the limits that can be accepted by Romania in the negotiation process and possible negotiating positions of other member states, the European Commission and the European Parliament or its committees.

The impact on the state, which the drafts of European legal acts have, as well as the proposals for implementing acts of requisite European legal acts, impact analyzed from an economic, social or environmental point of view should not be neglected either. Also among the elements of the draft mandate is the list of normative acts from Romania that regulate the matter to which the draft European act refers, as well as an analysis of the changes that would result in the adoption of the respective draft act.

The approval of the general mandate is carried out by the Ministry of Foreign Affairs, through the Minister of Foreign Affairs and the Delegate Minister for European Affairs, then approved by the Prime Minister and promoted at all levels of negotiation within the Council of the European Union.

The other types of mandates, submitted with the approval of the Minister Delegate for European Affairs within the Ministry of Foreign Affairs, are assumed as follows:

- the mandates for negotiation at the level of working groups within the EU Council or at the level of committees are assumed at a corresponding decision level, according to the internal regulations of each institution in the National System for the Management of European Affairs;

- the mandates for negotiation at the Coreper level and the mandates for negotiation at the level of the other committees established by the EU treaties or by intergovernmental decision, agreed within the Coordination Committee, are assumed at a decision level at least at the level of the Secretary of State.

In addition, the mandates for negotiation at the level of the formations of the Council of the European Union are approved by the Ministry of Foreign Affairs, through the Minister of Foreign Affairs and the Delegate Minister for European Affairs and approved by the Prime Minister.

Practice has also highlighted the existence of *exceptional situations*, when the evolution of negotiations results in a situation different from the one included in the mandate. In this case, the representative of Romania in the Council of the European Union can support a new position, but only after consulting the responsible ministry/specialized body. The new position, accompanied by the written presentation of the reasons for the decision, must be sent later to the prime minister and the delegated minister for European affairs within the Ministry of Foreign Affairs.

If this situation intervenes at the level of Coreper, the representative of Romania in this committee can support a new position only after consulting the responsible ministry/specialized body. Also, the written presentation of the reasons for the decision is subsequently sent only to the management of the respective institution and the delegate minister for European affairs within the Ministry of Foreign Affairs (MFA).

The register of mandates is the tool that ensures the traceability of documents analyzed at the EU and national level, from the first presentation (for example, from the launch of the legislative proposal) until the end of the decision-making procedure to adopt/reject the document. The organization and coordination of this register [3] is the responsibility of the delegated minister for European affairs within the MFA.

The principles underlying the elaboration, approval and adoption of mandates

The institutional mechanisms that ensure the development of mandates for European affairs activities are based on a series of principles [4], between which there is a close correlation. Their proper application has a major impact on the entire process, facilitating the fulfillment of Romania's obligations as an EU member state.

The principle of cooperation ensures the development of a sustainable position both with internal partners and with European partners. *Professionalism* takes into account the quality of the works prepared, the observance of the deadlines for the fulfillment of the measures, the efficiency and effectiveness of the staff in all the activities undertaken. Based on *the principle of flexibility*, the mechanism of the negotiation process must be defined by flexibility, which allows it to be permanently adapted to changes occurring at the institutional or European level.

Ensuring a unified position is achieved according to *the principle of interministerial concertation*; in this sense, the relationship of the MFA and the other ministers with the European partners is carried out in compliance with the procedural framework for the elaboration and support of Romania's position, defined by the national norms in the field.

The principle of coherence in the process of elaborating and supporting Romania's position presupposes the existence of a fluid circuit of information, undistorted, which allows the transmission of a clear and unified message, based on an appropriate work procedure. Any person involved in the process of elaborating Romania's position, based on *the principle of information and persuasion*, has the duty to defend the interests of our country and the professional obligation to ensure that internal or external interlocutors are informed of the official position of the MFA, as well as the reasons behind its foundation.

Aspects regarding the development of mandates for European affairs activities at the level of the Ministry of Internal Affairs

The seat of the matter is represented by the provisions contained in Chapter V of *Order no. 143/2015* [5] regarding the activities of international relations and European affairs at the level of the Ministry of Internal Affairs (MIA), amended and supplemented.

When initiating a draft legislative act of the European Union, an impact assessment is made according to the procedure established by the order of the secretary of state coordinating the activity of international relations and European affairs.

The competence to develop *the draft mandate or general mandate* in relation to a draft legislative act of the European Union or its *detailed elements* belongs to the coordination structure (within the MIA) whose competence is the field of which the respective project is part, based on the evaluation of impact. The procedure [6] regarding the elaboration of mandate projects, general mandate and detailed elements is established by the disposition of the secretary of state coordinating the activity of international relations and European affairs.

Draft mandates or general mandates for a subject under debate at the European Union level are drawn up by a main responsible MIA structure, designated by the coordination structure, which can be a unit, an institution or a structure of this ministry. The main task is to carry out an analysis that results in the technical elements of the

mandate and the position elements, based on which the draft mandate or general mandate or its detailed elements are drawn up.

In Order no. 143/2015, amended and supplemented, clear clarifications [7] are made regarding *the technical elements of the mandate*, which include the result of the assessment carried out by the MIA structure regarding the impact that the measures that make up the subject under debate at the European Union level can have on its field of competence. *The elements of the position* concern the objectives to be achieved within the debates at the European Union level regarding the respective subject, but also the possible alternatives that could be accepted within the negotiations.

The elements detailing the assumed mandates are sent to the Permanent Representation of Romania to the European Union, but with the approval, as the case may be, of the Secretary of State coordinating the activity of international relations and European affairs or of the head of the coordination structure whose competence lies in the field of which the respective subject is part of.

After completing the internal notice/approval procedures, the coordination structure ensures the speedy electronic transmission of the mandate to the Ministry of Foreign Affairs for approval. In the situation where the opinion of the MFA is negative, the mandate is retransmitted to the coordination structure, which has the obligation of redoing the mandate. The renewed mandate or, as the case may be, the justification for not taking over the MFA's observations shall be sent to the MFA as soon as possible.

Conclusions

At the national level, an attempt was made to increase the efficiency of the management system for European affairs through a clearer delimitation of competences through secondary legislation related to the coordination of European affairs.

In practice, however, there are a number of dysfunctions in the activity of the Committee for the Coordination of European Affairs. First of all, the existence of inter-institutional conflicts and dysfunctions was found. Most of the time, the meetings of the Committee are attended by civil servants and not only secretaries of state, as they should be, which indicates the lack of importance of this institution for the actors involved, including the government.

These dysfunctions must be removed, in order not to generate significant problems in the process of managing European affairs by the Romanian Government, because the non-resolution of inter-institutional conflicts can have a negative impact on the quality of Romania's effective participation in the decision-making process of the European Union.

In many institutions in Romania involved in the management of European affairs, there are not enough financial allocations for the training of expertise in the field, an aspect that indicates the lack of availability of the authorities to solve this problem, or even the misunderstanding of the importance that an adequate professional training of the staff has in the efficient coordination of European affairs. A thorough analysis is required in order to maintain the stability of the coordination system through the development and adoption by the management structure of European affairs of a strategy for continuous professional training of civil servants to strengthen the administrative capacity. The programs offered should be innovative, up-to-date and based on the acquisition of both practical and analytical skills.

It can be noted that the lack of coherent and relevant solutions for all these problems can attract risks [8] such as: diminishing the administrative capacity of the actors involved in the management of European affairs; maintaining ineffective institutional arrangements; the intensification of inter-institutional conflicts; low absorption of European funds; an intensification of the infringement procedures applied to Romania by the European Commission. In the inter-institutional relations of the field of European affairs, but also of the entire Romanian administration, the culture of institutional cooperation and dialogue must replace the traditional one.

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BRIEF CONSIDERATIONS REGARDING THE SETTLEMENT OF THE ADOPTION THROUGH A LEGAL DECISION OF THE MINOR (APPARENTLY) ABANDONED BY THE MOTHER [1]

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Abstract:
The best interest of the child / minor is often invoked by both the defenders and by the courts in cases involving adoption. Moreover, art. 2 par. (2) and (3) of law no. 272/2004 mentions that this type of interest "it is imposed also in connection with the rights and obligations of the child's parents, other legal representatives, as well as any persons to whom it has been legally placed" and "is limited the child's right to a normal physical and moral development, to socio-affective balance and to family life. That is why it is an extremely sensitive issue to balance, as a result of the analysis of these issues, the legal possibility for this child to be taken over by an organized, united family, which will provide him an environment conducive to his mental and physical development that of maintaining contact / remaining with his forest parents, especially the mother, even if she finds herself in a difficult life situation that makes it impossible for her to keep the permanent contact with the minor.
Keywords*: minor, adoption, mother, interest, decision.*

Introduction

In the system of the Family Code, adoption was a means of protecting the child, as art. 66 of the Family Code laid down the principle that the adoption could be approved only in the interest of the adopted. Adoption was conceived as a means by which the child could receive the family he or she needed [2], with the rule that only minors could be adopted [3],[4].

According to article 263 of the New Civil Code entitles "The best principle of the child" provides in paragraph. (1) the fact that *"Any measure concerning the child, regardless of its author, must observe the best interest of the child".*

Although not expressly provided for in the European Convention on Human Rights, the best interest of the child is a determining factor in the settlement by the European Court of Human Rights (ECHR) of cases in which children are involved. They fall under the scope of the right to private life and family relations (art. 8 of the European Convention) and may cover relations between parents and children after divorce, the

preservation of personal ties and direct contact with both parents, the right of visiting the minors, the conditions adoption, assigning the child's name, heirship, the rights of the child born out of the marriage, etc. [5].

Family reunion has specific regulations in European Union law (art. 21 TFEU, Directive 2004/38, EU Charter of Fundamental Rights). Without going into details, we emphasize that art. 24 of the EU Charter of Fundamental Rights. must be read as having the same content as art.8 of the European Convention and thus, in all actions regarding children, taken by public authorities or private institutions, the best interest of the child must be taken into account. Every child has the right to maintain normal personal relations with his or her parents, except in cases where this is contrary to his or her interests”[6].

Since the case analyzed by us in this article examines the opening of the adoption procedure, we will mention the fact that "adoption is a complex phenomenon, with legal and psychosocial implications. From a social point of view, adoption is a complex phenomenon, focused on the child, concentrated on integrating him into a family and providing him with a home that will help the child develop harmoniously from a physical, emotional and intellectual point of view"[7].

According to the new legislation, legal experts are no longer the only ones who decide whether adoption is a suitable solution for a child or not. The specialists of the General Directorate for Child Protection suggest national adoption as a solution for the child in question, based on a new, mandatory work tool, i.e. the individualized child protection plan, for well-founded and thoroughly analyzed reasons [8].

In the light of the new regulations, the involvement of the courts in all phases of the adoption process ensures the "transparency" necessary to verify all the actions of the factors involved. [9].

The opening of the adoption procedure established by the court at the request of DGASPC and the best interest of the child

The principle of the best interest of the child will prevail in all actions and decisions concerning children, undertaken by public authorities and authorized private bodies, as well as in cases decided upon by the courts, and the principle of the best interest of the child is also compulsory in relation to the rights and the obligations of the child's parents,

other legal representatives of the child, as well as any people to whom the child was legally placed.

The best interest of the minor is a complex notion related to the particular situation of each minor, taking into account his or her age, the possibility of the parents to ensure a good physical, intellectual and moral development, the mutual attachment of the parents and the child, the care shown towards the child during cohabitation until the moment of initiating the action to open the adoption procedure, ensuring the material resources for a decent living, etc.

Jurisprudence correctly noted that "The measure of adoption is the last of the measures of alternative protection to which the minor is entitled in the event that he or she cannot be left in the care of the natural parent, as is the case, and precisely for that reason according to art. 26 from Law no. 273/2004 republished and with subsequent amendments, two cumulative conditions must be fulfilled for the opening of domestic adoption: the existence of the individual protection plan to establish the necessity of domestic adoption and the adoption consent of the natural parents [10].

What is more, in certain specialty articles regarding this subject (the best interest of the child) it was appreciated that "the best interest of the child is for both parents to be close to them as long as they have the capacity to exercise their incumbent rights and obligations " [11].

In the case analyzed herein, the petitioner DGASPC Galati sought the approval of the President of the County Council with regard to the application to open the adoption regarding the minor P.G., based on the provisions of art 28 of law no. 273/2004.
Through the petition submitted to the Galati Court of Law, DGASPC requested:

- Opening the adoption procedure;
- Exercise of parental rights and obligations taking into account the fact that for a long time there have been no effective links between the minor's parents and the latter, and during the entire period while the minor was in foster care, no relative up to the fourth degree was interested in taking her over and raising her, not even her grandparents. Moreover, the maternal grandparents also gave their consent regarding the opening of the adoption procedure.

Returning to the situation of this minor`s mother, it was noted that she has not had a stable residence for a long time, she also has other minor children and was constantly assaulted by both the minor's father and the other concubines.

Although the trial court noted the fact that the child's parents and relatives up to the fourth degree who could not be found and therefore, did not cooperate with the authorities in order to take steps to reintegrate the child into the family, we believe that the defendant (the mother of the minor in question) couldn`t have possibly arrive on time, and the procedure of repeated summons, through publicity, did not completely cover the defendant's chance to appear in the process pending before the Galati Court and to clearly state her position in relation to the opening of the adoption procedure.

These arguments were also supported by the reports of the social investigation of DGASPC G., where it emerges that the minor's mother, in a cohabiting relationship with her father, was periodically physically assaulted by him, which caused her to leave their shared residence.

According to the provisions of art. 28 para. (1) from law no. 273/2004, related to the provisions of law no. 272/2004, the adoption procedure appears as being concluded if 6 months have passed after having instituted the measure of protection and the child's natural parents do not cooperate with the authorities in order to carry out the measures for the reintegration/integration of the child into the family.

Also, according to the provision Art. 464 Civil Code "if one of the parents is unknown, dead, declared dead, or, for any other reason, is unable to express his or her will, (in the case of opening the adoption – n.n.) the consent of the other parent is invalid. When both parents are in one of these situations, the adoption can be concluded without their consent", and according to article 465 of the Civil Code, it states that the natural parents of the child must consent to the adoption freely, unconditionally, after being properly informed regarding the consequences of adoption. The court will override this consent only to the extent that the parent abusively refuses to give his consent, and it considers that the adoption is in the best interest of the child.

In this case, in our opinion, we did not find ourselves explicitly in any of the situations set forth in art 464 and the only manifest, repeated position regarding the

refusal to maintain relations with his own daughter was that of the minor's father, not the mother.

Moreover, in our opinion, there was no evidence of bad faith on the part of the defendant, an effective agreement of the mother regarding the opening of the adoption procedure, and its absence from the court could be precisely the result of the fact that she was forced, in time, to find a new home, and her partners have all shown themselves to be aggressive, something shown in the court file, including by DGASPC.

In the situation presented herein, we consider that it cannot be a question of an abusive refusal on the part of the mother, but of her impossibility to present herself and show her position in the present case, the only statements actually taken into the file being those of the father and the grandparents` mothers, all of them disagreeing with maintaining relations with the minor. [12].

As a result, we consider that, above all, it will be necessary that, by virtue of this principle, the authorities insist on maintaining the child's relationship with the natural parents and in particular with his mother, the relationship between these two being a sensitive and defining one (see the case from file no 4738/121/ 2021, Galați Court of Law) for the evolution and harmonious development of a minor. The court, however, laid more emphasis, in this case, on the idea that the minor needs emotional and material stability that cannot be granted by the natural family or through a form of special protection, so it is necessary to identify a family that could potentially adopt the minor and the opening of her adoption procedure [13].

In this regard, in the jurisprudence it was appreciated that, "on the contrary, the situation evoked by the appellants - namely the fact that the minor ... is effectively deprived of the protection of her parents, unable to be left in their care -, represents a valid reason for ordering one of the measures of special protection provided by art. 59 of Law no. 272/2004, republished (placement, emergency placement) or for opening the adoption procedure" [14].

At the foundation of such decisions were, for example, the family conditions of the respondents, respectively "the domestic violence to which the respondent ... is imperiled by her husband, the poor material conditions, the lack of education, the state of mental health of the mother who would not allow her to make sure that the minor is safe ...

parental protection, the suspicion of sexual abuse that would have taken place between other minor siblings of the child in question "etc.* [15] which justifies the decisions of the authorities to establish such measures.

In our opinion, the case presented herein, was not about an explicit refusal of the mother, as she did not have the objective opportunity to express her opinion regarding the minor's situation or the opening of the adoption procedure. This deficiency was a justified one, especially in the context in which the reports of the DGASPC and the social investigation carried out showed that the environment in which family relationships took place was a harsh one, unsuitable for the development or maintenance of relationships between the defendant and the child (physical and verbal violence from the father towards the mother, lack of affection, respect, etc.).

However, in the reasoning of the court, the best interest of the child prevailed, considering that, according to Article 32 of Law 273/2004, the opening of the internal adoption procedure is conditioned by the fact that the individualized protection plan must establish the need for adoption, that it was not possible reintegrate the child into the extended family, although this has been tried, but also with the consent of the natural parent...which can be replaced by the court when it is considered to be abusive, according to art 8 of the same normative act. The court thus concluded that "the minor needs emotional and material stability that cannot be granted in the natural family or through a form of special protection, so it is in the interest of this minor to identify a potential adoptive family..." [16].

Conclusions

Resulting from the use of the legal concept of "best interest of the child", the "superiority" of the child's interest must be understood, as also results from art. 2 of Law no. 272/2004, in the sense that in order to observe these rights, they must converge, subordinate to these rights and the actions of all factors whose general, sectoral or specific responsibilities involve the relationship with the child must be related - from parents to the education system, the medical system, society as a whole [17],[18].

The case presented herein shows us how the passive attitude of both or at least one of the parents in relation to taking over of their minor child by the state authorities in

the situation where the child is in danger leads the court to the possibility of replacing their consent in order to respect the best interest of the child. As can be seen, this is interpreted differently, both in national jurisprudence and by international conventions, this interest practically coinciding with the best interest of the child, a good that is not always reflected in maintaining a relationship with one's own parents, / the family of origin but in ensuring a healthy climate from the perspective of physical, mental and spiritual health.

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THE CONFLICT OF INTERNATIONAL RULES DEVICES

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Abstract:
The specific features of the international norm, both from the point of view of the subjects to which it is opposed, and of its elaboration, create many more premises for the emergence of situations in which the norms are in conflict. In this study, we aim to identify some of the causes of the emergence of conflicts of international norms, particularly the dispositive ones, as well as the way in which their resolution is regulated in international law.
Keywords*: International norm, conflict of norms, treaty law, UN Charter.*

The international norm

International doctrine and practice have established that international norms are ”legally binding rules that establish certain rights and obligations between the subjects of international law”[1]. The international norm is developed in the international legal system and designates a standard of appropriate behavior, accepted by states and intergovernmental organizations.

The set of international norms by which sovereign states are guided in their relations forms public international law. This field is strictly based on the mutual consent of sovereign states, proving its effectiveness by ensuring a balance and a generally accepted mode of conduct. [2]

As far as international norms are concerned, they can have two different identities/characters: *dispositive* norms and *peremptory* norms, respectively, both of which are used in the international legal system.

In accordance with the provisions of the 1969 Vienna Convention on the Law of Treaties, mandatory norms are defined as ”norms accepted and recognized by the international community of states as a whole” as norms „from which no derogation is permitted” and which cannot be modified only by a new rule of general international law having the same character (art. 53 and 64).

From this definition, it follows that imperative norms are norms of general international law, with universal value. The foundation of the imperative character of the norms is their recognition and acceptance by the international community as norms from which no derogation is allowed.

It can be stated that the imperative norms represent those norms of general international law located in a higher category, both compared to the norms of general international law, from which states can derogate - called dispositive norms, especially compared to the norms of a restricted nature - bilateral - which cannot be in conflict with the imperative ones.

The sanction for the violation of an imperative norm is the nullity of the act by which the states would try to derogate from it. Any existing treaty, which is in conflict with a new imperative norm of general international law, becomes *null* and *void*.

The imperative norms are therefore defined in relation to the norms of a restricted nature, through which some states would try to derogate from the imperative norms, therefore to establish another inter se international legal regime.

There are many more operative norms and they have as a feature the possibility of derogating through treaties between them. By means of dispositive norms, states can create different he concept of imperative norm does not take into account individual acts, violating the norms, which are illegal acts.

All norms of international law have a *binding character*, regardless of whether they are imperative, dispositive (norms of international law from which it is possible to derogate) or of a limited nature, and the acts of their violation attract the international responsibility of the state.

Acts of violation, however, *do not constitute derogations*, because a state cannot derogate by itself from a norm that it has accepted. With regard to the illegal nature of the acts of violation of the norms, what is specific to the concept of imperative norm is the illicit nature of the treaties by which the states would try to derogate from these norms, under the penalty of nullity.

No hierarchy or prioritization can be established between the imperative norms, as they have the same imperative legal force. Being legal concepts that have a not only legal, but also political and historical character, neither the international conventions nor

the practice of the states provide a simple criterion to allow the recognition of a norm of international law as an imperative norm, derogatory legal regimes in their relationships.

The conflict of norms in international law

Experts in international law, starting with Grotius, expressed the presumption to remove the occurrence of a conflict of international legal norms. This concern for avoiding conflict serves to promote the systemic integration of norms in international law and is based on the assumptions that states act consistently and do not enter into agreements that contradict pre-established rights or obligations.

Despite this fact, in the sphere of international law, there has always been the potential for a conflict of norms to emerge. This potential is undoubtedly greater today, in its current manifestation given the following aspects: its continuous expansion, the extent and diversification of the areas of applicability, the highly specialized nature, the multitude of factors involved in the negotiation and consent to international legal norms and the number international awarding institutions.

There is a limited set of rules and principles in treaty law, customary international law and in some treaties for the avoidance and resolution of conflicts. For example, art. 3 of the Vienna Convention on the Law of Treaties expresses some of these rules, such as *lex priori*, *lex posteriori*, while art. 53 indicates the *lex superior*.

Lex specialis maximum exists in customary international law for similar purposes, and clauses such as art. 103 of the Charter of the United Nations indicates the relationship of a treaty with other rules of international law.

The method of application and their efficiency would be dealt with, in more detail, later, as well as other ways of solving conflicts of norms, either by avoiding their occurrence, or by actually resolving them when they occur.

In general, there is an emphasis on harmonious interpretation and systemic integration and a preference for conflict avoidance rather than subsequent recognition and resolution in most global court decisions.

However, none of the techniques used for interpretation sufficiently address the types of incompatibilities that seem to arise with greater frequency in the current context of international law.

The application of the dispute resolution techniques supported by the Vienna Convention depends on specific criteria and is therefore of limited use, for example between rules and treaties with only partially identical parties and different subject matter. The differences in approach in managing a conflict of international norms arise from the different mode of regulation.

Device rules are created in two steps. The first, in which the agreement of the *will of the subjects* of international law involved must be achieved, with reference to the rule of conduct, while in the second stage the same subjects express their *consent* regarding the legal obligation of the rule of conduct.

