Petroleum-Gas University of Ploiesti

The Centre for Studies and Legal and Socio-Administrative Research

JOURNAL OF LAW AND ADMINISTRATIVE SCIENCES

No.4/2015

ISSN 2392-8298

ISSN-L 2392-8298

The Journal is indexed in the international data bases

Petroleum and Gas University Publishing House of Ploieşti

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CONTENTS

1. **Violeta Slavu**- Effects of civil juridical act……4
2. **Mihaela Adina Apostolache**- Aspects regarding the Institutional Framework for the Coordination and Management of European Structural and Investments Funds in Romania……..…12
3. **Akanji Babatunde**- Responses of the Criminal Justice System to Violence against Women: A Review……27
4. **Zoran Jerotijević, Vukadin Šljukić**, Shaping the identity nemanjic states.Interpretation of Byzantine ecclesiatical rights……..…41
5. **Valentin- Stelian Bădescu**- Legal Protection of Woman's rights. The principle of Non discrimination, the Fundamental Principle of Rights……56
6. **Silviu Gabriel Barbu, Alexandru Silviu Goga**- Exclusion of a member of a political party. Unconstitutional provisions of the Law on political parties…….77
7. **Mihail Niemesch**- Facultative Jurisprudence and Compulsory Jurisprudence in Romania……..……87
8. **Marius Andreescu**- John Locke - a forerunner of the liberalism and contemporary constitutionalism……95
9. **Marilena Ene**- Analysis of the amendments from the Tax Code in the field of VAT in tax-budgetary terms……108
10. **Luciana Bezeriţă (Tomescu)-** Some considerations regarding the legal nature and the status of central autonomous public authorities……...118
11. **Iosif F ri e d m a n n – N i c o l e s c u**- History of the Legal Profession in Romania –moments, people and personalities-……..129
12. **Ion Gâlea**- The European Union and Interational Treaties: is there a Step towards Better Compliance with International Law?.....144
13. **Eufemia Vieriu**- Considerations Regarding Professional Training……161
14. **Emilian Ciongaru**- The Civil Legal Liability – Social Implications……...169
15. **Dumitru Vieriu**- General Considerations Regarding the Classification, Record and Prevention of Occupational Diseases……...180
16. **Maria Beatrice Berna**- The cultural defense : possible correlations and applications within the framework of women's rights……191
17. **Alina Daniela Pătru**- Considerations regarding cross-border crime and institutional cooperation……..206
18. **Diana Elena Răducan Morega**- Aspects of comparative law regarding the causes which remove the criminal character of the deed, respectively the justifiable causes and the impunity causes……..…213
19. **Diana Anca Artene**- The European Union political economy reflected through the associations and foundations activity……224
20. **Mircea Tutunaru** - State of Emergency Decrees and Laws Legislative Delegation in the Rule of Law……232

Effects of civil juridical act

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Abstract:
Analysis of the effects of civil juridical act is necessary both at the time preceding the conclusion of a civil juridical act and especially thereafter when there is a conflict that generates a litigation subject to legal inquiry. Such an analysis, complex by its nature, requires a dualistic approach both from the perspective of the parties, which is paramount (civil juridical act expressing the will of the parties) and of the legislature, which provides the legal frame in the matter subject to this analysis. It is noticed that an important role is given to the rules of interpretation of contract terms. Not to be neglected, this being abundantly prove by practice, the lack of legal training that is reflected in the content of civil juridical act concluded without specialized assistance and generating disputes between co-contracting parties. In this study we also propose an overview of the rules of interpretation of contract terms together with the principles governing the effects of the civil juridical act.
Keywords: *civil juridical act, the interpretation of contractual terms, the effects of civil juridical act, binding force, irrevocability, relativeness.*

1. Introduction. Definition and rules of interpretation

The effects of civil juridical act means individual rights and civil obligations to which gives rise, amends or extinguishes such an act [1].

What for civil legal act means effects, for civil juridical relationship is its content [2].

Determining the effects of civil juridical act involves establishing subjective civil rights and correlative civil obligations generated, modified or extinguished by that legal act. This legal operation is necessary because the content of civil juridical act is not always clearly expressed, in the sense that, sometimes the terms used by the parties are unclear, imprecise, do not reflect unequivocal will of the parties.

Determining the effects of civil juridical act involves several steps.

First it is necessary to prove the existence of the civil juridical act, preliminary and necessary step in determining the effects of civil juridical acts. If the existence of civil juridical act cannot be proven, the question of determining its effects is no longer needed, according to the maxim idem est non esse et non probari.. Obviously, the rules in the matter of probation can be applied here [3].

The second step is the interpretation of the provisions of civil juridical act.

The rules of interpretation are as follows:

- General rules of interpretation (Art.1266-1269, Art.1272 of Civil Code)
- Special rules of interpretation, provided by the legislature for certain categories of civil juridical acts (ex. a will in favor of the creditor excludes compensation [4]).

According to Civil Code the following are general rules of interpretation:

- Civil juridical act shall be interpreted as the real intention of the parties and not following the literal meaning of the term, when establishing the will of the parties shall take into account the purpose of the contract, the negotiations between the parties, the practices settled between the parties and the conduct of the parties after the conclusion of the contract [5];
- Clauses of civil juridical act shall be interpreted one from others reported to the whole act (systematic interpretation [6]) [7];
- Questionable clauses shall be interpreted in the way that best suits the nature and scope of the civil juridical act [8];
- Questionable clauses shall be interpreted taking into account the nature of the contract, the circumstances in which it was concluded, the interpretation previously given by the parties, the meaning given in general to terms in the field and the practice [9];
- If a clause is susceptible of more than one meaning, it shall be interpreted in the sense that can be binding and not in the sense that it would not produce legal effects [10];
- In the case of using too general terms, interpretation shall be restricted to the thing it was contracted for [11];
- Exemplary clauses do not restrict the scope only to them, meaning that the application also intervenes in cases not expressly provisioned by that civil juridical act [12];
- If the vagueness persists, then the questionable clauses shall be interpreted in favor of the debtor [13] except stipulations in contracts of adhesion [14], in which case doubtful interpretation shall be made against the person who proposed the terms;

- Valid juridical concluded act is binding not only to what is expressly mentioned, but also to all consequences following the established practices between the parties, customs, law or equity give to the act according to its nature [15];
- Usual clauses in a contract are implied even if they were not expressly provisioned [16];

2. Principles of the effects of civil juridical act

Effects of civil juridical act are governed by the following principles:

- principle of binding force (pacta sunt servanda);
- principle of irrevocability of civil juridical act;
- principle of relativity (res inter alios acta, aliis neque nocere, neque prodese potest).

The principle of binding force

The principle of binding force is that rule of the effects of civil juridical act under which civil juridical act validly concluded, is imposed upon its author or authors just like law (Art.1270 par.1 of Civil Code [17]).

The principle of binding force is justified by the necessity to ensure the stability and security of juridical relations arising from civil juridical acts on one hand and on the other by the moral imperative of keeping the word.

Civil juridical act legally concluded is binding for the courts invested with resolving disputes, in the sense that it is obliged to ensure the enforcement of civil juridical act according to the will of the parties [18].

Exceptions to this rule are cases where the effects do not occur as parties wanted at their end, meaning that the effects can be limited or stretched beyond parties' control. These are:

a) Cases of restriction of binding force

- termination of mandate contract in case of death, prohibition, insolvency and bankruptcy of trustee or principal [19] (Art.2030 par.1 point c) of Civil Code);
- termination of location contract [20]; intervenes when leased asset fully perished or became worthless of its common use (aArt.1818 par.(1) of Civil Code).
- termination of location contract as a result of the abolition lessor's right, of tenant's death [21];

- termination of mandate contract in case of death, bankruptcy or incapacity of the trustee or principal [22];
- termination of the undertaking contract concluded intuituu personae by death or disability of entrepreneur, non-imputable to him [23], a.s.o [24].

b) Cases of extension of binding force:

- extension (prorogation) of the effects of civil juridical act, by law effect [25];
- extension of the effects of civil juridical act with successive execution with a period of time equal to the duration of the suspension cause which made execution impossible.
- legal moratorium, assumes allowing lawful time for a certain category of debtors in extreme circumstances (economic crisis, military conflicts, etc.)

c) review of the effects of certain juridical acts due to rupture of the contractual balance following changing circumstances envisaged at the conclusion of civil juridical act (Art.1271 of Civil Code)

d) cases where the law recognizes one party the right to make unilateral changes to the civil juridical act [26] as is the case [27] governed by the provisions of Art. 53 par, (1) in OUG.no.54/2006 on the regime of concession of public assets contracts [28].

The principle of irrevocability

Irrevocability principle is that rule of law according to which bilateral civil juridical act cannot be terminated only by will of one party, and unilateral civil juridical act cannot be terminated by unilateral declaration of intent, to the contrary, by its author.

Exceptions to the irrevocability represents those cases where termination of bilateral juridical by unilateral declaration of intent of only one party, on one hand, and termination of civil juridical act by expressing contrary will of its author, on the other hand.

Exceptions to the irrevocability in the category of bilateral acts:

- revocation of donation between spouses during marriage [29];
- termination of deposit contract on depositor demand [30];
- no term tenancy contract may be terminated by either party [31];
- insurance contract may be terminated by unilateral will with a notification period of at least 20 days from the date of receipt of notification by the other party [32];

- a.s.o [33].

Exceptions to the irrevocability in the category of unilateral juridical acts:

- the testament [34];
- cancellation of relinquishment of a succession that operates only if the following conditions are met: a) the right of option of releaser should not be extinguished by the expiry of the limitation period of six months from the date of opening of succession; b) succession should not have been accepted in the meantime by another person entitled to succeed;
- offer without term may be withdrawn only if the withdrawal reaches the offeree before or concurrently with the offer (Art.1199 of Civil Code [35].)

The principle of relativity of effects of civil juridical act

The principle of relativity of effects of civil juridical act is that rule of law that takes effect only on authors or its author, and not on third parties (Art.1280 of Civil Code.).

The party is the person who concludes the civil juridical act, either personally or by representation, and in whose patrimony or person are produced the effects of civil juridical act.

Third parties are persons alien of juridical act (penitus extranei).

Those entitled (habentes causam) are those persons who, although not involved in concluding the civil juridical act, yet bears its effects due to their legal relationship with the parties of civil juridical act.

There are three categories of those entitled:

- universal successors are those who acquire a patrimony, a universality (e.g. only successor) and universal title successors who are people who acquire a portion of a patrimony (e.g. more legal successors);
- successors by particular title are people who acquire a determined individual good (e.g. a car buyer);
- chirographic creditors are those creditors whose debt is not secured through the establishment of a guarantee [36] but benefit of a general possessory lien over all assets of their debtor.

Exceptions to the principle of relativity are cases in which such civil legal act produces effects also to other persons than the parties, by the will of the parties of the civil juridical act. According to previous regulations coming into force of the new Civil Code, doctrine classifies exceptions to the principle of relativity into two categories: real and apparent, considering that the only real exception to this principle is the provision in interest of a third party [37]. Under the new regulations the provision in interest of a third party enjoys separate regulations [38], according to which third-party beneficiary right validly arises only by expressing his or her will on the acceptance, otherwise the right established by agreement between parties, in favor of third-party beneficiary, represent at most a resolutory condition.

Apparent exceptions to the principle of relativity:

- the situation of those entitled is an apparent exception to the principle of relativity as universal or universal title successors are natural successors to the parties; successors by particular title become parties to their agreement and chirographic creditors are entitled to promote actions against the debtor under the law, not by will of parties;
- vicarious promise (porte-fort convention) is the convention whereby a party called the promisor is bound to the other party called the creditor of promise to cause a third party to conclude a civil juridical act. It is an apparent exception as the conclusion of the juridical act by the third party depends solely on his own will;
- representation is technical and juridical procedure by which a person called representative, concludes a juridical act in the name and on behalf of another person, as represented, so as the effects of such juridical act occur directly in the represented person. Representation may be conventional (arising from the will of the parties), juridical (has its source in law) and judicial (has its source in the empowerment of court). It is an apparent exception from the principle of relativity because in case of conventional representation, the representative is party in the contract; in case of legal representation, powers derive from law, and in case of judicial representation, empowerment is given by the court;
- direct legal action. Designate those situations in which, by law, a person (the plaintiff) calls sue another person (the defendant) with whom he is not in contractual

relations, the latter being in contractual relations with another person with whom the applicant himself is in contractual relations. Thus: the matter of undertaking contract recognizes the right of workers employed by the contractor to sue directly the beneficiary of the construction, for payment of their due remuneration (Art.1856 of Civil Code.); in case of mandate contract is recognized the principal legal action against sub-mandatory substituted by trustee, although the principal is third in the contract between the agent and sub-mandatory (par.6 Art.2023 of Civil Code). Direct actions are apparent exceptions to the principle of relativity of effects of civil juridical act, because of the right to action arises from law.

- And others [39].

3. Conclusions:

Analysis of the effects of legal documents is complex as it involves an approach from several perspectives, as seen throughout this study. It is important and urgent for reasons already shown. Furthermore, should not be disregarded in such an analysis issues arising from the application of civil law in time, issues that will be subject to a further research.

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[1] Civil juridical act is a manifestation of will expressed with the intention to produce legal effects. For other definitons see Iosif Robi Urs, Carmen Todică Civil Law.General theory, Hamangiu PH, Bucharest, 2015, pp.198-199
[2] "The content of civil juridical relationship consists of rights and obligations of the subjects participating to the relationship", Carmen Tamara Ungureanu, Civil Law.general part.Persons, 2nd Edition, Hamangiu PH, Bucharest, 2013, p.83
[3] For further information see Iosif Robi Urs, Carmen Todică, op.cit., pp.113-128
[4] Art.1039 par.(3) of Civil Code disposes: Legacy in favour of creditor is not deemed to be made in compensation of his his claim.
[5] Art. 1266 of Civil Code.
[6] Systematic interpretation involves interpretation of the juridical norm by reporting on other legal requirements of the same law and/or other normative acts.
[7] Art.1267 of Civil Code.
[8] Art.1268 par. (1) of Civil Code.
[9] Art.1268 par. (2) of Civil Code.
[10] Art.1268 par. (3) of Civil Code.
[11] Art.1268 par. (4) of Civil Code.
[12] Art.1268 par. (5) of Civil Code.
[13] Art.1268 par. (1) of Civil Code.
[14] Art.1268 par. (2) of Civil Code.
[15] Art.1272 par. (1) of Civil Code.
[16] Art. 1272 par. (2) of Civil Code.
[17] "Validly concluded contract binds the contracting parties"

[18] According to our legal system, internal or real wish not exterior wish, as is the case of German Law, produces juridical effects. Of course, choosing wish in determining effects of civil juridical act intervenes only when there is no agreement between internal and exterior wish.
[19] For further details see Manuela Tăbăraș, Special contracts. Synthesis, models of contracts, tests, C.H.Beck PH, Bucharest,2013, p.199.
[20] For further details see Manuela Tăbăraș, op.cit. pp.144-145.
[21] Art. 1834 par.(1) of Civil Code disposes : Lease contract cease within 30 days from the registration of tenant's death.
[22] Pentru dezvoltări a se vedea Manuela Tăbăraș, op.cit., p.199.
[23] Art.1871 par.(1) of Civil Code
[24] Gabriel Boroi, Carla Alexandra Anghelescu, Civil right law. General part, Hamangiu PH, Bucharest, 2011, p.195-196
[25] Gabriel Boroi, Carla Alexandra Anghelescu, op.cit. p.196.
[26] Gabriel Boroi, Carla Alexandra Anghelescu, op.cit. pp.200-201.
[27] Art.53 par.(1) in O.U.G.nr/2006 settles: "conceders may unilaterally modify the regulating part of the concession contract, with previous notification of patentee, from exceptional reasons related to national or local , as the case may be".
[28] Published in Romanian O M, Part I no.569 from 30 June 2006, approved with modifications by Law no.22/2007 published in Romanian OM, Part I no.35 from 18 January 2007.
[29] Art. 1031 of Civil Code.
[30] Art.1277 of Civil Code.
[31] Art.1816 par. (1) of Civil Code .
[32] Art.2209 of Civil Code.
[33] For further examples see Gabriel Boroi, Carla Alexandra Anghelescu, op.cit., pp.202-205.
[34] Art.1034 of Civil Code disposes: Testament is the unilateral juridical, personal and irrevocable act by which a person called testator, disposes, in one of the forms demanded by law, for the time after his death.
[35] For further development see Iosif Robi Urs, Petruța-Elena Ispas, Civil Law. Theory of obligations, Hamangiu PH, Bucharest, 2015, pp.52-58
[36] For development see Iosif Robi Urs, Petruța-Elena Ispas, op.cit. pp.451 and the following.
[37] Also called the contract on benefit of a third party is the convention by which a party called provider binds to the other party called demander to perform a service in favor of a third-party called third-party beneficiary.
[38] Art.1284-1288 of Civil Code.
[39] For other exceptions see Gabriel Boroi, Carla Alexandra Anghelescu, op.cit., pp.215-216.

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Aspects regarding the Institutional Framework for the Coordination and Management of European Structural and Investments Funds in Romania

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Abstract
The paper takes into account one of the problems faced at present in the EU States, namely improving ways of attracting and managing EU funds. There must be taken into account the changes in the current socio-economic context, the changes on the labour market in the states, as well as other changes in the system of implementation, which may have an impact on the implementation of the operational programmes. It was found that the elaboration, implementation, monitoring and evaluation of programming documents involve compliance with the European principle of partnership. A close cooperation aiming at an integrated and coherent approach to EU funds must exist between all national, regional and local levels of public administration. Regional and local authorities are seen as authorities located closest to the actual use of these funds, having a key role in the realization of economic, social and territorial cohesion. The degree of involvement of these authorities in attracting and managing EU funds is influenced by the specific institutional framework of each member state, but also by the legal and budgetary competences of the various territorial levels.
Keywords: *European funds, specific principles, institutional framework, programming, absorption capacity, implementation.*

1. Introduction

One of the Romania's concerns as a member state of the European Union consists of the correct and efficient management of European funds viewed both in terms of the public authorities involved in the coordination and administration of these financial resources, but also in terms of the actual beneficiaries of these funds.

The manner in which Romania manages the available financial resources efficiently, following the example of other European countries, can lead to a decrease in the existing gap in comparison to other member states, since the direct beneficiary is the Romanian state itself: its people and its economy. It is necessary to analyze the implications of the structural and cohesion instruments in the context of overall economic development [1]; no matter how well these funds are managed, unless the overall economic development strategy integrates the perspective of an efficient use of funds, this analysis will not succeed.

2. The Efficiency of Managing European Structural and Investments Funds

The priority policies at European level represent priorities at national level as well, Romania being placed in a situation of diminishing, and even totally eliminating, the existing gaps in relation to other European countries, and also the present national challenges related to competitiveness and a reduced administrative capacity, insufficient human capital and a reduced innovation capacity. Thus, one of the ways of ensuring the fulfillment of these goals consists in the ability to provide a framework of integrity in managing the funding allocated by the European Commission through structural instruments.[2]

European Structural and Investment Funds (ESI) have an important role in achieving the objectives of the Union's Strategy for a growth which is smart, sustainable and favorable to inclusion, adopted in the European Council of June 17th 2010. According to the Strategy, the Union and the member states shall cooperate for a smart, sustainable and inclusive growth, promoting, at the same time, the harmonious development of the Union and reducing regional disparities.

Structural Funds are financial instruments managed by the European Commission, with the purpose of offering support at structural level. Financial support from the Structural Funds is mainly intended for less developed regions in order to strengthen economic and social cohesion in the European Union.

The European Commission has presented, since March 14th 2012, the "Common Strategic Framework" (CSF) to guide the member states in their preparation for the future cohesion policy. CSF has been developed in order to help establish clear investment priorities for the 2014-2020 programming period in the member states and their regions. The framework allows a much better arrangement of EU funds in order to maximize their impact. National and regional authorities have used this framework as a basis for drafting "partnership agreements" between them and the Commission, pledging to achieve the goals of the Strategy Europe 2020 for economic growth and employment.

In the summary published on March 14th 2012 there is a description of the investment priorities and key actions, current separate sets being replaced by strategic guidelines for the cohesion policy, the rural development policy and the maritime and fisheries policy.

In the current economic context, we can state that these funds have a significant contribution in terms of sustainable growth, employment and competitiveness, an increasing convergence of member states and less developed regions with the rest of the Union. The state and local communities require additional financial resources to increase the quality of public services, to modernize and develop infrastructure, a necessity that is correlated with the obligation to protect the environment.[3]

CSF represents a single source of guidance for all five European funds: the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD), the European Maritime and Fisheries Fund (EMFF), strengthening the integration of EU policies and ensuring a greater impact, on field, for citizens and businesses, aspect also revealed in “CSF: Clear Investment Priorities for all European Funds” by the European Commission, 2012 [4]. The CSF funds aim at the common endorsement of competitiveness, convergence and cooperation by establishing proper investment priorities for each country.

As a member of the EU, Romania developed, in cooperation with its partners and in dialogue with the Commission, a Partnership Agreement, a national strategic document which underlies and sets out the thematic objectives for development and indicative allocation of EU funds for the period 2014-2020, and also subsequent programs, which translate the elements provided in the Agreement, containing firm commitments from the state regarding the meeting of EU objectives by programming EU funds. [5] These aspects are addressed in the Memorandum of the Ministry of European Affairs - Approval of the actions and documents regarding the access preparation and implementation of European funds in 2014-2020.