Sometimes these two stages can coincide in time, for example, when the international treaty enters into force from the moment of its signing. In this case, the signing of the treaty signifies the definitive granting of the text of the treaty and its attribution to the legal force of conventional international norms.

Imperative norms, *jus cogens*, arise after three stages. The first is the one in which the subjects of international law express their *consent to the rule* of conduct that is the object of the regulation. The second stage is that in which the subjects of international law give the rule in question *ultimate legal force* in the system of international law. In the third stage, the subjects express their *consent* regarding the obligation of the respective rule of conduct.

Imperative norms thus become norms that have a superior legal force compared to the other norms of international law, and all new norms appearing in international law must be in strict accordance with the imperative ones.

The fundamental principle of international law that is the basis of compliance with any international norm, dispositive or imperative, is *pacta sunt servanda*. A series of norms of public international law are called principles, a name that emerges from their legal importance, such as the principles of sovereignty, non-aggression, peaceful settlement of disputes.

The first attempts to develop, to some extent, a code comparable to contemporary international law were those of the medieval Italian city-states. Certain Italian rulers developed a passport system, and in the case of military conflicts, established the

distinction between armies and civilians and established general rules for the conduct of wars. [3]

A general definition of the conflict of norms is that according to which the regulations generate difficulties in their implementation in a given situation, so that the application of one of them may lead to a certain form of limitation of the other. The situation can also extend to the level of the system, there are situations where a conflict of norms is counteracted by the other system of norms. [4]

In a narrower approach, which also faces criticism, a conflict of norms arises when a state has both an obligation and a right, and the exercise of the latter limited by the former. [5] Another definition is that a conflict of norms arises where there are two conflicting obligations, and to act in accordance with one obligation would be to violate the other. [6]

Causes of the emergence of the conflict of norms

In Joost Pauwelyn's understanding, the norms of international law can interact with each other in two ways, either to accumulate or to conflict. [7] Conflicts between norms are much more likely to occur in international law than in domestic legal systems, with some experts even stating “a normative conflict is endemic to international law” [8].

This is one of the reasons that international law *does not have a centralized legislative*, executive and judicial system. There is also no hierarchy in international law, with norms often covering specialized areas such as trade and being created as autonomous and separate systems of rules.

Complementary, the *lack of a centralized judicial system* with general and mandatory competence makes it difficult to coordinate the rules, and the existence of different non-centralized courts with different jurisdictions even gives rise to the possibility of a greater conflict between the findings of the courts when the competences overlap.

Also, another element that favors the emergence of the conflict of norms is the delegation of the exercise of some sovereign attributes of the states, by them themselves, based on the expression of their untainted agreement of will, in favor of cooperation in the chosen international organizations, given that the states can later be forced to accept

norms with which they did not expressly agree, if that organization establishes binding norms for which no consensus is needed.

It is expected that, with the globalism specific to the current world order, states will have to cooperate more to address cross-border issues, a fact that favors the emergence, in the future, of conflicts of norms.

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SUPREMACY OF THE LAW AND LEGAL SECURITY

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Abstract:
Based on the supremacy of the law, the rule of law has the obligation to guarantee, among other things, legal security, a principle that is characterized by great complexity.
Trying to summarize its content, we can appreciate that legal security involves two large categories of rules. On the one hand, there are those that aim at the quality of laws and, on the other hand, those rules that concern ensuring the stability of legal situations, i.e., the non-retroactivity of the law, its accessibility and predictability and the actions of the state.
Starting from these considerations, this article debates the concept of supremacy of the law and its qualities in correlation with the principle of legal security.
Keywords: *supremacy of the law, legal security, accessibility, predictability, retroactivity of the law, state of law*

Introduction

The rule of law is based on a minimal corpus of conditions, such as: the autonomy of the law, its predictability, the separation of powers in the state, the vertical devolution of power, the protection of rights and freedoms, the respect of the normative hierarchy, a cordial, open attitude of the state towards civil society [1]. At the same time, the rule of law is based on the rule of law.

In the specialized literature, the law was defined as the normative act issued in the exercise of the legislative function, regardless of the body that adopts it and the name it bears [2].

Using mainly the functional criterion, we define the law as the legal act having a normative feature, drafted in accordance with the Constitution, according to a predetermined procedure, by using a specific technique, issued in the exercise of the legislative function and by which a primary field is regulated. Therefore, we consider that they are laws: the normative acts of the Parliament; normative acts adopted by referendum to regulate a primary field (referendum laws); normative acts of the

Government that regulate a primary field, i.e., governmental acts issued in the exercise of the legislative function (ordinances, emergency ordinances, decree-laws).

The place of the law in the normative hierarchy. Supremacy of the law.

Establishing the place occupied by the law within a legal order depends on two aspects: the rigid or flexible character of the constitution and the system of reporting domestic law to international law, monist or dualist [3]. Thus, in the case of flexible constitutions, the laws are on the same position as the fundamental law. Within such a legal system that does not enshrine the idea of the supremacy of the Constitution and therefore, neither the hierarchy of normative acts, the reality is revealed according to which the supremacy of the Constitution is included in the supremacy of the law. On the contrary, in the case of legal systems where the constitution is qualified as being rigid, it cannot be modified by an ordinary law, the laws occupy an infra-constitutional position.

If the system of reference of the domestic law to international law is a dualist one, then the problem of the hierarchy of laws and treaties does not arise, but in the hypothesis where the system is monist with the priority of international law, then the laws occupy a lower position than the treaties, being necessary to be compliant with the latter, an aspect that imposes the control of conventionality. If we are in the presence of a monist system with the priority of domestic law, then laws are superior to treaties, and in case of contradiction, the law will have priority. Often, especially in the matter of human rights, one encounters combined systems, i.e., in principle, the treaty has priority, but, by way of exception, if the law contains provisions more favorable to the person, then this will have priority [4].

Traditionally, in our legal system, the law is placed at the top of the normative hierarchy, but immediately below the Constitution, thus having an infra-constitutional position, that is why the distinction is made between the supremacy of the Constitution and the supremacy of the law. Thus, the rule of law is revealed in relation with the rest of the normative acts, and not in relation with the Constitution.

The supremacy of the law represents a quality, a feature of it, according to which the law drafted according to a procedure in accordance with the Constitution is legally

superior to all other normative acts. At the same time, the law is able to intervene at any time to modify, suspend or abolish a legal norm established by an administrative act.

The scientific foundation of the supremacy of the law certainly has a historical basis, namely the recognition of this norm as the expression of the general will, or in other words, as an expression of national sovereignty, it being natural that the norms of conduct consecrated by it have the greatest force legal in relation to the other normative acts likely to be carried out by means of the coercive force of the state.

Even if this conception was upset by the profound evolution that the hierarchy of legal norms underwent in the contemporary period, it still left deep traces in positive law. Although competing directly with the acts of the Government, the law retained a certain pre-eminence over the acts of the Executive, pre-eminence guaranteed through the control of legality. The principle of legality guarantees compliance with the law in relation to the hierarchically inferior norms and especially in relation to the acts of the Executive. The control of legality understood *stricto sensu*, i.e., respect for the law, retains an essential place because, on the one hand, it leads to the compliance of all administrative acts with the law and, to the same extent, of private law acts, and on the other on the other hand, it must be registered within the constitutional limits.

Accessibility, predictability and non-retroactivity of the law – exigences of the legal security

However, the supremacy of the law cannot be arbitrary, because then it turns into the opposite of the rule of law. This means, on the one hand, that the law must meet certain qualities, which make it comprehensible to those who are called to apply and respect it, namely, to be clear, precise and predictable, both regarding its period of application, as well as the conditions it imposes and the legal consequences it generates. On the other hand, the law must ensure compliance with the principle of legal security, considered in doctrine as a rule of maximum generality, applicable in all branches of law, considering that the predictability and stability of legal norms is a necessity for any legal system. [5].

Regarding the link between the rule of law and the principle of legal security, it was argued that “the rule of law is not the state of any law, but of a law that guarantees the

legal security of individuals, because it is certain and is based on certain values" [6]. It is about the certainty of the law, which involves the accessibility of the legal rule, the clarity of the expression of the rule, the non-retroactivity of legal norms and the predictable nature of normative changes [7].

The rule of law is not an end in itself but, first of all, it must provide the necessary framework for asserting and respecting people's rights. Therefore, in order to outline the content of the principle of legal security, it is necessary to first clarify the meaning of the notion of security of the person [8]. In a narrow sense, the safety or security of the person means his right not to be subjected to controls, detained or arrested except in the situations, conditions and according to the procedure established by law. This right is expressly enshrined in art. 23 of the revised Romanian Constitution, which enshrines the inviolability of individual freedom and the safety of the person and makes the search, detention or arrest of a person exceptions that must be regulated by law.

In a broad sense, the security of the person means its legal security, legally guaranteed, specifying in this sense that "the security of the person is a principle that is almost the reason of being of the law itself" [9] or that "legal security is the quality of a legal order that guarantees the individual legibility and confidence in what constitutes the right at a given moment and which, according to all probabilities, will be the right in the future as well" [10].

Starting from such considerations, it was said that legal security is characterized by the fact that it must protect the person "from the danger that comes from the law itself, against an insecurity that the law has created or that it risks creating" [11].

The principle of the stability of legal relations is not expressly enshrined in the Constitution of Romania, but it is deduced both from the provisions of art. 1 para. 3, according to which Romania is a state of law, democratic and social, and from the preamble of the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights in its jurisprudence [12].

Starting from the multifaceted nature of the principle of legal security, some authors argued that it is not possible to define it precisely [13]. However, in Romanian doctrine, legal

security has been defined as “that principle that tends to remove from the legal order the risk of uncertainty generated by the imprecision or instability of the law” [14].

Based on the above, we also try a definition and say that the principle of legal security is a fundamental element of the rule of law, which includes in its content the non-retroactivity of the law, the accessibility and predictability of the law, as well as its unified interpretation.

Accessibility and predictability presuppose both the public nature of the norm as an intrinsic element of its legality, the clarity of its content, which will give it intelligibility, not only for the legal specialist, but also for the simple litigant, but also the predictable nature of normative revisions. From this perspective, it was shown that “the formal axis of legal security is represented by the quality of the law, while the temporal axis is represented by the predictability of the law” [15].

The unitary interpretation of the law constitutes another requirement of the principle of legal security and even if, apparently, this element brings to the fore the role of the courts, in reality, the requirement covers all legislative activity, because of the way in which are elaborated, correlated, systematized legislative acts, depends on the unitary nature of their interpretation [16].

At the same time, the observance of the principle of legal security also implies the obligation not to affect legal situations consummated before the entry into force of a new law. In other words, the law must not be turned into a tool for “governing” or “correcting” the past. This is why we consider that the non-retroactivity of the law, which is often expressed in the doctrine by the idea “the past escapes the new law” is an essential component of the principle of legal security.

The principle of non-retroactivity of the law is the rule of law according to which a law applies only to situations that arise in practice after its entry into force, and not to previous situations. As a consequence of this principle, the relations that took place in the past, based on the law in force at that time, cannot be abolished on the grounds that the legislator intends to give a different regulation to these relations [17].

The Constitution of Romania, adopted in 1991 and revised in 2003, enshrines the principle of non-retroactivity of the law through art. 15, para. 2, sentence II, when it states that “The law disposes only for the future...”. The criminal law and the more favorable contravention law are exempted from the application of this principle.

The effects of elevating this principle to constitutional rank are among the most "severe", as expressed by the Constitutional Court, which ruled on several occasions the universal nature of the principle: "the principle of non-retroactivity is valid for any law, regardless of its field of regulation" [18], the notion of law, being used in its broad sense, by any normative act. The principle thus became mandatory not only for the judge who applies the law, but also for the legislator, who is obliged to respect it in the legislative process.

Conclusions

Legal security is one of the foundations of the rule of law. Beyond the non-retroactivity of the law, it also implies the right of people to be able to determine what is allowed and what is prohibited by law. In order to achieve the goal, the adopted rules must first be known, clear, understandable and predictable.

For the existence of the rule of law, guaranteeing compliance with the principle of legal security must represent a priority and implies giving as much importance as possible to the quality of the rules. Therefore, although the legislative inflation and the complexity of the laws can be justified by historical, sociological, political, economic factors, as we have already shown [19], a sustained effort is still necessary to reduce the normative excess and to submit the norms dictated to the demands of security legally.

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HUMAN CONDUCT AND LEGAL SANCTION

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Abstract:
Several dimensions are specific to human activity, but the most important is the normative dimension, because it imposes on individuals a certain model of behavior (ethical, religious, political, etc.) in relation to certain social values. law represents the normative framework of social life that includes a set of rules of conduct, traditions, customs and social practices experienced over time by people and which have acquired mandatory and coercive characteristics in the normative system of society. Non-compliance with social norms and values determines a society's reaction embodied in a series of sanctions based on the coercion and social pressure that the community or society exerts against non-conformist or deviant behaviour. Legal sanctions are represented by punishments provided by legal provisions and applied through the use of coercive force by specialized agents of the state.
Keywords: *norm, law, sanction, conduct, state*

Social life includes the phenomena and relationships that occur between people at any moment of their existence. The relationships between the individuals of a community are characterized by interdependencies and interactions, and the actions and relationships of the individuals have a multitude of dimensions. The most important of these is the normative dimension. [1] The conduct of an individual represents "a sequence of programmatic-active or passive attitudes, as executions of operations or programs and as expectations or abstentions in other circumstances." [2] As Prof. D. Banciu specifies, defining and evaluating the types of actions and behavior in a society, law and legal norms have an imperative character, because they establish what individuals engaged in certain social actions must do, what they can do or what not to do. [3]

The Latin adage "ubi societas, ibi jus" shows us that law cannot exist outside society and no human society can function normally in the absence of law (ubi jus, ibi societas). Therefore, in any society there is a "more or less formalized, articulated and hierarchical corpus of norms, rules, obligations and social practices that normatively regulate individual and social actions, relationships and behaviours". [4]

Analyzing the concept of law as a social and normative phenomenon, we can find that in reality law is more appropriate than its rules and sources, including two types of phenomena: [5]

- phenomena of power or authority, which are in the sphere of public, legal and legitimate authority in a society, which include a diverse palette of rules and norms (orders, decrees, decisions, laws and administrative and jurisdictional decisions);
- phenomena under power or authority, which are in the sphere of the governed, including the behaviors, behaviors and reactions of individuals and social groups (facts and behaviors of submission, conformity or disobedience and rejection) [6]

Law therefore represents the normative character of social life, which includes a set of values, norms, traditions, customs and social practices advanced and experienced over time through systematization and codification in the normative system of society. [7]

Prof. Nicolae Popa shows us that all types of human activity are subject to regulation, as they cannot be carried out unorganized and, at the same time, these rules regulate people's conduct. [8]

Social norms contain rules that address people's conduct, describing and detailing the ways in which values must be embodied in legitimate behaviors in society. [9]

Any norm also implies both acceptance and tolerance, i.e. its observance by people. If the acceptance takes into account that the elaboration of the norm was done through a joint action of the social group, its bearing is imposed as "an external constraint, since its content is rejected by some elements of the collectivity" (the elaborated norm does not correspond to any value recognized also social groups or social classes). [10]

According to another opinion, it is considered that the members of a social group accept and support the norms and rules of conduct for two reasons: [11]

- because they are appropriated and internalized in the socialization process of individuals wanting to conform to them, a feeling of guilt is created for them when they do not respect or violate them

- the members of a group expect from each other a certain behavior in accordance with the norms of the group and when they deviate from the behavior the others show their disagreement in different ways. Of course, these expressions of approval or disapproval, shown by the social group towards a certain type of individual behavior, also constitute the system of social sanctions. [12]

This is that failure to respect social norms and values leads to a reaction from the social environment, a reaction embodied in a series of diffuse or precise sanctions and based on the constraint and social pressure that the group, community or society exerts against deviant or non-conformist behaviors.

We see that for M. Ralea and T. Hariton, the sanction represents an act by which social opinion or an authorized forum takes an attitude towards the activity of a person or a group of persons and pronounces on its social value. [13] "Whenever a sanction emanates from spontaneous social opinion (from the world) it has the character of diffuse opinion", of opinion or moral sanction whenever the sanction emanates from an organized public opinion and is applied through a defined organ. It has the character of an organized sanction, the typical case of legal legal sanctions. [14]

Legal sanctions are represented by the system of punishments provided by the legal provisions applied through the use of coercive force by specialized agents of the state (police, justice, administration, etc.). As R. Maunnier [15] shows, legal sanctions are the most effective, being made up of a system of fines, contraventions, civil compensation, confiscation of assets, deprivation of liberty of persons with illegitimate behaviors or even their exile, deportation or expulsion.

Sanctions reach a high degree of precision, regularity and systematization in the social and normative order of various societies. That is why Durkheim sees in these sanctions the main means of achieving social control and coercion. [16]

We must specify that the legal sanctions evolve depending on the type of solidarity and the degree of social organization. [17] Legal sanctions must be applied only according to the normative acts in force, within the limits they provide and directly

proportional to the crime committed. C. Beccaria specified, in the Theory of Punishment: "only laws can determine the punishments for crimes [...]; a punishment that exceeds the limit set by law means a just punishment plus another punishment". [18]

The specialized literature attributes the following characteristics to the legal sanction:

- the repressive-afflicting character, in the sense that the sanction is a form of social retribution, of retaliation for the antisocial act committed;
- legal character. Sanctions are applied only according to the normative acts in force, within the limits provided by them and directly proportional to the offense committed;
- the preventive character, which represents a feature of the legal sanction, because the very regulation of the sanction in the legal norm, aims at a social prevention;
- the educational character of the sanction refers to the social recovery of the perpetrator. As M. Djuvara said, "moral correction is obtained through the very reaction of one's own conscience: the goal of the punishment is then achieved." [19] Moreover, as specified in the criminal law, the punishment is a coercive measure and a means of re-educating the convicted.
- the reparative character, which highlights the fact that, by applying the sanction, the aim is to restore the violated values.

Legal sanction is an attribute of the state and fulfills the following functions:

- the sanctioning function, of coercion, assumes that any sanction uses coercion because no one is willing to carry out the sanction willingly.
- the educational-preventive function. The legal sanction fulfills both an educational function and the prevention of some acts that constitute violations of the normative legal commandments. By applying and executing the punishment, the aim is not to cause physical suffering or humiliate the convicted person, but to correct him, to prevent the commission of other criminal acts. [20]
- the function of exemplification and intimidation - is related to the fact that the application of the sanction determines a positive influence on the members of a community prone to commit acts that contradict the rules of the law. A sanction is given both as an example and as an intimidation. [21]

- the legal sanction also fulfills a reparative function, in the sense that once applied, the aim is to repair the damage caused by the violation of the law, as well as to restore the social values violated by the commission of the deed that does not comply with the law;
- the elimination function. As the criminal legal doctrine specifies, the punishment ensures the definitive or temporary isolation of the offender or even his removal from social life. [22]

The purpose of the legal sanction is closely related to its evolution, and its role is to ensure the effectiveness of the legal order. A certain social discipline is ensured by the sanction. The sanction generally guarantees the observance of the legal order in society.

Behind the legal system there is always a system of guarantees that we call sanctions. Punishment, as a sanction, constitutes a means of social defense with a curative character, which aims at the general prevention and healing of the offender; against people who commit crimes, society is obliged to react by virtue of the right to prosecute the perpetrator. [23]

In order to achieve general prevention, the certainty of repression and not its severity is sufficient. A doctrine that emerged at the beginning of the 20th century from the concern to promote a criminal policy able to meet the demands of an effective fight against the criminal phenomenon, was called the "doctrine of social defense". [24]

Today, under the conditions in which criminological research finds a worrying increase in the phenomenon of crime, of the feeling of insecurity that has appeared and developed in different countries, a new doctrine regarding the repression of criminals is taking shape, called "contemporary neoclassical doctrine". [25]

Sanctions make law not just a binding moral order, but an effective social order. Legal sanctions contribute to smoothing out possible elements of conflict, to guaranteeing the respect of rights and obligations, by mutually limiting the actions and conduct of individuals and to repairing the social damage due to illegal actions, by sanctioning the guilty. Sanctions allow the European Union to respond to challenges and political developments that are contrary to its objectives and values. The sanctions applied by the European Union may target: terrorism; nuclear proliferation activities; violations of human rights and freedoms; the deliberate destabilization of a sovereign country; the annexation of a foreign territory; cyber attacks etc.

Sanctions apply to both individuals and legal entities. Any legal sanction tends to ensure the effectiveness of the legal order and when it is applied in a particular case, the sanction aims, above all, at the general interest. The legal sanction, through its complexity, represents a phenomenon that has preoccupied the most enlightened minds of all times and various scientific studies have been carried out. All those who studied the issue of law, Socrates, Plato, Aristotle, Cicero, Hobbes, Locke, Kant, Hegel, etc., directly or indirectly touched on the issue of sanction in law. In modern societies, the association of legal sanction with the idea of evil, of aggression, is limited because society's reactions can be not only negative but also positive. In this sense, Prof. Nicolae Popa highlights "in both situations, but especially in their positive form, sanctions that are based on a harmonized system of values and assessment criteria constitute a strong element of social control." [26]

As Hugo Grotius showed, the right of society to punish those who violate the rules of conduct, disregarding them, is a manifestation of reason and must remain closed within the boundaries of justice and humanity. [27]

Conclusions

1. The right has its origin "in sanctions" and at the time of its birth it represented a collection of prohibitive sanctioning rules that aimed, in principle, to create the sensation of fear.

2. The law enforcement process cannot be separated from the idea of sanction, punishment, liability, because liability and sanction are, were and will remain genuine instruments for the realization of the law.

3. The law is intended to regulate, through its norms, human conduct, the social relations that arise between individuals, members of a community, of a society.

4. Legal norms and sanctions represent the main way by which the public authority protects and organizes, through legitimate coercion, the living conditions of society.

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THE DIGITALISATION AND THE EMPLOYMENT RELATIONSHIP

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Abstract
This paper is a review of some possible consequences that digitization has on the employment relationship. Thus, were considered the need to clarify the division of responsibilities between man and technology, the importance of training and professional conversion and aspects related to the redefinition of performance assessment and responsibility, in cases where there is a significant involvement of technology in the execution of job duties. Platform work was also considered.
Keywords: *digitalization, employment, platform work, telework.*

The concept of the industry and the relating labour relations have been changing and evolving since the first industrial revolution (industry 1.0) until nowadays, when digitalisation and artificial intelligence create a revolution which is different in scale, scope and complexity from any that have come before, industry 4.0 [1]. The successive industrial revolutions were characterised by a massive shift of jobs from the primary sector (agriculture) to the secondary sector (manufacturing) and further to the tertiary sector (services), question which opens the debate about the characteristics, opportunities and risks of the quaternary sector [2]. Frey and Osborne [3], two Oxford researchers, have forecasted in 2013, based on statistics and job taxonomies from the USA markets, that jobs threatened by digitalisation would represent about 40 per cent of existing jobs. An OECD study [4] has found some more optimistic results, stating that jobs at high risk of substitution by computers and robots represent an average of 9 per cent in 21 selected OECD countries (including 16 EU countries). During the past three years, digitalisation was enhanced by pandemic, which had a huge impact on labour market, in 2021 half of restructuring being attributable to COVID-19 [5]. Digitalisation requires and offers flexibility from and for the employees, in an era where agile working seems to be the future. Agile working is based on decentralized methods of work, the employees being empowered to succeed with minimal restraint and maximum responsibility in a flexible

environment and relationships. The main issues characterising the agile working are time, space, collaboration and even role, which are combined to optimize performance and deliver best in class value.

The agile working, the smart working, the working from anywhere, the telework are part of the new vocabulary related to work and employment relationship and require knowledge and skills that shall be built before starting to provide the actual work. The characteristics of these new forms of work are still in progress and only the telework has a definition under Romanian law [6]. The law no. 81/2018 regulating the telework defines it as the form of work organization through which the employee, on a regular and voluntary basis, fulfills the specific duties of the function, occupation or job that he holds in a place other than the workplace organized by the employer, using information and communication technology. This definition is consistent with the approach of ILO, which envisaged that „telework is a subcategory of the broader concept of remote work. It includes workers who use information and communications technology (ICT) or landline telephones to carry out the work remotely. Similar to remote work, telework can be carried out in different locations outside the default place of work. What makes telework a unique category is that the work carried out remotely includes the use of personal electronic devices" [7]. Or, the use of personal electronic devices may require advanced information and communications technology skills. Therefore, by training, the employer opens the opportunity for the employees to access jobs that follow the industrial development and trend. Moreover, performing an ICT job is also a matter of wage level, since workers in jobs with advanced information and communications technology skills needs benefit from an hourly earnings premium of about 3.7% compared with those in jobs with basic ICT skills needs [8].

In order to have access to the new forms of work and to enhanced digitalised tasks, the employees need to get the relating knowledge and skills. Under Romanian law, any employee has the right to be trained (Article 39 para. 1 lett. g of the Labour Code) and the employer shall ensure the participation of every employee to vocational training, at least once every two years, when it has at least 21 employees or at least once every three years, when it has less than 21 employees (Article 194 para. 1 of the Labour Code). Moreover, the expenses related to such vocational training shall be borne by the

employers. An employer with more than 20 employees shall develop and apply annual vocational training plans, after consulting the trade union or, as the case may be, the representatives of the employees. One of the main objectives of the vocational training of the employees stated by the Labour Code (Article 192 para. 1) are accommodating the employee to the requirements of the job or workplace (lett. a); updating the knowledge and skills specific to the job and workplace and improvement of the vocational training for the basic occupation (lett.c); and acquiring advanced knowledge, modern methods and procedures, necessary for the professional activities (lett. e). Although the general legal framework of vocational training is established, there are no instruments to encourage the efficient implementation of these provisions. The training remains at the level of the employer, who, depending on the interest of the employees and their representatives, can manage it more or less efficiently. In view of the need to bring the workforce to the level of knowledge required by digitization, a more resourceful training system like, for example, the French one, could be taken over in Romania. One of the components of the training system refers to the employer financial contribution to a budget dedicated to the development of the employee's skills - „the personal training account". The personal training account can be used by the employee throughout the entire working life (including during periods of unemployment) to take qualifying or certifying training. Therefore, the training budget follows the employee and enhance his motivation to acquire knowledge and skills. Moreover, according to the same French training system, the state could finance the professional conversion of employees of the companies which are changing sector, experience a sustainable decline in their activities or experience recruitment needs in sustainable professions (as it is the case of French Transitions collectives (TransCo) of Fonds National pour l'Emploi).

Some other matter that should be taking into consideration in relation to the digitalisation of work is the rigorous description of the content of the job duties in the context of the current shift from the traditional work task, where the human factor was predominant, to the industry 4.0 tasks, where the AI and information and communications technology acquire a significant importance in the performance of work. Since a task may be carried out in a close interdependence between man and technology, the job description should provide detailed information of the nature of the tasks, specifying the

degree of responsibility of each component, human and technological. If in traditional work the human factor uses or controls the machine, in the new technological reality the non-human element acquires the right to impose a certain behaviour or certain decisions on the human factor. To give a rather simplistic example, a bus driver shall be obliged to follow the instructions given by a software application which provides real-time driving directions based on live traffic updates. The will of the employee is limited to the execution of the information obtained through the technology and any deviation should be thoroughly motivated. In this new human-technology relationship, at least two aspects must be rethought, namely the assessment of the employee's performance and the employee's responsibility.

Under Romanian law, the employer is entitled to establish individual performance objectives, as well as the evaluation criteria for their achievement (Article 40 para.1 lett. f of the Labour Code). When the tasks are individual, the performance assessment follows the rules set by the legal and organisational psychology studies. But digitalisation created new forms of tasks and working arrangements. In the cases when the employee's activity relies on the AI or highly digitalised programs, the performance assessor shall determine with more proficiency and technical knowledge the amount of performance (or lack of performance) generated by the technology used. Therefore, the evaluation criteria should take into consideration the double input, human and technological, in achieving each task.

Regarding the employee's liability, regardless whether it is of criminal, patrimonial or disciplinary liability, it is to be demonstrated that the deed was committed by the employee, freely, as a result of a volitional process that he controlled.

Digitization also brings other changes in the field of labour relations, resizing the traditional employee-employer relationship. One of these changes is already on the market and has generated intense legislative and judicial debates - the platform work, which is the subject of a European directive proposal. According to the proposal, the platform work is defined as „means any work organised through a digital labour platform and performed in the Union by an individual on the basis of a contractual relationship between the digital labour platform and the individual, irrespective of whether a contractual relationship exists between the individual and the recipient of the service" [9]. The platform worker would be, according to the proposed directive, any person

performing platform work who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in the Member States with consideration to the case-law of the Court of Justice. Under the Romanian applicable law, there are no specific provisions regulating this specific work arrangement. An employer and an employee are obliged to choose between indefinite and limited duration employment contract, for full time or part time, in rather inflexible limits established by the individual employment contract whose contents are set by the Labour Code. The regulation of platform work must therefore be carried out through special provisions, adapted to the reality of the relationship between the parties. Under the proposed directive, the platform work involved three types of actors, namely the digital labour platform, the person performing platform work (who can be a platform worker or not) and the recipient of the service.

A digital labour platform can be any natural or legal person providing a commercial service which meets all of the following requirements: (a) it is provided, at least in part, at a distance through electronic means, such as a website or a mobile application; (b) it is provided at the request of a recipient of the service; (c) it involves, as a necessary and essential component, the organisation of work performed by individuals, irrespective of whether that work is performed online or in a certain location. In order to prevent the artificial expansion of labour relations over commercial relations, the organisation of work performed by the individual shall constitutes not merely a minor and purely ancillary component, but a „necessary and essential component", which is similar to the characteristics of the employment relationship.

However, the directive aims to protect the employee and the work relationship, in the sense that it establishes a legal presumption of employment relationship. At the core of this legal presumption is the notion of *controlling the performance of work*, which means that the employee's subordination to the employer is maintained as a fundamental element of the employment relationship.

Under the proposed directive, controlling the performance of work shall be understood as fulfilling at least two of the following:

(a) effectively determining, or setting upper limits for the level of remuneration;

(b) requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work;

(c) supervising the performance of work or verifying the quality of the results of the work including by electronic means;

(d) effectively restricting the freedom, including through sanctions, to organise one's work, in particular the discretion to choose one's working hours or periods of absence, to accept or to refuse tasks or to use subcontractors or substitutes;

(e) effectively restricting the possibility to build a client base or to perform work for any third party.

The delimitation will not always be easy to achieve, since a number of the previously mentioned criteria are also used in the field of commercial relations, where the specifics of the activity require a control of one contractual partner over the other. For example, it is specific to the franchise contract that the franchisor has a significant control over how the franchisee respects rules regarding the relationship with customers, the quality of services, working hours, etc.

Regulation of the platform work is necessary and urgent, since over 28 million people in the EU work through digital labour platforms [10] and in 2025, their number is expected to have reached 43 million [11]. A report [12] based on the comprehensive analysis of more than 320 judgments and administrative decisions on the classification of platform workers in the sixteen European countries where such decisions have been up to and including August 2022 pointed out the difficulty to draw overall conclusions on dominant patterns in national case law. The causes are multiple, from the heterogeneity of platforms and the scarcity of case law on some platform types to the inconsistence of the judicial assessment in many countries.

The short presentation above shows that the transition to industry 4.0 has significant effects on the employment relationship and that the legislator must provide employers and employees with the necessary legal means to adapt the employment contract to the realities that characterize the activity in the enterprise. For their part, employers must ensure that their employees can make the transition to 4.0 workers, proving adapted professional training and, where appropriate, professional conversion.

Employees must adapt to the new realities of work and acquire the knowledge and skills that will allow them to carry out the new types of work, such as agile or smart work.

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LEGAL REGIME APPLICABLE TO THE INSOLVENCY OF THE ADMINISTRATIVE-TERRITORIAL UNITS IN ROMANIA. COMPARATIVE LAW ASPECTS - COLOMBIA, HUNGARY, SOUTH AFRICA, SWITZERLAND AND THE UNITED STATES

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Abstract:
The year 2022 marked the critical point when the shock of a real war between Russia and Ukraine overlapped the almost exhausting struggle with a multidimensional crisis - sanitary, social and economic, generating a truly global crisis in a cascade, unprecedented. At the border between the fight for a post-pendemic recovery and the geopolitical upheavals triggered by the invasion of Ukraine by Russia, the perspective of 2023 remains quite bleak and unpredictable, the regime of "stagflation" already outlining the beginning of a global recession.
The budgetary effort of the states to respond to the crisis triggered by the pandemic has been deepened by the repercussions of the war in Ukraine, which have materialized in the global monetary tightening, the energy crisis in Europe and the persistent inflation, further limiting the ability to respond to the new socio-economic tensions, especially in the middle-income and low-income countries. The macroeconomic result indicators contributed to the downward revision of global economic growth in 2022, with an estimate below 2% similar to previous years. In such a volatile climate, in addition to the deterioration of the social fragility indicator in most countries, we face the fragility of the business "ecosystem", the tensions and financial challenges "rolled over" since 2020 continuing to fuel the upward trend of insolvencies. However, we must admit that these cascading crises were the catalyst for repositioning the image of insolvency in socio-economic culture by prioritizing the instruments of reorganization, recovery and granting a second chance to debtors in financial difficulty.
In this context full of uncertainties, in which we have familiarized ourselves with terms such as insolvency, reorganization, recovery or even bankruptcy, we aim to identify the benefits of establishing such special procedures, but this time we limit ourselves to those applicable to administrative-territorial units and not to the legal regulations applicable to professional traders. The insolvency legal regime applicable to the administrative-territorial units is too little promoted and known at national level, although it complements the existing budgetary rules and procedures and can serve to restructure the debts and the fiscal recovery of the subnational entities, including states and municipalities, bringing to the forefront the need to acknowledge that the high indebtedness of ATUs can lead to a serious danger, can undermine their proper functioning and can affect the provision of essential public services but also the central administration.

After an "overview" of the national regulations on the insolvency of administrative-territorial units, we will "explore" other legal realms to identify different options for the design of insolvency regimes specific to municipalities such as those in Colombia, Hungary, South Africa, Switzerland or the United States.
Keywords: *state of financial normality, state of financial crisis, insolvency of administrative-territorial units, financial recovery plan, comparative law - Colombia, Hungary, South Africa, Switzerland and the United States.*

From pandemic to war – insolvency law in time of crisis. Brief considerations on the insolvency of administrative-territorial units

Covid-19 has emerged in a global economy on an accelerated upward path, offering a tough, costly lesson and imposing a profound transformation and reinvention of society and the economic perspective. While the impact of the Covid pandemic still persists, Russia's invasion of Ukraine has generated new obstacles on the road to global economic recovery, creating an unprecedented socio-economic context, a systemic crisis shaped, on the one hand, by the transformations imposed by the pandemic through the fight for resistance and social and financial restoration, and, on the other hand, by the effects of inflation, the effects of rising energy prices and those of an expected recession, a boomerang effect of wide and considerable financial and economic sanctions imposed on Russia by governments around the world. Thus, the current geopolitical landscape prefaced by Russia's actions has generated tensions in multiple global points of interest, tensions that have overlapped and merged with those generated by the economic and health crisis triggered by the pandemic and fully "unhealed".

According to the September 2022 Report of the Organisation for Economic Cooperation and Development (OECD) [1], the world pays a high price for Russia's war of aggression against Ukraine, in the sense that global GDP stagnated in the second quarter of 2022, and production decreased in G20 economies, with many economies having seen inflation in the first half of 2022 at its highest level since the 1980s. Thus, compared to the OECD forecasts of December 2021, before the outbreak of the Russia-Ukraine war, the global GDP is now projected to be at least $2.8 trillion lower in 2023. Moreover, according to the OECD, inflationary pressures extend beyond food and energy, with businesses throughout the economy "going through" high energy, transport and labour costs, and wider inflationary pressures were already obvious in the United States

at the beginning of 2022, and this is now also obvious in the Euro Area and, to a lesser extent, in Japan.

According to the recent Barometer conducted by Coface, [2] Europe nevertheless remains the target of the hardest prospects, which will face an inevitable recession, resulting in the suspension of unprofitable activities due to energy costs or a rationalization decreed by governments, resulting in reduced production and a decline in GDP. Without sufficient diversification of supply and an orderly reduction in demand, OECD experts believe that all these shocks could reduce the growth of European economies by more than 1¼ percentage points in 2023 compared to the reference value, and increase inflation by more than 1½ percentage point, which would truly unveil the recession of European countries in 2023.

We considered appropriate this short “navigation” through the general, global socio-economic picture, which outlines the reality of the end of the year 2022 and outlines the prospects of 2023, so as to be aware of the current and future economic constraints and challenges, which are obviously reflected in the activity and functioning of the administrative-territorial units, its economic and functional reality being in connection, in interdependence with the business environment, which in turn faces numerous challenges since the beginning of the pandemic, knowing a tortuous and thorny route, imprinted by the “lock-in effect” and uncertainties unprecedented in 2020, by a strong return in 2021 and “sunk” in a systemic crisis in 2022 as a result of the start of the Russia-Ukraine war.

In a more optimistic version, we like to say, rather, that 2020 was the start of an economic and social decline, but also the start of a profound legislative reform, especially regarding the “key” rules aimed at the economy, such as the field of insolvency, which is why we will start from the premise that any crisis becomes an opportunity for a significant reform in society or rather, no crisis should be wasted.

If, regarding the insolvency of the commercial debtors, the law has experienced an alert pace of reform in this period, we cannot say this about the national legislation on the insolvency of administrative-territorial units. As a brief review of the “footprint” that the Covid-19 pandemic has triggered on the legislative “picture” in the field of insolvency of professionals, [3] we mention Law no. 55 of 15 May 2020 on some measures to prevent

and combat the effects of the COVID-19 pandemic,[4] in which the legislator allocated a number of articles, we could even say generously, dedicating Section 8 exclusively to the matter of insolvency, but also Law no. 113/2020 on the approval of GEO no. 88/2018 amending and supplementing certain normative acts in the field of insolvency and other normative acts. [5] Law no. 55/2020 was the start of the legislative reform of the insolvency matter, as a large part of the measures ordered during the alert state were subsequently taken over by Law no. 113/2020, which gave them final character in the Insolvency Code – Law no. 85/2014. Moreover, after a remarkable effort of the specialists and experts from the environments with an impact on insolvency, which started two years ago, we are also glad to see the transposition of Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, debt remission and disqualifications, as well as measures to increase the efficiency of the procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency)[6] by the entry into force of Law no. 216/2022 amending and supplementing Law no. 85/2014 on insolvency prevention procedures and insolvency and other normative acts, [7] thus ensuring modern support for the practice of insolvency.

Unfortunately, we cannot enjoy such an evolution, reform, respectively legislative harmonization and insolvency of administrative-territorial units, as regulated by GEO no. 46/2013 on the financial crisis and the insolvency of administrative-territorial units. It seems to be rather a normative act “covered by dust”, left in the shade and “not beleaguered” even at the level of doctrine, especially at the level of central and local administration, proof being that it has not undergone any changes since March 2016, amendment made by Law no. 35/22 March 2016 which also approved GEO no. 46/2013. [8] However, such insolvency mechanisms allow the restoration of the necessary fiscal capacity to cope with acute crises, such as the COVID-19 pandemic, an excessive debt limiting long-term growth and leading to discouragement of the financing of infrastructure and public investments. Moreover, the increase of the debts of an administrative-territorial unit may generate negative externalities for other such administrative-territorial units, but also for the government, by reducing their creditworthiness and increasing the total costs

of loans, the central administration being practically obliged to save the other regions, which may lead to the triggering of unsustainable general fiscal policies.

It is important to start the analysis of our research from a few premises, namely that the legal regime for the insolvency of administrative-territorial units is based on the same reasoning as the insolvency regimes dedicated to natural and legal persons under private law. However, the insolvency of administrative-territorial units is different from the insolvency of professionals on certain aspects. The essential purposes of regulated insolvency proceedings for entrepreneurs are to recover money owed to creditors, to save businesses and to apply a reorganisation plan to viable firms. They may also serve to liquidate assets and facilitate an orderly exit from the market. Instead, the insolvency regimes dedicated to administrative-territorial units, as well as the insolvency regimes applicable to natural persons, focus exclusively on restoring the viability of the subnational entity and on a new beginning.

A subnational entity cannot be dissolved in the same way as a company. Although the main objective of business insolvency regimes is to differentiate between viable and non-viable firms and to balance the rights of debtors with those of creditors, insolvency proceedings concerning administrative-territorial units mainly focus on protecting the core functions of the subnational entity. Consequently, in the restructuring process only a limited number of assets can be seized in order to preserve basic public services. Moreover, the administrative-territorial units face the difficulty to accurately assess their assets and to identify the state of insolvency. Unlike the insolvencies of individuals and companies, the insolvencies of administrative-territorial units cannot be determined often by simply comparing assets and liabilities. In many cases, the assessment of insolvency must involve a complex analysis of current and future cash flows based on a number of assumptions. Account must also be taken of their sovereign powers and the democratic rights of citizens. This limits, for example, the right of creditors to initiate insolvency proceedings and reduces the possibility of third parties intervening in debt restructuring and the adjustment process.

We consider that an insolvency framework well designed for ATUs can have substantial beneficial effects, by imposing fiscal discipline measures and applying an official debt restructuring mechanism, while determining the subnational administrations

and creditors to take reasonable loan and financing decisions (*preventive function*), and in the case of a severe budgetary crisis, to contribute to finding a solution *ex post* (*corrective function*), and more design options for insolvency regimes can be extracted, by reference to the legal frameworks outlined by other states. The way in which the specific characteristics are chosen depends on the objectives to be achieved: the provision of essential public services and the strengthening of fiscal adjustment and consolidation, the discouraging strategic non-compliance by an administrative-territorial unit, the facilitation of debt restructuring, the protection of the contractual rights of creditors and the limitation of interference with subnational sovereignty and constitutional rights.

An insolvency framework facilitates debt restructuring and allows a fresh start. As a comprehensive approach, it is superior to *ad hoc* and often chaotic contractual negotiations and approaches, such as collective action clauses. Thus, an insolvency framework can include all creditors' claims, from those of state employees to bondholders. If designed in a predictable and transparent manner, it creates legal and procedural certainty for all parties involved in the event of a subnational fiscal crisis. Above all, debt restructuring may involve extending the maturity of the debt and reducing the amount of interest and principal payments.

Besides its corrective and preventive function, an insolvency regime also serves as an insurance against the long-term negative effects of determined shocks, such as strong decreases in the level of public services.[9] Also, a debt restructuring, such as rescheduling or even a partial annulment negotiated between debtors and creditors, allows ATUs to recover without being obliged to take unjustified decisions on expenditure reductions and tax increases, the repayment of the debt can be postponed until the economic conditions improve. Moreover, insolvency regimes can increase the transparency of the finances of subnational entities, tax transparency being an integral part of many existing insolvency frameworks, as the submission of the insolvency file requires ATUs to disclose all fiscal and financial information, which is often examined by independent third parties.[10]

"Look" at national regulations - GEO no. 46/2013 on the financial crisis and the insolvency of administrative-territorial units

GEO no. 46/2013 on the financial crisis and the insolvency of administrative-territorial units, approved by Law no. 35/2016, represented and continues to represent a sensitive and controversial regulation, which is, in fact, a necessary application and continuation of Law no. 273/2006 on local public finances. The national doctrine considers that these regulations outline the idea of progressive decentralization, "*achieving a normative framework for the transfer of responsibilities from the central to the local level*". In the current conception, decentralization is the indispensable attribute of democracy and implies the idea of autonomy, through decentralization the public administration becomes more efficient and more operative, while the problems are solved at local level, in conditions of maximum operability.

Government Emergency Ordinance no. 46/2013 refers to the ratio between *the state of financial normality* and *the state of financial crisis*, as well as the *state of insolvency* of an administrative-territorial unit, having as a criterion the excess of the administrative-territorial units of the payment obligations they have committed towards third parties over a certain percentage threshold of the general budget of these territorial divisions of the state.

At a first contact with these regulations, the vision of GEO no. 46/2013 seems to be in absolute contrast with the provisions of the Insolvency Code, as regulated by *Law no. 85/2014 on insolvency prevention and insolvency procedures*, due to the following specificities: the administrative-territorial unit is the holder of a public property right, which has in its structure two domains, namely the public domain and the private domain, consequently the goods that enters the public domain of the administrative-territorial unit cannot be liquidated considering the inalienable and imperceptible character, the impossibility of the complete liquidation of the patrimony of an administrative-territorial unit and implicitly the non-entry in the classic bankruptcy, budgetary rebalancing shall be achieved exclusively through the liquidation of its private assets. In fact, the essential difference from the classic insolvency of professionals is that the administrative-territorial units can never go bankrupt.

However, it cannot be denied that the provisions of the two legal acts can be mirrored in terms of the remedial philosophy, which is also reflected in the financial recovery plan drawn up at the level of the administrative-territorial unit. Indeed, the state of insolvency of an administrative-territorial unit can be prolonged *sine die*, in the sense that the recovery plan can be modified, extended or even replaced, the state of the administrative-territorial unit oscillating, based on technical and economic criteria and parameters, from the state of crisis to the state of insolvency and vice versa, but these legal benefits which allow a return to normality are of general interest, unlike the private interests which prevail in the case of professional insolvency. For this reason, during the financial recovery procedure, the Chief Authorising Officer is obliged to ensure the efficient and effective functioning of essential public services, the doctrine [14] assimilating this obligation to the principle of continuity of public services applicable under administrative law, essential being those "public services whose cessation would imperil or jeopardise the existence of the local community".