The European Commission stipulated in its proposal Multi-annual Financial Framework 2014-2020 [6] a new approach to the use of funds to ensure that CSF funds

have a long-lasting economic and social impact. This approach is in line with the call made by the European Council since June 29th 2012 on the use of the EU budget.[7]
Programming the CSF funds by the member states and regions in preparing their partnership agreements was performed according to country-specific recommendations issued by the Council under Art. 121 Para. (2) and Art. 148 Para. (4) of the TFEU, as well as their national programs of reform. The member states have taken into account the recommendations of the Council based on the Stability and Growth Pact. As according to a press release of the European Commission, 2011, it was necessary for each member state to establish, in the partnership agreement, how the different EU and national funding streams contribute to the approach of challenges identified in the recommendations specific to each country concerned. [8]

In the document entitled "The Position of the Commission Services on the development of a Partnership Agreement and of Some Programs in Romania during the 2014-2020 period" it was stated that the CSF funds represent one of the most important instruments for addressing key development issues for Romania, as identified in its EU/IMF lending program and in the commitments under the Europe 2020 Strategy.
The first Romanian version of the Partnership Agreement for the programming period 2014-2020 was developed based on the proposals of the European Commission from October 2011 on the legislative package regarding the Cohesion Policy, respectively the Common Agricultural Policy and the Common Fisheries Policy. This was informally sent to the EU services on October 11th 2013. The document, which was elaborated with input from ministries and dialogue partners involved in the programming process, was discussed on October 7th in the fifth meeting of the Inter-institutional Committee for the Partnership Agreement. As known, the preparation, implementation, monitoring and evaluation of the programming documents involve following the European principle of partnership, and also consultations with the competent national, regional and local authorities, with civil society organizations, with economic and social partners.

This version includes recent proposals received from the social dialogue partners, constituting an enhanced form compared to the one published in early October, but one that does not include, however, the regulations setting out the manner in which European funds will be implemented during the future programming period.

Before being formally adopted by the EU Council and the European Parliament, the regulation proposals were under negotiation with the European Union member states. These European regulations were adopted in December 2013 and became official after their publication in the Official Journal of the European Union; from this moment on, the member states were given a four-month deadline to submit the Partnership Agreement officially.

Since July 2013, a first draft of the document sent to the European Commission was considered “incoherent and lacking clear priorities”. This document did not display, though, the financial allocation of available funds to finance the identified priorities, because at the level of the European regulations, the financial aspects had not been finalized. However, in the process of developing the Partnership Agreement, the Romanian authorities had also taken into account the financial planning so that, with the completion and approval of the European financial framework, a coherent proposal was available.

Thus, it should be noted that challenges of economic development can not be addressed without a coherent strategy for competitiveness that includes public support for economic operators, and also through research and innovation policies and investments in human capital. In addition, the links between the funding areas identified and the expected results should be noted.

Following the final discussions on the Partnership Agreement with the two main directions of the Commission, DG Employment and DG Regio, it was determined that the document could be formally sent to the European Commission at the end of March.

After Romania had sent draft copies of this document as part of the informal dialogue, an official version of the Partnership Agreement 2014-2020, setting out how to use European funds, approved by the Romanian Government on March 26th 2014, was sent to European Commission via the computer system of communication - Structural Funds Communication (SFC), on March 31st, the deadline set by EU regulation being April 22nd 2014. The document was to be signed within a maximum period of three months, during which Brussels officials could make the necessary observations. Based on them, on July 7th 2014, the Ministry of European Funds sent the updated proposal

for the Partnership Agreement 2014-2020 to the European Commission officially, including the changes to the document submitted on March 31st.

According to a press release [9] from the Ministry of European Funds from our country, on August 5th 2014 the Partnership Agreement 2014-2020 with Romania was validated by the four commissioners; the decision of the European Commission to adopt this document was to be published in the following days. Statistically, Romania is the 11th state to obtain the approval of the Commission on this document, which demonstrates that Romania's document meets the demands of the European Commission. The Partnership Agreement shows how the European structural and investment funds will be used in the actual programming period (2014 – 2020).

In this programming period, Romania benefits from European funds worth about 43 billion euros, of which over 22 billion are intended for the cohesion policy. The proposed allocations, as reflected in the Partnership Agreement [10] signed with the European Commission are:

- 9,5 billion euros for the Operational Program regarding the Large Infrastructure;
- 6,7 billion euros for the Regional Operational Program;
- 4,2 billion euros for the Human Capital Operational Program;
- 553 million euros for the Administrative Capacity Operational Program;
- 1,2 billion euros for the Competitiveness Operational Program;
- 265 million euros for the Technical Assistance Operational Program;
- 452 million euros for programs of cross-border cooperation;
- 8 billion euro for the National Program for Rural Development.

For the Fisheries Operational Program the allocation is not yet agreed upon; depending on the efficiency of absorption, Romania has a reserve of 1.82 billion euros that can be accessed.

These funds are considered to be crucial for Romania's ability to meet the challenges of development in the medium and long term, as they will mobilize additional public and private funding meant to expand and create jobs, and reduce the social and regional disparities existing in Romania.

The priorities for the CSF funds for Romania were developed based on a thorough country analysis of the Commission services, and they were selected from out

of the 11 thematic objectives arising from the Commission's proposal for a regulation on the common dispositions for the CSF funds adopted by the Commission on October 6th 2011 [11]. These 11 thematic objectives translate the Europe 2020 strategy into operational objectives to be supported from the CSF funds. The 11 thematic objectives common to the cohesion policies, rural development and maritime and fisheries policies, ensure that these policy interventions are directed towards the accomplishment of common goals, those of the Europe 2020 Strategy, offering a range of financing objectives possible across the entire EU.

Specifically, a Summary of the Partnership Agreement with Romania for the period 2014-2020 shows the following challenges and afferent priorities [12]:

- Promoting competitiveness and local development in order to strengthen the sustainability of economic operators and improve regional attractiveness;
- Development of human capital by increasing the employment rate and the number of graduates in tertiary education, while providing solutions to serious social challenges and combating poverty, particularly in marginalized or disadvantaged communities or in rural areas;
- Development of physical infrastructure, both in the ICT sector and the transport sector in order to increase the accessibility of regions in Romania and their attractiveness to investors;
- Encouraging the sustainable and efficient use of natural resources by promoting energy efficiency, a low carbon economy, environmental protection and climate change adaptation;
- Consolidation of a modern and professional public administration through a systemic reform oriented towards solving structural errors of governance.

These priorities translate the aspirations towards economic growth reflected in the overall objective of the Partnership Agreement. Briefly, in the period 2014-2020 Romania's development priorities are [13]: competitiveness and local development; people and society; infrastructure; resources; administration and governance.

3. Changes in the Institutional Architecture of the Management of European Structural Funds

It is currently known that, in Romania, the coordination and management of structural instruments is ensured by the Ministry of European Funds, as shown in the GD 43/2013 on the organization and functioning of the Ministry of European Funds [14]. According to its competences, this ministry coordinates structures within the institutions exercising attributions of the management authorities and of the intermediate bodies, as well as structures within the institutions exercising attributions of the program operator. As of March 1st 2014, the Ministry of European Funds took over the activity and structures of the management authorities afferent to the Sectorial Operational Program Human Resources Development (SOP HRD) and the Sectorial Operational Program Increase of Economic Competitiveness (SOP IEC). This change is the consequence of the application of Government Emergency Ordinance no. 9 of February 26th 2014 for the approval of measures to streamline the management system of structural instruments [15].

The Ministry of European Funds is responsible, according to Art. 7 paragraph 4 letter b) of the GEO No. 9 of February 26th 2014, to coordinate the process of development, negotiation, modification, monitoring and evaluation of the implementation of the Partnership Agreement 2014-2020 and of the programs financed by European structural and investment funds 2014-2020 and by the EEA and Norwegian Financial Mechanisms 2014-2019 [16]. In addition, according to Art.7, paragraph 6 of GEO No. 9 of February 26th 2014, it is authorized to issue, based on its competences, orders and instructions regarding the coordination and management of structural instruments 2007-2013, European Structural and Investment Funds 2014-2020, pre-accession instruments PHARE and ISPA, provisional financial instrument Transition Facility, the Financial Mechanism of the European Economic Area for the periods 2004-2009 and 2009-2014, the Swiss-Romanian cooperation Program, the Norwegian Cooperation Program for Economic Growth and Sustainable Development 2004-2009, the Norwegian Financial Mechanism for 2009-2014 and the financial mechanisms EEA and Norwegian 2014-2019, in order to implement them correctly and efficiently. [17]

In the actual funding period, this coordination should be strengthened and particular attention should be given to ensure the consistency in management procedures implemented by management authorities and guidance to beneficiaries [18].

Also, consultation and dialogue with the competent Commission services should be intensified, within or complementary to the annual review meeting. The possibility of further rationalization or even formalization of the coordination committees at the level of partnership agreement can be properly considered.

A statement of the Ministry of European Funds [19] affirmed: “Coordination will take into account on the one hand, the lessons learned in 2007-2013, and will follow the implementation efficiency and reduction of administrative burdens, and on the other hand, the thematic concentration of funds will ensure a significant impact of investments, respectively the continuation of sustainable interventions from the current programming period”.

The Partnership Agreement for 2014-2020 details the institutional framework - the Management Authorities and the Intermediary Bodies, presents the principles of effective implementation of the funds in accordance with the stipulations of the European Union’s legislative package. According to the document, the implementation of the European Structural and Investment Funds 2014-2020 will be done in a much more coordinated system, establishing responsibilities of management authority only at the level of three ministries:

- The Ministry of European Funds, for the management of four Operational Programs: Large Infrastructure (transport, environment and energy); Competitiveness (Research - Development, Digital Agenda); Human Capital and Technical Assistance;
- The Ministry of Regional Development and Public Administration, for the management of regional development programs, the programs for the European territorial cooperation and the program Administrative Capacity;
- The Ministry of Agriculture and Rural Development, for the management of programs dedicated to agriculture, rural development and fishing and aquaculture.

Although structural funds are related to the European Union budget, the way they are spent is based on a division of responsibilities between the Commission and governments of the member states. Thus, the Commission negotiates and approves the development programs proposed by the member states and allocates credits; the states and their regions manage the programs, ensuring their application, and select the

projects they control and evaluate; the Commission participates in program monitoring, commits to and pays for the certified expenses and checks the control systems in place.

For each operational program, the member state designates:

• a management authority (public authority or national, regional or local body of public or private law to manage the operational program);

• a certification authority (authority or national, regional or local public body to certify the situation with the expenses and applications for payment before they are sent to the Commission);

• an audit authority (authority or national, regional or local public body level designated for each operational program and responsible for verifying the effective functioning of the management and control system).

The objectives of the cohesion policy will be achieved through 8 operational programs (OP), with less than 1 program compared to the period 2007-2013. The funding of operational programs will be carried out as follows:

o from the FC: Operational Program Large Infrastructure;

o from the ERDF: Competitiveness Operational Program; Regional Operational Program (POR); Operational Program Technical Assistance (POAT);

o from the ESF: Administrative Capacity Operational Program Directors (POCA); Operational Program Human Capital (POCU);

o from EAFRD: National Rural Development Program (PNDR);

o from EMFF: Operational Program for Fisheries and Maritime Affairs (POP).

4. The Partnership, a Key Principle in the Management of European Funds

The European Commission has adopted a common set of standards to improve consultation, participation and dialogue with partners such as regional, local, urban and other types of public authorities, trade unions, employers, nongovernmental organizations and bodies responsible for promoting social inclusion, gender equality and nondiscrimination, in the stages of planning, implementation, monitoring and evaluation of projects financed by the European structural and investment funds. These aspects are presented in a Commission press release of January 7th 2014.[20]

This common set of standards can be found explained in the European Code of Conduct regarding the Partnership Principle. According to this, the member states are

required to strengthen cooperation between national authorities responsible for the spending of EU structural and investment funds and project partners, in order to facilitate the exchange of information, experience, results and good practices in the programming period 2014-2020, thereby ensuring that these funds are effectively spent. The Code of Conduct, which took the form of a Commission regulation binding legally, sets objectives and criteria to ensure that member states implement the principle of partnership. The regulation also establishes the principles that the member states must apply, allowing them greater flexibility in organizing accurate practical details to involve relevant partners in the different stages of programming.

The partnership is one of the key principles for the management of EU funds and involves close cooperation between public authorities at national, regional and local level in the member states with the private sector and other stakeholders [21]. Although this principle is part of the cohesion policy, so far, based on comments submitted by the states, it was revealed that its application varies greatly from one member state to another, being mostly influenced by the institutional culture and policy of each state, which is more or less favorable to consultation, participation and dialogue with relevant stakeholders. It has different forms at the level of the member states: the public-public or the public-private partnership. In doctrine was shown [22] that the public-private partnership is viewed by the European Commission as one of the recovery tools for the economic growth and the labor market, and also as an instrument of state reform.

It can be stated, therefore, that Regulation no. 1303/2013 of the European Parliament and of the Council has established The European Code of Conduct on Partnership for partnership agreements and programs supported by the European Structural and Investment Funds (ESIF). However, in many cases, the partnership existed only formally. In the 2007-2013 programming period, the partnership was not actively promoted, even if parallel stakeholder participation has become one of the cornerstones for the implementation of the Lisbon Strategy. In a guide developed by the Community of Practice on Partnership in the European Structural Funds, 2011 [23] it is mentioned that the partnership must be viewed in a close relation with the approach based on the multilevel governance and the principles of subsidiarity and proportionality. Multilevel governance is, according to The Committee of the Regions

[24], a coordinated action of the European Union, of the member states and of the regional and local authorities, based on partnership, aiming at the development and implementation of EU policies.

For the partnership contract and, respectively, each program, a member state enters a partnership with the following partners:

a) regional, local, urban authorities and other competent public authorities;

b) economic and social partners;

c) bodies that represent the civil society, including partners in the field of environmental protection, nongovernmental organizations and bodies responsible for promoting equality and nondiscrimination.

However, in practice, it was found that the implementation of the partnership principle by the member states is carried out in different ways, due to the institutional provisions and traditions of the involved parties. The ability of the partners involved in the process can also influence the effectiveness of the partnership [25].

A Press Release of the European Commission [26] shows that by its provisions, The European Code of Conduct on the Partnership Principle requires “its member states to strengthen cooperation between national authorities responsible for the spending of EU structural and investment funds and project partners in order to facilitate the exchange of information, experience, results and good practices in the programming period 2014-2020”, thereby ensuring that these funds are effectively spent.

5. Conclusions

Intermediary assessments carried out in our country for the programming period 2007-2013 have revealed many difficulties in the implementation mechanisms. This determined the Government to adopt new support measures designed to ensure better financial management of European funds by the beneficiaries and the authorities competent in the management of European funds [27]. It is worth noting, in this regard, the Government Emergency Ordinance no. 9 of February 26th 2014 for the approval of measures to streamline the management system of structural instruments.

Another aspect concerns the level of financial corrections that can be applied to beneficiaries who do not strictly comply with the European principles and the applicable law in force, fact which represents a more flexible level; penalizing the beneficiaries is

done according to the gravity of their misconduct. These regulations are intended to improve and restructure the mechanism for prevention and management of irregularities, given the experience in the use of pre-accession funds and those allocated to the member states for the 2007-2013 programming period.

Another target represents the strengthening of the monitoring system for tasks delegated to other entities, thus ensuring that their activities are carried out according to the community requirements governing different categories of funds.

In Europe, for 2014-2020, the legislation proposed for the ESI funds offered additional flexibility which was necessary to create programs in each member state - operational programs that best meet the national institutional structure. The balance between funding, the number of programs and the best architecture was developed in partnership with stakeholders in the member states and in negotiations with the Commission. As for the priorities that target the growth aspirations reflected in the overall objective of the Partnership Agreements, it was found that they are consistent with those contained in the position paper of the European Commission [28], stating that funding priorities are complementary and reinforce each other, and depending on the specific situation of each member state, a more precise selection being performed, in accordance with the national authorities [29].

Although funding priorities are not presented hierarchically, they do reflect the importance of funding needs and the potential contribution to economic growth and employment. Moreover, the actual programming architecture 2014-2020 integrates sufficient flexibility to respond to new challenges and unexpected events, which allows reprogramming for good reasons.

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Responses of the Criminal Justice System to Violence against Women: A Review

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Abstract:
Evidently, various types of sexual, psychological and physical violence inflicts excruciating pain onthe female gender in epidemic proportions globally. Such abusive behaviours against women existing in any economic or social class is also a gross violation of the victim's human rights. This is further made worse by the patchy responses and inadequate support services of the criminal justice system of different countries in tackling abuse onwomen and young girls within their respective societal context. This review focuses on the problems of violence against the female gender with particular reference to the United Kingdom and assesses the responses of the British criminal justice system in dealing with these violent crimes. This review ends by making recommendations on how the justice systems in the UK can promptly and sufficiently deal with this social menace that is a major concern to all and sundry.
Keywords: *violence against women, criminal justice system, abuse, female gender.*

Introduction

Female child exploitation,sexual assault, rape, stalking, female genital mutilation,indecent workplace romance and sexual harassment against the female gender has been a worldwide threat that is almost as old as when humanity began to exist. Subsequently, a worldwide awareness isnow increasing the need to improve gender equality and minimise domestic violence that can be defined as any incident of unacceptable behaviours and violence conducts carried out by perpetrators that can result into psychological, physical and/or mental torture of victims (Fontes, 2004). It is also described as a pervasive violation of women's human rights and a major inhibitor of achieving gender equality, feminine development and social peace anywhere it is allowed to thrive (Buzawa and Buzawa, 2003). Although the rates at which the female gender is been exposed to violence vary from one region to the other, past and extant surveysand statistics indicate that violence against women is not an overwhelming problem for only alleged victims but also those who work and research in areas where these victims or clients are survivors of sexual violence (Coles, Astbury, Dartnall and Limjerwala, 2014).

For instance, a British Crime Survey produced a damning report revealing that almost half of women living in England and Wales have at some points in their lives experience various dimensions of sexual abuse (Walby and Allen, 2004).In addition, the sexual violence against women in developing nations such as stories from India showshow female gender violence are perpetuated with extreme atrocity and cruelty with reports stating that crimes against women arecommitted every twenty-nine minutes in a day in some of the inner suburbs in India. This have been attributed to the patriarchal nature of these impoverished society(Kinnear, 2011). It is also reported that the criminal justice systems has grossly failedto come to the rescue of abusedvictims in these societies. The fights against female violence is increasingin some nations by intensifying awareness of these crimes against humanity through various global information technologies (e. g. social media platforms).However, there are still many impediments that are preventing the eradication of violence against womenin practical terms (Harne and Radford, 2008). As such, the devastating outcomes of violence against women irrespective of the nation where it is perpetuated includes physical health damage, social isolation, societal stigma, marital divorce or evendeath of victims when such abuse occurs under prolonged circumstances.For instance, in the United Kingdom, an independent appraisal published by the British Women's National Commission (WNC) reportedly gave theBritish Government an overall low score of 1 out of 10 in aspects of adopting an integrated approach to addressing violence against women(Women's National Commission, 2011).

Speaking from the British perspective, the WNC acknowledged that while there are robust policies in parts of the legal system that addresses rapid responses to violence against women, there were criticisms about some gaps in such policies and services hindering women's protection and access to prompt justice. Some of the generic factors that were found existing in UK for example, are the poor enforcement of criminal laws and regulations (Mama, 1996), diminishing and discriminatory behaviours exhibited among relevant professionals vested with powers to assist these victims. Other gaps were also found to existwithin the criminal legal systemthatallows this despicable crime to remain hidden and concealed by victims from friends, work colleague, family and legal authorities such as the police (Mooney, 1994).Therefore,

some of these failureshave resulted in a significant number of cases of violence going unreported and unprosecuted as a result of lack of trust and confidence in the criminal justice systemswhich may be the reason for the high number of victims whose cravings for help, protection and redress are either ignored or responses falls short of desired expectations (Buzawa and Buzawa, 2003). Therefore, the answers that will be provided in this review intends to critically examinehow the various institutions within the criminal justice system have treated and responded to violent crimes that is categorised as not only crime against women but a serious offence against human dignity. Thus, this paper intend to assess how the justice agencies such as the police, the crown prosecution services, the courts, the probationary and prison institutions have dealt with victims, suspects and offenders of violent crimes against women especially in the United Kingdom.

The police

The police are often the first point of contact in either dealing with reports of domestic violence against women, apprehending offenders and making them face the consequences of their criminal actions.Therefore, the response of the police is very important, as an inadequate response in treating these cases with high priority and with recourse to strict confidentiality normally affects the victims involved. This can subsequently affect the victim's trust in the criminal justice system (Gosselin, 2005). However, documented evidence still reveal that women who experience domestic violence and sexual abuse most times do not report these crimes to the police because of prior experiencesof poor police investigations into reported cases. For instance, one of this notorious Indian cases was a gang rape of a 23-year old student on a public bus on the 16th of December, 2012 that sparked large protests and uproar across New Delhi, the capital of India. This public outcry and condemnation drew attention of people in other countries particularly with a focus on the passive responses that such victims encounteredwhen formal complaints were made to the Indian police (BBC News report, December, 2012). Thus, the culture of rape was perceived to flourish in India because of the patriarchal nature of theircaste systems that seems to fuel an acceptance of inequality and gender stereotypesin a country with almost the largest population in the world (Shanmugam, 2013).The fact that the Indian police is a male dominated institution

further exacerbates the problem of vulnerable female victims not given due attention needed to effectively prosecute some of these disturbing cases.