Pursuant to Article 2, letter m) of GEO no.46/2013, approved as subsequently amended and supplemented, "the financial crisis is the state of the patrimony of the administrative-territorial unit characterized by the existence of financial difficulties, by the acute lack of cash availability, which leads to the non-payment of the payment obligations, liquid and payable, for a certain period of time. The financial crisis shall be presumed in one of the following situations:

m1) non-payment of liquid and due payment obligations, older than 90 days and exceeding 15% of the expenses provided in the general budget of the respective administrative-territorial unit, except for those in commercial litigation;

m2) non-payment of the salary rights provided in the local budget of income and expenses or in the budgets of the institutions or public services of local or county interest, as the case may be, for a period of more than 90 days from the due date".

At the same time, according to art. 2, letter r) of GEO no. 46/2013 "insolvency is the state of the patrimony of the administrative-territorial unit characterized by the existence of financial difficulties, by the acute lack of cash availability, which leads to the non-payment of the payment obligations, liquid and payable, for a certain period of time. Insolvency is presumed in one of the following situations:

r1) non-payment of liquid and payable payment obligations, older than 120 days and exceeding 50% of the expenses provided in the general budget of the administrative-territorial unit, without taking into account those in commercial litigation;

r2) non-payment of the salary rights arising from the employment relationship and provided for in the income and expenditure budget, for a period exceeding 120 days from the due date".

From the perspective of the remedy and recovery, we notice that in the situation of the administrative-territorial units this conception extends both in the situation of financial crisis, in which case the main authorizing officer together with the other members of the committee for financial crisis situations shall prepare a financial recovery plan of the administrative-territorial unit, with the approval of the Territorial Court of Auditors, as well as in the case of the insolvency of the administrative-territorial unit, in which case, following the opening of the insolvency procedure, the judicial administrator appointed by the bankruptcy judge shall draw up the insolvency recovery plan, together with the main authorising officer, with the opinion of the General Directorate of County Public Finance or of the General Directorate of Public Finance of the Municipality of Bucharest and of the Territorial Court of Auditors. The insolvency procedure also involves a judicial activity, carried out by the bankruptcy judge, in this respect approaching more closely the insolvency procedure of professionals, unlike the financial recovery procedure triggered by the financial crisis, which involves more the exercise of active public administration or consultative powers, which is why the applicable legal provisions are also corroborated with Law no. 554/2004 on the administrative contentious.

By mirroring the instrument of judicial reorganization/financial recovery with the reorganization/recovery plan, both as an instrument used by the professional and as an instrument used by an administrative-territorial unit, we find the importance given to it by the legislator in the sense of honesty and interest of the beneficiary subject to implement it, given the consequences of not respecting these commitments. On the one hand, we are talking about the legal possibility granted to creditors and the receiver to request the bankruptcy of the debtor in case of non-compliance with the conditions and terms of the reorganization plan, by accumulating new debts, and on the other hand, we are talking about the legal possibility granted to the receiver to request the bankruptcy judge to take

over the duties of the main authorizing officer only if they do not submit to the approval of the deliberative authority the insolvency recovery plan or if the latter authority does not approve, with or without amendments, the proposed plan, within 10 days from the registration. This possibility also raised a sensitive issue of constitutionality, the doctrine considering that the principle of national sovereignty, enshrined in the Romanian Constitution, is violated, in the sense that the receiver is not part of the category of public authorities, is not elected by universal, direct, secret, equal and freely expressed vote, not being designated by electoral mechanisms. We agree with this opinion, taking into account the principle of separation of powers in the state, which is the foundation of democracy, the legislator "slipping" in this direction from the desire to empower the main participants in this procedure, on which depends ultimately the effectiveness of the implementation of such a plan, with the ultimate goal of restoring the financial balance.

Moreover, considering the manner of design, approval, adoption and implementation of a plan for the recovery of the insolvency of an administrative-territorial unit, in the light of the persons and bodies involved, it is considered to be a unilateral administrative act of normative nature. It should also be realised that a budgetary imbalance gives rise to imbalances in all local economic branches and elsewhere. We are talking about the public-private interdependence in economic terms, we are talking about public procurement, we are talking about a "domino" effect of the financial imbalance. Obviously, the creditors of an administrative-territorial unit in insolvency are at a disadvantage, given that, although a recovery plan cannot be conceived for a period of more than 3 years, if it cannot be implemented during this time, the unit will not go into liquidation as in the case of professionals, but a new recovery plan will be drawn up for a maximum of 3 years or for a shorter term.

As we have not proposed an exhaustive presentation of this normative act, we go beyond the theoretical area and we try to make contact with reality, in order to find that at the level of Romania 7 counties were registered in the Insolvency Register. Thus, if we go to the Ministry of Finance website [15], we note that in the initial phase of financial crisis of the administrative-territorial units, the on-line Register concerns Suceava and Gorj counties, while the Register on insolvency situations, which automatically implies a deficit economic state much more advanced than the state of financial crisis as it concerns

debts older than 120 days, representing more than 50% of the general budget or have not paid salaries for more than 120 days from the due date, concerns five counties, namely Vrancea, Tulcea, Satu Mare, Hunedoara and Bacău.

The first locality in Romania on which the opening of insolvency proceedings was ordered is the town of Aninoasa in Hunedoara County, [16] in 2013, when the debts accumulated by this locality, with over 4,000 inhabitants, reached the threshold of 6 million lei. The Romanian Government decided to allocate the amount of 3.7 million lei from the Budget Reserve Fund, an amount that was used according to the Financial Recovery Plan admitted in 2014 by the Hunedoara Court. Other localities followed, namely Nalbant (Tulcea), Ardeoani (Bacău), Călineşti Oaş (Satu Mare), Naruja (Vrancea) and Andreiașu de Jos (Vrancea), for all of which the insolvency procedure was already closed, the last locality for which the insolvency procedure was closed being Călineşti Oaş, in 2020.

It is necessary to emphasize that since 2015 no such insolvency proceedings have been opened for any locality in Romania. Is this law a failure? Does the stigma of insolvency also affect these issues of law, the local authorities being still reluctant to address such legislative instruments, which currently do not enjoy jurisprudence or doctrinal encouragement? However, the deepening of the research and the development of concrete financial recovery strategies in this field becomes of great interest in the current economic context, given that the specialized literature has strictly stopped at the interpretation aspects of the legal text at the time of its appearance, the doctrine in the field being almost non-existent. We believe that an absolutely essential approach becomes the approach of comparative law, which will sediment the feeling of security in such rules, in the idea that the insolvency of administrative-territorial units finds its application in many developed states that have thus managed to rebalance financially and which can become examples of good practices in the field of insolvency.

As a consequence, the local authorities must take advantage of the existence of these insolvency law rules and avoid as far as possible other ways of financial rebalancing, such as resorting to credits from the state budget, respectively from the Treasury, opting for a plan to reduce the debts according to GEO no. 46/2013. By implementing such a financial recovery plan, as complex as the one regulated by Law no.

85/2014, the capitalization of the assets is used, the reduction by negotiation of the debts, the concession, the lease, the sale of the goods from the private property of the administrative-territorial unit, etc., thus avoiding the indebtedness of the budget permanently by attracting credits from the Treasury, which in reality represent contributions, taxes and duties of the citizens.

Thus, according to art. 5 (4) of GEO no. 46/2013, the financial recovery plan shall comprise:

1. a presentation of the economic and financial situation of the administrative-territorial unit;

2. measures to ensure the provision of essential public services by local public administration authorities during the implementation of the financial recovery plan;

3. measures to improve financial management and control mechanisms necessary to make the provision of essential public services more efficient;

4. measures to increase the degree of collection of own revenues, as well as to generate additional revenues;

5. measures to reduce expenditure;

6. economic - financial and budgetary planning during the financial recovery procedure, which involves:

a) analysis of all budget revenues and expenditures, recommendations for increasing revenues and reducing expenditures, as well as elaboration of corrections to the local budget;

b) projection of income and expenses for the current year and for the next 2 years;

c) restructuring of the leadership, organization and management of the specialized apparatus of the mayor, respectively of the county council, of the public services and institutions of local or county interest, as the case may be;

Of course, the Government also has an essential role to play in balancing local budgets. For example, at the end of 2019, it decided to allocate 475 million lei to save 1,682 municipalities and small towns from insolvency,[17] especially for the payment of salaries, for the settlement of utility bills, social assistance, in the context in which 43 small towns were unable to close the 2019 budget year. Such data represent the real image of the territorial situation, although officially the state of insolvency was not declared in 2019.

The main purpose of an administrative-territorial unit is to return to a financial situation of normality, in the context of these subjects of law, the perspective of recovery being imposed especially, as it concerns the public interest. That is precisely why both procedures regulated by GEO no. 46/2013 are practically reorganization, the state of financial crisis involving a financial recovery plan, and the state of insolvency involving a plan for the recovery of the state of insolvency, the latter being rather identified with the reorganization plan of the professional debtor, in the sense that it cannot be applied for a period longer than three years, with the mention that in case of insolvency of ATU the period cannot be extended.[18]

We mention that, according to art. 7 of GEO no. 46/2013, the financial recovery plan may be amended, when necessary, at the request of the chief authorising officer, where data, information or facts unknown at the time of its approval arise and may hinder the process of financial recovery. The new plan shall be drawn up by the Chief Authorising Officer together with the members of the Financial Crisis Commission and shall be subject to the approval of the deliberative authority. The implementation of the financial recovery plan is mandatory for the authority of the local public administration involved and for the public institutions and services of local or county interest, as the case may be, regardless of the form of financing, which fall under the responsibility of the chief authorizing officer.

Thus, according to Art. 101 of GEO no. 46/2013, at the time of the decision to admit the recovery plan, the activity and structure of the specialized apparatus of the mayor or of the county council, as the case may be, and of the public institutions or services of local or county interest, as the case may be, regardless of the form of financing, are reorganized accordingly, and the claims and rights of creditors and other interested parties are amended accordingly.

Also, in order to increase the value of the patrimony of the administrative-territorial unit, we notice in the content of this normative act, as in the case of Law no. 85/2014, the possibility granted by the legislator to the administrator to propose the unilateral termination or denunciation of any contract, unexpired leases or other long-term contracts, as long as these contracts are not fully executed by all the parties involved and cannot be executed within the recovery plan.

Comparative law aspects - Colombia, Hungary, South Africa, Switzerland and The United States

Only a few countries have established insolvency frameworks for subnational administrations, which have become examples of options for designing and implementing a legal insolvency framework for administrative-territorial units.

The Organisation for Economic Cooperation and Development (OECD) provides us with several studies (2018) [19], including a recent study from 2021, [20] adapted after the one from 2018, studies highlighting the benefits of introducing insolvency frameworks for subnational governments and analyzing existing frameworks in Colombia, Hungary, South Africa, Switzerland and the United States, as well as other frameworks discussed in the literature.

The foundations of such an insolvency procedure were substantiated with the shaping of high budget deficits, with subnational administrations (municipal and regional administrations) accumulating a significant volume of debts, which caused financial problems. For example, in the United States, California has repeatedly experienced severe budget crises between 2008 and 2012. In July 2013, Detroit, whose debt level reached USD 18 billion (USD 26 000 per capita), filed for bankruptcy and recovered after several months. Also in Brazil, the state of Rio de Janeiro declared “a state of financial calamity”, in 2016 obtaining an emergency federal transfer in order to host the Olympic Games. [21] In Germany, the deferral states of Bremen and the Saarland were in an imminent budgetary emergency and already in 2011 they were subject to a consolidation programme under the supervision of the so-called Financial Stability Board. [22]

Subnational entities that may be subject to insolvency proceedings may comprise subnational governments as well as subnational agencies, such as public companies or public-private partnerships. In Hungary, South Africa and Switzerland only local governments, municipalities or similar entities are subject to these insolvency laws. American rules define a municipality as “a political subdivision or a public agency or an instrument of a state”. This comprehensive definition includes state-sponsored or state-controlled entities that generate revenue through taxes or user charges for the provision of public services (e.g. school districts, hospitals, sanitary districts, public planning districts, bridge authorities).[23]

In our opinion, the insolvency regime of administrative-territorial units is, however, a sensitive subject, as it must certainly take into account the country's particularities, institutional, legal framework and social preferences, in order to achieve an economic-social and administrative balance.

Following the analysis, the OECD has identified an effective and 'balanced' framework model with the following characteristics: the procedure allows the debtor to submit the application that is approved by the court, in order to respect the sovereignty and constitutional rights, allows only a limited set of eligibility criteria by applying the *ultima ratio* principle (discouraging moral hazard) and grants an automatic suspension of the capitalization of assets (facilitating debt restructuring). Also, with regard to debt restructuring, the right of proposal is assigned to the debtor and the right of veto to the court (as regards sovereignty and creditors' rights), a simple majority rule in terms of the number of creditors and a qualified majority rule in terms of debts (facilitating debt restructuring), priority is given to new interim financing (maintaining the financing of loans) and preferential debts over secondary debts (preserving creditors' rights). As regards fiscal adjustment, it provides for the monitoring of subnational fiscal adjustments, for example, on expenditure and taxation, as well as other necessary reforms by the upper-level administration, by accelerating fiscal adjustment while discouraging moral hazard, and provides for sanctions in case of non-compliance.

While experience with existing insolvency proceedings is quite positive, such insolvency frameworks may be difficult to implement in other countries as they may not be compatible with constitutional or sovereign rights or may require major structural and institutional reforms to be effective. Many believe that their introduction may lead to 'contamination' effects at other levels of government or even in the financial markets.

For example, the largest municipal bankruptcy file in the history of the United States is that of the city of Detroit, Michigan. After accumulating debts of more than USD 18 billion (USD 26 000 per capita), Detroit filed for the opening of insolvency proceedings under Chapter 9 in July 2013. By the end of 2014, after 16 months, Detroit had recovered. Under the plan, debts were reduced by $7 billion. Creditors recorded a substantial 80% adjustment in their claims, while pensions were reduced slightly and the fees paid to lawyers, consultants and financial advisors in connection with the bankruptcy generated

a total of over $150 million. Consequently, the insolvency proceedings in Detroit allowed for a fresh start, launching a process of administrative restructuring and attracting new industries and capital. [24]

In May 2017, the American territory in Puerto Rico declared its insolvency, its liabilities totalling USD 122 billion (USD 35,000 per capita and 124% of GDP) consisting of bonds in the amount of USD 74 billion and unfunded pension liabilities in the amount of USD 49 billion.[25] As a result of the unsuccessful debt negotiations, Puerto Rico was subject to the insolvency procedure, as provided for in the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), the law being heavily criticized in this regard, which raises questions regarding the optimal design of insolvency regimes. [26]

Only a few countries provide regulations dealing with the insolvencies of administrative-territorial units. Many countries, such as Denmark and Australia, have not developed any rules on debt settlement in the event of a subnational fiscal crisis. In Germany and Norway, insolvency proceedings against the assets of the States (Germany), counties and municipalities (Norway) are even prohibited. In these countries, municipalities, states or counties cannot be declared insolvent. Other countries, such as Austria, explicitly allow the enforcement of debt against municipal property, but have no specific rules on how to proceed in the event of insolvency.

A remarkable example is the procedure in Chapter 9 of the United States, which stems from the Municipal Bankruptcy Act of 1938, adopted during the Great Depression and which led to multiple municipal insolvencies. At the time, many municipalities issued debt financing bonds. Unable to pay, they faced withholding in the debt negotiations. As a consequence, the primary purpose of the Act was to address this issue of collective action arising in debt negotiations. [27]

Switzerland has experienced only one case of insolvency. At the end of 1998, after accumulating CHF 346 million in debts due to wrong investment decisions, the Swiss municipality of Leukerbad became insolvent and was placed under forced administration. The municipal government, as well as certain creditors, sued the Canton of Valais (Wallis) for failing to fulfil its supervisory functions. In 2003, the Federal Supreme Court rejected the claims and ruled that the law did not provide for cantonal liability for the municipality’s

obligations. Consequently, the creditors accepted a debt relief of 78% of their claims and the Canton of Valais offered a guarantee of CHF 30 million. Each year Leukerbad has to repay CHF 1,3 million, so within a decade the outstanding debt has been reduced significantly to CHF 13 million at the end of 2013. In addition to the rehabilitation of Leukerbad, the application of insolvency proceedings has generated additional positive effects, such as the creation of reforms of accounting standards at municipal and cantonal level, the establishment of policies to restore the capital market, the cantons being granted exemption from the support of municipalities in serious financial difficulties.[28]

The need to regulate insolvency in Hungary, Colombia and South Africa is attributed to systemic and institutional changes. In Hungary, regulations for local governments came into force in 1990, allowing unregulated subnational loans and leading to significant increases in public spending. With the macroeconomic recession in the mid-1990s, many local governments were in serious financial difficulty and received central government subsidies to stay afloat. The Hungarian Municipal Debt Adjustment Act was adopted in 1996 and the purpose of the insolvency regime was to limit the moral hazard arising from the rescue precedents and thus to restore local fiscal discipline. [29]

Colombia underwent a rapid process of decentralisation, which began in the 1970s and accelerated in 1991. SNGs were given more responsibility for the provision of public services and relied on increased transfers by the central government. This has led to the lack of decentralization and the lack of interest of the administrative – territorial units to generate their own resources. The rise in debt levels prompted the Colombian government to pass several laws aimed at overcoming institutional weaknesses and discouraging excessive spending and borrowing. One of these measures is the provision of a debt restructuring mechanism defined in Law 550/1999 and supplemented by Law 617/2000. [30]

In South Africa, after the fall of apartheid, municipalities experienced key changes, with the central government guarantee of local debt being abolished and the municipal boundaries “redrawn”, combining the black-and-white, poor and wealthy urban communities. Extensive intergovernmental grants were also awarded to limit the need for borrowing. South Africa’s motivation behind the Municipal Financial Management Act

2003 was to provide a comprehensive framework for SNGs with regard to municipal financing and the loan. [31]

Three different types of insolvency frameworks can be distinguished, depending on the role of courts, higher-level administrations or other authorities in the proceedings.[32]

Judicial procedure, in which the court has a wide decision-making authority throughout the insolvency process. For example, in Hungary, the court decides whether a municipality is eligible for insolvency filing, gives its consent to the crisis budget and appoints a trustee who directs and oversees the bankruptcy and reorganization process.

Administrative procedure, in which the upper-level administrations establish the bankruptcy status, carry out the debt restructuring procedure and take control of the subnational finances. For example, an administrative procedure is used in Colombia because the judicial system does not always work well. The bankruptcy proceedings for SNGs are conducted by the Superintendence of Companies (SOC) in cooperation with the Ministry of Finance and Public Debts. Switzerland is also following an administrative procedure, although the courts are also involved in the determination of insolvency, the administration of the creditors' meeting and the establishment of a supervisory board for tax intervention.

In *hybrid insolvency systems*, both the court and the administration are involved in the debt restructuring process, which is also specific to our legal system, as we have analyzed above. For example, in South Africa and the United States, the insolvency court approves the bankruptcy application and the debt distribution system, which sets out how debts will be restructured. The preparation of the restructuring plan and the fiscal adjustment are either left to the Municipality itself (the United States) or to an administrative authority (South Africa, Romania).

In an administrative procedure system, debt payment and fiscal adjustment can be achieved more quickly than in a judicial procedure, especially in countries with an underdeveloped judicial system. The disadvantage of administrative systems compared to judicial systems is that subnational administrations may expect the upper-level administration to provide additional public funding and thus increase the risk of moral hazard. In addition, they may be less immune to political pressure and discretionary

decision-making and tend to be more biased in favour of one or the other than in court proceedings. Hybrid frames could be superior because they combine both systems. As the court takes the final decision on the debt allocation system or the debt adjustment plan, it can be ensured that the outcome is fair and equitable for all parties, assuming that the legal system is efficient.

Insolvency frameworks may be initiated by the debtor, creditors, upper-level governments or other authorities. Filing may be voluntary or mandatory. In most countries, the debtor voluntarily submits the application to the competent court (United States of America, South Africa) or to the competent authority (Switzerland). The argument for requesting the opening of the insolvency procedure by the debtor is emphasized by the fact that they know best the real financial situation and the severity of the indebtedness.

The assessment of SNG's eligibility as well as the management and supervision of the debt restructuring process are also important steps in the insolvency proceedings. Regardless of which institution (e.g. court, trustee, administrative authority, etc.) is involved in the process, it should be provided with the necessary conditions of independence, impartiality and jurisdiction. In all existing frameworks, the insolvency assessment is left to a third party, such as the court (United States of America, Hungary, South Africa or the Department of Tax Affairs (Colombia). In Switzerland, a committee of experts can help to assess the financial situation of the municipality.

In Hungary, South Africa, Colombia and the United States, once the request to open insolvency proceedings is accepted, the court or administrative authority shall appoint a trustee to direct and supervise the debt restructuring process. The United States bankruptcy court or the Colombian Department of Tax Affairs serves to enforce the insolvency rules and settles disputes between the debtor and the creditors. In addition to the existing institutions, creditors and debtors may also establish an *ad hoc* arbitration panel which shall lead the debt restructuring process and settle disputes.

According to the OECD, subnational governments (SNGs) play an important role in public finance in many countries, most of which are responsible for the provision of essential public services (e.g. education, infrastructure maintenance, garbage collection, water supply). At OECD level, in 2014, NGAs accounted for 31% of total government

expenditure and 19% of own revenue (from own and shared taxes and user fees). Their debt is high and has increased in most OECD countries, amounting to 150% on average in 2020. The high indebtedness of the SNGs may be due to institutional weaknesses (e.g. limited taxation capacity) or persistent structural problems where the revenues from own resources and intergovernmental transfers are insufficient to meet the expenditure obligations. Apart from the relatively stable fiscal position of many NGAs, some have been strongly affected by the financial crisis and COVID-19 pandemic.

In order to avoid high borrowing costs, limited access to the capital market and/or stigmatisation of bankruptcy, the debtor may nevertheless follow a prudent fiscal policy. Insolvency frameworks can therefore serve to prevent the insolvency of NGAs ('*preventive function*'). They complement and implement existing measures to protect financial discipline and to strengthen the budgetary constraints of NGAs.

Given the specificities and compromises of each country, we can conclude by stating that there is not an optimal framework for all insolvency cases. The design of an insolvency procedure for subnational administrations and the choice of different characteristics should be fully in line with a country's priorities and the country's cultural, economic, legal, constitutional and social context.

We believe that in order to maintain essential services and to facilitate fiscal adjustment, the insolvency procedure of the administrative-territorial units should provide for a comprehensive definition of assets that cannot be confiscated, sanctions in case of missing adjustments and tax intervention of the upper-level administration. These latter two characteristics may also serve to discourage moral hazard. Beneficial to the debt adjustment facility are features that grant a temporary stay of foreclosure, stipulate a rule imposing a debt restructuring plan and define a clear and detailed order of payments. Creditors' rights are best protected when trigger criteria are narrowly defined, the right of veto is attributed to a neutral third party and a wide range of assets can be seized. Ensuring respect for constitutional rights and sovereignty requires strict eligibility criteria, as well as a limitation on asset attachment and political intervention. Based on these characteristics, the existing legal frameworks set different priorities. For example, Chapter 9 of the US Code places greater emphasis on facilitating debt adjustment, in particular by discouraging the problem of collective action and protecting constitutional rights

compared to other countries, but places less emphasis than other insolvency frameworks (Hungary, South Africa and Switzerland) on protecting public services and promoting fiscal adjustment.

Conclusions

The seriousness of the insolvency of the administrative-territorial units results first of all from the damage to citizens and society in general, the respective city entering into a maze of debts and decline by losing the confidence of potential investors, the migration of current investors to other cities, the loss of jobs, lowering salaries, affecting the provision of essential public services, discouraging the financing of infrastructure and public investments, thus limiting the long-term growth and finally declaring a city “dead”, abandoned. At the same time, the effect can occur in a chain, the increase of the debts of a single city can generate negative externalities for other administrative-territorial units, but also for the central administration, by reducing their solvency and increasing the overall borrowing costs. Excessive levels of their debt increase the likelihood that a default on debt will lead to “contagion”, thus preventing all levels of government from accessing loans and even threatening overall financial stability, as Argentina experienced, for example. In this context, the central administration will be forced to rescue the other administrative structures, which may trigger an unsustainable fiscal policy.

In the current context, it is also very important to increase the capacity of absorption of European funds by all administrative-territorial units, Romania being able to benefit in the coming years from a large volume of European funds, funds made available by the European Union through NextGenerationEU in order to achieve the targets in terms of reforms and investments to support resilience, preparedness for crisis situations, adaptability and growth potential. Here, too, we consider the implementation of the National Plan for Recovery and Resilience (PNRR),[33] the major objective being to create a unitary framework legal regime, coherent for the central and local public administration, approached in close correlation with the activity of coding stable codes

that will contribute to increasing citizens' confidence in the continuity and sustainability of legal regulations.

All these harmonized actions lead to avoiding the indebtedness of the administrative-territorial units and the use of the legal framework regarding insolvency only as a prevention mechanism and not as a correction mechanism, as we have pointed out in our research from a comparative perspective.

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STAY OF JUDICIAL AND ENFORCEMENT ACTIONS IN CASE OF OPENING THE INSOLVENCY PROCEEDINGS

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Abstract:
A stay of judicial or extrajudicial actions, as a result of opening the insolvency proceedings, aims to protect the competitive, collective and egalitarian character of the procedures regulated by law no. 85/2014 on insolvency prevention and insolvency procedures, thus avoiding the risk of individual actions to pursue or enforce creditors' claims on the debtor's assets and eliminating the uncertainty over the liabilities. This imperative legal norm, of public order, was appreciated as having as its purpose the concentration of all disputes with the debtor's property as its object, in the exclusive competence of the syndic judge appointed in the insolvency procedure. Creditors whose actions were thus suspended will have to declare their claims in the judicial reorganization and bankruptcy procedure.
Keywords: *insolvency, bankruptcy, enforcement actions.*

Stay of judicial and extrajudicial actions

According to provisions of art. 75 paragraph 1 of Law no. 85/2014, from the date of the opening of the procedure, all judicial, extrajudicial actions or enforcement measures for the purpose of recovering any debts on the debtor's assets are automatically suspended. The exploitation of their rights can only be done within the insolvency procedure, by submitting applications for the admission of claims. Their reinstatement is possible only in the case of the annulment of the decision to open the procedure, the revocation of the decision to open the procedure or in the case of the closure of the procedure under the conditions of art. 178. If the decision to open the procedure is cancelled or, as the case may be, revoked, the judicial or extrajudicial actions to realize the claims on the debtor's assets can be put back on the docket, and the enforcement measures can be resumed. On the date when the decision to open the procedure becomes final, both the judicial or extrajudicial action, as well as the suspended enforced executions, cease.

The appeals promoted by the debtor against the actions of some creditors started before the opening of the procedure are not subject to legal stay, nor are the civil actions from the criminal processes directed against the debtor. Both legal actions against co-

debtors and/or third party guarantors and legal actions to determine the existence and/or amount of claims against the debtor, born after the date of the opening of the procedure are also exempted from the provisions of art. 75.

The stay of judicial and extrajudicial actions is carried out *ope legis*, a judicial decision in this regard not being necessary. The suspensive effect is produced from the pronouncement of the decision to open the insolvency procedure, and not from the date of registration of the petition.

Subsequently, both the judicial or extrajudicial action cease on the date of the definitive stay of the decision to open the procedure, as well as the suspended enforced executions. Regarding the ending moment of judicial or extrajudicial action or enforcement, it operates by effect of the law, just as in the case of stay by effect of law[1]. The decision to open the insolvency procedure remains final on the date of expiry of the term for exercising the appeal, or on the date of the pronouncement of the decision on appeal, to the extent that the appeal has been rejected.

In case the opening of insolvency proceedings against a company that has the defendant status in an action through which a creditor seeks to realize a claim on it occures while such a process is pending, the judgment must be suspended, and on the date of finality of the decision to open the procedure, the judicial action ceases[2].

The ending of the action pursuant to art. 75 of Law no. 85/2014 is a procedural measure newly introduced by the provisions of Law no. 85/2014, appearing as a genuine exception to the provisions of the Civil Procedure Code, which regulates the solutions that can be pronounced by civil courts (e.g. annulment, rejection, admission), its purpose being to stop the actions in claims and enforced executions directed against the debtor (for which the insolvency procedure was opened by final judgments pursuant to Law no. 85/2014) and the capitalization claims only within the collective procedure.

In such case, the action does not remain without an object, because such a solution would imply the disappearance of the object of the request, respectively the disappearance of the claim whose capitalization is sought. The purpose of the law is to verify/value the claim in the collective procedure, the solution that must be pronounced being the one provided by the law: "completion of the action".

As for the procedural act ordering the ending of the trial, according to the provisions of art. 424 paragraph 1 of the Civil Code, it must be a sentence, because in this case the court divests itself without resolving the case[3].

The cause of stay includes the actions that have as their object the recovery of court costs against the debtor.

Thus, in the practice of the courts[4], it was established that, within the meaning of art. 453 Civil procedural code, the legal nature of court costs is bivalent, they represent, on the one hand, the damage caused by the procedural fault, and, on the other hand, the compensations that the party losing the claims must pay to the other party. The right to claim the restitution of court costs is a patrimonial right of claim, the creditor having the obligation to prove the existence of a certain, liquid and enforceable claim consisting of the amounts claimed under this title. The request by which the creditor requests the obligation of the debtor - an insolvent company - to pay court costs has the nature of an action to realize a claim on the debtor's assets, so that it is correct to apply the provisions of art. 75 para. (1) from Law no. 85/2014, which refers to the stay of all judicial, extrajudicial actions or enforcement measures for the realization of claims on the debtor's assets.

Also in practice[5], it was ruled that, in the event that, through the preliminary court action, it was requested, on the one hand, the partial cancellation of a debt assignment contract, and, on the other hand, the obligation of the defendant party, an insolvent company , upon the payment of certain sums of money, the decision of the court to suspend, under the provisions of the Insolvency Law, only the petition in claims relating to the insolvent defendant is legal, since this stay can only operate for the request through which it was sought to realize a claim on the insolvent debtor, the petition regarding the partial cancellation of the assignment contract not being able to lead directly to the realization of the debt. Thus, since the stay of the judgment does not concern the entire action filed against the insolvent defendant, the solution of partial rejection of the action against this defendant is legal and fundamental, the lack of an express mention regarding the end of the claim which is rejected without causing the annulment of the decision[6].

Application of art. 75 para. (1) from Law no. 85/2014 by the court specialized in the settlement of labor disputes

Since the insolvency procedure has a competitive, collective and egalitarian character, all creditors who have claims against the debtor must register these claims in the credit table. This is the rationale for which the legislator ordered that all judicial, extrajudicial actions or enforcement measures for the realization of claims against the debtor or his assets be suspended, otherwise the competitive, collective and egalitarian nature of the procedure cannot be respected.

However, only claims that comply with the legal conditions, that is certain, liquid and enforceable, and that are expressed in a document recognized by law as having an enforceable nature, can be registered at the credit table, and not the simple requests of creditors.

The text of art. 75 paragraph 1 of Law no. 85/2014 refers to judicial, extrajudicial or enforced execution actions, for the realization of claims against the debtor or his assets, i.e. to satisfy creditors, therefore these are the actions susceptible of being suspended, not the actions that tend to the recognition or ascertainment of a claimant's claim on the debtor.

In the absence of a recognition of his claim, through a final and irrevocable court decision, the plaintiff, participating in the insolvency procedure, would not be able to submit to the credit table and would not benefit from the entire procedure. Therefore, it is up to the court, vested with judging such a request, the competence and, at the same time, the obligation to analyze to what extent the plaintiff's action tends to realize his claim or only to ascertain its existence and extent.

Consequently, compared to the mandatory interpretation made by the Constitutional Court[7], it falls under the provisions of art. 75 of Law no. 85/2014 only the actions aimed at satisfying the creditor's right, respectively the payment of claims, not the actions that infer uncertain rights or in relation to which the creditor does not hold a valid title for registration in the credit table.

In fact, only such an interpretation satisfies art. 6 ECHR, in the interpretation of the European Court of Human Rights, which established that "the right to a fair trial, guaranteed by art. 6 § 1, must be interpreted in the light of the principle of the supremacy

of law, which presupposes the existence of an effective legal way that allows the claim of civil rights

In the same way, the High Court of Cassation and Justice held in its jurisprudence[8] that "if the plaintiff did not invest the court with an action to realize a claim against a company against which the opening of the general insolvency procedure was ordered, his claims regarding only the finding of the development of some labor relations, the decision of the court to suspend the trial of the case based on the provisions of art. 36 of Law no. 85/2006, motivated by the fact that the opening of insolvency proceedings was ordered against a company other than the one against which some claims were sought, the conclusion thus pronounced being given by the wrong application of these legal provisions."

In the actions in which the plaintiff only requested that the defendant recognize his claimed rights, the court must verify the title of the plaintiff's claim, the provisions of art. 75 of law 85/2014 not being applicable.

Practical solutions to remove the violation of the legal provisions regarding the enforcement of insolvent companies

a) Enforcement appeal

Whether formulated under art. 712 et seq. of Civil Procedure Code or art. 260 et seq. of Law no. 207/2015 regarding the Fiscal Procedure Code, the enforcement appeal is the optimal solution that leads to the restoration of the state of legality and the annulment of the enforced enforcement started illegally.

In order for the procedural approach to be as effective as possible, it is recommended to request the cancellation or termination of the entire forced execution, and not just the cancellation of certain acts of execution, because in the case of violation of the legal provisions regarding the forced execution of insolvent companies, all the forced execution is illegal, and not just certain acts of execution.

In this regard, art. 703 para. (1) point 5 C. proc. civil law provides that: "(1) *Enforcement ceases if: the enforcement has been cancelled*", and art. 704 C. proc. civil law provides that: "*Non-compliance with the provisions regarding the enforced execution itself or the execution of any act of execution entails the nullity of the illegal act, as well*

as of the subsequent acts of execution, the provisions of art. 174 et seq. being applicable accordingly".

To the extent that only certain enforcement documents are annulled, the creditor may issue other enforcement documents within the same enforcement procedure and another appeal will have to be made for subsequent issued enforcement documents.

Moreover, to the extent that the cancellation of the entire enforced execution is not requested, within the term established by art. 715 para. (1) point 3 C. proc. civ., respectively within 15 days from the date when "the debtor contesting the execution itself received the decision approving the execution or the summons or from the date when he became aware of the first act of execution", the forfeiture of the right to also requests the cancellation of the enforced execution, only the right to request the cancellation of individual enforcement acts remains, within 15 days from the date when the appellant became aware of the enforcement act that he is contesting

b) The possibility of the insolvent debtor to file a request to lift the seizure from the insolvency account, addressed to the syndic judge

To the extent that the forced execution was carried out by seizing the insolvency account, the insolvent debtor has the opportunity to file a request to lift the seizure from the insolvency account, addressed to the syndic judge under art. 45 para. (1) lit. r) and art. 163 para. (3) from Law no. 85/2014. The provision of art. 163 para. (3) of the law, gives effectiveness to the competitive, collective and egalitarian character of the procedure, in accordance with which the suspension of judicial or extrajudicial actions after the date of the opening of the procedure is instituted.

Conclusions

A stay of judicial and enforcement actions in case of opening the insolvency proceedings, ordered based on the provisions of art. 75 paragraph 1 of Law no. 85/2014, can only concern those judicial or extrajudicial actions and enforcement measures directed against a debtor in order to recover some claims likely to be entered in the credit table, and not the actions initiated in order to obtain/establish a claim against the debtor, a contrary solution being likely to flagrantly violate the provisions of art. 6 ECHR, in the conditions where, as an example, the people who would try to obtain the recognition of a

patrimonial right would see themselves put in the situation that their actions will not be analyzed effectively and within a reasonable time by the court, as much while the processes initiated to establish such a right would be suspended for a long time (most of the time).

References:

[1] Themis Magazine, no. 2/2020 of National Institute of Magistracy
[2]Decision no. 520 of March 9, 2021, pronounced by the Second Civil Section of the High Court of Cassation and Justice
[3]The meeting of the presidents of the specialized sections of the ICCJ and the Appeal Courts in Căciulata, May 15-16, 2017
[4]ICCJ, Second Civil Section, Dec. no. 2323 of November 12, 2015
[5]ICCJ, Second Civil Section, dec. no. 524 of February 17, 2015 - Jurisprudence Monitor no. 52/2015
[6]Carpenaru, D.Stanciu, Hotca, Mihai-Adrian, Nemes, Vasile, Codul insolventei comentat, 2nd edition, Universul Juridic Publishing House, Bucharest, 2017
[7]Decision of the Constitutional Court of February 5, 2013, published in the Official Gazette of Romania, Part I, no. 176 of April 1, 2013
[8]Civil decision no. 1526/05.06.2015, ICCJ - Second Civil Section

THE PROBATIVE VALUE OF FORENSIC DOCUMENTS IN THE CASES OF OFFENSES AGAINST LIFE (MURDER)

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Abstract:
Evidence does not have a pre-determined value established by the legislator and there is no evidence with higher probative value, regardless of the authority from which it emanates. Thus, neither the experts' report nor the opinions issued by the supreme scientific authority in the field of forensic medicine have a higher probative value than the other scientific evidence administered in the case. Thus, the judicial bodies may consider or dismiss any of the conclusions of the expert reports carried out in the case, regardless of whether or not they have been endorsed by the Superior Forensic Commission.
There are provisions in national law authorizing the competent forensic institutions to issue opinions which elude the requests of the judiciary and thus refuse cooperation whenever the needs of the investigation so require, but this it is not in accordance with the main duty of the state, namely to guarantee the right to life, by establishing an effective legal and administrative framework to determine the cause of death of an individual.
As a result, the establishment of a legal framework in the field of forensic expertise is required so as to allow the issuance of opinions by the supreme scientific authority in the field of forensic medicine, to clarify or evaluate facts or circumstances that are important to find out the truth, in order not to divert the criminal proceedings from its purpose, namely that any person who has committed a crime be punished according to their guilt and that no innocent person should be held criminally liable.
Keywords*: Forensic Expert Report, Forensic Opinions, Judge's Conviction, Presumption of Innocence, Assessment of Evidence, Factual Situation, Syllogism, Criminal Trial, Court Decision*

Preliminary considerations

A relatively recent resolved case brings back into question, remaining problems regarding the epistemology of the forensic investigation of crimes against life.

The present study will focus on aspects regarding the on-site investigation, the examination of the corpse, the medical data and the probative value of the forensic reports and the opinions of the Superior Forensic Commission in the case of the crime against life and especially when dealing with a suspicious death [1].

At the same time, this scientific approach will seek to respect the general, but also to highlight the particular, as it presents itself in reality.

For an easier understanding of the case, the brief chronological conduct of the trial in the first instance and on appeal will be presented.

Judgment of the first instance

Thus, by the criminal sentence no. 19 of January 28, 2020 of the Gorj County Court[1] pronounced in the file 1299/95/2019 based on art. 396 para. (5) referred to in art. 16 para. (1) lit. c) Criminal Procedure Code, the defendant V. I. was acquitted, for committing the crime of murder, sanctioned by art. 188 para. (1) Criminal Code.

In essence, it was noted that through indictment no. 623 / P / 2018 of 14th of May 2019 of the Prosecutor's Office attached to the Gorj County Court, it was ordered to be sent to trial, in a state of pre-trial detention, the defendant V. I., for committing the crime of murder, provided by art. 188 para. (1) Criminal Code.

In the act of notification, it was noted, in essence, as a fact that, on December 21st, 2018, the defendant V. I. applied to the victim R. M. blows with hard bodies in the skull area, which led to her death on the 22nd of December 2018, (without indicating the time, place, vulnerable thanatogenerator body and victim-aggressor position our a.n.).

The first instance court held that the evidence administered in this matter must clarify the essential aspects of the criminal offense in the field of crimes against life, namely [2]:

- correct identification of the causes of death [3];
- the time and place of the act for which the accusations were made [4];
- the existence of an own deed of the accused person [5];
- clarification of the consequences of the accused's own deed [6].

Relating these criteria to the case brought before the court, the court noted that from the documents and works of the case it could be established that on 22.12.2018, around 04:00, the police bodies were notified by the named VI (son of the defendant)

1 Available on www.rolii.ro.

2 As it has been constantly shown in judicial practice (criminal sentence no. 197/2011 pronounced by the Gorj County Court in file no. 15709/95/2011, amended by decision no. 362/2012 of the Craiova Court of Appeal, which remained final by decision no. 3419/2013 pronounced in the file No. 5012/1/2013 of the Supreme Court).

3 The verification of the mechanism of occurrence of the death is important for establishing the eventual instruments through which the death was caused, which, in turn, will lead to the identification of the instruments in their materiality, the taking of biological samples, fingerprints. Establishing the instrument that caused the death, but the lack of identification at the scene or at the home of the suspects makes the evidence not contain elements by which the act is more easily attributed to a particular person and allows the exclusion of others from the circle of suspects.

4 The correct determination of the crime scene allows the collection of traces, including biological ones from the victim. This evidence is necessary to identify the culprit and to exclude persons who were originally part of the circle of suspects but who did not cause the fatal outcome. In relation to the establishment of the moment and place of the deed, the defenses formulated by the accused person regarding his presence in another place are verified.

5 In the absence of evidence relating to the act itself and the causal link between it and the fatal outcome, no conviction can be handed down. In this context, it is necessary to clarify the defenses of the persons in the circle of suspects regarding the place where they were at the time of the victim's death.

6 The contributions that could not lead to death are thus highlighted, the defenses of the accused person regarding the lack of aptitude of his act of conduct in producing the lethal consequence are verified.

regarding the fact that at her father's home in the town of Ţicleni, in a room of the house, there is a deceased woman named RM, who showed signs of violence on her face and body.

From the forensic report autopsy no. 1856/22.12.2018 it results that the death of the named R. M. was violent, it was due to the meninge-cerebral hemorrhage with ventricular flooding as a result of a craniocerebral trauma. The injuries could have been caused by hitting with hard bodies, compression with the finger (injuries to the arms and thighs), crawling (injuries to the hip and left flank) and possible fall (injuries to the lumbar region and knees), those at the level of the skull directly related to the cause of death. In the blood collected at the autopsy, 2.83 gr./00 ethyl alcohol was detected, and the death of the named R. M. can be dated December 22, 2018[2].

During the criminal investigation, the forensic examination of the defendant was also ordered, and from the forensic report no. 1854 / 22.12.2018 to S. M. L. Gorj, it turned out that he presented traumatic injuries that could have occurred by hitting with a hard body scratching the nail, the injuries can date from December 22, 2018 and require 7-8 days of medical care. The defendant showed an excoriation of 10 / 0.5 cm. on the right forearm anterior, and the coroner concluded that it is produced by scratching with the nail.

At the same time, a judicial genetic expertise was ordered in the case[7].

Subsequently, by the conclusion of 12.08.2019, the court, taking into account the

7 The conclusions of the expertise were submitted by the National Institute of Forensic Medicine Mina Minovici Bucharest - Genetics Laboratory during the preliminary chamber procedure. The expert paper showed that:
1. The analysis by rapid identification tests of biological microworms revealed the presence of human blood on several garments of the so-called R. M. (two sweaters, blouse, panties and scarf), on the bedding raised from the home of the defendant V.I. (the three sides of the pillow and sheet), as well as on a series of clothing items belonging to defendant V.I. (T-shirt, sweatpants, shorts, panties);
2. No traces of semen were detected in the vaginal secretion of the said R. M;
3. The genetic analysis of the traces of blood identified on the clothing worn by the so-called RM showed on the two sweaters, the body blouse, the sweatpants and the scarf one and the same female genetic profile, in perfect correspondence with the genetic profile of reference of said RM; per panty: a mixture of genetic profiles from at least two people, of which at least one is male, and the genetic characters from the reference DNA profiles of the said R. M. and the defendant V.I. are found in this mixture;
4. The genetic analysis of the biological traces taken from the said R. M. highlighted: for the vaginal secretion, the area of the hands and, under the neck" one and the same unique female genetic profile in perfect correspondence with the reference genetic profile of the said R. M.; for traces taken from the thighs: a mixture of genetic profiles from at least two persons, of which at least one is male, and the genetic characters from the reference DNA profiles of the said R. M. and the defendant V.I. are found in this mixture;
5. Genetic analysis of biological traces taken from defendant V.I. highlighted: in the subungual deposits: a unique male genetic profile, in perfect correspondence with the reference DNA profile of the defendant V. I.; on the face: a mixture of genetic profiles from at least two people, of which at least one is male, and the genetic characters from the reference DNA profiles of the said R. M. and the defendant V.I. are found in this mixture;
6. Genetic analysis of traces of blood on clothing worn by defendant V.I. highlighted: on the panties: a unique male genetic profile, in perfect correspondence with the reference DNA profile of the defendant V. I.;
7. The genetic analysis of the traces of blood drawn from objects in the defendant's home revealed: on the three sides of the pillow and sheet: one and the same unique female genetic profile in perfect correspondence with the reference genetic profile of the so-called R. M.; for reddish-brown traces (blood) on the stove: a mixture of genetic profiles from at least two persons, of which at least one is male, and the genetic characters in the reference DNA profiles of the named RM and the defendant VI are found in this mixture.

inaccuracies between the forensic documents in the criminal investigation file and, implicitly, the insufficiency of the forensic information provided by them, ordered a new forensic examination by Craiova Institute of Forensic Medicine, establishing 13 objectives.