Shifting focus to more developed countries like the UK, it is certainly the lead responsibility of the police and other related criminal justice agencies to respond to violence against women. One of the Government's responsibility is to protect women against such crimes (Allen and Walby, 2004). As such, the broad functions of the Metropolitan Police Authority thatare similar to those of other police authorities in England under the Police Act 1996 is to play a critical role in keeping police response to violence against women at a minimum time level (Mullender, 1996). However, aUK humanitarian body known as the International Rescue Committeethat can be viewed at (http://www.rescue-uk.org/) was formed to support women and girls around the world in fighting sexual discrimination revealed a few scenarios where a victims of sexual assault narrated how when they made complaints of sexual abuses in the UK, butalleged that the officers dealingwith their cases neither believed their storiesnor heldthe victims serious about the violent crimes reported. It is worth stating that some of this institutional omissions and failureson the part of the police force in promptly responding to and investigating some of these potential or actual abuses have resulted into untold hardshipon victims and their families(Gosselin, 2005).

An example of a televised negligent action demonstrated by the London police when a complaint of domestic violence was made occurred in the case of one BanazMahmod; a 20 year old Kurdish immigrant, who was reported missing from her South London home in January, 2006 but her decomposed body was found three months later(BBC news, 2010- www.bbc.co.uk/news/uk).Her story reported by the BBC news was that before her gruesome murder,her family forced Banaz,as a teenager to enter an arranged marriage to one of the men of their tribe. However, a couple of years along the line, her marriage broke down irretrievably due to domestic violence and rape allegations that eventually lead her returning to her parent's house. While her divorce case was still pending, she fell in love an Iranian Kurdish man of a different tribe.However, her family showed fierce disapproval of her new lover.Shesubsequently faced several threats from her family and community where she lived. In December, 2005, reports revealed that Banaz was hospitalised as a result of multiple assaults from

her father who threatened to kill her. Although she made complaints to the police about the series of violent actions and reprisals from her family but little action was taken by the police to stop the abuse. Unfortunately, in January, 2006, Banaz was sexually assaulted and strangled to death by her father and uncle who are currently serving very lengthy jail terms after been convicted for murder (www.bbc.co.uk/news/uk).Following the Independent Police Complaints Commission (IPCC) investigation and review into the London Metropolitan police dealings of Banaz's case, the Commission found that due duty of care was not taken to investigate her case in a timely manner and that the police should have done more in its dealings with Miss BanazMahod's case. This is just one of so many cases where the police service had let down victims suffering from these heinous crimes.

The crown prosecution services

Despite the British Government's strategies to tackle violence against women and girls by bringing perpetratorsto timely justice while victims are supported, there has equally been reports of lapses and gaps in the persecution system (Hague and Malos, 2005).The Crown Prosecution Service (CPS) are the enforcement institution that prosecutesuch violent offences once the policeinvestigation is completeand a prima facie case is established against offenders. However, the CPS responses to domestic violence have been criticised in the past of how some ofthese cases are handled. This has also resulted in some victim's unwilling to support the prosecution and as a result, offenders have been allowed to slip through the nets of justice (Harne and Radford, 2008).Some of these cases are not even prosecuted by the CPS on grounds that some reports are speculative and a waste of time. For instance, a survey carried out by Amnesty International, UK, a non-governmental organisation that campaigns for human rights protection for women with over seven million members and supporters worldwide revealed that about 30% of women surveyed were of the view thatwomen and young girls sexually abused are mostly blamed if alleged victims are under the influence of alcohol or drugs. This drunkenly disorders and other anti-social behaviours are thought to likely result to a nonchalant attitude from those working in the criminal justice system about reported cases(www.amnesty.org.uk).It was even found that the very week that this survey was made public, a rape trial of a 21 year old female complainant collapsed

because she claimed that she was excessively intoxicated as at the time of the incident and unconscious of the sexual activities between her and the sex offender (Harne and Radford, 2008).Although this was inconsistent with the law that provides that an individual must be an adult (e.g. must be 18years and above)capable of giving free consent to sex. Consequently, some of these cases were later found to lead to a miscarriage of justice.

This example and many other cases have been unsuccessful due to some of these issues that have proved to be a serious challenge in bringing the sex offenders to face the law. Moreover, for many years, there has been criticism in the way rape cases are prosecuted. This has generated concerns on the legal skills, knowledge and expertise of lawyers that are instructed by the CPC to successfully prosecute cases of violence against women (Radford and Gill, 2006). This is why some of the victims are unwilling to pursue their cases because of the public stigma that some will have to live with when their cases areunsuccessful but have already gone public and irretrievable from the glare of all and sundry. Giving some of these criticisms, the British CPS has to confront some of these loopholes by taking more pro-active measures in gathering credible evidence and create an effective system in prosecuting violent cases even without the victim's consent and disallowing external factors such as public opinions to contaminatepotential cases (Cook, Burton and Robinson, 2006).For example, in 2001, the British CPS formed a network of domestic violence specialists to provide expert coordination and advice to the CPS on cases of abuse. By 2006, a total number of forty-three coordinators were appointed to work closely with the main body of CPS in the UK (Harwin, 2006). In addition, these coordinators are delegated to also work in conjunction with other government agencies in identifying and sharing good practice. Accordingly, Matczak,Hatzidimitriadou and Lindsay, (2011) pointed out that these coordinators were carefully selected to hold due consultations with women's specialist services and other agencies to develop policy and guidelines" and ensuring that all prosecutors are well trained in prosecuting cases relating to domestic violence against women.

Her Majesty courts, tribunals and special domestic violence courts

In other to adequately deal with cases of violence against women in the UK, there are other courts empowered by legislation to support the traditional criminal courts

of justice. For instance, Her Majesty Courts and Tribunals Service overlook courts in England and Wales by providing management and assistance to the county courts, magistrates' courts, the crown court and the appellate courts such as the High Court, and Court of Appeal (Radford and Gill, 2006; Matczak, Hatzidimitriadou and Lindsay, 2011). As such, domestic violence victims can apply for either civil or criminal remedies. This gives the victim a choice onwhat line of action (either as a criminal or civil matter) to pursue in prosecuting their own cases. However, Sundari, (2008) was of the opinion that the legal choicesavailable depends on the criteria including the nature and severity of the crime, the type of relationship existing between the perpetrator and victim as at the time the crime was committed, the burden of proof needed to secure a conviction and what protection is required by the victim. In the UK, sexual offences are crimes covered by the Sexual Offences Act 2003. Furthermore, most of the courts that treat most of the sexual cases especially against women are the traditional courts of original jurisdiction which are the magistrates' courts and the crown court. But because of the high number of cases in these lower courts and the fact that some of these courts are already over-stretched due to the limited judicial officials to sit and deal timeously with rape cases have also raised concerns in the past by policy makers (Matczak, Hatzidimitriadou and Lindsay, 2011).

For example, the Independent Newspaper of the UK contained a story of how the Members of the British Parliament sometimes in 2013 contested in the wake of the Rochdale and Jimmy Savile sexual scandals that laws should be passed to give more powers to new specialists' courts particularly for children (mostly girls) who are been abused in silence (www.independent.co.uk/new).It was claimed that this special domestic court sittings can be modelled like those already in place to hear violence cases like rape charges. It was further debated that policies should be made to ensure that specially trained court judges and agencies are assigned to support young victims and their witnesses. High standards of careshould also put in place to protect victims and their potential witnesses from the accused (Ministry of Justice, 2009). In Britain, one of the Members of Parliament interviewed in past on this matter said "Children do not approach communication in the same way as adults and the same research also revealed that half of all young witnesses said they were unable to understand some of

the questions they were asked in court. This rises to 90% in those aged under 10." (www.independent.co.uk/new).This statements was also in line with concerns raised by Sir Peter Fahy, a Chief Constable of Greater Manchester in a news interview were he said the “police force have significantly improved the way that victims are treated but the fact that many victims do not come forward or if they do are reluctant to support a prosecution. This highlights another issue in the way our adversarial court system treats victims.” This are areas that still needs improvement in the UK judicial system for satisfactory decisions to be achieved in bringing perpetrators of abuses against women to book (Ministry of Justice, 2009).

Probation and prison services

Once a prima-facie case is established and proved in court, there is a likelihood that a custodian order or a prison sentence is meted out to the offender of sex crimes and other violent charges. Men are mostly perpetrators of these crimes than women. However, it is believed that it is rare for women to commit theseheinous crimes but when they do, these are minor or smaller offences that attracts shorter supervisory or custodian sentences (Neyroud and Disley, 2007). Katz, 2012). An insignificant number of females commit violent offences while it is too rare for women to commit sexual crimes. Gillian and Samson, (2002) pointed that where females are found committing such sexual or violent crimes against others are sometimes as a result of the female offender having a past record of victimisation experiences, mental health, drug, substance and alcohol abuse. Subsequently, a 2003 statistical report from the UK Home Office on reasons why offenders irrespective of gender commit extreme violent sex crimes was revealed that“a history of abuse is one factor among others contributing to a risk of offending and of a range of associated problems, including drug and alcohol problems, mental health problems and self-harm”. Certainly, in most sex crimes or any other domestic violent cases that occur around the world, men represents a significant number of offenders and found that most of the probation and prison services are fashioned to meet the needs of male offenders while the minority female of offenders seems ignored.

For instance, in the UK, where female offenders have primary caring needs, it is reported that there is a lack of general facilities for such child care needs (Flatly,

Kershaw, Smith, Chaplin and Moon, 2010). Further, Justice and Equality review on Women and the Criminal Justice System of 2005 annual review in the UK also revealed that “women on mixed sex probation programmes report intimidation and harassment by male offenders,a serious issue particularly for those who have a history of being abused by men”. Thus, it was established that some of these factors are likely to work against female offenders that can likely lead them to offend again. It was also found that there are no crime intervention agendas tailored to meet the needs of female offenders and help them leave a life contrary to a life of crimes against partners, family members or the general public at large.In other broad terms, the minority female offenders are generally overlooked in making sure that the corrective measures for them in custody are put in place like that of their male counterparts so that they do not re-offend.

Consequently, in Britain, a body called the National Offender Management Service are vested with the responsibilitiesof developing accredited and efficient domestic programs for all offenders irrespective of gender and prison sentences given in accordance to the Criminal Justice Act of 2003 (Gosselin, 2005).Robinson, (2007) further alleged that some of these corrective programmes were compulsory for all offenders (both male and female) and failure to attend or complete these agendas will result in the offender being taken back to court (Neyroud and Disley, 2007). Furthermore, Matczak, Hatzidimitriadou and Lindsay, (2011) declared thatthere are Home Office policy guidelines on how the probation and prison services can offer more enhanced help and support to female victims ofdomestic abuse. Furthermore, some of these policy guidelines also contains a framework that outlines the degree of guidance, support and direction given to all those involved in working with female offenders and women at risk of offending. The purpose of these Home Office policies is to enable the authorities to respond more adequately to those who have been affected by abuse (Matczak,Hatzidimitriadou and Lindsay, 2011).

From the foregoing, it is established that domestic violence against women remains a despicable crime that poses a lot of challenges to the criminal justice system. Harne and Radford (2008) rightly suggested that individuals involved in these domestic and social crimes needs to recognise that such actions are unacceptable. Subsequently, domestic violence against women has to be recognised as a serious

crime and perpetrators brought to justice. It is believed that women who are scared and not able to speak out or report abuses should be encouraged and supported by the criminal justice system. Confidence in the criminal system can also help disabled women and vulnerable young girls who are easy targets, to report cases of abuse. However, the gaps identified earlier in the responses of the criminal justice system to violence against women still poses a formidable problem in achieving the eradication ofhate crimes against women in any society that it is perpetuated.

In essence, this review suggests that violence against women is a threat of pandemic proportions that impedes physical, social, financial and psychological well-being of victims. In addition, reports on female violence has also shown that victimised women will often live in a perpetual atmosphere of fear. Based on these fears, there is a tendency for women to feel inferior especially when they are continually exposed to social norms that make them think they are inferior to men. Women in patriarchal societies for example may suffer abuse in silence and unwilling to report such cases because of the feeling that the police may not even take them serious. Therefore, more attention should be given to the lapses in the British criminal justice system used a reference case in this current review. It is believed that the system needs major reforms and the following recommendations are suggested.

Recommendations

As earlier argued, the response of the police is very crucial in dealing satisfactorily with violence against women. Certainly, inadequate responses always affects the confidence of female victims and likely to impugn on their trust in the criminal justice system as a whole (Edwards, 2000).Using the UK as an example, the police must always engage in proactive interventions in relation to domestic abuse especially in cases reported by female victims. This means that in all cases, police officers are required to take robust actions to assist victims by treating each case with a high level of professional empathy and offering practical advice that will make victims confident and interested in prosecutingtheir cases without any fear of being publicly stigmatised (Allen and Walby, 2004).

Furthermore, officers in the UK must consider reported incidences holistically byfocusing efforts from the onset, on prioritising the protection of victims and other

vulnerable persons such as children.Thenthereafter, gathering evidence in order to charge and build up a prima facie case that does not rely entirely on the victim's story or statement but also on all other credible witnesses and circumstantial evidences that are strong enough to secure a conviction (Cook, Burton and Robinson, 2006). This means that all crimes of domestic abuse should be investigated vigorously while there is a need for action to be taken at every stage of police responses.It was also recommended that for rape cases in the UK for example, there should bean allocation of specially trained officers to handle the severity and sensitivity of these cases.Mooney, (1994) was of the opinion that more female officers should be allowed to deal with female victims given the fact that theymay be able to relate to victims on gender basis. Female officers should also be responsible for support and liaison duties in treating cases of child and young girl's abuse. In addition, the report from the British Government Fawcett Society's Commission on Women and the Criminal Justice System of 2004 further recommended that the creation of sexual assault referral centres should be established to cover almost all police areas so that victims are reachable within the shortest possible time when such victims call in to lodge a complaint of domestic or sexual abuse. Public awareness campaigns, guidance and counselling should also be prioritised for the safety of women and the general public at large.

For the crown prosecution services in the UK, it is recommended that the CPS should appoint only barristers and advocates who have taken proper training in the area of criminal prosecution and legal specialists in cases of gender abuse. The CPS should also ensure that the legal firms appointed for these cases have a deep understanding of gender equality and diversity ethical codes of practice (Gosselin, 2005). Additionally, all other issues raised in the earlier discussions with regards to the CPS should also be addressed adequately. With regards Her Majesty courts, tribunals and special domestic violence courts, it is recommended that more of these specialist courtsshould be established across Britain so that such violent cases can be expedited in the best secure environment for victims. It is also important that all gaps and issues raised earlier as causing serious concerns when these cases get to court should be addressed properly. In addition, it is also important to mention that of the National Health Service(NHS) in the UK for example cannot be ignored in assessing how well they

provide physical, mental and psychological health servicesto female victims who have suffered adversely from abuses. Like in the United States, it was suggested thatmedical routine inquiry checks should be done on victims (Harwin, (2006). Also, the NHS specialised units should be trained to attend to domestic violence victims on a long term basis.

For instance, Matczak, Hatzidimitriadou and Lindsay (2011) reiterated how sometimes in 2005, the Department of Health in the UK published a hand book on responding to domestic abuse for health professionalscontaining vital information on responding to and caring for female victims, including women with special needs, minority or migrant women and disabled females. Notably, since the NHS is perceived as a public health institution that victims of domestic abuse are mostly likely to come into contact with at some point in their lives, it is paramount that the NHS is properly equipped to deal adequately with the sensitive nature of abuse cases and promptly identify victims with mental health problems arising from cases of abuse (Sundari, 2008).Matczak, Hatzidimitriadou and Lindsay (2011) also pointed out that professional health service bodies in the UK such as the British Medical Association, the Royal College of Obstetricians and Gynaecologists and the Royal College of General Practitioners have all well prepared and issued guidelines as toolkits to “identify, manage and deal with ethical issues in domestic violence cases”.

Furthermore, the Non-Governmental Organisations (NGOs) have also been found to play an important role in helping to shape domestic violence policies in the UK. Some of these NGOs like theWomen’s National Commissionin the UK identified earlier in this paper, represents one of the prominent bodies that engaged in feminist activism in uncovering various crimes against women.Some of these NGOshave even helped to campaign for policies that is aimed to reform laws, securing welfare benefits, housing provision and emergency assistance for victims of violent domestic abuses (Radford 2004). Some other very important NGOs in the UK mentioned by Matczak, Hatzidimitriadou and Lindsay (2011) that have been instrumental in combating female abuse are:“Action on Elder Abuse; Broken Rainbow; Citizen Advice Bureau; Domestic Violence Intervention Project; Everyman Project; Greater London Domestic Violence Project; Justice for Women; ManKind Initiative; Men's Advice Line; National Centre for

Domestic Violence; Prostitute Outreach Workers; Rape Crisis England and Wales; Refuge; Rights of Women; Standing Together Against Domestic Violence; Survivors UK Ltd; The Zero Tolerance Trust; Victim Support and Women's Aid." All these organisations were primary created for purposes of combating violation of the human rights of women by male sex predators while most work with government bodies to see that violence crimes are decisively dealt with especially in the UK.

Conclusions

In conclusion, it is proposed further that a wide range of control measures should can be put in place for victims experiencing domestic violence. Setting up of specialist public helplines across UK is also an appropriate step in the right direction. The legal system that combatsdomestic violence should be robust enough. There should also be tougher measures put in place by the police that provides a consistent and sensitive approach such as partnership working and information sharing with communities, local councils and other agencies of abuse cases while data protection laws should be strictly observed to protect victims.Other public awareness measures can be put in place to prevent domestic violence from occurring such as educating young people especially who were between the ages 16 - 25 and mostly vulnerable and susceptible to the risk of domestic violence. Also, there should be public campaigns and sessions in schools (e.g. primary schools, colleges, Universities) in the UK and educational institutions in various countries about the dangers of experiencing abuse and not reporting it. Men are noted to have higher statistics of being perpetrators, so more robust educative measures should be made available to young men by warning and counselling them about the criminal implications of been caught in such abusive tendencies against women.

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Shaping the identity nemanjic states Interpretation of Byzantine ecclesiatical rights

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Abstract:
Understanding Church-state relations in Serbia as an idea carried over from the Byzantine understanding of the doctrine of the relationship between the secular and ecclesiastical authorities. While the ruler carrier secular power, spiritual patriarch, the nation's indivisible and belongs to the state and the church, so that the question of relations between church and state resolved uniquely. On that basis set and relationship harmony and mutuality of church and state, as in Byzantium, and later in Serbia.
Archimandrite Sava using Studenica typicon - the first constitution of the Serbian Church - managed in the best way to highlight all that contain terms: church autonomy, self statehood, independence, identity.
Keywords: *state, church, Serbia, Byzantine, Studenica typicon.*

INTRODUCTION

St. Sava was fully aware that there is no national unity without unity of faith. The cultural development of all nations can be observed twofold elements: autochthonous, which are the result of internal development and long time transplanted elements which represent a more advanced culture, which diffusionist process of intra-social exchange "grafted" to the traditional. The degree of reception of this civilizational element depends on the progress of the cultural identity of a people. The right one side of popular culture and as culture is exposed to various influences, so it is right, depending on various factors, such as: • the church - to receive Christianity, and the state - that is its origin.

From the moment of acceptance of Christianity, slavdom decays into two major groups: the western - Catholic and Eastern - the Orthodox. West is subordinated to cultural ideas of the West, the eastern group of Slovenian culture is being assimilated East. To the west is accepted Roman-Germanic culture, and on the east Roman- greek. Community in the West broke up into several classes, which are significantly different

from one another, had their interests and managed by its decoration. Roman individualism led to the fact that the Romans quickly due to large freedoms guaranteed to man. Hybridization Germanic conceptions of collectivism from a purely Roman individualism leads to half roman-half barbarian understanding of the community in the form of feudalism, which in Western Europe until the new century dominated the entire public life. Under the influence of these two different principles, we find mutations in the understanding of social organization in Rome, enjoyed all the rights and freedoms of individuals and in the feudal West European country - privileged estates.

It had a different form refers to European East. Byzantium culture of newcomer nations (Slovene) assimilated, not subvert it was done on the second part of the old continent. That is why the social relations are different. East was unaware of the sharp class differences; he was representing a whole that is not permeated with the spirit ESTATES has already tied a ruling by faith. Stocks were not separate entities but parts of general community, underling the highest authorities in the country - ruling, which apart from the secular, she wore a religious character. In the east there is a mutation Byzantine interpretation of a state which is characterized by the idea of a symphony. Thus the Slovenian collectivism hybridization Roman-Byzantine individualism with a lot of Christian influence produced specifically experiencing a symphony in all countries whose cultural matrix was Byzantine. This resulted in a completely different attitude of the masses of these countries to the priest-ruler "caste".

On the basis of the spirituality of St. Sava, which is in no way separated from Byzantine Orthodoxy, which is adapted to the character of the Sava Serbian state and people, it's real unity of the state, the church and the nation. This close link contributed is much to be in Serbia faith developed as a major driving force of folk being. It happened something unusual, something that is basically a nearest real Christianity, and yet so rarely; in us, the church became a nation, a nation Church, the national-political sense.. Saint Sava through nationally organized church did its people worthy member of the universal Christ family. For Orthodox Serbian church has remained a characteristic that has not only survived Serbian medieval state, but received its national idea and to keep her awake until the resurrection of a new Serbian state in the early nineteenth century. What you should know and those who, recognizing the

interweaving of Serbian Orthodoxy and Serbian nationality, insisting on the pagan elements of the Serbian faith, thinking that this way denationalization Serbs, not realizing that it is paving the way chauvinism. There is no greater obstacle to national chauvinism of Christian Orthodoxy, that is nationalism St. "Our nationalism - will tell Nikolai Velimirovic - consecrated St. Sava, and acquitted him of chauvinism" [1].