From the conclusions of this report results that the death of the named R. M. was caused by meninge-cerebral hemorrhage as a result of a craniocerebral trauma produced by an active mechanism (most likely). Cranial wounds were most likely caused by active mechanism, by repeated hard body blows and possibly an elongated hard body with an irregular surface, and the time of death could not be established with certainty, as it could date from the afternoon of 21.12.2018.

Next, seeing the conclusions of the forensic report (autopsy) no. 1856 of the 22nd of December 2018 drawn up by the Gorj Forensic Medicine Service and of the report of new medico-legal expertise no. 2649 / A5 / 23rd of September 2019 prepared by the Institute of Forensic Medicine Craiova, and the lack of essential data for clarifying the factual basis and implicitly finding out the truth, by concluding on 08th of October 2019 it was ordered to verify and scientifically approve the conclusions of two reports of forensic expertise by the Superior Forensic Commission within the National Institute of Forensic Medicine Mina Minovici Bucharest.

On the 19th of November 2019, the file was forwarded to the file E1/13127/2019 of the Superior medico-legal Commission within the National Institute of Forensic Medicine Mina Minovici Bucharest, by which the report of new medico-legal expertise no. 2649/A5/23rd of September 2019 prepared by the Institute of Forensic Medicine Craiova.

In this case, the court found that the evidence administered in the case does not fully and convincingly outline the circumstances of the alleged act, in this case not being elucidated in the criminal investigation phase the factual circumstances in which the suspected death of the said Republic of Moldova occurred and no substantiated situation was established. on certain proofs of guilt, it is necessary to give efficiency to the rule according to which any doubt is interpreted in favor of the defendant (in dubio pro reo), as established by the provisions of art. 4 para. (2) from the Criminal Procedure Code.

Following the logical, scientific and rigorous analysis of the revealed facts, respecting the principles regarding the loyalty of the administration of evidence and the

assessment as a unitary whole, the court found the insufficiency of evidence to support that the defendant V. I. committed the crime of murder, prev. and ped. of art. 188 para. (1) of the Penal Code, and according to art. 396 para. (5) referred to in art. 16 para. (1) lit. c) Criminal Procedure Code, acquitted the defendant.

The decision of the court of appeal

The prosecutor's office appealed against this sentence. In the grounds of appeal, among others, it was shown that: the court of first instance unjustifiably removed the report of new forensic expertise; that this undoubtedly results in the mechanism of production of the injuries and that the death of the victim occurred a few hours after the blows were applied; that in the case of the crime of murder the law does not provide for the existence of a motive; that the windows should not have been described in the on-site inspection report, as it appears from the photographic drawings that they had foil and that it was found to be intact; that no drops of blood were found on the wall as the bed had a high headboard; that the handkerchief had no traces of blood, which proves that the victim did not have bleeding lesions when she was brought into the defendant's house, that it was not necessary to establish the activity of the victim and the defendant prior to the crime. At the same time, it is also shown that: the death of the victim occurred on December 21, 2018; the victim was standing or on the bed in a sitting position at the time of the blows, so no drops of blood were found; the defendant's injuries are from December 21; that the defendant struck the victim with a hard body described as a piece of wood as she would more than likely have refused to have sex with the defendant.

In other words, a new state of affairs is described, than the one with which the court was invested by the indictment, but also this one without factual conductivity.

By the criminal decision no. 216 of February 18th, 2021 of the Craiova Court of Appea based on art. 421 point 2 lit. a) Criminal Procedure Code the appeal declared by the Prosecutor's Office attached to the Gorj County Court was admitted and the appealed criminal sentence was annulled based on art. 188 para. (1) Criminal Code the defendant V. I. was sentenced to 10 years imprisonment under the conditions of art. 60 of the Criminal Code, applying to the defendant the complementary and accessory punishment.

In order to pronounce this decision, the court held that (following the re-hearing of

the defendant and the witnesses), The evidence administered during the criminal trial, as described so far, the statements of the witnesses, who observe the victim at the bottom of the stairs, speak to this and does not notice traces of blood in the head area, four witnesses who meet the defendant on the afternoon of 21st of December 2018 and notice that he had traces of blood on his shirt and shorts containing one and the same genetic profile in perfect correspondence with the victim's DNA profile, the report of new forensic examination establishing that the death occurred due to meninge-cerebral hemorrhage due to a craniocerebral trauma produced by active mechanism, hard body elongated impact with multiple irregular surfaces, genetic expertise report which proves that the only person in the room with the victim was the defendant and refutes his defenses regarding the maintenance of relations sexual, the injuries presented by the defendant that were produced during a fight with the victim, the statements of the defendant, his behavior when the victim was bleeding profusely, prove that on 21st of December 2018 the defendant VI applied repeated blows to the so-called RM hard in the temporal and occipital area of the head, which led to her death from meninge-cerebral hemorrhage.

The Court finds that the act of murder, prev. of art. 188 para. (1) of the Criminal Code for which the defendant was sent to trial exists, constitutes a crime and was committed by the defendant V. I. with guilt in the form of indirect intent, taking into account the vulnerable object used ,,elongated hard body with irregular surfaces,, head area, intensity of blows, their number, heavy bleeding that caused the blood to pass through the mattress on the bed and the connection of causality between the action of the defendant and the death of the victim.

The appellate court, finding that the guilt of the defendant has been established beyond any reasonable doubt, will proceed to convict him for committing the crime of murder prev. of art. 188 Criminal Code”

It is noted that the appellate court, accepting the criticisms of the prosecutor's office, gave implicit priority relevance to the new forensic report, endorsed by the Superior Forensic Commission operating under the Institute of Forensic Medicine "Mina Minovici" Bucharest.

In the following, there will be no analyze the judgments in question, although a simple reading shows that the appellate court, in its own reasoning, uncritically took over

passages from the prosecutor's opinion set forth in the ground of appeal regarding the acquittal, not being therefore exempt from easements.

Thus, in the two procedural acts it is erroneously noted that the first instance removed the report of new forensic expertise, the culmination, ordered by the first instance at the first trial. Obviously, this support cannot be received, for the simple reason that the payment solution was pronounced on the basis provided by art. 16 para. (1) lit. c) of the Code of Criminal Procedure, ie there is no evidence that the defendant committed the crime. The option of the first instance therefore excludes this possibility expressed by the prosecutor in the reasons of the declared appeal. And, yes, maybe the first instance had to rule on the acquittal on the grounds that the deed does not exist. However, for reasons of ,,own technique and tactics" probably anticipating the prosecutor's criticism that, the judge is not allowed to remove an expert paper prepared by the 12 most famous doctors in Romania", the first instance chose as a basis for acquittal provided by art. 16 para. (1) lit. c) Criminal Procedure Code[8], translating into lack of evidence.

In other words, not removing explicitly the new report, the judge of the merits was probably, forced" to give precedence to the conviction based on the whole probative ensemble under the conditions of art. 103 Criminal Procedure Code, to the detriment of the intimate conviction[9].

On the contrary, the appellate court took over the prosecutor's assertion, tale quale", implicitly removing in the process of evaluating the evidence, the genetic expertise report prepared in the case, which invalidated the thesis of the fight between victim and defendant, which was not even described. in the act of notification of the court.

It is noted that the prosecutor, finally, after the trial in the first instance, through the grounds of appeal, exposes and imposes inextricably a new state of affairs regarding: the

8Seen from the outside, of course, in relation to the evidence in question - including genetic expertise - the most appropriate solution was to acquit the defendant on the grounds that the deed did not exist.

9 In connection with the intimate conviction of the judge, the court of constitutional control had a winding path, so that by decision no. 43 of 23.03.1999 and decision no. 60 of 30.03.2000 ruled that the provisions of art. 63 para. (2) Criminal Procedure Cod are constitutional. In a short time, without any legislative change, by decision no. 171 of 23.05.2001, in the same composition, the Constitutional Court of Romania admitted the exception of unconstitutionality, finding that "the provisions of art. 63 para. (2) Criminal Procedure Code contravene art. 123 para. (2) of the constitution, according to which the judges are independent and are subject only to the law".

At the time, the court found that in the Constituent Assembly, during the debates on articles of the draft Constitution and the Report of the Drafting Commission (published in the Official Gazette of Romania, Part II, No. 35 of 13 November 1991 and respectively, No. 36 of November 14, 1991) the proposed amendment regarding the completion of the final thesis of para. (2) in art. 123 of the Constitution with the phrase,,[...] and their intimate conviction". After the debates, the Constituent Assembly rejected by a majority of votes this amendment, thus expressing, its will for the judges to obey, only the law", and not, their intimate conviction".

date of death of the injured person, the date of injuries on the forearm of the defendant, determines for the first time the motive of the crime, the vulnerable body thanatogenerator (piece of wood, put in the stove and burned), the position of the victim at the time of the hit, the approximate time of the blows, explaining the reason why no material blood samples were found on the spot.

Accepting the state of affairs exposed by the prosecutor, we wonder why the defendant was not sent to trial for committing the crimes of attempted rape and leaving without help a person in difficulty stipulated by art. 32 rap. to art. 218 Criminal Code and art.203 Criminal Code?

Likewise, if the prosecutor had two exhaustive and dubious variants regarding the state of affairs, the first instance his own variant, and the appellate court on its own, what can the defendant, the parties or a neutral observer think? What is the truth? Did the court do justice? Convinced the decision of the last court he represents, isn't it true that res judicata pro veritate habetur? There are as many unanswered questions[3].

All these questions would not have existed if the on-site investigation was done professionally, if the material blood samples were taken, if the victim's temperature was taken using a simple thermometer, if the defendant's blood alcohol level was established, the corpse was thoroughly examined, every injury was noted, including previous ones at the level of the skull, if the corpse has been moved from the place of application of the alleged blows, the establishment of an investigation plan and the elaboration of versions of criminal prosecution or the elimination of negative circumstances.

One of the main conditions for carrying out multiple and complex tasks related to the discovery of the crime of murder is the active, sustained and creative application by criminal prosecution bodies and courts of scientific, tactical and special technical procedures and methods developed by forensic science.

The opinion of the first instance is correct, according to which given the numerous inaccuracies between the forensic documents in the criminal investigation file and, implicitly, the insufficiency of the forensic information provided by them, in relation to the provisions of art. 173 and the following from the Criminal Procedure Code, it was

necessary to perform a forensic expertise by the Institute of Forensic Medicine Craiova[10].

In the following, an analysis of the probative value of forensic acts will be conducted, more precisely of forensic reports and the opinions of the Superior Forensic Commission in the case of crimes against life.

The forensic examination

As is well known, evidence is any element of fact which serves to establish the existence or non-existence of a crime, to identify the person who committed it and to know the circumstances necessary for the fair settlement of the case and which contribute to finding out the truth in criminal proceedings [art. 97 para. (1) of the Romanian Code of Criminal Procedure]. At the same time, according to paragraph (2) of the cited article, the evidence is obtained in criminal proceedings by the following means: statements of the suspect or defendant, statements of the injured party, statements of the civil party or civilly liable party, statements of witnesses, documents, expert reports or finding, minutes, photographs, material evidence, any other means of proof that is not prohibited by law [4].

10 The first instance established as objectives: 1. depending on the blood infiltrate, the local histological and histochemical changes, to establish the age of the wounds located at the level of the skull, respectively temporally left contusion wound 0.5 cm and 2 median occipital contusion wounds of 1 cm each (more precisely the time elapsed from production to death);
2. if the first lesion, respectively the one located at the left temporal level, of 0.5 cm, occurred on the same date, in the same way and on the same occasion as the two wounds at the occipital level and if the first lesion occurred on another date, to approximate the date and the way of its production;
3. whether the first injury could cause the death of the injured person alone or in connection with the other two (if there is a late death, what is the injury (s) immediately causing death and to what extent the other injuries of a vital nature contributed to the death);
4. if the blows located at the level of the skull, occipital region (2 median occipital contusion wounds of 1 cm) occurred simultaneously or successively;
5. if the possibility is excluded that the first injury or the other two may have occurred by falling / hitting hard bodies, taking into account the intoxication and the weight of the victim;
6. Depending on the position, orientation, size, depth and severity of the lesions in the head area, to establish the physical particularities of the vulnerable object/body thanato-generator (stone, iron, wood, blunt, with edge or geometric shape, or with several areas of action);
7. if the injuries to the head occurred by hitting with hard bodies, to establish the position of the victim / aggressor at the time of the attack, the distance and direction of impact, if the 3 injuries were caused by acceleration or deceleration (active or defensive character) and yes if they have produced backlash injuries;
8. establishing the direction / orientation on the surface of the body of the body of the injuries identified on the body of the victim (excoriations, bloodshed) and the defendant, based on these data to establish whether there was a fight between the two (taking into account the expert report genetic) and if the injuries identified on the victim's body are aggression injuries, and those on the defendant's body are self-defense injuries from the victim and at the same time to specify the mode of production and their date;
9. depending on the cadaveric phenomena and the conditions of finding the corpse found to specify whether the position of the corpse was changed or was permanently lying on its back;
10. if the amount of cloudy brown liquid found in the abdominal cavity may be alcohol swallowed by the victim and if so what kind of drink (brandy, wine, beer);
11. if the lesions located at the level of the victim's genitals can date from December 21, 22, 2018 or another date;
12. depending on all the data of the investigation so far (including body temperature, cadaveric phenomena and the conditions of finding the body), to establish approximately the time of the victim's death;
13. on the basis of all medical documents and data, explain the death of the victim and which are the medical facts that support the thesis, as well as the medical facts that support the opposite thesis (hitting with hard bodies or falling and hitting hard bodies.

Among the means of evidence expressly provided by the Code of Criminal Procedure are also the expert reports. The performance of an expertise is ordered when, in order to ascertain, clarify or evaluate some facts or circumstances that are important for finding out the truth in question, the opinion of an expert is also necessary.

Depending on its purpose, there are several types of expertise, including forensic expertise. The regime of these forensic examinations is regulated by the Government Ordinance no. 1/2000 regarding the organization of the activity and the functioning of the forensic medicine institutions, approved by the Government Decision no. 774/2000. Carrying out a forensic examination is ordered on living persons, corpses, biological products and criminal bodies, in order to establish the truth in cases concerning crimes against life, bodily integrity and health of persons or in other situations provided by law.

These expert reports are performed within the forensic health institutions and other structures with attributions in the field of forensic medicine, subordinated to the Ministry of Health, respectively: forensic practices, county forensic services, forensic institutes.

If the judicial body that ordered the forensic examination finds that a forensic examination is incomplete, it may order either the hearing of the forensic doctor who performed the expertise, or a supplement to the forensic examination, or, as in the case under discussion, a new forensic report. by the higher institution.

In our case, then new forensic report that the thanatogenerative lesions are represented by the temporal wound and the two occipital wounds, which caused intracranial hemorrhage, that the occipital plagued wounds most likely occurred by elongated hard body impact with irregular surfaces, but and that the absence of backlash injuries suggests that cranial wounds were most likely caused by the active mechanism (after studying the photographic material no blood stains were observed leading to the passive mechanism, respectively fall, although this cannot be ruled out with certainty).

However, the investigation materialized in the forensic act cannot and must not establish the guilt of the defendant in causing the injuries that caused the death - he can guide the judicial body in the early stages of the investigation, strengthen or eliminate versions of the investigation, reaching later to a categorical syllogism devoid of errors by means of apodictic or dialectical reasoning, inductive or deductive - and the doubt as to the circumstances of its occurrence benefits the defendant. As the second expertise was

performed on the basis of documents and images, without a corpse, it has a lower reliability[11], knowing that, the dead speak

On the other hand, the scientific impartiality of an expert should not be considered absolute, given that he is not always omnipotent, and the truth can never be accepted without a critical evaluation and a convincing demonstration. Or, the latter is missing from this report, considering the answer from objective no. 13 established by the court.

Therefore, such an expertise must be supported, corroborated with other solid evidence to confirm that a person (in this case the defendant) is guilty of a crime, a condition that is not met in the case brought before the court, because, as previously indicated, the other means of evidence invoked by the prosecutor's office either leave strong doubts regarding the commission of the crime of murder by the defendant, or do not confirm such guilt at all.

It is true that in the process of corroborating and evaluating the evidence, the court can establish with certainty a factual situation based on the use of certain syllogisms, but this procedure must be based on certain elements and lead to a reasonable conclusion. Obviously, the retention of a certain state of affairs cannot be based on certain inductions, reasonings, presumptions, insofar as they do not have a certain weight, a character of certainty, which would convince in an adequate way.

The simple presumptions are the conclusions of a logical reasoning by which the court establishes the probability of a factual situation that constitutes the deed in dispute in the criminal case, based on which the examination of typicality of the crime that is the object of the criminal accusation is performed. These facts can be indirectly proven, inferentially, starting from factual situations known to the court on the basis of evidence. In order to make a finding of the commission of the typical deed under the conditions of the standard of proof beyond any reasonable doubt, these simple presumptions must be placed in the vicinity of certainty, and any doubt benefits the defendant.

Opinions issued by the Superior Forensic Commission

In order to establish a real state of affairs and, therefore, in order to find out the

11 The corpse provides evidence of what happened in life, teachings about how death occurred, exclusion from life.

truth, either he or the judiciary, the criminal investigation bodies or the courts may request the approval of the new expert report by the Superior Forensic Commission.

Currently, in Romania, the supreme scientific authority in the field of forensic medicine is the Superior Forensic Commission, which operates under the Institute of Forensic Medicine "Mina Minovici" Bucharest[12]. The mission of this commission is to verify, evaluate, analyze and scientifically approve, at the request of judicial bodies, the content and conclusions of various forensic acts performed by other subordinate public institutions, authorized by law to make findings and expertise. The Superior Forensic Commission may rule, verifying and approving from a scientific point of view, even in situations where new reports have been performed or opinions have been given by the commissions for approval and control of territorially competent forensic acts.

When the Superior Forensic Commission finds the existence of contradictory conclusions between the first and subsequent expertise or other forensic acts, it may approve, in whole or in part, the conclusions of one of them, and may formulate certain clarifications or additions. If the conclusions of the forensic acts cannot be endorsed, the Superior Forensic Commission recommends the total or partial restoration of the works, formulating proposals in this respect or own conclusions [art. 27 para. (1) and para. (2) of the Regulation implementing the Government Ordinance no. 1/20006].

It should be noted that an important effect of the issuance of an opinion by the Superior Forensic Commission is the fact that judicial bodies may not request other forensic examinations by institutions hierarchically subordinate to it, unless new medical data have appeared. or investigation.

Even if it operates with the term of opinion, in which its own conclusions can be formulated by the Superior Forensic Commission and all other forensic acts drawn up by the subordinate institutions can be abolished, neither of the two mentioned normative acts make any reference on the form of the opinions in question, as well as on any mandatory information which it should include. The only normative act containing a definition of these opinions is represented by the Norms regarding the procedure for performing forensic

12 It is composed of several permanent members, namely: the general director and deputy director of the National Institute of Medicine "Mina Minovici" Bucharest, the directors of forensic institutes in university medical centers, the heads of specialized disciplines in accredited faculties within university medical centers, the head of the morpho pathology discipline at the "Carol Davila" University of Medicine in Bucharest and 4 forensic doctors with specialized experience, appointed at the proposal of the general director of the National Institute of Forensic Medicine "Mina Minovici" Bucharest.

examinations and other forensic acts, which, at art. 9 para. (2) lit. e), stipulates that "forensic opinion means the act drawn up by the Superior Forensic Commission, as well as by the commissions for approval and control of medical acts, at the request of the judicial bodies, approving the content and conclusions of forensic acts and it is recommended to carry out new expertise or draw your own conclusions". However, these rules do not provide for the form of these opinions either. In general, G. O. no. 1/2000 refers to the provisions of the Code of Criminal Procedure.

This imperfection of a legislative nature led to the issuance by this commission of opinions that fully maintained the conclusions of previous medical acts (reports of new expertise, as in our case, o.n.), without any explanation and without a concrete objective-scientific analysis of the situation analyzed, notified by the court. The issuance of such opinions also led to the finding by the European Court of Human Rights of the violation of the provisions of art. 2 of the European Convention on Human Rights by the Romanian state[13]. Thus, the Court held that that High Commission did not reproduce the questions to be answered, did not describe the operations to be carried out in its review and did not specify the specific reasons on which it was based in order to reach those conclusions. At the same time, it stated that, in the situation where the obligation to motivate forensic acts fell only to the competent institutions to prepare the first findings and expert reports, and not to the control commissions, this guarantee aimed at strengthening the credibility of opinions and the efficiency of the whole system. forensic expertise is useless because they have the power to completely change the conclusions of subordinate institutions. The Court considered that the obligation to state reasons for scientific advice was all the more important in this case, since the formulation of such an opinion by the supreme national authority in the field prevented lower-ranking institutes from carrying out new expertise and supplementing those already carried out. The same considerations were retained by the European Court of Human Rights in another case which had as its starting point a case settled even by the Gorj County Court[14].

The issuance of such opinions has created problems in judicial practice at the national level. Thus, there were situations in which the criminal investigation bodies or

13 Case Eugenia Lazăr v. Romania, Judgement no.32146/05 from the 16th of February 2010, par.83-84.
14 Case Baldovin v. Romania, Judgement no. 11385/05 from the 7th of June 2011.

even the courts (as in the case of the Craiova Court of Appeal) offered the higher probative value to this opinion, motivated by the fact that this document was issued by the highest form of authority. forensic expertise.

Such an approach of the court of last degree of jurisdiction, which became possible as a result of the national legislation on forensic expertise, is contrary to the procedural obligation implicitly included in art. Article 2 of the Convention, which requires the national authorities to take measures to ensure that evidence is obtained which provides a complete and accurate account of the facts and an objective analysis of the clinical findings, in particular the cause of death. Given the contradictory opinions issued by forensic institutions, as well as the laconic way in which the higher commission was limited, in the last resort, to endorsing previous conclusions, a new expertise or a supplement of expertise seemed useful to clarify aspects of the cause of death of R. M.

Other criminal prosecution bodies and courts have reasonably removed the conclusions of these opinions, considering the provisions of art. 103 Criminal Procedure Code, which enshrines the principle of free assessment of evidence.

Some courts - as in the case of the one that ruled in the first instance, the commented judgment - have implicitly removed them, for reasons of "own technique and tactics" probably anticipating the criticism that "the judge is not it is allowed to remove an expert paper prepared by the 12 most famous doctors in Romania". Proceeding in this way, the courts choose as the basis of the acquittal, the one provided by art. 16 para. (1) lit. c) of the Code of Criminal Procedure[15], that is, the lack of evidence.