Today, in civil countries emerged under the echoes of the bourgeois revolutions of ideas, there is a separation of church and state, but the Church in all Orthodox countries which received Christianity from Byzantium, has the role of some patrons and patriarchs and clergy in many ways represent the kind of authority that has a strong spiritual influence in society, as opposed to political or economic.

BYZANTINE JOURNALS CHURCH AND CIVIL RIGHTS

Roman law in the empire passed through many mutations, and Canon Law is regulate important areas of secular law, particularly in the area of family and inheritance of criminal law, thereby becoming nomokanon in Byzantium, which represents the collection of ecclesiastical and civil rights. Nomos is Greek law in general and canon means rule that sets the church in the field of religion, morality, discipline, life and ministry of the church in totality. In literature we find data that is the first collection of the canon emerged after the First Ecumenical Council [2] (in Nicaea) 325th when the rules of the Parliament were attached canons several local Parliament. Thus amended nomokanon will be called by the name of the then patriarch Photius, Photius nomokanon to 920 [3]. Parliament decision of Constantinople to become an official legal document for all Christian churches.

With the outbreak iconclasts movement gripped by a crisis that has for over a hundred years ago the Byzantine Empire turned into battlefield fierce infighting. Iconoclasm is spreading from the east as a result of the convergence of Christian principles with pure spiritual faith Christological heresy and sect contrary to the external religious rite, and the diffusion of religious beliefs of non-Christian religions of Judaism, especially islam. Impact an icon, a symbol of Orthodoxy, was primarily a deep struggle for cultural identity of the Roman Empire and Orthodoxy. So Byzantine both political and experienced a turning point in the cultural sense. Final break with the Roman tradition, the Byzantine, or Orthodox Church, broke acculturation influence of Islam and the

eastern sects, and thus be permanently identified as a conservative Christian church. This will have a big impact on all the Autocephalous Orthodox Church and the spirit of conservatism and isolation, influenced greatly on the containment of external influences, both Serbs and other Orthodox church people. Beside identification, while Leo III Byzantium starts with independent development legislation, and the final separation from the Roman legal tradition, acquires its own legal qualifications. Caused by general insecurity and the crisis has created a need for a body of law, which is called Ekloga. Ekloga is relatively short legal text of Chapter 18, which provides the most important judges of all the material from the civil law, criminal law and judicial procedure. It is, in fact, the adjustment of Justinian's legal traditions that is for all times remain the legal basis of the Byzantine life. Justinian law has become incomprehensible because it gave broad framework misuse and therefore the religious stained introduction states adopting "dear to god and useful for the community," [4] legal code. Starting of Justinian Roman law, Eclogue trying to modify it in the direction of "greater philanthropy", primarily under the influence Canon and eastern customary law.

The agricultural law was passed in order to implement social reform and the protection of free peasants. It contains provisions on the protection of private ownership of movable and immovable property peasants.

Maritime law is known as Naval or Rodos law. It contains provisions on naval and maritime trade, on the responsibility of the ship owner, the maintenance of order on board, on payment of the crew and the like.

Military law regulates the issue of military discipline and responsibility that derives from it. It originated from the need to regulate the obligations which the soldiers take over the state, a large number of those to which the law applied and implemented, it belonged to the Slovenian nations.

In the ninth and tenth century formed Prohiron, Epinagoga, Vasiliki, collection of short stories Emperor Leo VI, Romanos I Lekapenos, Constantine VII, as well as famous Fotijev nomokanon.

Prohiron (manual) is the first major legislative work of the founder of the Macedonian dynasty Basil I (867-886.), Was passed between 878 and 879.. Dedicated primarily to civil law, and only towards the end of the criminal law. The whole matter is

systematized in 40 head, and because of its simplicity and accessibility, for convenience in the judiciary and state administration. Prohiron remained in force until 1453.. He enjoyed great popularity not only in Byzantium, but also between the southern and eastern Slavs. In Serbia, the translation Prohiron entire Sava included in the legislation, but appears to be indirectly introduced into our medieval legal compilation, called unusual name - Law of Emperor Justinian.

Espagnole (Legal Guide, the way to the law) is other legislation Emperor Basil I. It has been conceived as a manual for judges. Composed between 879 and 886. and largely modeled on Prohiron, but with significantly improved systematics. The most important newspapers appearing in the regulation of institutions of public rights-position of the emperor and the Patriarch of Constantinople, and their mutual relation. Great legislative zest Basil I will continue 886-912. of his son Leo VI the Wise, by issuing 888-889. Six volume collections called Vasiliki (imperial books or laws). Emperor's book is the most ambitious, most systematic and most important codification endeavor rulers of the Macedonian dynasty. It was created with the aim of precanonization Justinian codification. This capital-based legal work contains all legal novels that were made from the sixth century.

Vasiliki in the coming centuries as the main source of Byzantine law and are totally suppressed Justinian codification. This source of invited judges and in the thirteenth century.

The last two significant collections of Byzantine rights Syntagma and Heksabiblos. Syntagma is rated in the year 1335. Thessaloniki. Almanac is compiled by a monk at Athos Blastaros. This collection belongs to the Church law, was well suited to the needs of his time, and has become a part of Dusan legal code. Heksabiblos – six books, the collection passed as part of a private collection 1345.godine, also in Thessaloniki. It was composed of Thessalonica judge Konstantin Armenopulos. It contains predominantly secular law, which most reflects the legal decision from Vasilika and later jurisprudence.

CHURCH AND STATE DESIGNED IDENTITY LAW RULE SAINT SAVA

In the history of the Serbian church and the Serbian state, church civil bridge important legal document is the work of the Holy Basin, legal books, which came into

force in the second half of the thirteenth century, a book with about 800 pages, which the Serbian language called Zakonopravilo. This kind of legal code points to a deeper reflection on its compilers, the main participant in the formation of such a code [5] – Saint Sava. As an excellent connoisseur political church events in Serbia and Byzantium, St. Sava was not all one what the legal code drawn up by the Serbs. In connection with this are also thinking about the characteristics of Serbian people, which has developed under the influence of Byzantine culture, build awareness of their nationality and shaped their culture. Sava freedom, skill and inspiration, "that the selection and distributes Nomokanon material, and synoptic canons Stefan Ephesian (VI century) and Aristin (XII century) interpretation replaces the full text of the canon or Zonara (XII century) comments that, when interpreting authoritatively extends certain Greek texts of their explanations, to shorten or newly- compiled all of that and other details make Nomocanon (Zakonopravilo) kind of codex" [6], which will in future centuries to have a decisive influence in shaping the identity of the Serbian state, Serbian Church and the Serbian people.

St. Sava is introducing Zakonopravila church and state devised a new legal system and the essential terms of content ... "show up at the light of the Slovenian language god inspired these books, called nomokanon, because before that were darkened by a cloud of wisdom of the Greek language; now he brightened, that is, interpreted both by the grace of God clearly shine, case away the darkness of ignorance and all reasonable enlightening light, and from son relieve. But every teacher, I want to say a bishop or presbyter, or other person who has a teaching act, if you do not know well these books - even the Seben know who he is, and perceiving depth in these god inspired book as in a mirror and you will see yourself as it is, and what should be to be, and others will be known and to learn .... " [7].

Social legislation in Zakonopravilo

St. Sava, with its Zakonopravilo radically expands the boundaries of social measures by introducing Christian teaching on social justice, the opposite spirit of civic norms and regulations of the slavery system in Byzantium. Time has shown that many of the laws of Moses serve national interests rather than man. Based on Zakonopravilo find out what was considered social need and that all solutions exist on these issues.

"Zakonopravilo regulate the care of the poor and the sick that were raised appropriate homes, protected persons with physical defects for detection duties of parents and children, aided widows and orphans girls redeemed prisoners and detainees protected slaves from the arbitrariness of masters, mercenaries from exploitation, debtors by loan sharks etc .... "[8].

Marital and Family Law in Zakonopravilo

Marital law differs significantly from the original model, the Roman law. Marriage shall be entered into the church rules, the church ceremony, which was preceded by an engagement. Divorce of marriage is possible, as the Byzantine Empire in two forms: guilt without guilt spouse. Families are increasingly protected by law and sets, in contrast to Roman law, on firmer legal footing. Zakonopravilo enabled the Civil Law (Greco-Roman) is implanted into the foundations of Nemanjic state, and that in the consciousness of the people entering teaching on engagement and marriage as something that is essential to the existence of family, nation and state. St. Sava scored that this right becomes The generally accepted and pressure customs that were previously existed. Sava influenced the regulation of marital relations in the Serbian state as it is in existing case law introduced changes causing the obligation of Christian marriage premarital examination, engagement and church wedding ceremony, holy mystery of marriage. The population, which is the most illiterate, through the priest knew of their obligations towards marriage and engagement. At the same time have a high awareness of the importance of reciprocal social obligations of parents and children, on the complex role of the mother, on the status of the wife as well as the close cooperation with the holders of civil authorities. The church took care of the founding of "honorable homes" [9] old people, slums, for the sick, for children without parental care, for outsiders and others. These homes had their administrative and clerical staff; movable and immovable property that is acquired through legacy. Business in these institutions mercy took place under the general supervision of the bishop, whose task was, inter alia, to "represent the poor, comforting the bereaved, defend those who believe violence"[10].

Inheritance law in Zakonopravilo

There are institutes of inheritance law, which were developed under the influence of customary law. Inheritance could be either based on a will (testamentary) or law (intestatic). In medieval Serbia a small number of provisions on succession, and therefore Zakonopravilo St. Sava is one notable exception. Zakonopravilo says that under certain circumstances, and the church could inherit the fortune! Man and woman are equal in inheritance. The church could succeed only if bequests.

Contract Law in Zakonopravilo

Contract Law was not developed in the medieval Serbian state, with regard to the consumption of the feudal economy, where production was not intended for the market, but satisfying their own needs. However, bearing in mind that Byzantine anthologies embedded in Zakononopravilo represent parts of Justinian codification leads to the conclusion that the legal system of the medieval Serbian arrived and some classical Roman law, civil law institutes, (purchase, loan, partnership ...)

Criminal law in Zakonopravilo

Criminal law is an area which Saint Sava in Zakonopravilo devotes most places. As of today, there are a number of offenses, and the sentence, which had not previously been regulated by any laws. Zakonopravilo first, and then the code often devoted particular attention to this area of law. Byzantine influence is great, but the common law find their place in cases where the Byzantine methods of punishment were too strict and unfair. Methods of execution of the death penalty, were mostly taken from Byzantium. These were beheading with a sword, burning, suspension ... From Byzantium also downloaded and corporal punishment, very diverse: flogging, amputation of ears, blinding, singeing his hair and beard. These will be the ways of punishment and to preserve of Dusan era, and afterward, some even to the First Serbian Uprising in 1804. The most common spiritual punishment was banishment from the church and not allowing certain people to come some time in the service. Zakonopravilo detail the criminal offense of theft: The penalty for those who might in the night stole something from the church would be death, and executed to by the beasts thrown into the pit. Who would steal from the church during the day and was captured, sent to eternal imprisonment, digging gold ore. Thieves who steal from large churches ,, "could not be sent to imprisonment, but the sentence was carried out immediately by beheading with

a sword. Those who were convicted of witchcraft and magic, they had no right of appeal to another court, but to anyone who found them, I could kill you right here. This represents a clear legal transplant from the Mosaic Law that says: ,, prophet and dreamer who force others to turn away from the true religion will be executed. If it is someone close, a brother, sister, wife or anyone else is allowed self-stoning. If a whole city engaged in witchcraft and magic, to burn all the men and cattle slaughtered by the sword "[11].

Here is what the law of Moses says about the fight: If men fight, and if one of them struck a pregnant woman so that she loses her child, but dies, the penalty will be a fine, and if you lose a child and he dies, shall be based on the principle TALION-around for an eye, a tooth for a tooth. There is a great likelihood that this provision in Serbia and applied. Slave, Jew can serve a maximum of six years and seven must be released, without redemption! This provision in Serbia is not applied consistently, because slaves were commonly sold several times between the different masters. If a man fell into captivity along with a woman, both of them will be free after six years. The murder of this law says who strikes a man and die to die. Whoever strikes his father or his mother, and that he may die. A liability for the damage that the animal, if in stings a man or a woman, and they die, in order to be stoned, and the master of the ox to free himself. But if the master of the ox, he knew that his killer and not kept him properly, will answer on the principle of strict liability, shall be stoned along with an ox. In the event that the slave dies, the owner not in any case will not match. There we meet the legal inequality, which is in Serbia was represented.

Customary law in Zakonopravilo

In Zakonopravilo Saint Sava is interesting to point out the institution of the old Serbian law which they resist the influence of the powerful Byzantine state. Non-transplant in Zakonopravilo usually related to canon, inheritance and criminal law. "It is perfectly possible to be a powerful legal system develop due to natural talent, without the help of transplants and that, even more amazingly, it can happen even in such a society such as that which generally adopts a lot of other civilizations ... Country whose laws are mainly incurred in the execution of another's rights, can sometimes prove itself to great originality " [12] in the case of medieval Serbia. St. Sava is going much ahead

of his time, recognized the need for codification of canon law, the first regulating this area, except for a few provisions which relate to heresy, he personally participated in the work of the monastery as abbot of Studenica, so creating a church of the same standards applied, explained and promoted. It is also critically supervised the implementation of concrete solutions envisaged in Zakonopravilo, and creating original solutions, adapted to the situations in the Serbian church and state, changed Byzantine canons creating a unique legal system that is still proud. Canonical sources are original, Saint Sava gives them a halo of divine origin, and in this case we can not talk about legal transplants, but can only be brought under the Institute of customary law.

RELATIONSHIP BETWEEN CHURCH AND STATE GOVERNMENTS

Its Zakonopravilo Sava has set the legal foundation Serbian state. The roots of the relationship between church and state Sava is the Christian teaching on the source and the sense of power that has already been developed in Byzantium. As the population in Byzantium and thus in Serbia, was predominantly Christian Orthodox faith, this fact had ensured that the issue of relations between church and state resolved uniquely. Due to this fact, the relationship between church and state was built up in mutual harmony, harmony and mutuality of church and state. To implement this system of agreement are most responsible head of state and head of the church. Christian teaching on obedience to authority is not declared in the servile sense as it was before, but a submission in a positive way. "For the elders did not fear to good works, but to evil. Will you turn that is not afraid of the power? Do good and you will have praise from the same[13]." Here we proceed from the fact that the ruler is "servant of God" for the good of the people. "If you do evil, be afraid, because it does not bear the sword in vain, because it is God's servant, an avenger, to pour out wrath upon him that doeth evil[14]."

Taranovski explains that there are several ways that the relations between church and state at the time widening. Caesaropapism is typical of Catholic countries, where the Pope was above the rulers of these countries. Contrary to this, the Byzantine ruler's power comes from the grace of God. The ruler was elevated to apostolic level, and the church is treated as a state institution. This ratio is called caesaropapism and characteristic was the Byzantine to the ninth century, Protestant countries and Russia, starting from the reign of Peter the Great. As a pursuer of Rome, Byzantium and took

his public law system, in which the emperor undisputed master; until in 375 he was the supreme religious leader, Pontificis Maxim, he convened, chaired and managed by the ecumenical councils which make the most important decisions about faith, and shall be construed and scripture[15]. At the time ikonoclasts movement caesaropapism was even more pronounced. After the defeat of iconoclasts (mid-ninth century), the Byzantine Empire will weaken the secular government and create some kind of balance between church and state, in which both governments complementary. Patriarch (the supreme head of the Christian East), as a vassal state, subordinate to the emperor, and this, as a believer is subordinate to the patriarch. This harmony is the third method of regulation of mutual relations (between the highest spiritual and secular power) and is called Symphony. Emperor has the right to convene, preside over and handled ecumenical councils for reflection on disscuse on major religious issues. He has the right to elect three candidates proposed patriarch. It is no longer over the church, but is treated as a guardian of the faith. On the other hand, churchyards are sacrosanct and the ecclesiastical court is independent. Orthodox decisions and rules of the holy fathers can interpret only the patriarch. Poor people may be under the protection of priests over merciful interventions that are often driven by the nobles. For the main, the patriarch alone could crowned emperor, he could anathematize, or prohibit the entry to the church. Emperor did not have the right of church teaching and selecting priest nor has it had any rights you may have had the clergy, which were a condition to exist caesaropapism. An important set of ecclesiastical rights contained Espagnole (after 879 years) Basil I, which in theory symphonies brought the laws of the Byzantine emperors[16]. In Espagnole cites in detail the duties of the Emperor to the state and the church, and then, and tasks of the patriarch as the bearer of spiritual power. "In the country, compiled from the parts and limbs like the human body, the largest and most important parts of the emperor and the patriarch, because it is for the soul and body of citizens peace and prosperity for the empire and clergy the uniformity of thought and consent[17]." Sava is its codification working to create a Serbian autocephalous church and put into operation the independence of their country. Opted for the theory of the symphony, which was originally constituted on the understanding of the Orthodox Church. In Zakonopravilo there was no place for those texts that challenged this view on

the issue of state and church relations; rejected all sources which housed the track "Hellenic evil." With 45 votes. Proceedings of the John scholasticism, where he covered and 6. Justinian novel that speaks of a symphony. "The greatest gifts of God among men, philanthropy given above are: the clergy and the empire (hierosyne te kai basileia), first to serve what is divine, and secondly, to manage and take care of what is human. And both outcome from one and the same principles (arches), adorn human life; because the emperors could not be anything as important as the honor of priests who are for themselves always pray to God. For if they are first in everything righteous before God if they had the audacity and the other proper and fitting to begin decorating items and towns (ten paradotheisan cars politeian), ie. state and those who are under them, will become a pleasant harmony of all that human life bestows good. And it will be, we believe, if we keep monitoring clerical rule (tone hieron kanonon) that the apostles - justly acclaimed and honored, and witnesses of God's Word (Logos) - surrendered, and Holy Fathers preserved and recited [18]". As of this Justinian text can be concluded, the clergy and the Empire are essential social categories; there by the will of God and therefore both have sovereign authority. Although they have different properties, the clergy - the supernatural and divine, the Empire - natural and human, they are not separate; they have a common source - the will of God. Work toward achieving a common goal, and that is well and happy society. To achieve this goal it is necessary harmony between them, which is possible when both categories subordinated to the same standards, the canons that were given by the Holy Apostles and preserved by the Holy Fathers. In practice, this symphony expresses the mutual assistance - prayer on the one hand and the government on the other. In this regard, the corrected provision 7. heads, their first championship in 14 Nomokanon branch "about it, you should not let the crowd a choice of priest," in "about it, you do not need the nobility or the crowd to elect bishops and asks whom he will [19]". In this way, the Sava is Zakonopravilo further emphasized the harmonious relationship between spiritual and worldly power holders.

Nomokanon, Zakonopravilo our saint rejects the idea of Eastern Papism, which enforces the supremacy of the Church of Constantinople, and that did not match either the dogmatic teaching about parliament as the highest authority of the church

authorities, nor the canonical doctrine of the equality of heads of autocephalous churches. This would jeopardize the position of the Serbian church, which met the basic requirement of canonical autocephaly - independent choice bishop, due to which the interference Patriarch of Constantinople was antikanon.

CONCLUSION

Orthodoxy, in the form of St. Sava spirituality, which are in no way separated from the Byzantine, substantive unity of the Serbian state, the church and the nation. This close link contributed is much to be in Serbia faith developed as a major driving force of folk being. It happened something unusual, something that is basically a nearest real Christianity, and yet so rare. The church became a nation, a nation Church, the national-political sense. Serbian orthodoxy, has become the epitome of Serbian national and state tradition. For the Serbian church has remained a characteristic that has not only survived the medieval Serbian state, but received its national idea and to keep her awake until the resurrection of a new Serbian state in the early nineteenth century. Orthodoxy means right opinion or belief properly. Our opinion and theologians believe that the multi-layered concept much richer than the notion of opinions and beliefs: it includes himself, automatically and in parallel, life, therefore orthodoxy as orthopraxy, true faith as the right action. Saint Sava'shood is Orthodox, but Serbian Orthodox style and experience, which means orthodoxy embodied in the history and in the experience of a particular people, the Serbian people. The very identity of Christians is being built with love of neighbor, then the love of the community of believers that. the ecclesial community. That's why people in the corpus of the Church really brothers, but not in the blood and the tribal sense, but close brothers in spirit and reality with Christ in Christ. Serbian people under the influence of Byzantine culture and Orthodoxy in the form of St. Sava, built his special national consciousness as a fundamental value, which was a factor of the genesis and existence of Serbian state.

Sava is set Zakonopravilo legal basis Serbian medieval state. Pored legal, this book has a remarkable socio-political significance. Sava guideline was thought that their work can pave the way to the autocephalous Serbian church, organisationally strengthen its foundations and bring it into line with independent status and the very being of their country, according to the principles of the sympony. In Serbia after St.

Save, Zakonopravilo will be valid as a holy, unchangeable law. For him to call later and Dusan's Code, and Prince Lazar in their charters (1380, 1382), as well as other legal acts. At the time of centuries of Ottoman rule in the region, Serbian Orthodox Church was the most important integrative factor in the Serbian nation and the bearer of spiritual continuity with medieval Serbia. The rights that the Serbian church received in 1557 (renewal of the Pec Patriarchate) enabled her to, in addition to the freedom of its activities, to become the headquarters of the spiritual, national and political gatherings and unity of the Serbian people. Zakonopravilo will just be one of the key links in the preservation of their national consciousness and identity of the nation. It confirms, among other things, by the fact that the dispute between them in these difficult times the Serbs used precisely Savino Zakonopravilo. Zakonopravilo was used in Serbia during the uprising, (Prota Mateja Nenadovic) at the time when the Serbian people at the beginning of the nineteenth century to begin with the struggle for liberation from Turkey and restoring its statehood, as well as the Serbian Civil Code of 1844.

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[12] Watson 2000, 118-119
[13] Romans 13, 3.
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Legal Protection of Woman's rights. The principle of Non discrimination, the Fundamental Principle of Rights

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Abstract:
The need for legal protection and chance equality between men and women is an essential element of harmonious human development. In the legal protection of one's rights aspect, the human being exposes the deepest and most personal features, tendencies, one accomplishes one's deepest wishes, all of them enlightening one's true personality. Legal protection thus ensures a total of rights and obligations, expresses a number of features and qualities of human personality, has an influence on a person's health and sanity and therefore it is the reason for which the majority of states have included this value amongst the ones that must be taken into consideration even by instrumental implementation of criminal law.
Keyword: *equality of chances between men and women, fundamental human rights, EU rights, Romanian constitution, morals, religion, culture and civilization.*

1. Argument:

The Necessity of Legal Protection for Women's rights: The recent publishing in Romania's Official Monitor of the law regarding the claiming of the date - 08th of May as the day of Chance Equalization between men and women having as an objective promoting chance equality between genders as an integrative part of social politics, offers me a need for reflection exposure related to the need for legal protection of women's rights, especially with an attention to the non discriminatory principle [1]. The need for legal right protection is an essential element of harmonious human evolution. Within the legal protection of one's rights, the human being may manifest one's profoundest and most personal features, tendencies, one may make true one's most hidden wishes all revealing the true personality. Legal protection may thus ensure an integrity of rights and obligation, gives expression to features and manifestations of human personality, has an influence on one's health and sanity and thus it is the reason for which most states have included this value through those which desirve being protected even through Criminal Law.

There are interests in most cases which are very realistic to cross the appearances with which some people surround themselves either willingly or unwillingly

in order to satisfy social conventions, and the possible damages caused by an inhumane approach of one's rights could most oftenly be more extreme thene other material or moral prejudice, they could even attract deep insane states which could generate depression and even suicide. Likewise, the extreme diminishing in the sphere of protected rights caused by aggressions to one's life can cause a dangerous isolation of an individual and even the intervention of mental illnesses. They can cause fear stages and nightmare generators. There might also exist situations in which one accepts the diminishing of legal protection. This consensus occurs mostly by given obligation of some conditions and if they are not respected then the one in central zone should be sanctioned, and a lot of the hurtful aggressions regarding personal rights including equality of chance and equal treatment, could also a tract a legal response in any of its shapes.

Legal protection of human rights does not solely respect a psychological objective of ensuring an individual that society takes care of one's cognition and courage in action according to the law with the social duties, but the certainty of such a kind of care contributes to the development of an individual, to the human and humanitarian spiritual progress.

At times, in personal evolution every individual has to submit to ambiental environmental influences, assaulted by various information, incoming a variety of pressures, some of them benefic and others dangerous, and one's voluntary retreat is essential for a clear reflection on all influences and a choice between the diversity of pressures and information amount. The need for protection, in our case of women's rights and the insurance of chance equality between men and women as an integrative part of social politics is determined as well by the lack of ordinary resources, extra criminal, of individual defense; as women's protection in such ways may be inefficient against some outrageous violations of their rights in chance and treatment equality, then it is up to society to interfere in order to protect with the help of Criminal Law against the tangibility brought to these rights. These short introductive considerations would not be enough for the true painting of a satisfactory picture without a short historical incursion regarding sexual discrimination. Why is it that only in 2015, the Romanian Lawful

Authority decided to propose the 8th May the Day of Chance Equality between men and women?

2. On the origins of Sexual Discrimination

2.1. Preliminary discussions

How comes it that after more than two thousand years the world is still infected with the virus of racial and sexual discrimination ? Grosso modo, mysoginism and racism are beliefs that justify the domination of one sex or race above others. The use of this terminology does not reflect the suggestion that men and women are identical. Or that racial differences are insignificant. There is though a great difference between admiting human diversity and building or toleratiog opressory systems based on such diversity. Unfortunately, humanity has proved a great sense of greed and inventivity in justifying opression. Many kinds of theoretical aproaches have been ellaborated envolving everything from cognition to art from economics to law in order to rationally point out the malfeasance shown towards women and minoritary groups. In the new current society, all of us are members of minoritary groups. If we do not admit to this fact, at both a personal and public level we might find ourselves cought in our own hateful future. Regarding myself I am an unconditional feminist partisan, as regarding mysoginism, I cannot even remember any moment of my own passing to a mature state in which I have not considered women to be equal with men, in all viewpoints that mater today: knowledge, courage, energy, humour, creativity, responsability and persevverence not to mention the so called feminine qualities: warmth, empathy and good wil for care and protection. I thought thus especially while I was writing the article with the two women in my family, my wife and daughter as my mother recently passed away. Through time I had no divergences with organized feminism regarding various requests or tactics however the general fight for women's rights had always seemed just to me as a pressuring factor towards a more decent and humane future for both sexes, as restrictions on women have always given an ability to implement more correspondent restrictions thow maybe less observable towards men themselves. Historically speaking, with some concrete exceptions, women through all cultural backgrounds had been dominated, oppressed, violated or at least controlled by their men and we are not willing to end the debate while atributing the masculin domination- to God or genetics.

We live in a culture where masculin domination in one way or another can be observed on a daily basis. Most boys gain notions on their superiority even since childhood.

In my case things have changed a little though the job of weaponry to which I took since a very young age is thought to be an exclusively male job and it could have brought me to a different perspective, my feminist attitude is atypical determined by my personal experience with four remarcable women. In my first years of age I was living with my grandparents in a normally considered family for that age. My grandmother, a simple woman from Muscel lived for close to a hundred years and she was strong enough to combat the hostilities of that society which she faced for a while without my grandfather, her husband. She was very brave. My mother was kind and obedient but so intellectually curious that after ending her senior school studies and became a tutor she dedicated herself in full to her profession and for nearly fifty years the village people, her ex. students called her Teacher till the end of her life.

Then for years and years, the woman most close to me and from whom I learned quite a lot is my wife - my partner, redacting technition, my colleague and criticist.

She is a nurse. She can understand a medical text, she can fix a catlle, she can knitt a jumper, climb on a stage and talk about the syndical gathering she can cook an impressive meal, fix hair, to take care of a series of houses, gather apples as well as understand medical legislation. Now I have the pleasure of looking at a fifth woman- my daughter growing to a mature state. I cannot forget the fact that in my life there were some powerful men as well, my grandfather, my father and my uncles. None of them had any timidity they were role models for me and I respected their word. They thought me anything a man has to know: military work, football, woodwork, how to fix a door etc. They made me get into politics, encouraged me to read the paper and gifted me with plenty of things. But now however, talking about women no one may ever convince me of them being inferior and I have not been made believe in the absolute supremacy of the male and the normality of a sexual division in workforce.

2.2. On the Origins of Sexual Discrimination

Even today we face proof of mysoginism in sexual discrimination regarding workforce, in legal codes, in credit practices, in tendentious jokes on blonde women. We see them in the stereotype of racial, national or ethnic groups, and then, sectioning

these, we find a hypothesis of masculine superiority. Where does the male supreme system come from? Maybe from the fascinating anthropological speculations. And when clamming that male supremacy is not genetic we do not say we have to ignore biology. It seems normal to suppose that since women give birth to children in the first human societal forms they acted in condition to an incorporated disadvantage regarding men. When we passed on from simple food gathering to hunting, it is clearly thought that men could go on faster, they could stay away from home for a longer time, they had more complex muscles so it was more or less normal that men had to hunt and women just to gather. Hunting in its own self might have promoted these features of pray animals and coercitive capacities which offered men a huger social empowering above women. Along with these we might also add the idea that men have more reasons then women to ask for a greater number of children and the grater the pregnancy rate the less occasions do women have to go on a power conquest. Both men and women were in need of children to take care of them at an old age when they were unable to survive on their own. Obviously, children were linked to their mothers. However they being closer to their mothers, the old men in the tribe stayed vulnerable and thus they manipulated the boys to stay away from their motherly link and become in a rather more male way of acting. This thing helps us explane a lot of puberty rituals related to boys, the passing initiation, secret rituals between men etc belonging to a lot of primitive communities however they are only speculations which do not answer to the question of how did the male supremacy start and how comes it that it is still up to date.

Our scientific research objective is not based on the reason for which mysoginism has not yet disappeared even if we are facing important changes in technology, culture and more other domains however it consist in the ensuring of legal woman right protection judging the times of industrial revolution which still kept a reference to biological identity still offered a new feature to the relation between men and women and the role of men and women were redefined in a deep way, predicting the future feminist movement.

2.3. Feminist Movement and its link to Female Emancipation

Feminist movement had a starting point on the Female Misticity [2] and it contributed to a start of a modern movement which soon alike all successful movements

had spread in new shapes of which initially no one thought. Thus a nucleus of full generations of intelligent women way too energetic and ambitious to only sit at home and do knitting with an ended college studies mostly aged over thirty had formed a significant part of the movement, mothers whose children were growing up into school students.

These women thought to be equal with men and started attacking the fundamental structure of society roles as a hole. Therefore the modern feminist movement engaged in a fight for change in definitions and known roles promoted by the industrial revolutions is part of the huge historical movement till beyond the traditional industrialism and just as all social movements it had its dose of courage, tactic errors, extreme demands and confusion. As all social movements it had to either decade or change state. But just like the act for human rights it became part of a massive human criticism as a result to industrial revolution and it helped clarifying the social problems fulfilling thus, the complex female problem revealed by religion which started indicating the way towards a more increased legal protection of women in a more amplified situation as we shall further see.

3. Female Issue in Religion

Religion offered rights and privileges to women which she would have never enjoyed in other constitutional systems. This subject may only be understood when the issue is holistically studied in a comparative way more than in a partial one. The rights and responsibilities of women are equal with those of men, but not necessarily identical for equality and simily are two different things. This different issue is to be understood as man and women are not identical but created to be equal. It is nearly impossible to ever find two identical men or women [3]. The different aspect of equality and simily has a great importance for equality has to be righteous but not such as simily. People have not been created identical but equal. Thus, we cannot imagine a woman to be inferior to a man. There is no reason for which we may suppose that she is less important than he is just because her rights are not those of him. If her status were identical to his she would have only been his duplicate, which she is not. The fact that religion gives her equal but not identical rights, proves that to her is given the deserved importance and she also benefits of admission of her independent personality.

4. The woman's status in a religious concept does not stand as a problem and the attitude of believers shows that a woman is at least as essential to life as a man is and that she is not inferior to him

Religion does not take a women as the seed of evil or a man as her dominating master and to whom she has to surrender with no other option. Furthermore religion had never doubted the fact that a woman has a soul or not. No believer had ever doubted the humane status of a woman and the fact that she has pure spiritual qualities. Even in comparison to democratic nations in which we find that women are not in such a pleasant state. She does not have a status to die for. The woman has to work hard in order to survive, and at times she may have the same job as a man, but gets less paid. She has a privilege of enjoying a specific type of liberty which in some cases may lead to libertinism. In order to reach the place that she occupies nowadays, the women had to fight hard for decades and centuries. In order to win the rights to education and work women had to undergo a lot of painful sacrifices and give up their natural rights. Still, despite all ill sacrifices and painful fights, they did not get what God stated in his rules.

Women's rights in modern times have not been given in a voluntary or faithful way. Alass she managed to own her status by force and not by natural conscentment. She had to force things and different circumstances were of help. The deficit in mail workforce through war, economic pressures and demands of industrialization had forced her to leave her home in will to work, study, fight for her life and seam equal to the man as well as compete with him in a battle for life. She was forced by existing situations and in exchanged she herself forced to defeat barriers gaining her current status.

What religion stated for a woman is what is suitable for her nature, offers her security and protects her from embarrassing and unsafe situations. We shall not develop the subject of the nowadays status of women and the risk which they take to make a living and not to analise the hard struggle and the failures through which we have as a result of the so-called legal woman rights even if they are arranged in a righteous lawful protection established with the aid of legal instruments with an international regional or national objective, and the invented gender concept has major

difficulties of the interlinguistic equivalence due to the fact that each word belonging to a language is resulted by a number of experiences shared by a community. Likewise while showing the semantic informational structure there should be taken into consideration a multitude of elements of which we may remind the context of situation in which we expose the process of communication, wordly formation and the derived meanings from the same root, also relating to the specific conotation of the given word for each language, nation era or even the individual. May it be therfore observed that semantic spheres of equivaled words at dictionary level do not always coincide. Likely, a difficult problem states for the polisemantic legal vocabulary and the special categorising of these ones represented by contrary meaningful words as in semantic polarity or contextual oppositional capacity such as antonimes - that appear quite often in the common- law system thus being traps for the interpreter. If the propper meaning may at times show a difficulty in transfer, the conotation is even harder to show. These being said, it is important to point out that the legal meanings can only be legally defined, and the difficulties we find in attempts of transposing them into a different linguistical community language is owned to the fact that the latter did not go through likewise legal experiences with the ones of the community which made that particular text and which would have ultimately taken to the creation of nearby corespondencies.

In the Romanian language, the legal words will unavoidably be carrying specific conotations, thus some keywords for the defining of equality in chance as a system such as gender, are equivalent in translation with words that have known meanings in the national legal system. These pairs of words- established according to translations- thow having common meaningful features, which allowed, actually their equivaling have meanings that are differently expressed in connotation, being mostly the object of compensatory explanations of the unavoidable loss in transfer. That is why we shall study the gender concept in link to other close concept from a legal perspective only.

4. Gender concept in link to other related concepts

In legal doctrine it is righteously stated that the correct explanation of the meaning regarding gender concept it is in order to help for a better implementation and deffence of the right to equal chances which may be possible inclusively by incriminating and punishing facts which bring tangeability to this value. It is known that

each individual has an own representation on non discrimination according to the features and particularities of a concrete being, as well as according to the rules, traditions and regulations which exist in a society at a given time and which an individual choses to respect. Beyond the individual particularities of a person the gender concept also features some general claims which make it different than other related concepts. Under this aspect in special doctrines we may distinguish between gender and other notions such as equal chances and treatments, nondiscrimination, differences which show a major interest for a full understanding of the gender conceptual content in relation to other concepts which it oftenly faces. Thus a being has firstly as a subject to social relations a social life making one capable of developing social activities including respecting the responsabilities which one has for such an activity. Social life is made of a system of relations which place individuals in a diverse and uncombative contact with their fellows and likewise it demands a way to way interaction of individuals and collective groups. Social life, in its'complexity means both existing rules which disciplin social relations obliging a human being to have a compatible behavior according to general interests in one's social life development. Likewish from the sphere of social life we may also take into thought cultural sport religious professional and cooperation relations etc. A normal development of social life is the base to social order which means the lack of disorder (disturbances, manifestations, social vindicative or contesting movements) social order would not be anything according to some authors appart from a state of balance, managed with the settling of all elements, which enter in their own place while making social lifestyle [4].

Regarding social life, a human being may also have a private life which includes all kinds of domestic actions (eating, dressing, sleeping having spare time activities) as well as relations with close people and friends with which links are only happenings.

Gender also refers to family relations within one's family and between known families. A part of chance equality is also reflected in professional preparing activities in specializing, training etc and it demands everything in which an individual may be interested including physical and moral integrity. It also stands as a right so that one may establish and develope relationships with the ones close by, the right to protect and reveal a formed image and to be in a healthy environment, the pshychological freedom

of one being, the guarding of healthy secrets above all over the personal concepts opinions and beliefs as well as regarding the way of evaluating another attitude. The gender concept also includes the business relational domain, professional to one subject, meaning everything regarding an individual only apart from community and state. This concept also includes family relations, as well as those related to home life as they had not been included in the sphere of previously analised concepts.

For the EU Court judges, chance and treatment equality is a broad concept with no exhaustive meaning. This concept is especially broader than the one of non discrimination rights and it refers to a sphere in which every person may freely develop one's personality. These social values mainly are cared for through extralegal ways or even legal manners extra criminal, however they might as well be defended by the add of criminal law if the violation of such rights would be a casualty which may not be efficiently combating through other legal rules. The chance equality between men and women may be a multitude of personal manifestation, even if it is seen as a distinct individuality, different then all others , and even if it is regarded as a part of fundamental relations with others and it may as well be reflected to other main and spiritual activities of a being when they are controlled by the person in self, meaning developed by the subject with no external influence, and without any social interest. The gender sphere also links to the developed activities for health care and physical development, meaning those activities which contribute to personal development and fulfillment.

It is known that human spiritual progress stands as an inner incursion, a deep reflection in which a human being feels the need of peacefully thinking how to freely choose between the acting impulses and deliberating over the reasons for and against any decision, to evaluate the various influences of the surrounding environment as well as filtering through ration the information of reality. Under this aspect, chance equality between men and women appears as an internal zone in which social environmental pressures and individual reactions combine and it presumes to be including a whole of activities affecting a righteous owner of affect his relations with a third part. This right refers to human actions which belong in their natural way both to the intimate sphere limited by the private one as well as to the social sphere. In order to make the continuous profe of the non discrimination right, a beneficiary has to be financially

independent towards anyone who could be interesting in stopping this right. Such a condition is not realized if one asks for a loan or a job, condition in which one may not be allowed for a sexual discriminatory reason. These examples show proof that when there is lack of material resources, the right to equality, with its sides cannot be functional in a complete and absolute way and if they are insufficient, its content is drawn to such lessure that it loses the quality of a fundamental right, conditioned by its own accessibility for every member of society. There is a logical question to mind if the unapearance of material conditions favorable to the claim of a right to equality does not ruin the right itself and if it is fully applicable if there is a material existence deficit. Definitions of various authors to the gender concept have been influenced by technology as well as feminist movements.

Regarding the social sphere, multiculturalism just as the diversity of lifestyles have brought together in the same public space populations and groups with practices and sensitively different options. As modern individualism has mantained or even amplified its grounds, all these processes have multiplied the problems linked to gender concept and they have revived the rows in which we refer to the way that the rights to equal chances between men and women should be understood. That is why the sphere of non discrimination has different approaches not taking control in culture and mentality watched by aspects belonging to social particular groups as an individual status of one single person. Which would be the criteria that has an objective of evaluating a manifestation as belonging to the gender sphere? A first criteria would be the place, the territory in which various actions take place. If these were in a strictly intimate place, someone's residence, without the participation of other witnesses apart from family friends there may be thought that it was a particular manifestation. According to this criteria referring to place various other manifestations would be excluded from the gender sphere: talks, activities which took place in public areas like the street or in the park, although they should not be niglected in a strict way if a talk takes place in a park however the participants whisper the words. Social scientists saw that what is typical for a German citizen is the fact that he prefers more discrete places and to have residences either surrounded by high fence or placed where no one may see them whereas on the

other side the French citizen would like to talk in public spaces, prefers coffee shops, restaurants and parks.

A second criteria may be represented by an individual and social status. Even if everyone has a right to equal chances, the equality sphere is proportionally related to the individual's range of celebrity. People who benefit from being famous allow to be known even through publicity regarding their private view on life (actors, sportsmen, politicians and singers) unlike the non public persons. If in case of a specific category of population the right to non discrimination is becoming more uncertain in other places it becomes more believable. Thus we may not talk about pretending to have a hidden rather than a public life. Thus the sphere of equality in chance rights is less broad.

A third criteria would be related to the type of manifestation no matter the place where it happened. Regarding this criteria there must be proof that the manifestation in a way had a so called defined character implementation which is rather more hard to prove with regard to a public manifestation, in this case the objective may easily be sued especially if confidentiality does not appear as evidence. Into evaluating the proposed objective there has to be taken into consideration the cultural degree as well as the particularities of each population because it could be that an action in one social group can be perceived as an usual manifest and in another group something seen as intimate and personal or the other way round. Evaluation differences alike may exist even linking to a national mentality, thus, as it had previously been said the German nation is assigned to moral stability which may not be likely found in the definition of French, Italian or other nations which may also damage the correct judgement in chance equality. The gender concept according to a consequent jurisdictionality of the EU Human Rights Court also extends to personal identity, the physical and psychological condition of a person and mostly, towards the development without external interventions of the personalities linked to each individual in relation to other human beings. The sphere of equal chances between men and women in the European legal conception refers to the physical and moral non discrimination of a human being and in a specific way one's right to establish and develop relations with the ones close by without discrimination. Thus there is no principal ration which may lead to concluding in exclusion of professional gender activities because the majority of humans have the

possibility that they may fix social interhuman relationships at work. It is also admitted that there is a non discrimination law, a common European fundamental right, being assigned to the disposition of the EU conventional charter and admitted by the constitutional traditions of member states. Although according to the convention in an ideal way, all citizens of the EU are equal, still on the other hand the conventional key being unity in diversity it is to be admitted that the conventional disposition are not a complete harmonization factor but only a closure of care and guardianship standards of common fundamental and European rights. This closure allows the existence of a diversity in jurisdictional solutions of member states. If the fundamental right as the right to equal chances between men and women is stated in the EU Human Rights convention, the concrete aspects will be taken care of by the EU human rights court which decisions are a responsibility for member states to respect in a true guardianship modality.