In agreement with these courts, these opinions issued by the supreme authority on forensic expertise do not have a higher probative value than the other scientific evidence administered in the case. Thus, the judicial bodies may keep motivated any of the conclusions of the expert reports carried out in the case, regardless of whether or not they have been endorsed by the Superior Forensic Commission and implicitly to remove this opinion. These opinions are legally based on the provisions of art. 103 para. (1) Criminal Procedure Code, According to which the evidence does not have a value previously established by law and is subject to the free assessment of the judicial bodies

15 Seen from the outside, of course, in relation to the evidence in question - including genetic expertise - the most appropriate solution in this case was to acquit the defendant on the grounds that the deed did not exist.

following the evaluation of all the evidence administered in the case. It follows from the text of the aforementioned law that the assessment of evidence in criminal proceedings is governed by the principle of free assessment of evidence, a principle according to which the judiciary has the right to freely assess both the value of each piece of evidence in which they were administered, as well as their credibility; the evidence does not have an a priori value established by the legislator, their importance resulting from their assessment by the judicial bodies following the analysis of all the evidence material administered legally and loyally in question.

At the same time, as shown above, there are situations in which these opinions issued by the Forensic Commission are sibylline / unmotivated, without an objective-scientific analysis of the situation on which it must rule and without a concrete motivation of the conclusions. That being the case, all the more so, the judicial bodies have the obligation to assess in concrete terms the scientific value of each medical act performed in the case. Only a detailed, scientifically proven report, containing a reasoned solution in relation to possible contradictions between other acts issued by lower-ranking institutions and answering in detail and reasoned all questions asked by the judiciary, is likely to be used as evidence in criminal proceedings [16].

It is a legal truism that any irregularity in the investigation which weakens its ability to establish the cause of death or liability risks leading to the conclusion that it does not meet this standard [17].

Of course, based on the principle of free assessment of evidence governing criminal proceedings in Romania, the courts may reject evidence that does not seem credible or conclusive. However, such a possibility remains purely theoretical if courts are prohibited from conducting an examination outside the network of forensic institutes authorized by law and whose opinions are the only ones admissible as evidence in criminal proceedings, or ask these institutions to reconsider their conclusions if they seem incomplete or insufficiently clear to allow them a clear choice and help them make a

16 The jurisprudence of the European Court of Human Rights also supports this opinion. Thus, in the case of Eugenia Lazăr v. Romania, in paragraphs 77-80, the European court held that,, The court of last instance relied on the opinion of the High Commission - although the judges considered it incomplete and requested a new opinion - on the grounds that this document had been issued by the highest national authority on medical expertise and that, in the circumstances of the case, this was prevented by the special law governing the activity of forensic institutions to carry out a new expertise in the absence of new elements."

17 M*utatis mutandis*, Slimani v. France, no. 57671/00, point 32, CEDO 2004-IX (fragments), McKerr v United Kingdom no. 28883/95, point 113, CEDO 2001-111 and Paul and Audrey Edwards.

decision. However, the case presented does not represent an isolated situation and reflects a current practice of the Institute of Forensic Medicine "Mina Minovici", which consists in evading the requests addressed to it by the judicial authorities in order to obtain the information they need. to make objectively informed decisions in full knowledge of the facts.

In agreement with the European Court of Justice, the mere existence, in national law, of the provisions authorizing the competent forensic institutions to issue opinions which circumvent the requests of the judicial authorities and thus refuse to cooperate with them whenever the needs of the investigation so require. it is in line with the main duty of the state to guarantee the right to life, by establishing an efficient legal and administrative framework, which would allow the establishment of the cause of death of an individual.

At the end of the analysis, one can concludee that the Romanian state has not fulfilled its positive obligation to amend the legislative framework in accordance with the requirements of the jurisprudence of the European Court of Human Rights, the legislation applicable in these cases being the same today.

Conclusions

The existence of a legal framework in the field of forensic expertise, likely to allow the issuance of opinions by the supreme scientific authority in the field of forensic medicine, to circumvent the requests of courts and to refuse to cooperate with them, whenever the needs of the investigation impose, it may lead to situations in which the clarification or assessment of certain facts or circumstances that are important to find out the truth becomes impossible, thus diverting the criminal proceedings from its purpose, respectively that any person who committed a crime be punished according to his guilt; no innocent person shall be held criminally liable.

Thus, the normative acts that regulate the activity of forensic medicine should stipulate what form the opinions issued by the highest national authority on forensic expertise should take and what should be their concrete content, precisely for so that the judiciary can make a clear choice in assessing the evidence and to help them make the right decision.

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ASPECTS REGARDING CITIZENS' PARTICIPATION IN DECISION-MAKING IN ADMINISTRATIVE LIFE. CASE STUDY

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Abstract:
Citizens' participation in the city's life is a desire of the administration, being, on the one hand, a measure of their degree of involvement and, on the other hand, leading to a large-scale acceptance of the decisions taken by the authorities.
The level of development of a community is given by the way in which the citizens perceive the services provided by the administration as satisfying their public interest.
The present work follows the way in which the regulation in Romania favors the involvement of citizens in decision-making through their participation in the legislative activity at the central and local level, following, as a case study, the results obtained by some administrative authorities in the application of a participatory budgeting system.
The analysis of the implementation of the participatory budgeting tool at the level of UAT Constanța leads to conclusions that reveal significant differences between public opinion, which is most dissatisfied with the way public funds are spent, and the low interest in a concrete involvement in the decision-making activity.
Keywords: *Citizens' participation in decision-making, public administration, administrative authorities, local public administration*

Citizen participation. Introductory considerations

Citizen Participation represents the process by which citizens' concerns, needs, and values are incorporated into the decision-making process of the local public administration. There are two directions of communication (between the citizens and the administration), with the general aim of improving the decisions (of the local public administration) supported by the citizens

American President Abraham Lincoln stated, for the first time in 1863, that the essence of democracy is a system of government with and for the people. These words are as true and relevant now as when they were first spoken. This concept of democracy is as valid for Romania as it is for the United States of America, England, or any other modern democracy.

The implications of this statement are that democracy represents much more than free elections, but these are necessarily the starting point, the foundation without which nothing can be built.

Government with and for the people must become and remain a partnership - a partnership between citizens and elected officials in whom they have invested their trust. This trust must extend to all civil servants and all administrative institutions.

In democratic countries anywhere in the world, this trust is achieved through honesty, transparency on the part of elected officials, and the opportunity offered to people to play an important role in the governance process, and even in day-to-day activity.

Citizens' participation in decision-making in a traditional democracy is a gradual process, which involves going through certain stages organized on two levels, drawing an apparently ideal model of citizen involvement.

In this structure, the first level of participation is information, which requires efforts from both the citizens and the local administration. The public administration is obliged to issue information to the citizens regarding its activity and plans so that they can understand the priority directions of the administrative policy of the local elected officials. The second level is constituted by the citizens' consultation, considered as the action of the authorities to identify the needs of the citizens, to evaluate the priorities of some actions, or to collect ideas and suggestions regarding a certain problem.

For all this to be achieved, it is necessary to fulfill several elements simultaneously. We appreciate that, first, the local administration must be open to the involvement of citizens in the complex activity of the governance process. This can be achieved, first, by adopting some regulations that, on the one hand, ensure the possibility of real involvement of citizens in the administrative activity, but also the possibility for them to have access to the necessary information to be able to make decisions, make reasonings and submit proposals.

It will be mandatory to achieve a continuous transfer of information starting from the administration and having the citizens as recipients, but also find the most effective ways for the administration to collect the information coming from the citizens.

Thus, they will participate as equal partners in the activities of the administration and will thus successfully honor their civic obligations, because they will understand the problems faced by the administration and will be able to propose, in full knowledge of the case, the most appropriate solutions to solve all situations.

The responsibilities of citizens are:

- To observe what the local administration does and for what purpose.

- To be prepared to contribute when the administration plans to do something that may affect their interests.

- To approach representatives of the administration with a positive attitude.

- show an interest in understanding the issues, including the restrictions on what the administration can do.

- To express his interests and ideas clearly and completely.

In appropriate situations, try to collaborate constructively with local government officials to find and implement mutually satisfactory solutions.

Since these ideas are new to many Romanian citizens, local government officials should be ready to encourage, guide, and educate citizens regarding these responsibilities.

Legal regulation

In Romanian legislation, we can consider transparency as a cover principle of the rule of law. At constitutional level we can find in art. 31 of the Constitution, which provides the right to have access to information of public interest, a right that cannot be restricted. moreover, the constitutional text emphasizes in paragraph (2) the obligation of the authorities, be they central or local: to ensure the correct information to citizens on public affairs(1). [1]

All this from the consideration that state institutions, authorities, and agencies have public interest attributions, their decisions and activities are, in general, the object of the person's right to information.

the implementation of these principles began to be achieved through the adoption in 2003 [2] of the law on decision-making transparency in the public administration, which aims to increase the degree of responsibility of the public administration towards the

citizen, as the beneficiary of the administrative decision, stimulating the active participation of citizens in the process of making administrative decisions and in the process of drafting normative acts and, finally, increasing the degree of transparency at the level of the entire public administration.[3] The normative act establishes the minimum rules and procedures for ensuring decision-making transparency within local and central public administration authorities and public institutions that use public financial resources, in relations with citizens and their legally constituted associations. [4]

The individual administrative acts of authority produce legal effects, i.e., they create, modify, or extinguish rights and obligations only in the charge of natural or legal persons provided for in the respective act or, in other words, previously and individually determined or about several persons but referring to situations determined. [5]

Romanian legislation expressly enshrines the right of the public to participate effectively and in time in the authorization procedure of construction works, "to document and transmit comments and opinions to the competent local public administration authorities, before taking a decision on the application for the authorization of the execution of construction works related to the investment for which the competent authority for environmental protection established the need to assess its effects on the environment (art. 43, 1). Since in paragraph 2 of the article it is mentioned that the information and consultation of the public "are carried out in accordance with the provisions of the legislation on the assessment of the impact of certain private projects on the environment", the question arises whether the information and consultation concern only the aspects of the ecological impact and the procedure for issuing the administrative act of the competent authority for environmental protection or the entire authorization procedure for the execution of construction works. As it concerns the application of Council Directive 85/33//EEC of June 27, 1985, on the assessment of the effects of certain public and private projects on the environment (amended by Directive 97/11/EC of March 3, 1997), the correct answer, in a teleological interpretation, would be that public participation concerns the procedure carried out by the environmental authorities regarding investments that require an environmental impact assessment. But, from the general wording of art. 43, 1 (referring to the "authorization procedure for the execution of construction works") in conjunction with the provisions of art. 43, referring to

the administrative litigation related to investments that require environmental impact assessment and public participation, it can be concluded that it is the procedure for authorizing "the execution of construction works related to the investment for which the environmental protection authority has determined the need to assess its effects on the environment". This confusion between environmental and urban and construction aspects has considerable practical complications.

The transparency of the authorization procedure for the execution of construction works - both at the level of the urban planning certificate and the construction/demolition authorization - is achieved by ensuring their public character, respectively by ensuring the public's right to be informed.

In a situation where the competent authority for environmental protection has determined the course of the procedure for assessing the impact of the investment on the environment, the public has the right to be informed and to effectively and in time participate in the authorization procedure, to document and submit comments and opinions of the competent public administration authorities, before taking a final decision on the application for the issuance of the building permit related to the investment, and, consequently, the public information and consultation procedure is carried out in accordance with the provisions of the legislation regarding the assessment of the impact of certain public and private projects on the environment.

It is true that the field in which citizens' participation in decision-making has penetrated the most, at least from a legislative point of view, is in the field of the environment, [6] the right to a healthy environment which also included the right of all individuals to be informed about plans and projects that may damage the environment, to participate in the process that leads to decision-making, and when it is necessary to dispose of the legal means to restore the damage caused to the environment.

The key to this system is represented by public participation, which is based on the information and can be represented by any tool used to involve the public in environmental decision-making and includes the right to information, the right to participate, and the right to access to justice.

Those in a position to decide on the way to realize the projects are obliged to ensure the information and the framework for public participation in each phase of project approval.

Many times, public participation in the decision-making process is incorrectly defined, for this reason, it is considered ineffective. Some believe that simply informing citizens can be defined as a process of public participation. Other times, public participation stops in the consultation phase. Citizens' consultation on the decisions to be taken can only be effective when it takes place from their conception phase when the options are open. However, there are procedures that allow the public to intervene in the decision-making process up to the influence and control phase. In this sense, it is necessary to know the legal procedures for access to information and the effective techniques of public participation. An objective process of public participation in decision-making involves the following important steps:

• identification of the public (the group of people affected by a certain decision to be taken), respectively the separation of persons and institutions directly interested in obtaining or building the decision.

• receiving public opinion, and building consensus within the affected group, respectively: access to information for all those interested, separation by interest groups, negotiations, acceptance of problems, and a delegation of people to represent the interests of the group.

• the action itself, namely the use of public participation techniques to obtain the decision (see the chapter "Several formal and informal methods of involving citizens in solving environmental problems").

Problems arising in the citizens' consultation process

Public participation, misunderstood, can acquire less pleasant accents that we do not want to hide, being specific to all situations where democracy is not correctly understood. Often, the process of informing and consulting the public in making decisions creates problems, leading to open conflicts between groups separated based on antagonistic interests. The struggle to influence decisions in favor of the option of a certain group is often the most important part of some businesses in which many resources are

invested. Promoting business success treats antagonistic interests as obstacles, and managers skillfully construct solutions to overcome these obstacles. Often these solutions mean: speculating on loopholes in the legislative system, corruption, hiding intentions, etc. The designers and beneficiaries of some projects, aware of the possibility that the public will reject their intentions or be unwilling to accept the costs related to informing and consulting the public, often resort to circumventing this process, resorting to corruption or disinformation techniques. Based then on the apparent ignorance of the public, they obtain the decisions to implement the projects and proceed to their practical realization. In this phase, it is difficult for the affected citizens to intervene, often resorting to desperate actions to prevent the implementation of projects (public demonstrations, collecting signatures, sabotage, and individual and collective protests). Even if Justice will give them justice in the end, the project can advance enough in this time to produce significant damages or the cost and discouraging procedures of the legal processes can constitute insurmountable obstacles for those who cannot afford them. The solution for solving these conflicts is informing all parties about the project that creates the dispute and negotiating through open and honest dialogue all the problems that have arisen. Many times, a process of public participation is only an apparent one, the public being made up of supporters of a certain project or supporters of a competing company, or people who want to settle personal accounts, opposing not the project itself but its promoters. These cases can be avoided by applying public participation procedures clearly adapted to each individual situation.

Citizens' participation in decision-making regarding the spending of public funds. Case study - participatory budgeting at the TAU Constanța level

In 2021, for the first time, the territorial administrative unit Constanța Municipality tried to implement the participatory budgeting procedure, according to the model already existing in several cities - Oradea, Cluj-Napoca, Brașov, Bucharest, Pitesti, etc.

Participatory budgeting is intended to be a process through which civil society assumes the role of an active participant in the life of the community and the ideas and initiatives of citizens can be transformed into projects that will be carried out by the public administration to solve problems of interest to the community.

Participatory budgeting aims to increase the level of dialogue between citizens and the administration, the assumption by citizens of the community's problems, the increase the transparency of the administration's activity, and, equally, the creation of an instrument through which citizens participate directly in the decision-making process regarding the destination of a certain part from public funds.

At the level of TAU Constanța, funds of 500,000 ron/project were allocated - the citizens will decide how part of the local budget will be spent. People with a minimum age of 18 who live, work or study in the municipality of Constanța could submit projects or vote for those proposed. 10 areas of interest were established: culture, planning of public spaces, planning of green spaces and playgrounds, mobility, accessibility and traffic safety, environmental protection/animal protection, digitalization, sports, social, education, and health, and the projects of interest could be voted online, following a previously established procedure

Analyzing the way this action was carried out and the results obtained in the end, we can see the limited impact that the initiative had among citizens. 5 projects were submitted and declared eligible for the design of public spaces, 6 projects for the design of green spaces and playgrounds, 3 projects for the field of culture, 4 projects for the field of mobility, 3 projects for the field of accessibility and traffic safety, 3 projects for the field of environmental protection/animal protection, a single project for the digitization field, 5 projects for the sports field, 2 projects for the social field, 6 projects for the education field. No health project has been registered.

The low participation recorded, both in terms of the projects submitted, but also in terms of their appreciation - 2145 votes were recorded - each voter being able to express his opinion for each of the 10 proposed areas forces the administration to an analysis process regarding, how to implementation of this activity. The first conclusions reveal, on the one hand, poor knowledge on the part of the citizens of the authority's intention, although the administration had the ambition of total transparency of the procedure, and on the other hand, a cumbersome implementation due to the relatively difficult access to the platform used by the town hall.

An explanation can be the low level of allocation for these projects, but we can add to this "handicap", the limited capacity of the administration to implement them, its lack of

openness in the period leading up to the launch of the program, in this sense, the authority is limited to posting on the own website of the regulations and the schedule of events. These are not the coordinates of real consultation and transparency, but the concrete involvement of citizens from the preparatory stages, in the elaboration of the regulation or the organization of specific workshops.

Moreover, we notice, at the national level, a distrust of citizens in this instrument, used quite little and, often only at a declarative level, by some administrations that put too little effort into completing it in optimal conditions. In a study [7] carried out at the level of 2022, it is observed that only 13 county residences - to which the municipality of Bucharest is added - ran, in 2022, participatory budgeting programs.

Some conclusions

We can say that citizen participation, although essential in a democracy, is not always easy to achieve. Often, political will and perseverance are needed, but also a certain disposition to educate both authorities and citizens about their responsibilities in a democracy.

The partnership between people and government depends on the extent to which citizens have access to the information that influences their lives.

The authorities should encourage more citizens to actively participate in the meetings of the City Council, and the procedure by which one or another decision is made should be widely publicized. To help the administration fulfill its responsibilities most effectively, citizens should be invited to participate as voluntary community representatives in various working groups, specialized commissions, or citizen advisory committees. In such structures, the role of citizens can be very creative and useful in finding solutions to problems that trouble the community; at the same time, they can help solve daily work tasks. Some town halls and local councils in Romania have already started using citizens' advisory committees to help them in the local governance process, and some of these examples will be presented below.

Many local governments partially understand the importance of citizen participation, and although the less happy experience in this area (several projects approved but later abandoned) could naturally help them to identify shortcomings and

correct them, in practice for most, this cannot be observed. Finally, we come to the measurement of the efficiency of the administration, a ranking in which Romania is still in a not very desirable place.

The solution we see remains education on both sides: of the administration to the citizen and of the citizen to the administration, in a real partnership between them with the common goal of ensuring the satisfaction of the public interest.

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CONSTITUTIONAL EXIGENCIES ON THE APPROVAL OF NORMATIVE ACTS. SPECIAL EMPHASIS ON THE APPROVAL OF THE LEGISLATIVE COUNCIL

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Abstract:
Constitutional literature highlights the fact that legality is one of the major values of the rule of law, and the quality of regulation is a dimension of legality.
Starting from these premises, the present paper brings back into discussion the importance of securing approval of normative acts.
The analysis starts from the provisions of articles 9 and 10 of Law no. 24/2000 concerning the rules of legislative technique for the elaboration of normative acts and it continues with an account of some cases brought before the Constitutional Court, through which it has rebuked the lack of approval from the Legislative Council, the Economic and Social Council, the Superior Council of the Magistracy, and the Supreme Council of National Defence.
It emphasizes the role of the Legislative Council as a 'scientific filter' in the drafting of normative acts, it showcases the arguments in support of the theory that the main object of its approval concerns the quality of law and its conformity with the provisions of the Constitution and the international treaties ratified by Romania.
Without putting forward solutions, it submits proposals de lege ferenda, arguing that legislative action is needed for article 2 para. (1) of the Law no. 73/1993 for the establishment, organization and functioning of the Legislative Council, as well as for article 9 para. (2) of Law no. 24/2000.
Keywords: *normative act, approval, legislative technique, Legislative Council, Constitutional Court.*

Introductory considerations

In order to regulate a particular segment of social life, the competent public authority adopts normative acts containing legal rules which will - in turn - constitute the structure of the normative act. The arrangement of the legal rules and the relationships between them give the public authorities' regulatory decision its own architecture.

According to the doctrine, the normative act is the source of law - created by organs of public authority, vested with normative powers, which contains general-obligatory rules, the application of which can also be achieved by the coercive force of the State [1].

The categories of normative acts that can be found in the Romanian system are represented by: a) the Romanian Constitution; b) the law - as a legal act of the Parliament;

c) normative acts of the Government (ordinances, emergency ordinances, decisions); d) decrees of the President of Romania; e) normative acts issued by the central public administration; f) normative acts issued by local public administration bodies; g) EU legislation; h) international treaties ratified by the Parliament.

The rules of legislative technique for the drafting of normative acts are regulated by Law no.24/2000, and compliance with them constitutes a genuine criterion of constitutionality in terms of the application of Article 1 para. (5) of the Constitution.

Whether constitutional or legal in origin, the work of approving legislative acts is of particular importance, contributing overwhelmingly to their quality.

Etymologically, the noun aviz (opinion) comes from French (avis) and -according to the DEX (Romanian Explicative Dictionary)- has a double meaning:1) "written (public) notice of an official nature"; 2) "opinion, competent assessment issued by someone (from outside) on a matter under debate; resolution of a competent authority".

In administrative doctrine [2], opinions are defined as "opinions which a body of public administration asks another subject of law, in one or more matters, to inform itself and make an informed decision." Moreover, opinions are, most of the time, opinions of specialists who provide specific clarifications that help the competent authority to make the best decision. [3]

In the constitutional doctrine [4], it has been suggestively stated that the opinion is not a mere "paper" among many others circulating in the procedure of adopting a normative act, but an act issued by an institution/authority with competences/specialization in the respective field, and it supports the thorough substantiation of normative acts.

As a matter of principle, disregarding the rules governing the approval of the law - as a legal act of the Parliament - and of the acts with the power of law of the Government, entails the sanction of their unconstitutionality, while ignoring the requirements concerning the approval of administrative normative acts entails the sanction of nullity of the act.

In this study we will focus our attention on the constitutional requirements concerning the approval of the law - as a legal act of the Parliament, and of the Government's acts with power of law.

Compliance with the relevant provisions concerning the scope of the regulatory acts subject to the opinion and the public authorities with competence in the opinion procedure

Constitution of Romania from 1991, revised in 2003*:*

Art. 79 – " (1) The Legislative Council is a specialized consultative organ of Parliament which advises on draft normative acts with a view to the systematization, unification and coordination of the entire legislation. It keeps the official records of the legislation of Romania. (2) The establishment, organization, and operation of the Legislative Council is regulated by organic law".

Re-establishing the Legislative Council [5] – as pointed out in the literature [6], was imperatively necessary after the 1990s, "at a time when our young rule of law had to carry out a total reform of the law, to build practically a new body of legislation."

On the basis of the constitutional text, the Parliament adopted *Law No 73/1993 on the establishment, organisation and functioning of the Legislative Council. [7]*

The Legislative Council began its work on April 1st, 1996, following the approval of its Rules of Organisation and Functioning, approved by Decision No. 1 of the Permanent Bureaux of the Chamber of Deputies and the Senate of February 26th, 1996.[8].