5. Care for the Equality of chances between Men and Women methods

Mainly the care for chance equality between men and women is ensured through moral conventions, through polite acts as well as social rules. We could as well imagine a such type of care with the aid of Criminal Law for non discrimination? We do think so obviously considering the unrighteous facts which would violate the wish of women to be equal with men and not to undergo discrimination, a violation which may not be efficiently oppressed by extralegal methods. In specific literature there had been discussins both concerning the legal nature of the right for chance equality, a right known to have a jurisdictional origin. In an opinion it is stated that it is an extrapatrimonial right, which may add to a category of rights different from real and credential rights while another opinion states this right to be regarded as a subjective and nonpatrimonial right (without economic content, without being financially considered). Paul Roubier stated that this is a subjective and patrimonial right because only patrimonial rights may be qualified as subjective [5]. In another opinion which could be embraced and would be in deep link to jurisdictionalism it is shown that this right behaves with attribution both in a moral and intelectual way, as well as in a patrimonial circumstance. Also this right from a historical viewpoint, has been born with an

extrapatrimonial meaning, in order to progress towards market economics thus having patrimonial elements added.

Social order cannot be done only by applying collective rules as necessary and benefic for social cohabitance. There is also a need for a justice to evaluate human behaviors in the light of these rules and to decide which rules have been respected and which not, and in this last hypothesis it may decide which kind of attitude does the social group have to assume regarding hostile members. The social cohabitance rules are rules of behavior, normal and elementary as part of everyday life and they reffer to thhe relations between humans in their development in relation to the morals and principples of society. Many of the moral rules by being intaken by lawful reglementationn become legal rules, which are ensured to be respected more than by the force of public opinion by also the constraining force of criminal rules [6].

Humanity had always felt the need of establishing behavioral rules and regulations which may establish the relations between social group member relationships. These rules and customes had established human behaviors in society, in their families, with their neibours, with their friends being generated by social existence and the necessity of peaceful relations and cooperation between group social members which was an absolute need for an isolated individual may not face the hardship of social life. Regarding historical needs starting at one point some of the cohabitance rules also became legal laws as their violation had been resulting with a sanction and were stated by an authority more independent to society with the competency of adding constraint for the issunderstanding of rules. The determined attitude against various manifestations which brought a touch to the gender sphere of an individual had represented a moral obligation of every citizen, a position manifested by the disapproval of such acts, which slowly contributed to the shaping and developing of new human behavioral features, to the uplifting of their need understanding level towards woman dignity guardianship [7].

If in a first instance, gender protection was taken to moral rules, slowly as the demands of social groups grew there had been reached a point of extra criminal lawful protection which later on lead to legal constraint. Thus if there was a time when the legal protection of women's rights was ensured by polite moral or educational rules

which asked the ones taking part not to impose their presence in any way had one not desired for that with the consequence of excluding the hostile members from the groups of friends or relatives, slowly society felt the need to use legal rules in order to ensure an individual the respecting of a right for equal chances between men and women. Firstly extracriminal rules had been implemented which lead to the attributing of criminal constraint.

About the extracriminal legal protection of chance equality we may firstly cite the disposition of the EU Human Rights convention as well as the dispositions of [8]Article 16 of the Romanian Constitution with the side name of rights equality.

Thus the Romanian Constitution cares for chance equality between men and women as it was stated expressis verbis of this principle in the sixteenth article and the second paragraph of the Constitution. The fundamental Law under great humane principles also reflects care towards humans and their needs, guarding in both ways women as well as men. The responsibility of public authorities obviously refers not only to Romanian citizens but also th foureighners and residents in our country. Likewise in article 28 paragraph 1 the Constitution refers to legal ways to social economic and cultural methods through which our state ensures the manifestation and development of human personality understood in the way of unconditional and unlimited respect for one's life as well as physical, psychological and moral integrity. Not taken into respect these responsibilities may atract applying implemented rules of the Civil or Criminal code. Civil law protects personal freedom including the great number of rules regarding reparing prejudicial acts if it thus follows. Therefore according to the Civil code article 61 with the side name of guarantying the rights of humab beings it is stated that: “Life, health and physical or psychological integrity of every person are guaranteed and likewise equally protected by law , the interest for human goodwilling life development has to be primordial over the unique interest for rights of science or society”.

In specialized literature there has clearly been mentioned that the right to non discrimination is a subjective right which by simple violation may lead to an action in which there might be a request for material fixation even if there is no apparent damage. Non discrimination as a fundamental right it is also recognized by the general UN gathering which adopted the Universal Declaration of Human Rights in whiches content

there may be found the Fundamental Human Rights, explicitly being stated that no one may be part of a discriminatory act. The need for lawful fulfillment for chance equality is also pointed through other normative documents such as the International Pact regarding Economical Social and Cultural rights, as well as in the content of the International Pact related to civil and political rights (art. 6-16 and 23-24). Likewise the International Declaration of Human Rights, the EU convention of Fundamental Rights and Liberties.

Another document which explicitely points out the protection of rights for private life, next to the mentioned reglementations also to be found in the Lisbon Treaty. Once the treety entered in function by 1st of December 2009, the Fundamental EU charter gained compulsory legal force not only for institutions and actors of the EU, but also for member states of the EU, when applying EU law.

According to Art. 6 of the EU Treaty paragraph 1, the EU recognizes the rights, liberties and principles stated in the EU charter of Fundamental Rights. In the second title of the charter content there are stated the liberties of which EU citizens benefit. Thus in article 1 a. it is explicitly stated there has to be a right of equal chances between men and women.

There may also be stated that Criminal law is and has to be the las resource (extrema ratio) used in an adequate manner by the protection of chance equality. The social need which imposes such protection has to be, therefore, more deep profound and constrainious, obliging thus the authority to appeal to combating ways more sharp and with a more strong influential degree of the citizen behaviorism, susceptible of ensuring a more efficient care for individuals and society. The ways of stronger influencing such as the Criminal ones are used by the lawful authority both in order to ensure a more drastic sanctioning of behavioral rule violation in different other domains of social relationing, but also in order to punish deep violations against some values which are not protected by anything other than Criminal law; in all cases Criminal law is not used in any way appart from as an exception or a last case solution, there and then when other methods prove themselves useless. The existing incriminations in Criminal Law regarding facts which bring a touch to the principle of non discrimination is to seriously stop the ongoing of these facts and to thus reveal a powerful general

preventory action. Thus our Criminal Law stands as an important and efficient instrument for the protection of women's rights, its specifical methods contributing to combating these facts which hurt the chance equality attempt. However the interventioon of Criminal Law has not a main objective more as a helpful side tool. Criminal law interfers against the touch of women's rights when such facts present a degree of social danger, which is related to the nature of infractional behaviors, the actual hurting or the stage of creating danger attributed to the places and condition in which the fact had been committed thus as it has previously been stated, the lack of other methods for such combat justifies the application of specifical Criminal Lawful constraint [9].

The facts directed against chance equality through their degree of deep damage and the consequences cannot be differently considered apart as negative actions stating a social danger and woonding or endangering the exposure of an individual woman's dignity through the incriminated actions. These facts through their degree of damage and manifestation bring a touch not only to the private life of a person taken solely but also to the relations regarding to peaceful interhuman cohabitance because such facts also damage the existing legal order. Thus in ensuring Criminal Protection for chance equality the lawful authority shall also concentrate on everyone for there is a need for security, a need which obliges each individual to find a refuge in which to feel safe from any aggression. Incriminations which protect women's dignity correspond to the tasks of our Criminal law of protecting this gender sphere of people. Under this aspect it is to be taken into attention that stating a punishement does therefore show a powerful act of general prevention regarding refracting or doubtful elements capable of comiting such crimes. Moreover the general preventory action can also be realized by effectively applying punishment over the persons who committed crimes, because this too will amplify the influence of preventive education regarding those who are doubtful in their own condition. The special act of prevention states for an effective and concrete showing of punnishement regarding those persons who stay unsensitive to the act of general preventing and had committed such a crime and thus sanctions have to lead to the once again education and integration of those who had done wrong. In order to make the influence true there has to be established for a proportional punishement in

link to the danger shown by the fact and the criminal for only thus, the one sentenced will be determined not to futurely commit such a crime. Under the efficient aspect of special prevention punnishing has to be looked at under two aspects : punishment is only a tool of special prevention for it determined the sentenced one not to commit another crime in fear of consequences which one should suffer, which is equal to a strictly lawful equivalence and on the other hand it determines the sentenced not to commit other criminal facts of the own will in respect towards the law, in this situation special prevention is the expression of moral good will as proof to a deep change in the consciousness of the sentenced. Even if the special preventory action is more oftenly based on fear of punishement more than a transfiguration of the criminal's conscious values, society is satisfied if statal laws are respected at least by fear of punnishement and may restrain from such facts.

6. Instead of adding conclusions: Which may be the future of equal chances between men and women?

Which is the possible future of men to women relations? The new civilization which fractures and restructurates the social order in a more differential way will oblige us to witness only one dominant configuration of relations between men and women or will it be a diversity of divergences of roleplays - with a lot of different communities each of them with its own values and role structures. Instead of having a country in which people are more or less forced to integrate in the family nucleus and belonging to a culture in which words like old girl or bachelor have a negative connotation, or in which the lack of children is an equivalent of unfertility- I forsee the movement to a period of time in which we will see a florishing and acceptancy of various different family structure. No matter the fact that we are talking about the electronic villa in which mome dad and the children work alltogether or about a family with two chareers or a mono parental structure, a common or a number of other specific shapes, people will live in such structures which shows a more amplified variety between men and women and their relationships compared to what we see nowadays and this diversity will also include mysoginist behaviors [10].

Therefore we might imagine the survival of communities devoted solely to male values- Mormon communities for example, and other religious traditionalist societies. I

do not suppose they might ever disappear. However do we also believe that we shall see communities in which relationships between the two sexes will bi frighteningly traditionalist. If the theory of diminishing masses is correct, then we have no chances off looking at only one dominating model. Despate the obstacles encountered in an ooverwill to succeed on the workforce market, with hostile governments regarding wommen's rights, with disorganised and unsure feminist movements there are reasons for a perspective in an optimistic way. Firstly, at the moment we are decisively tearing apart from an economy based only on physical force, towards one which is fundamented on mental power- which eliminates a crucial disadvantage of women. Then there is a possibility that women shall have more control on birthrate- programming pregnancies and their numbers- more then ever in history. And moreover we are restarting to add work at home so that even home staying women who willingly or unwillingly are at home may if they like, take part as well in exchanged economics working directly from home. Likewise the western young women of the new generation at least and even the most conservatory ones, think they have a guaranteed area of places that are chosable which were never in the benefit of their mothers and grandmothers. They are more independent and this phenomenon may also be observed amongst younger men- of whom at least a small part rebel against the old sexual roles which offered men the dominant title, however they exiled him in the position of moneybringer and had taken away the pleasure of emotional links with their children in their growth and development. Thus, we nowadays see young fathers taking care of their children and babies. Spme of them make this in a permanent way so as to allow their wives to mantain a job or to create a professional chareer. Thus, I will end with such opinions: even if I do not expect future society to throw away mysoginism and to stop cultural features which survived for thousands of years in only a few decades; eventhow I may forsee male dominance in hi- tech societies even thus II believe that the fundamental will of actual changes favours a rather more valuable equality between sexes. Both men and women had changed. New values appear in sight together with technology and changes in economics. I might be too optimistic. But I think that now for the first time we forsee a new civilization which acts in order to historically free the women and not to ground them [11].

Regarding mysoginism the new civilization will propose a new set of social attitudes and relations instead of the ones which persisted amongst all the technoeconomical waves of change so that ethnic discriminations as well as religious and of other natures are lastly rooted in the need of individual evolution of finding in one way or another a group identity. Groups which managed to create a degree of cohesion had survived, probably way better than the ones that did not especially as we have to expect a greater variety of groups and identifications. Moreover in the rhythm of current social and cultural change citizens intake or outthrow componences of their identities in a more faster timing and everything implements in the older and mor profoundly fixed stratifications of rasial and ethnic identity. Therefore because of all these reasons, towards the above mentioned we think we are not wrong when stating there will be a change in quality in this case, the oldest of them male dominance will turn to female dominance. Are us men able to accept at least in only an idea that women will rule us just as we said in our very funny jokes that us men are the head but the neck which controls the movements is the woman?

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I. Ifrim, the above mention page 31.
Art. 16 Equal Rights
1. Citizens are equal in front of the Law and Public Authorities without privileges and discrimination.
2. No one is above law the public functions and dignities be them either civil or military may be occupied in lawful conditions by persons with Romanian citizenship and stable residence within the country. The

Romanian state guarantees for equality between men and women in order to occupy the above mentioned dignities.
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Exclusion of a member of a political party. Unconstitutional provisions of the Law on political parties.

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Abstract:
The Constitutional Court is an independent judicial body that provides political and constitutional independence of the rule of law. It is the only institution ensuring the implementation of laws in accordance with the Constitution, thus preventing the violations of citizen fundamental rights. This paper aims to clarify the extent to which the Constitutional Court can intervene by the means of the exception of unconstitutionality in restoring order when it is violated through various actions or material acts or laws of the various bodies and institutions of the state.
The political parties law provision regarding the free acces to courts when trying to attack an internal decisions of exclusion of a member is unconstitutional.
Keywords: *Acts of Parliament, political parties, disciplinary control judiciary, political acts, access to justice*

1.Introduction

First, it should be noted that Decision. 530 of 12.12.2013 of the CCR was drawn up on the basis of unconstitutionality raised before as ordinary court. This is alongside the objection of unconstitutionality, one of the ways in which they Court can regulate the laws to make them consistent with the Constitution.

Subsequently, taking into consideration the theme, we appreciated as necessary to provide some insight into the Political Parties Act in order to better analyze the issue. Defining and considering provisions contained in the mentioned law allowed us to give a better understanding of the scope, the duties of these associations, their role and position within the context of the rule of law and the state. However, based on these two the Constitutional Court is making an interference in the political world once again, proving that it is not a judicial body, but a political-judicial body. Thus, it was noted that although there is a material independence between the two, they are also intertwined in the implementation of specific tasks, without this affecting the principle of separation of powers, nay, ensuring compliance and its implementation.

Constitutional Court Decision no. 530 of 12.12.2013 on art. 16, para. (3) of the Political Parties Law no.14 / 2003 governing the jurisdiction of the courts in relation to

the statute of the parties when they contradict is a very important decisios. It has been established so that any limitations on the jurisdiction of the courts is unconstitutional. Examining the articole of incoporation of these associations, they can not limit free access to justice. De Plano, the Court based it s decision on two fundamental principles, namely free access to justice and the right to defense. While each association may adopt its rules of procedure they can not bring harm or limitations to the jurisdiction of the courts.

However, it was noted that the intervention of the courts to be an optimal one must be limited to checking the application of their own internal laws and not the decision the Political party made. The decision comes to elucidate this point, so we considered there is a necessary an in depth analysis of them.

2. Various aspects of the organization and functioning of political parties

Law No. 14/2003 regulates the organization and operation of political parties. Thus, under Article 1 states that "Political parties are associations of Romanian citizens that are able to vote, participating freely and exercising their political formation, fulfilling a public mission guaranteed by the Constitution. They are legal entities of public law".
Under the same law, the second article states that they are intended to promote national values, political pluralism, help to form public opinion and stimulate citizens' participation in political life. Therefore, a crucial need for the parties to have a rigorous regulation in accordance with constitutional regulations for citizens' interests to take shape validly and effectively. The content of Article 9 states that each party must have its own statute and political program. This provision shows that it is organized and operates according to its statutes, acting independently, but always in accordance with the law.

Also in the art. 11 compulsory submission status and political program in writing and subject to approval by bodies authorized by statute. They must have a minimum number of members, have legal personality and a general meeting as required by management for a fixed period (4 years) . In the art.16 states that para. (2) "Members have the right to resign from the party at any time with immediate effect. (3) the acquisition and loss of membership of a political party is subject only to the party's internal jurisdiction, according to the statute. ".

Political parties adopt decisions by a majority vote withheld by statute and the election of members shall be by secret ballot. Staff members shall include the right to political initiative and the possibility of examination within an organized framework.

By researching the chosen theme, aimed to highlight the importance incidents of law and political parties on practical cases, so directly on citizens, since parties are nothing but associations designed to promote the public interest and not to censor or jeopardize laws in any way . Therefore, national rules must necessarily be in agreement with the law, especially the Constitution as the fundamental law of the country.

In fact, the juridical interference in politics always existed as state powers can not operate independently. The three branches are intertwined, generating both collaboration and support, but implementation and policy compliance while monitoring fundamental law underlying all state relations. The possibility of the compliance verification thus becomes mandatory in order to prevent possible abuses of laws and rights that could result from a completely independent political body. In fact, none of the state authorities could not justify the existence without this collaboration and would reach a point of unification, since no longer distinguish their respective duties. It is precisely this apparent interference of state authorities that ensures autonomy, separation and balance of powers. Thus the fundamental principle of "separation and balance of powers", introduced by Montesquieu, contains a central concept for the systematic functioning democratic state, namely the notion of checks and balances.

Social interest must prevail in a democratic state and therefore, the cooperation of the authorities should be calculated to ensure the event to prevent a monopoly of power concentrated in the hands of state authority.

Therefore, juridical interference in politics is equally a legal political interference, just as the powers and duties meet.

3. Background on the reasons

It violates the constitutional provisions of art. 24 "right to defense" which provides that "The right to defense is guaranteed" and the art. 30 "Freedom of expression" stating that "freedom of expression of thoughts, opinions, or beliefs [...] shall be inviolable" and that "Freedom of expression can not preserve the dignity, honor, privacy of person, and the right to your own image ".

Also, it is considered that it infringes Article 21 "Access to justice" which states that "Any person can go to court to protect the rights, freedoms and legitimate interests." In paragraph (1), continuing with par . (2) which states that "No law may restrict the exercise of this right.".

Pending court opinion: Calarasi Court - Civil Division, where the exception of unconstitutionality was raised by the applicant, decided on the admission of the exception of unconstitutionality, "whereas the provisions of article 16 par. (3) of the Law no.14 / 2003 is a limitation in the functioning of the courts. " The court considers that allowing the application of sanctions by the governing bodies of the party, even in violation of its own statute, is a measure manifestly unconstitutional, which could lead to abuses. Therefore, believes that courts should be able to give judgement on such violations of the statute of a party.

It violates, in fact, the fullness of trial courts provided for by Article 126 para. (1) of the Constitution, without being given the argument that under Article 126 para. (2) of the Constitution, "The power of the courts court and trial proceedings are set only by law ". The provisions of Article 126 of the Constitution mean that jurisdiction is established by law, not that there are differences over which they can not decide, but in order to establish general jurisdiction courts to deal with complaints and appeals.

Therefore, any kind of authority can not establish jurisdiction even less can limit their authority. Even if the special law gives competence of solving a case is assigned to other organs (the administrative jurisdictional, for example), their solutions, without exception, can be challenged in court, thus respecting the right of access to justice. The right of access to justice is a fundamental right provided both by the Constitution and the majority pacts and treaties to which Romania is part of ensuring and while generating a number of other principles such as the right to defense, the right to trial fair, equal rights.

According to the very status of political parties, excluding judicial review of decisions of political parties in terms of their organization, it means, directly denying rights and freedoms in the Constitution and the law may lead to abuses of law in the party in breach of fundamental rights such as: freedom of opinion and free access to justice. Political parties are by definition even associations of citizens established to

achieve the general interests of society, relying on the equal rights of citizens to access public office. It follows undoubtedly that for a proper defense of rights and interests of members, they can appeal in court, as members or just as citizens, parties decisions affecting their personal status. These constitutional provisions can not be removed even by their own internal provisions institutions even if they reserve the right to resolve any issues that generate internal controversy. In a democratic state, the existence of general material bodies having jurisdiction to establish and ensure the independence and fairness of the authorities in a straight line between authorities and citizens, skew between state and society, correcting abuses or deviations from the rule of law.

4. Decision of the Court

The Constitutional Court declared that the provisions of article 16 par. (3) of the Political Parties Law no. 14/2003, republished in the Official Gazette of Romania, Part I, no.550 of 6 August 2012 which read as follows: "The acquisition or loss of membership of a political party is subject only to the party's internal jurisdiction, according to the charter party . " is unconstitutional since this provision infringes art. 21 of the Constitution which states that "(1). Anyone may apply to the courts for protection of rights, freedoms and legitimate interests .; (2) No law may restrict the exercise of this right "as well as those of art. 24: "The right to defense is guaranteed" and art. 30 of the Constitution "Freedom of expression [...] shall be inviolable".

The reasons for the decision are motivated by the provisions of art. 146, item. d) of the Constitution which provides, inter alia, that one of the powers of the Constitutional Court is to "d) to decide on objections of unconstitutionality of laws and ordinances, brought up before courts of law or commercial arbitration" and of art. 1 para. (2) of Law no. 47/1992: "The Constitutional Court is the sole body of constitutional jurisdiction in Romania" of art. 2:

The Constitutional Court ensures the constitutionality of laws and international treaties, regulations and orders of Parliament the Government. The Constitutional Court decides only on the constitutionality of the acts brought before it without being able to amend or supplement the provisions under review. Constitutional Court's powers are established by the Constitution and the law of functioning. In the exercise of his duties Constitutional Court is only entitled to decide on its jurisdiction. The jurisdiction of the

Constitutional Court, established under the Constitution and law can not be challenged by any public authority ", Article 10 of the law refers to the cases provided for by art. 146 of the Constitution, and Article 29 of Law no. 47/1992 on the procedural aspects of the introduction of the exception of unconstitutionality. All these legal proceedings give the fundamental competence of the Constitutional Court to settle the exception of unconstitutionality brought before it.

The exceptions of unconstitutionality was promoted against article 16 para. (3) of the Political Parties Law no.14 / 2003, republished in the Official Gazette of Romania, Part I, no.550 of 6 August 2012 on the acquisition and loss of membership of a political party that excludes any legal control over how the application of the statutory provisions and limit the domestic jurisdiction of that party.

Although CCR rejected in a previous case the exception of unconstitutionality brought under the same provisions of Law party, by reconsidering the legal consequences that the exclusion from the party has on the mandate of local elected officials, consisting of its termination and the large number of complaints concerned It was considered necessary to clearly distinguish between the normal rules of ethics and containing their rights and obligations, penalties for violations and procedures that have no legal basis.

At the same time, the court is entitled and competent to verify fulfillment of the conditions necessary for the legal establishment of political parties status application to specific parties and statutory procedure which takes only party policy. The fact that such issues are governed by legal rules therefore involve possible development of judicial review and the adoption of legal decisions and not political acts. As a result of these considerations the Court considers it necessary to reconsider the case law, and grant exemption under the general principles of Article 1. (3) of the Constitution.

While political parties have an internal organization independently based on its statute, which once approved has the force of law for members of the party, they can not restrict or eliminate judicial review because of verification of compliance regarding the observance of these bodies has its own status, as it would prevent access to justice, a fundamental principle laid down by the constitutional norm. Moreover, approval of

such measures could lead to abuses of domestic law of party members not deducted any impartial judge.

The court will therefore analyze and control only how they are applied the statute and the regularity of such the proceedings in front of their internal bodies and not on the opportunity of sanctions. The court will examine, in concreto, the proportion that were respected and the rights of the defense review.

"In light of these considerations, the Court found that the regulation infringes the constitutionality of Article 21, under which no law may restrict the exercise of the right of everyone to the courts for protection of rights, freedoms and legitimate interests because, according to article 16 par. (3) of the Law no.14 / 2003 request of the member of the party to which an exclusion from the party penalty can never be effectively examined by an impartial and independent judge. So, in this matter, free access to justice is not only limited but completely annihilated. The Court held that it infringes the full jurisdiction of the courts, as it is governed by Article 126 para. (1) of the Constitution. Even if the special law competence of solving such a case is assigned to other organs (a jurisdictional arbitration court, for example), their solutions can be challenged in court, thus respecting the right of access to justice". The Court therefore has jurisdiction to ascertain the right of access to court in conjunction with the provisions on rights of defense and their own opinion provided for by the Constitution and by article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and ECHR jurisprudence on the right to a fair trial. "The right to defense concerns the exercise of legal remedies against findings of fact or law, or the solutions taken by a court".

Furthermore, the Constitution Court retains the provisions of art. CR 37 "right to be elected" in conjunction with Article 15 on the rights of citizens stating, a fortiori, stating that a local representative must be able to exercise the function undisturbed as he or she was elected by the vote of the people.

Noting that, if local councilors, the exclusion from the party produce legal effects severely respectively Retiring Court notes that impossibility to challenge before the court such a measure ordered without checking compliance status and statutory procedures contrary to the right access to a court and makes the rights enunciated be free of legal content guaranteed by the rule of law and democratic by virtue of these

provisions declared unconstitutional the provisions of article 16 par. (3) of the Political Parties Law no. 14/2003, republished in the Official Gazette of Romania, Part I, no.550 of August 6, 2012.

The rule of law implies respect for the principles imposed over evolutionary time necessary for the functioning of society and its principles have been enshrined in international treaties that ensure coexistence of peoples and the equal rights of their citizens and they are made. Just imposition of such general rules of conduct made possible the establishment of democracy in most countries, especially a regime based on the equal rights of men. Romania is party to all these treaties and constitutional forcing it to compliance. To be insured it is required by the state to impose mainly the classical tripartite separation of powers: legislative, executive and judicial. However, it is well known that such a separation does not require absolute their removal as it would result in the specific loss of function of each. Moreover, they are interdependent and independent simultaneously. This incongruity has its rationale and motivation, however, that each other's work deduct its duties by interacting frequently to establish equitable relations with citizens. However, by establishing an independent judicial organ of the three state authorities, in this case, the Constitutional Court has ensured a fair and ample of the legal authorities intended to apply and enforce the law.

The decision in this case tends to reveal precisely this interference welcomed in the state where the rule of law applies. Thus, although each institution has its own status and well-defined operating rules, it is and must be possible to have outside control in order to prevent abuses of power by law.

Art. 16 of the Political Parties Law no. 14/2003 "The acquisition or loss of membership of a political party is subject only to the party's internal jurisdiction" have generated controversy and have been challenged in this case to amend the unconstitutional aspects. Interpreting by a grammatical analysis that provision is observed that the adverb restrictive "only" excludes directly possibility of members of a political party to contest any decision considered improper thereof, which in our opinion constitutes an abuse of power in violation manifestly constitutional provisions of art. 21 "Access to justice" of art. 16 para. (2) "No one is above the law", (3) governing equal opportunities, art. 24 "right to defense" and of art. 126, paragraph (2) states explicitly

that "The jurisdiction of the courts and the judging procedure shall only be stipulated by law." To eliminate subjective decisions required to contest them.

5. Conclusion

The Constitution guarantees the express right to defense, "the Constitutional Court arguing constantly that the observance of this right shall ensure the constitutional right of citizens to go to court to protect the rights, freedoms and legal interests" and access to justice, which "has the meaning a right that must be provided to all judicial structures and no law may restrict the exercise of free access to justice "By resolving the objection of unconstitutionality of these provisions, the Constitutional Court established a uniform regulatory and legal framework for adoption of such decisions.

Incidentally, in a case just based on the ratio decidendi of this decision, a member of the political party wrongfully excluded from the function did not have the possibility of contesting the decision to exclude. The member, in the absence of concrete problems with the party received an exclusion decision, which was challenged to the arbitration panel but remain unresolved. The applicant also pointed out that the judgment under appeal is devoid of substantive items on the validity and did not include any penalty or peculiar elements of the person was referring to. In defense, the defendant, political party, brought among other things the general objection that the courts could not hear the case, the exception being rejected just under decision no. 530/12.12.2013. The court reached the judgment the court found that it was manifestly abusive, does not contain any exposure of the facts, deviations and no legal basis to determine the extent of exclusion, thus it appeared that this act was completely unmotivated. The judgement was very similar to that of an administrative court, taking into consideration that the competence started from the Tribunal and was appealed at the Court of Appeals.

In accordance to Decision nr.530 / 12.12.2013, the court found that the decision of exclusion is necessary that the decision on this measure to be justified in terms of compliance with statutory rules, the court is also required to verify that the person had access to a defense and opinion and this was effectively ensured. In light of these provisions the court found that the applicant's case were not complied with these requirements arising from the decision no. 530 and appreciated this kind of behavior

from the political party as issuing a decision of exclusion is illegal and upheld the applicant's civil action. This decision was appealed against by the political party concerned that the trial court exceeded the limits of the possibility to nullify an internal decision.

But the conclusion is that the courts can only nullify decisions not on their merits, but on grounds of illegality for not respecting the statute of the party.

Facultative Jurisprudence and Compulsory Jurisprudence in Romania

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Abstract:
Since 2007, as Romania joined the great European family, the influence EU law over the domestic law has been constant and extremely auspicious. This influence has produced a series of changes in the legal system, as Romania took over the European legal rules contained in the EU treaties which it has signed, and some Compulsory sources – such as directives, recommendations –, and acknowledged and enforced the jurisprudence of the European Court of Justice and of the European Court of Human Rights.
Keywords: *jurisprudence,law, legislation, decisions.*

Accession to the European Union represents a great advantage for our country in all respects. This democratic union of states is based on the equality in rights of all its citizens belonging to the Member States. All the activity and the whole way of functioning of the European Union is based on the principle of representative democracy, with respect for human rights, for the notions of pluralism, non-discrimination, tolerance and justice.

It is obvious then that the values promoted by the European law are deeply democratic rights, humanitarian and moral.

Since 2007, as Romania joined the great European family, the influence EU law over the domestic law has been constant and extremely auspicious. This influence has produced a series of changes in the legal system, as Romania took over the European legal rules contained in the EU treaties which it has signed, and some Compulsory sources – such as directives, recommendations –, and acknowledged and enforced the jurisprudence of the European Court of Justice and of the European Court of Human Rights.

The Praetorian formula, do, dico, addico, perpetuated over time and transposed in jurisprudence it influenced and influences essentially the law, whether we speak of Anglo-Saxon legal system, or of the continental type. In ancient Rome, by jurisprudence was understood the science of law, but also the correct application of law, considered as a science and as an art. An essential step in the history of jurisprudence is the work

of Trebonian (534 AD), called Corpus IurisCivilis. His work was composed of a pieces selected from the Roman law (Institutiones, Digestum, Codex and Novellae), before and during Justinian's time.

It is said that the origin of jurisprudence should be sought before the birth of law. In other words, law also existed in the primitive societies, where there were no laws. This law is either the work of the people, expressed by habit or later by the rules given by the ruling authority (usually the King), who made the law by the pronounced sentences, i.e., via jurisprudence. It is not wrong, therefore, to say that the seeds of the written law, of what then would be a norm of law, are to be found in ancient times[1].

The term jurisprudence derives from the Latin term juris + prudentia, i.e. the practical knowledge of law.

Professor N. Popa distinguishes between the judicial practice and the judicial precedent, pointing out that in establishing the jurisprudence, an important role is played by the Supreme Court (Court of Cassation, Supreme Court, etc.), which has the sovereign right to solve the conflicts between lower courts and to impose them a certain interpretation; such consistent and uniform solutions are sometimes invoked as a judicial precedent in the judicial activity and based on them are solved the cases in the courts. Thus, judicial practice can become a source of law[2].

In Common Law system law has a secondary role compared with jurisprudence, and the judge is the one who makes the law. The judicial practice has a very important role in countries such as England, USA, and Canada.

The British jurisprudential law is composed of Common Law (which includes solutions given by the Royal Courts of Westminster), equity (principles of justice, which represent a set of rules emerged in the fifteenth and sixteenth centuries from the jurisprudence of the Chancellor; rules pronounced by the royal courts to complete and revise the Common Law system) and Statutory Law (the written law deriving from the documents issued by the Parliament; laws whose application remains under the control of the judicial power).

Jurisprudence in the Romanian legal system

Jurisprudence has played an important role within the legal phenomenon in which our people developed since the beginning of the Romanian Nation and the

Romanian State. Obviously, on the territory of the modern day Romania, jurisprudence had a special place, since the Roman occupation. In the Romanian Principalities, jurisprudence and custom have played an important role among the sources of law. Thus, in feudalism, jurisprudence and local customs formed the substance of the Romanian law, in a time when the secular jurisprudence acted together with the ecclesiastical one.

Subsequently, the role of jurisprudence among the sources of law fluctuated from one era to another, and jurisprudence lost some of its practical significance. There is obviously a justification which coincides with the time of the major legislative codification in the nineteenth century, when it was placed on the top of the Romanian law the concept of "the exegesis School", of literary and formalistic interpretation of the legal norms, and when the Roman law dictum prevailed: optima lex, quaeminimumjudici, optimusjudexquiminimumsibi.

As an example, jurisprudence under the regulation of the old Civil Code was often contradictory and confusing regarding the applicability of the theory of unpredictability, particularly in the early years of transition to a market economy, when the unpredictability was determined by the economic phenomenon of monetary devaluation through inflation[3].

Yet, I consider it is wrong and even absurd to think that the laws created by man can cover immediately and permanently all the aspects of social life subject to regulation, and we ought to pay attention also to those showed by the followers of the "School of free law",who supported the judge’s powers and his conscience to solve fairly the litigation. Kantorowicz, the chief exponent of this theory, which has among the supporters Ehrlich and Fr. Geny, believes that the judge is a creator and an innovator of law, much more effective than a normative act that cannot be adapted immediately to a concrete need.

I believe that truth is "somewhere in-between" and it is necessary a balance between the authority and the attributionof the legislative power to create rules of law and the act of creation and application of law which must come from the magistrate.

Therefore it is good that now the inevitable fact happened once Romania joined the European Union: the development or better said the beginnings of developing a

legal system which combines the system of judicial precedent with the Roman-Germanic one. There are multiple proofs for this fact and do not regard only the recognition of jurisprudence (not on the whole) as a source of law. We should not forget that the system of judicial precedent establishes the role of the judge as a creator of law (judge made law). This attribution is placed in the hands of the Romanian magistrate through art. 1 in the Code of Civil Procedure, which states that the judge must solve the case even in the absence of a rule of law, using ultimately the principles of law.

The best proof in this regard is represented by the jurisprudence of the European Court of Justice and of the European Court of Human Rights and by the impact of this jurisprudence on the domestic law.

The relationship between the Luxembourg Court of Justice and the national courts is one of cooperation and is primarily aimed at the uniform application of the European Union law. The premise from which we should start is that outside the national legal order, specific to each Member State of the EU, within the European Union another superior legal order also functions, with direct application, and influencing the national law of the member countries.

Thus, for the first time, the Court of Justice, in the famous case called briefly "Van Gend& Loos"– where Company N.V.Algemene Transport- en ExpeditieOnderneming van Gend& Loos, with headquarters in Utrecht litigated with Nederlandse Administration der belastingen (the Dutch tax authority)– [4] ruled by the decision of 5 Feb.1963 in the favour of the superiority of the Community legal order over the national legal order. The legal basis of the file is represented by the infringement of art. 12 of the Treaty of establishing the EEC, prohibiting the introduction of customs duties or increasing the existing customs duties in the Common Market (the name existing at the time), the claimant company arguing that the Dutch Customs Administration charged an increased customs duty to a chemical that came from the German Federal Republic (former West Germany), and this represented a breach of the Community legal order. We specify that the Court of Justice found that the claims were grounded. It is very important to note the fact that this court established that the subjects of Community law are not only the states but also the citizens and any legal person.

Taking into account the case presented above, I would like to mention that the evolution of the Community / European jurisprudence went so far as it was stated that the Community rules are superior to the national ones, even if the latter have a constitutional character. I remind in this regard the decision of the Court of 17 December 1970, InternationaleHandelsgesellschaftmbH v. Einfuhr und VorratsstellefuerGetreide und Futtermittel, C-11/70 [5].

In this case, the explanatory memorandum notes that:

Whereas indeed, the law stemming from the treaty, an autonomous source of law, cannot, by its nature, be removed by the rules of national law, whatever they may be, without losing its Community nature and without questioning the legal foundation of the Community; whereas, therefore, reference to infringements either of fundamental rights, as stipulated by the Constitution of a Member State, or of the principles of a national constitutional structure cannot affect the validity of a Community act or its effect on the territory of the respective state.

In the case of Costa vs. Enel, in 1964, the Court of Justice held that the EEC Treaty represents an own legal order that was adopted by the Member States of the Treaty. This entails the impossibility of giving priority to national rules over the European provisions previously adopted and integrated into the national legal systems. As mentioned, the Community law/ European law "... is an organized and structured set of legal rules, with own sources, with bodies and procedures able to adopt them, interpret them and sanction their violation[6]."

Currently the Community jurisprudence has evolved and it is stated the priority of Community law over the national law, regardless of the national rule arose before or after the Community rule. It is eloquent in this respect the decision of 19 March 1978 Amministrazione delle finanze dello Stato c. Simmenthal, C-107/77 [7]. As stated in the literature "based on the principle of primacy of Community law, the Treaty provisions and the acts with direct effect of the Community institutions, in their relations with the national law of the Member States, following their entry into force, make ineffective, according to the law, any contrary provision of the existing national legislation, and also, because these provisions are a part of the national law of each member state, having a higher legal force, they prevent the valid adoption of some new national normative acts,

insofar they would be incompatible with the Community law. ... The national judge in charge of applying, within its jurisdiction, the provisions of the Community law, is obliged to ensure the realization of the full effect of these rules, against any conflicting provision of the national legislation, even a later one, without requesting or waiting for its prior removal in a legislative way or by the constitutional court[8]. ”

In the domestic legislation a special role is played by the decision pronounced in the procedure of the preliminary question before the national court. Thus, to ensure the uniform and unitary interpretation of the Community rules, the European Community Treaty (ECT) has adopted an original solution, at least partially different from that practiced in a centralized state or within a federation of states. Thus, while in these cases it is established one or more supreme courts to ensure the uniform application of law in all areas, the authors of the European treaties were forced to invent a solution that should be consistent with the special structure of the Community, respectively a solution that will be based on the recognition of the sovereignty of the national courts as regards their own jurisdiction. In these conditions it could not be taken into account the above mentioned model, namely that to confer the European Court of Justice a direct control through an appeal, on the way of application of the Community law by the national courts [9].

The solution is found in the current art. 267 TFEU (for instance Article 234 TEC) where it is stated:

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay [10].

In conclusion, it could be noticed that "in the normative pot" of the EU, it was found a legal solution, because on the one hand it is not affected the independence of the judicial systems of EU member states, but at the same time it is respected the principle of primacy of the European law. This reasonable solution is also extremely effective in obtaining the purpose of the uniform and unitary application of EU regulations.

We can conclude that, at present, at the level of the domestic law jurisprudence is divided in two categories:

- Compulsory, consisting of the decisions of the European Court of Justice, of the European Court of Human Rights and of the High Court of Cassation and Justice (in matters of interpretation of law issues). This type of jurisprudence has become Compulsory in the domestic law, starting right from the convictions against Romania. On the other hand, the new civil and penal codes establish the mechanism of "pronouncing a prior decision to solve issues of law". That procedure is a remedy against anon-unitary practice in the application and interpretation of law and draws from Article 267 of the Treaty on the functioning of the European Union, regarding the preliminary question referred to the ECJ. It should be mentioned that the mechanism introduced by the Romanian law-maker is also based on the recommendations of the European Commission. All in all, by this procedure the Supreme Court becomes the basic institution in charge of ensuring the uniform practice, having also the role conferred by the law-maker in the Compulsory interpretation of the texts of law. The decision of judicial interpretation of the High Court of Cassation and Justice, on matters of law interpretation, becomes compulsory for all the courts called to solve the same legal issue, from the moment of its publication in the Official Journal.
- subsidiary and facultative, a real source of inspiration for magistrates, lawyers and other categories of law practitioners. In Romania, the judge obeys the law and in his work he applies the rules of law. The interpretation of law, as done by the

magistrate, should be adapted to immediate reality and should be a source of inspiration for the legislative power.

Conclusions

The evolution of the domestic law and of jurisprudence in terms of its classification as a source of law will be very interesting . More than likely the direction will be given by the desire of building a large European state, whose foundation should be retrieved in the bases of the current European Union. Yet, such a state cannot exist outside of a unitary legal system, from the point of view of the procedural and substantial law; in that sense solutions for the crystallization of a European procedural law, a European civil law are being looked for. It is necessary that the steps taken in this direction should be increasingly faster, but better balanced, because the big European family, including all the state attributes, represents a great benefit and a factor of progress, inclusively in the field of law.

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John Locke - a forerunner of the liberalism and contemporary constitutionalism

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Abstract:
Many authors may consider that there is no longer of interest the resuming of the issues of the social contract doctrine, as the contemporary realities appear to have been departed from the principles sustained in the works of the XVIII - XIX centuries philosophers and politicians, who supported and argued the key aspects of this theory and, much more, there no longer exist new theoretical elements whose specific issues be continued and developed.
In our opinion, the bases of philosophical and political doctrine of the social contract are of immediate relevance, because, compared with the theory's classical principles resumed and developed in the modern and contemporary law philosophy and some other branches of constitutional law, represent possible solutions to the fundamental problems of the State's existence and of society, but also with regard to the complex relationships between man - society - state.
In his writings, John Locke gave expression to the political and social ideals of the English bourgeoisie of his time. His treaties on the governance are considered the basic texts of the modern democratic liberal doctrine and, we may say, prefigure the constitutionalism and supremacy of the rights in their contemporary meanings. Together with other authors, we state that the capital significance of John Locke's work for the juridical will and thinking and the modern policy is linked to the ideal of eliminating the discretionary power and arbitrariness of state's power exercising and the establishing of a state society, based on rules in which, the principles of law supremacy and respecting of man's natural rights, to represent the basis for building the social institution.
Keywords: *The concept of experience in philosophy / the sensitivity and reason / man's natural rights / the social state continuator of the natural State / the limits of state's powers / individual liberty / democratic individualism*

1. EXPERIENCE, THE SOLE SOURCE OF OUR KNOWLEDGE

Any incursion into the history of philosophy notes the dualism of the conceptions regarding the knowledge. On one hand, the empiricists who claim the priority of the sensation of the direct contact between man and nature as the unique source or primary means to reach formulating the knowledge, even of a theoretical character, and on the other hand, the rationalism followers, whose argumenting aim the defined priority or even absolute of ideas, of the rational constructions, sometimes independent of any form of sensory knowledge, a priori, which underlies the human knowledge.