Art. 2 para.1 of Law no. 73/1993 mentions : "The Legislative Council has the following duties: a) *analyses and approves draft laws, legislative proposals and draft ordinances and decisions of a regulatory nature of the Government, with a view to their submission for legislation or adoption, as appropriate; b) considers and gives its opinion, at the request of the chair of the parliamentary committee responsible, on amendments submitted to the committee for debate and on draft laws or legislative proposals received by the committee after their adoption by one of the chambers of Parliament (...)".*

A first observation is that although the *Legislative Council* also gives its opinion on the Government's draft legislation, *it is - according to the constitutional rule - an advisory body of the Parliament, not of the Government.*

It should also be noted that although from the wording of paragraph 1 of Article 79 of the Constitution, *it could be interpreted that the approval activity of the Legislative*

Council would cover all normative acts, the activity of this authority of constitutional rank is limited to the approval of the normative acts listed in the organic law that regulates its organization and functioning.

According to Professor Valer Dorneanu - former President of the Legislative Council, one of the most important "achievements" of the Legislative Council was Law no. 24/2000 on the rules of legislative technique. The work of the entire apparatus, but especially of the working group coordinated by the renowned specialist in legislative technique Ilarie Mrejeru (...) and with the direct participation of the three section presidents, the law involved a laborious process of study, analysis and drafting [9].

Law no. 24/2000 regarding the norms of legislative technique [10] repealed Decree no. 16/1976 for the approval approval of the general methodology of legislative technique for the preparation and systematisation of draft legislative acts [11].

Among the provisions of the law - relevant to the scope of regulatory acts subject to approval and public authorities with powers in the approval procedure, we mention:

Art.9 **:** ” *(1) In the cases provided for by law, during the drafting phase of the normative regulatory acts, the initiator shall seek the opinion of the authorities concerned in their application, depending on the subject matter of the regulation. (2) Once they have been drawn up and the approval procedure referred to in paragraph 1 has been completed; draft laws, legislative proposals, as well as draft ordinances and decisions of a regulatory nature of the Government shall be subject to the approval of the Legislative Council."*

Art. 31 alin. (3) : ” *The final form of the instruments presenting and explaining the reasons for draft legislation must include references to the opinions of the Legislative Council and, where appropriate, of the Supreme National Defence Council, the Court of Auditors or the Economic and Social Council****.”***

Examination of the latter provision reveals that all the authorities mentioned are of constitutional rank. The monitoring and implementation of the requirements imposed by Law 24/2000 ensures the coherence of the entire legal system, and it is the Legislative Council which primarily carries out this activity.(...) [12]

It is also worth mentioning that other public authorities, such as the Superior Council of the Magistracy, are also recognised by special laws as having the power to approve normative acts in their fields of activity.

Constitutional Exigencies on the Approval of Normative Acts

Rules on the substance of regulations, the procedures to be followed, including the request for opinions from the institutions provided for by the law, are not ends in themselves, but means, tools for ensuring the desired quality of the law, a law that serves citizens and does not create legal uncertainty. [13]

The Legislative Council's endorsement of draft laws and legislative proposals, i.e. the Government's legislative acts

The legislative policy of the Romanian State and the harmonisation of national legislation with the Union legislation and international treaties must constitute the basis of the law, a legal act adopted by the Parliament - by virtue of its monopoly of legislating, enshrined in Art. 61 para. (1) second thesis of the Constitution.

In accordance with the principle of bicameralism, the parliamentary legislative procedure shall be conducted - in accordance with the rules of procedure of each Chamber - in separate sittings and, where appropriate, in joint sittings of the Chambers together, in accordance with the joint rules of procedure.

The parliamentary legislative procedure comprises the following stages: a) legislative initiative; b) approval of the draft law or legislative proposal; c) examination and approval of draft laws and legislative proposals in the standing committees; d) inclusion of draft laws and legislative proposals on the agenda of the sitting; e) debate in plenary; f) vote on the law; g) return of the law to the first chamber to which it has been referred.

Art.3 of Law no. 73/1993 provides: ”(1) Draft laws and legislative proposals shall be submitted to Parliament for debate with the opinion of the Legislative Council.(2) The opinion shall be given within the time limit set by the Standing Bureau or the standing committee of the House of Parliament which requested it. If the opinion is not given within the time limit set, this shall not prevent the legislative procedure from proceeding.”

The Constitution establishes two ways for the Government to enter into the sphere of primary regulation of social relations, namely: a) the Government's accountability to Parliament; b) the adoption of ordinances and emergency ordinances.

Observing the case-law of the CCR (note: Constitutional Court of Romania) [14], the specialized doctrine has emphasized that this does not infringe the "legislative monopoly of Parliament", as long as the methods of lawmaking set out are used under the conditions laid down by the Constitution.

Pursuant art.4 of Law no.73/1993:"(1) Draft ordinances and decisions of a regulatory nature shall be submitted to the Government for adoption only with the opinion of the Legislative Council on the legality of the measures envisaged and on the manner in which the requirements laid down in Article 3 para. (3) are met, which shall apply accordingly. (2) The opinion is advisory.(3) The opinion will be given within the period requested by the Government, which may not be less than 10 days in the case of projects under the ordinary procedure and 2 days in the case of those under the emergency procedure. For the ordinances provided by art. 115 para. (4) from the Constitution, republished, the time limit is 24 hours".

Through a rich jurisprudence [15], the Court has established that *the lack of request for the opinion of the Legislative Council leads to the unconstitutionality of the law or ordinance - simple or emergency* - in the light of Article 79 of the Constitution.

By *Decision No. 221 of June 2nd, 2020,* on the exception of unconstitutionality of Government Emergency Ordinance No. 23/2020 amending and supplementing certain regulatory acts with an impact on the public procurement system [16], the Court - notified with the resolution of the exception of unconstitutionality of the provisions of GEO No. 23 of February 4th, 2020 amending and supplementing certain regulatory acts with an impact on the public procurement system, an exception raised directly by the People's Advocate - held that two issues of principle arise in relation to the Government's way of working: (i) which is the date on which the opinion of the Legislative Council was requested, (ii) whether the emergency ordinance was adopted without seeking the opinion of the Legislative Council.

The Court noted that the emergency ordinance under criticism was adopted on February 4th, 2020, that the Legislative Council initially issued a negative opinion No. 91

of February 10th, 2020 on the draft Government Emergency Ordinance for amending and supplementing certain regulatory acts in the field of public/sector procurement (draft sent by the Government on February 4th, 2020 and received and registered at the Legislative Council on February 5th, 2020). Subsequently, the Legislative Council issued a Negative Opinion No. 95 of February 10th, 2020, on the draft Government Emergency Ordinance for amending and supplementing certain regulatory acts with an impact on the public procurement system (draft submitted by the Government on February 6th, 2020 and received and registered at the Legislative Council on February 6th, 2020).

From the facts as they stand, the Court finds that the contradictory nature of the approval procedure, which is part of the procedure for the adoption of the emergency ordinance at issue, is unquestionable, since it is either held that the opinion of the Legislative Council was requested twice for one and the same act, or that after the first opinion was requested, the Government adopted the emergency ordinance and subsequently requested another opinion, or that there are two different draft emergency ordinances for which opinions were requested on two different dates. (par.65)

The Court finds that the Government, after having adopted the emergency ordinance and having, at the same time, been dismissed by a motion of censure on February 5th, 2020, could not, on February 6th, 2020, request the opinion of the Legislative Council, since it is clear that opinions are requested before the adoption of the primary regulatory act by a Government exercising its powers in full (...) (par.66)

Council must be expressed, the Court points out that it runs from the date of registration with the Legislative Council of the request for approval of the draft legislative act, since it is not sufficient for the request for an opinion on the draft emergency ordinance to be registered with the General Secretary of the Government on the day on which the emergency ordinance is issued (...) because otherwise the very role of the Legislative Council would be compromised, because the situation could arise where, at the time the request for an opinion is received, the legislative act has already been adopted, as was the case here (par.67)

The Court concludes that, at the time of issuing the emergency ordinance, the Government did not request the opinion of the Legislative Council and thus violated Article 1 para. (3) and (5) as well as Art. 79 para. (1) of the Constitution.

Approval of legislation acts by other public authorities

While the opinion of the Legislative Council is required for all primary regulatory acts, the opinion of the other public authorities must be sought according to their specialised fields, as laid down in their laws on organisation and functioning.

Opinion of the Economic and Social Council

Art.141 from the Constitution enshrines the role of the Economic and Social Council as "an advisory body to the Parliament and the Government in the specialized areas laid down by its organic law establishing, organising and functioning".

Law no. 248/2013 regarding the organisation and functioning of the Economic and Social Council [18] - through art.2 para. (1) and para. (2) let.c) mentions, „(1) Social and Economic Council is mandatory consulted on draft legislation initiated by the Government or on legislative proposals by MP or Senators. The result of this consultation takes the form of opinions on draft legislation. (2) The specialised areas of the Economic and Social Council are: (...) c) *labour relations, social protection, wage policies and equal opportunities and treatment".*

By *Decision no. 681/2018 regarding the objection of unconstitutionality of the Law on the Administrative Code of Romania, the Constitutional Court [19]* – reiterating its case-law on the role of the Economic and Social Council and the nature of its opinion [20], held that Article 141 of the Constitution merely enshrines the role of the Economic and Social Council as an advisory body to the Parliament and the Government, and that if the will of the constituent legislator had been to make it compulsory to request an opinion on all primary regulatory acts, then this would have been expressed in Article 141 of the Basic Law, in a manner similar to that used in drafting Article 79, to regulate the role and powers of the Legislative Council.

By reference, however, to the provisions art.1 para. (5) [21] of the Constitution and the dispositions of art.2 para. (2) let.c) of Law no. 248/2013, the Court establishes that the Law regarding the Administrative Code of Romania regulates the labour/work relationshipsof the employees— contractual personnel or civil servants — of the public administration. The Court finds that, in the absence of a request for an opinion at the time

of the parliamentary procedure for legislating the normative act under examination, the provisions of Article 1(5) of the Constitution were disregarded. *Given the subject-matter of the legislative proposal in question, it was mandatory to have requested the opinion of the Economic and Social Council, in order to consult it, as a specialised advisory body of the Parliament and the Government, and it is irrelevant whether the legislature, in its legislative work, took account of its content or not. Ignoring the constitutional principle of mandatory compliance with the law in the course of parliamentary lawmaking procedures would place the legislature in a privileged position, prohibited by the constitutional principle of equality enshrined in Article 16 para. (2) of the Fundamental Law*. *(...) (par.251).*

A similar approach can be found in Decision no. 722/2020 [22] on the objection of unconstitutionality of the Law for the modification and completion of Law no. 94/1992 on the organisation and functioning of the Court of Accounts. The Court ruled that the law, in its entirety, is unconstitutional in relation to the provisions of art.1 para. (3) and (5) and art.141 from the Constitution in connection with art.2 para. (2) let.c) from Law no. 248/2013, whereas the opinion of the Economic and Social Council has not been sought.

The Court also takes on board the opinion of the Venice Commission, in the report entitled Rule of law checklist, adopted at the 106th plenary session (Venice, 11-12 March 2016), stating that "the procedure for adopting laws is a criterion for assessing legality, which is the first of the reference values of the rule of law (point IIA5). In this respect, according to the same document, the existence of clear constitutional rules on the legislative procedure, public debates on draft laws, their adequate justification, the existence of impact assessments prior to the adoption of laws are relevant. On the role of these procedures, the Commission notes that the rule of law is linked to democracy in that it promotes accountability and access to rights that limit the powers of the majority. (par.84)

Opinion of the Supreme Council of National Defence

Pursuant art.119 from the Constitution, the Supreme Council of National Defence „organizes and coordinates ază și organises and coordinates activities concerning the defence of the country and national security (...)". According to Article 4 letter d) point 1

of Law no. 415/2002 on the organization and functioning of the Supreme Council of National Defence, it "shall approve draft normative acts initiated or issued by the Government concerning: national security (...)

Corroborating these dispositions to the provisions of Articles 9 and 31 para. 3 of Law 24/2000, the Constitutional Court - by Decision no. 455/2018 [23] - admitted the objection of unconstitutionality of the provisions of the Law on ensuring a high common level of security of networks and information systems. The Court held that the Government was obliged to request the opinion of the Supreme Council of National Defence, that although the constitutional provision does not make any express reference in this regard, the texts of the infra-constitutional legislation invoked required the request for the opinion. This is because, whether the power is granted by law or directly by the text of the Constitution, the authorities are obliged to apply and respect it by virtue of Article 1 para. 5 of the Constitution (...), a conclusion which is required by the fact that the principle of legality is one of constitutional rank.

The Court - invoking its constant case-law [24] - stresses that the absence of the opinion of the public authorities concerned does not automatically lead to the unconstitutionality of the law on which it has not been given, since what prevails is the Government's obligation to request it. The fact that the authority required to issue such an opinion, although requested to do so, has not done so it 'constitutes a misunderstanding of its legal and constitutional role, without, however, affecting the constitutionality of the law on which the opinion was not given." (par.68).

Opinion of the Superior Council of Magistracy

Pursuant art. 38 para. (3) of Law no. 317/2004 regarding the Superior Council of Magistracy [25]: „The Plenary of the Superior Council of Magistracy endorses draft normative acts concerning the activity of the judicial authority".

Within the scope of the term "legal acts concerning the activity of the judicial authority" are included: legal acts directly concerning the organisation and functioning of the judicial authority, such as the functioning of the courts, the career of magistrates, their rights and obligations, etc. The draft laws requiring an opinion of the Superior Council of Magistracy are the normative acts on the status of judges and prosecutors - currently

regulated by Law No 303/2004, the judicial organisation - currently regulated by Law No 304/2004, as well as the normative acts on the organisation and functioning of the Superior Council of Magistracy, the subject matter of which is regulated by Law no. 317/2004. [26]

Having been referred to the Court for review of the constitutionality of the Law for the amendment and completion of certain normative acts, the Court - by Decision no. 3/2014 [27] - censured the authors of the objection of unconstitutionality, according to which the omission to submit to the Council for its opinion the normative act amending the Criminal Code would contravene its constitutional role as guarantor of the independence of justice, it would implicitly accept the thesis according to which the opinion of the Superior Council of Magistracy would be mandatory in the drafting of all normative acts.

In the recitals of the Decision, the Court states that "in so far as any law is liable to give rise to a conflict situation which would require a court to be entrusted with the settlement of the dispute, it may be concluded that all legislative acts concern the activity of the judicial authority. However, beyond the lack of logical and legal basis for such an interpretation, the circumstance created would lead to a situation in which the Superior Council of the Magistracy would have powers similar to those of the Legislative Council, which, according to Article 79 para. (1) of the Constitution (...) is inadmissible. The Superior Council of Magistracy, as part of the judicial authority, (...) cannot be transformed into a consultative body of the Parliament, the legislative authority, without affecting constitutional values such as the rule of law or the principle of the separation and balance of powers in constitutional democracy".

By Decision no. 221/2020 – to which I referred in observing the importance of the opinion of the Legislative Council, the Constitutional Court ruled that the failure to request the legal opinion of the Superior Council of Magistracy constitutes a violation of Article 1 para. (5) in relation to Art. 133 para. (1) of the Constitution, which implicitly constitutes a violation of Art. 1 para. (3) on the rule of law. However, although the criticism of unconstitutionality raised is extrinsic, its admission does not concern the unconstitutionality of the entire legislative act, since the opinion of the Superior Council of the Magistracy cannot concern the entire law, because it does not fall in its entirety

within the field in which the Superior Council of the Magistracy has the power to issue opinions, but only the provision of Article IV, paragraph 26 [28] of the emergency ordinance, which established as a disciplinary offence the failure by the court to comply with the time-limits or the provisions/measures contained in the legislative act. In view of the limited effect of the opinion of the Superior Council of the Magistracy on matters relating to judicial authority, the Court held that, if requested, it was competent to give its opinion only on the provision concerning a new disciplinary offence of judges. [29].

Final considerations

Without claiming to have carried out an exhaustive research in the field of endorsement of primary regulatory acts - which would not even be possible in a specialized article - we hope that we have succeeded in highlighting its particular importance, especially the endorsement activity carried out by the Legislative Council.

A glance at the opinions issued by the Legislative Council for 2021 shows that: 1) the number of negative opinions issued in 2021 remained at a high level, i.e. 111, compared to 2020, when 116 were issued, but doubled the number issued in 2019, when 57 such opinions were issued; 2) the number of favourable opinions, with comments and proposals, was 899; 3) the number of favourable opinions, without comments, decreased significantly in the year 2021, respectively to 49, from 88 in 2020, 90 in 2019, 106 in 2018 or 117 in the year 2017 [30].

These statistics - in our opinion - draw attention, on the one hand, to the need to increase the quality of legislative initiatives, regardless of the form they take (bills [31] or legislative proposals [32]), and, on the other hand, to the need for awareness on the part of the legislator (mayor/parliament or delegate/government) of the fact that the opinion of the Legislative Council is not a mere "paper" circulating in the process of adopting primary regulatory acts.

As we have already stated on other occasions [33], the main object of the opinion of the Legislative Council is the quality of the law and its compliance with constitutional provisions and those of international treaties ratified by Romania, from which perspective the role of this authority of constitutional rank must be strengthened.

In order to strengthen the role of the Legislative Council, we believe that it is necessary to intervene on the legislative framework that enshrines its powers.Thus, de lege ferenda we propose that Article 2 paragraph 1 of Law no. 73/1993 be supplemented and amended by extending the powers of the Legislative Council with:

- reviewing and endorsing normative acts that are issued on the basis and in execution of laws, Government decisions and ordinances, namely: administrative orders, instructions and other acts of the heads of ministries, central public administration bodies or autonomous administrative authorities;

- analysis and endorsement of draft laws approving or rejecting ordinances (simple or emergency) issued by the Government.

We conclude by stating - with conviction - that the goal of quality legislation can only be achieved through the combined efforts of all actors involved in the legislative procedure, that the opinions issued by the public authorities with competence in the procedure for approving legislative acts must necessarily be carefully observed by the primary or delegated legislator.

References:

[1] For details, see N.Popa, General Theory of Law, Actami Publishing House, Bucharest, Romania., 1997, pp.211-212.
[2] A.R.Lazăr, Procedural aspects of the issuance of administrative acts. Some considerations on the procedure of tacit approval, in RDP no.3/2003, p.87 apud V.Vedinaș, Administrative Law, 13th revised and added edition,Ed.Universul Juridic, Bucharest, 2022
[3] Flavia Ghencea, Reglementari cu privire la aviz in Codul administrativ, in Revista de Drept Public no. 1-2/2021, p. 97.
[4] M.Safta "Constitutional Court case law note [6-31 July 2020]. Approval of legislative acts", material available on https://www.juridice.ro/692146/nota-de-jurisprudenta-a-curtii-constitutionale-6-iulie-31-iulie-2020-avizarea-actelor-normative.html
[5] The first Legislative Council - organized as a separate institution of the state, was established by Law no.20/1925 (Mârzescu Law), according to the Constitution of 1923; the Constitution of 1938 - by art.72, consolidates the role of the Legislative Council; During the communist period, we do not find regulated - at constitutional level, the institution of the Legislative Council. The second Legislative Council - re-established under Law 15/1971, under the leadership of the eminent Professor Ioan Ceterchi, ceased its activity in December 1989, following the dissolution of the Great National Assembly.
[6] Sorin Popescu in "Romania's Constitution. Commentary on articles"- coord. I.Muraru, E.S.Tănăsescu, 2nd edition, Ed. C.H.Beck, Bucharest, 2019, p.691
[7] Law No. 73/1993 on the establishment, organisation and functioning of the Legislative Council, published in National Gazzette no. 260 of 5 November 1993, republished in National Gazzette No. 1122 of 29 November 2004
[8] Published in the National Gazzette no. 43 from 28 February, 1996.
[9] V.Dorneanu, *The Legislative Council at 25 years of existence - living and eloquent proof of its necessity, usefulness and importance, in Buletin de Informare Legislativa no.2/2021, p.16*
[10] published in Official Gazette No 139 of 31 March 2000; republished in Official Gazette No 260 of 21 April 2010 (r2).

[11] Published in the Official Gazette, No 14 of 13 February 1976
[12] Decision No 304 of 4 May 2017, published in Official Gazette No 520 of 5 July 2017.
[13] Decision no. 221/2020, published in the Official Gazette no. 594 from 7 July 2020, par. 53.
[14] M.Safta, The Government's responsibility for a draft law. The jurisprudence of the Constitutional Court on the matter, article available on https://www.ccr.ro/wp-content/uploads/2021/01/safta.pdf
[15] See Decision No. 83 of 15 January 2009, published in Official Gazette No. 187 of 25 March 2009, Decision No. 354 of 24 September 2013, published in Official Gazette No. 764 of 9 December 2013, Decision No. 140 of 13 March 2019, published in Official Gazette No. 377 of 14 May 2019.
[16] Published in the Of. Gaz. No. 594 from 7 July 2020
[17] Published in the Of. Gaz. No. 106 from 12 February 2020
[18] Republished in the Official Gazette of Romania, Part I, no.740 from 2 October 2015.
[19] Published in the Of. Gaz. No. 190 from 11 March 2019.
[20] Decision no. 83 of 15 /2009, published in Of. Gaz. no.187 of 25 March 2009, Decision no. 354/ 2013, published in Of. Gaz. no. 764 of 9 December 2013.
[21] „In Romania, respect for the Constitution, its supremacy and the laws is mandatory."
[22] Published in the Of. Gaz. no. 1074 from 13 November 2020.
[23] Published in the Of. Gaz. no. 622 from 18 July 2018
[24] Decision No. 383 of 23 March 2011, published in Official Gazette No. 281 of 21 April 2011, Decision 574/2011, and Decision No. 575/2011, paragraph IV.A.2., published in Official Gazette No. 368 of 26 May 2011.
[25] Published in the Of. Gaz. no. 628 from 1 September 2012.
[26] See Decision 901/2001, published in the Official Gaz. no. 503 of 21 July 2001, Decision no. 221/2020, published in the Official Gaz. no. 594 of 7 July 2020.
[27] Published in the Of. Gaz. no. 71 from 29 January 2014
[28] Art.IV pct.26: "Failure to comply with the time limits laid down in this law or with the provisions contained in this law concerning the solutions or measures that may be ordered by the court constitutes a disciplinary offence and shall be punished according to the law."
[29] In the present case, the Court found that the delegated legislature chose not to amend Article 99 of Law no. 303/2004 governing disciplinary offences of judges and prosecutors.
[30] Source: Report on the work of the Legislative Council in 2021, available on the website http://www.clr.ro/wp-content/uploads/2022/07/Raport-CL-2021.pdf
[31] Legislative initiatives belonging to the Government.
[32] Legislative initiatives belonging to senators, deputies and citizens, under the conditions laid down in Article 74 of the Constitution.
[33] Anca-Jeanina Nițǎ, The Legislative Council - Parliament's consultative body in ensuring the quality of the law, a primary condition of the rule of law, in Revista de Drept Public no.1/2022, p.38-50.