This dialogue between the empiricist and rationalist concepts is rooted in antiquity and involves the formation of a way of understanding reality. Aristotle said that what exists is only the individual, but we can only know the general.

John Locke's philosophical work is traditionally framed by commentators of the history of philosophy in empiricist conceptions. However, at a closer analysis of the great English thinker's philosophical concept we note that the sensorial is not the unique source of any knowledge, but only the background from which one starts to develop concepts, categories and laws of thinking.

Even the followers of the rationalistic conceptions, an outstanding representative being Immanuel Kant, did not exclude the material world and the importance of sensation in the process of knowledge. In the Critique of Pure Reason outstanding passages are encountered that illustrate the limitations of implementing the rational knowledges a priori, beyond which they become a pure speculation that has nothing to do with a true knowledge of reality. Here's how Kant expresses plasticly, but suggestively: "The light dove, enjoys in its free flight the air whose opposition it feels and this could have meant that it should manage better in the void space. Likewise, Plato left the sensitive world, as it sets too narrow limits to the intellect, and he ventured beyond it on the wings of ideas into the void space of pure intellect (Kant, 2009: 74)." Emphasizing the duality between the sensitive factor and the rational in the process of knowledge, the same philosopher remarked: "Our nature is such that intuition can only be but sensitive, ie it contains nothing else but only how we are affected by objects. On the contrary, the ability to think, the object of sensitive intuition, is the intellect. Neither of these two properties is preferred to the other. Without sensitivity we would not be given any object and without the intellect, neither would have been thought. The ideas without contents are empty, intuitions without concepts are blind" (Kant, 2009: 95-96).

These considerations are, in my view, necessary to find a key to interpret the general philosophy and social philosophy that has been developed by John Locke, beyond a sensorial and empiricist limiting interpretation.

To better understand the essence of the great philosopher's ideas, especially his theory on the social contract, a brief incursion into his life and work is needed.

John Locke was born in England in 1632 and belonged to a Puritans bourgeois family, being the son of a lawyer. He attended the University of Oxford where he studied chemistry, physics, politics and medicine. He had certain diplomatic and political

assignments since his youth age. From this period dates his earlier writings: Anatomica (1668) and De arte medica (1669).

The philosopher was not directly affected by the social turmoil that occurred in Britain in the second half of the eighteenth century and had led to civil war in 1649, finishing with the victory of Cromwell, who, as everybody knows, has established a dictatorial regime meant to overcome the resistance of nobility. Cromwell's policy regime collapsed after his death, and monarchy was restored in England. Since Locke took bourgeoisie side, he was forced into exile, settling in 1675 in the south of France and then in Netherlands.

After the establishment in England of the liberal monarchy of William of Orange, John Locke returns home and receives official position such as Commissioner of trade and colonies. This is the most fruitful period of his creative philosophy, when appear his fundamental works: Tolerance Letters (1689), Treaties on Civil Government (1690) and Essay on Human Intellect (1690), which one is considered his fundamental work. In 1695, John Locke published paper About the Rational Character of Christianity.

In his writings, John Locke gave expression to political and social ideals of the English bourgeoisie of his time. His treaties on governance are considered as basic texts of the modern liberal democratic doctrine, we may say, they prefigure the constitutionalism and supremacy of the rights in their contemporary meanings. Together with other authors, we assert that the capital significance of the work of John Locke for the thinking and juridical will and modern politics is linked to the ideal of eliminating the discretionary powers and arbitrariness of the exercising of state’s power and the establishment of a state society based on rules, in which the principles of law supremacy and respecting of man’s natural rights to represent the basis for the construction of a social institution (Popa, Dogaru, Dănişor, Dănişor, 2002: 161-170).

In the history of philosophy, John Locke is considered the founder of English empiricism. Empiricism appeared in England as a reaction to the concepts of substance and causality backed by Galileo, Bacon and Descartes. What is characteristic to John Locke’s initial philosophy is that orientation towards the founding of the knowledge towards the experience that signifies the action of man over nature, ie, on the known object.

The philosophical concept is a continuation of the Renaissance thinkers, directed against sterile speculations which Scholastica was practicing a long time. Through artistic, philosophical and literal creation, the renaissance imposed the nature as man's existential environment, object of human knowledge, in relatation with which, man manifestes in his genuineness. Therefore, it isn't an abstract nature, detached from man, but a direct relationship of nature with man.

One can notice that the renaissance and modern philosophy, to which John Locke's thinking is included, bring as absolute novelty the link to the two factors that together can establish science: reason and experience. In this period manifested the doubt that senses alone can give a true knowledge of reality and it was refused, on the other hand, the speculation void of sensitive content. The philosophical thinking of that period considered the common sense as a way of inadequate knowledge of some scientific experiments and the scholastic speculative deduction in the dogma as a simple philological game of words (Trandafiroiu, 1998).

Renaissance and later on, modern philosophy raise against the sense and idle speculation the rational approach based on observations and experiences. As stated in the literature, the mistrust of the thinkers of the period, against common sense, didn't have as consequence the denial of the role of experience and senses in knowledge but only the non-acceptance of subjective arbitrariness which these can involve. The reflection on the nature and concept according to which human existence, but also the knowledge have as environment the nature in all its forms, determined Schiller to assert that the existential purpose of man throughout artistic creation, scientific knowledge and, in general, through everything that means creative work, is to "enhance nature admist nature".

The scientific and philosophical discussion problems in John Locke's time group particularly around the concepts of substance and causality that will be criticized from the standpoint of empiricism.

Descartes, like other rationalism followers, believes that the substance is the substrate, the deep essence of things. Substance is that which backs up individual things, having, as the things, an objective character. It is this nature of the substance that will be questioned by the founders of empiricism. John Locke states that the

concept of substance cannot be conceptualized philosophically and Berkeley, seeking to suppress the contradictions that he believed subsisting in the philosophical system developed by Locke, reduced the existence to perception and categorically denied the existence of a material substance, keeping instead his conception of the existence of spiritual substances. Hume is the one making the last step further in the multitude of empiricist philosophers and he denies the existence of a spiritual substances. The substance is, after Hume, a fiction (Bagdasar, 1940:33).

In the criticism of the concept of substance, John Locke starts to study human intellect, the approach of this concept being epistemological, not ontological. Thus, he criticizes the conceptions with regard to the born ideas, stating that all our concepts and categories are of empirical origin. This epistemological orientation had consequences on the social philosophy of the great philosopher. The literature stated that: "through this, the feudal principle of the birth climate is denied and it is imposed the principle of the essential role of experience and education into human spiritual formation."

Here it is what John Locke said in this respect: "It is a view rooted in some people that in the intellect reside certain principles, certain primary notions, characters, so to speak, embedded in the human mind which the soul receives from the first moment of its existence and brings them with him into the world. To convince the readers that are deprived of preconceived conceptions, about the falsity of these allegations, it would be enough if I show (...) that people can acquire by the simple use of their natural faculties, all the knowledge possessed without the help of a born embedding and they can reach to certitude without such notions or original principles" (Locke, 1961:18).

According to this view, the great philosopher says that our only source of knowledge is the experience. At birth, the mind is considered as a blank sheet on which nothing is written. "How does it reach to be endowed? Where does the mind get all reasoning and knowledge elements from? To this I answer in one word: from the experience" (Locke, 1961:81). Therefore, the source of knowledge is formed by senses, sensation being the first source of knowledge. This doesn't mean an identification of sensation by the common sense, because the sensation only can not form the experience. To the sensation the reflection is added. In philosopher's concept,

sensation and reflection are the only ways through which ideas can be obtained. "I say that these two, meaning the material things, as objects of sensation, and processes inside our own minds, as objects of reflection, are for me the only original elements in which all our ideas find their beginnings (...) we have nothing in our mind that shouldn't come otherwise but through one of these two ways" (Locke, 1961:82-83).

Some explanations are needed in regard to philosopher's experience concept. Analyzing his fundamental work "Essay on the Romanian intellect" comes out that his understanding on experience has a dimension primarily subjective. This was noted in the literature, "Locke's experience consists solely of sensations and ideas of reflection. From it is missing just what is really important in the real experience: the objectivity side" (Trandafiroiu, 1998: 32). John Locke believes that even though our knowledge is imperfect it is sufficient to enable us to meet the demands of life on earth, "God has made our organs such as it is best for us in our present status" (Locke, 1961: 69).

Regarding the causal relationship, it is closely linked to the notion of substance. Locke believes that things are subjective to a relationship, but the understanding was confined only to external relations that exist among things. The causal relationship is treated subjectively starting from his conception on experience "the notions of cause and effect have their roots in the ideas received via sensation or reflection and that this relationship, no matter how comprehensive would it be, ends finally in these ideas. For, to have ideas of cause and effect, it is enough to consider that some simple idea or substance begins to exist due to the action of another, without knowing the kind of that action" (Locke, 1961:307).

The space and scope of this study does not allow us a more comprehensive analysis of John Locke's general philosophy and of its importance for the contemporary scientific and philosophic thinking. Nevertheless, we underline the importance of the 'experience' concept which, even if being subjectively treated, does not identify itself with the common sense, because the connotation of the concept includes the thinking activity, "the reflection". It is important to remember that modern science, the exact ones, but also the social ones and the positivist contemporary philosophy came into being and are based on experience, the foundations of this concept being shown by John Locke.

2. THE LIBERTY, LEGITIMACY OF CONSENSUS AND SUPREMACY OF LAW

The fundamental concepts of John Locke's social philosophy are the liberty and equality which, in philosopher's concept, are part of human nature.

The relations between people in nature's status are relationships of power, but the right is not an expression of these relationships, yet the link between a free human being with another free being, a relation achieved through equality. These relationships are naturally constituted before any agreement leading to the establishing of civil society. For Locke there is a natural society before any civil society. In this way, the philosopher continues the aristocratic idea, namely that of man as a social being, a natural dimension of that. If man would not have within himself the call for joining other men, as a natural gift, the civil society could not be established. Therefore, there was a natural right, unwritten, previous to the positive law specific to civil society. The main element of this right is freedom. The right to be free makes human happiness and it is reflected in the possibility of possessing goods. Thus, the ownership is another important element of natural right. In philosopher's concept, this right is absolute, and its preservation and defending is essential for human existence, both in its natural status as in its social status. It is important to underline that for John Locke property is based on work.

John Locke's thinking differs in this respect from Hobbes' philosophy, who argued that the central problem in society is the power. For Locke, the essential question is no longer the governance, but the establishing of a civilization based on rules and a legislative system leading to a sound administrative organization and to limit the discretionary power of the state.

It is necessary, says Locke, a government of the owners that should be given the liberty to achieve their own prosperity and of the society in which they live. The philosopher stands against the arbitrary authority of the sovereign, considering it as unacceptable. Everything must be based on rational, freely consented fundamental regulations, which in turn, to come from a sovereign principle, respectively "tolerance": " In the question of the freedom of conscience, which for years has been so much debated between us, which even entangled much more the matter, ignited the dispute and increased the animosity was, I think, the fact that both sides have exaggerated with

the same zeal and even as wrongly, the claims of one of the parties preaching for the absolute power and the other one calling for a universal freedom in matters of conscience, without determining which are the things justified to liberty and without having shown, which are the borders for imposing and submission" (Locke, 1999:65).

The need for such laws existence is vital for society's existence and community's survival: "If it isn't guided by certain laws, and if its members will not accept to follow a certain order, no society – no matter how free will it be or no matter how unimportant would be the occasion for which it has been established ... will not be able to subsist or be kept united, but will fall apart and shatter into pieces" (Locke, 1999:65).

Unlike Hobbes, Locke believes that the status of human nature has some features that bring it closer to civil society and makes possible the transition. Important to stress is that in philosopher's conception "natural state is a rational, natural and prelegal state". The natural state is rational because through the reason life is regulated within bearable limits, so that here dominates freedom and equality. It is natural because people have few rights in accordance with the reason, as natural law: legality, equality, the right to prosperity and paternal rights are among the most important. The natural state is prelegal because here private justice dominates. This right of private justice means essentially, the needed reciprocity of human behavior, and the validity of each individual's right to his defense. Essentially, in philosopher's conception, the natural state is largely based on moral concepts of universal validity and intangible, and also is a state of social peace.

John Locke believes that the transition to civil society took place following a general consensus, because people wanted maximum security and freedom. The transition from the natural state to civil state was done under a contract that is based on mutual consent and free association principles. It is important to specify that, in Locke's conception, the object of the social contract is the guarantee of the natural rights, and not their suppressing in favor of the sovereign, such as Hobbes thought. Besides, the only natural right which the associates make available to the civil society is to do justice, to punish. The sovereign power is by excellence, a purely juridical and limited one. This theory considered as profound and democratic by most authors, is found in the modern doctrine of the liberal state and democratic constitutionalism.

John Locke appreciates that "people by being free by nature, equal and independent, nobody can take them out of this status to be subjected to another one's political power, without their own consent, by which they may agree with other people to unite in society for their preservation, for their safety, for their lives' peace, to enjoy peacefully of what belongs to them and be better protected from the insults of those who want to harm them" (Locke, 1999:89).

The "judicial power" concept used by Locke, but corresponding to the concept of political power, is divided into three components: legislative power, which role is to determine the facts that violate the coexistence and proper penalties, the executive power, which aims actually to execute the laws issued by the legislative power and the confederative power, exercising the state's power in relation to the other states.

We emphasize the idea consistently stipulated by Locke according to which, in philosopher's thinking, the judiciary power, identifies with the political power, can not be absolute, but must have limits. Thus, the social contract that is legitimizing the political power can be terminated if those holding such authority fail to comply with the assumed obligations. The goal of any political power should be in Locke's conception, the preservation of life, liberty and property. If this goal is not met, the government would be in conflict with civil society and will return to the natural status, which the social contract wanted to surpass. It is, in fact, the applying a juridical principle valid to any contract, namely in case when one of the parties does not comply with assumed clauses, the other party is no longer considered to be bound by the contract's stipulations.

Another difference from Hobbes's thought is that, by establishing the political power, the people doesn't give up its part of sovereignty. John Locke states that if the political power will seize in its favor the natural rights of the people, this is no longer bind by the agreement concluded and may even resort to force to replace those that are governing. As a promoter of the idea of justice, Locke recognizes however the right of the governers to legal constraining within law's limits, so that the civil society's members will follow the rules established for reaching the common good

In our opinion, John Locke is one of the first thinkers who legitimized the revolution, which in philosopher's concept, means the social contract's termination by the people in case the governors exercise their power discretionarily or confiscates in

their favor the natural rights or the exercising of power is no longer aiming towards the common good, but to the good of the governors. In order to avoid getting here, Locke gives great importance to the "person" that can provide and guarantee a balance between the parties, ie the people, as owner of the natural rights, liberty, equality and property, on the other hand, the governors, invested by the social contract with the exercise of the political power, with the purpose to guarantee these rights: that is the judge.

For John Locke, the limit of political power is given by the natural rights of the people for whose defending it has been invested.

3. MAN RELATIONSHIP WITH THE STATE AND THE CONTEMPORARY DEMOCRATIC INDIVIDUALISM

The democratic liberalism claims the principles of Locke's conception in regard to individual's relationship with the state. Natural rights are purely individual. This thesis is backed by the contemporary constitutionalism, which states that the holder of the fundamental rights consecreted in the Constitution can be only the man, not human communities. The social state was established with the purpose to protect the individual rights as natural rights, because within the natural State such guarantees are not offered, and man, through by his nature is also a social being.

For Locke the political society identifiable with the social state is only the product of a partial and provisory surrendering of the people of their natural status in the interests of a better organized justice and a more efficient power. The political power always remains limited by the natural rights.

The purpose of the state cannot be other but to ensure the individual freedom and equality for every member of society, but also to guarantee its legality. In order to justify the existence and bring social peace, the state must be just. It is important to emphasize that in John Locke's conception, the political power is not legitimate in itself, but through the moral values it defends, related to which it execises its duties. In other words, is not the law that legitimizes the power, but its moral purpose. The problem of the power is a problem of moral.

The purpose of the entire theoretical construction in political domain is to limit the power that is favoring and not to inhibit the individual's freedom. Locke supports the

theory of separation of powers within a state as a guarantee to avoid the arbitrariness in exercising of state power. So that "its fundamental purpose is what we call today - taming of power: the purpose for which people choose and authorize the creation of laws and establishing of the rules as milestones and protectors of the goods of all society's members in order to limit the power and moderate the domination of a group or member of society" (Locke, 1999:189).

By his social political thinking, John Locke establishes the liberalism that will inspire modern liberalism, which on behalf of the concept of limiting the power will make important distinctions between public and private, individual freedom and public obligations, scope of state intervention and intervention area of the individual, powers of the institutions and, not least, the establishing of a law regulatory domain.

The issue the great philosopher had considered is an important theoretical opening of what represents the complex dimension of the relations between society and state, on one hand, and on the other hand, the human individual. We note that in his work, Locke stresses on man as a holder of the natural rights, and, therefore, in his relationship with society and the state, he has a dominant role, the other topics of the relationship have a recessive position, even subordinated to human individual.

This concept, we appreciate, corresponds to "democratic individualism" that characterizes the contemporary society by exaggerate limiting of state intervention in managing the complex relationships between society and individual. The consequence is a decline in social cohesion, a fact otherwise noted, by numerous contemporary philosophers and sociologists. Given the social economic and political realities, the man has become a being for himself that understands the freedom refers almost exclusively to his private interests. The man exists besides others - the coexistence of liberties - and not with others. The consequence is the impossibility to find himself in the social environment, the indifference towards the social, even political activities, emphasizing on the spirit of claiming, which more often considers a personal interest and not a social one and last but not least, the major contradictions between man and on the other side, the society and state.

The contemporary man forgets that no one can be free through himself and only with others, while the natural law, which essentially involves absolute moral and

intangible values, has existence only by social recognition and through the isolation in an exacerbated individualism. Such a conception is supported by Kant. In Kantian moral language the universal law principle is the one which states as a right action the one oriented by the assertion according to which the free will liberty of a man can coexist with the freedom of all, according to a universal law (Kant, 2013: 10-14).

The contemporary democratic individualism turns the man into a mere element of a social mechanism statistically subjected to an abstract coercion of juridical and even moral law, without letting the individual to be able to assert himself in relation with the political force of the state. In other words, in contemporary society, the man who exists only as an individual, not as a person, "is full of rights, but lacking powers" because he only has the illusion of freedom, in reality he is under the domination of the abstract and constraining legislative mechanisms, which the state power has.

In another study dedicated to the doctrine of the social contract, we will try a thorough going analysis of certain aspects of the relationship between man's natural status and social status with reference to the philosophical and theological thinking. Here we only resume ourselves to mention that man can find true freedom only if he exceeds his individual status and becomes a spiritual person, which implies his existence in communion, ie not an existence besides others, but together with others, without sacrificing his personality's individuality. We support thus, the transition from the democratic individualism that, together with masses' democracy, as forms of constitutionalism and contemporary democratic liberalism, are the precariousness of the democratic ideal to the "democratic personalism" emphasizing the idea of communion of the free persons, communion that does not identify itself with the abstract, rigid and statistic "social state" of the juridical, economical and moral laws, whose purpose is the man as a free, spiritual and social person, and not the mere supremacy of the law.

The individualism, that characterizes the contemporary society and whose theoretical vein is also found in the works of John Locke, was noticed including in the theological thinking. This individualism is actually an exclusivism which, in the name of freedom, relates man to himself with the exclusion of the other. Father Theophilus Părăian stated on this meaning that, "we are more for ourselves than for others." Prof. Dr.priest Dumitru Stăniloae rightfully stated: "my reality, consisting of soul and body and

activated, is performed through the acts of relationship with other people. I become fully real in Christ, because all are real in Him, because we are real together" (Stăniloae, 2003:263).

I think we can make a distinction between the existence and reality of man. All exist, but not all people exist in the authenticity of their nature. The authenticity of the nature really means the reality of existence that can only be found if man exceeds his individual status and becomes a spiritual person and by this, is free in communion with God and through God, with others.

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Analysis of the amendments from the Tax Code in the field of VAT in tax-budgetary terms

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Abstract:
The amendments of the Tax Code related to the reduced rate of value added tax generated numerous comments by the media, specialists in public policies, tax scholars. It is considered a good measure but having important effects in the public budget. The analysis in this article explains several legal arguments that uphold the amendments.
Keywords: *Value added tax, tax-budgetary strategy, public budget, tax policy, budgetary policy, tax evasion, tax equity principle*

1. Introductory issues

Value added tax is one of the taxes that have known the highest development in a short period of time. The first theoretical paper regarding value added tax is considered to belong to the German economist, Wilhelm von Siemens, namely „Veredelte Umsatzsteuer" [1]. Apparently, one of the first authors that initially published in 1915 but subsequently became known for an article published in 1921 is Thomas S. Adams [2], American economist, who reflects the difficult situation of the budget of the United States of America after the first world war, due to the drop of the budgetary income from the income tax following the rate increase and considers that the introduction of a tax on expenses can be the solution for the increase of budgetary income.

The first normative act regarding value added tax was drawn up by Maurice Lauré, deputy manager of the General Directorate of Taxes from France in 1954, which was initially composed of two taxes, respectively a tax on production calculated at the sale price of the merchandises and which is born by the last manufacturer and a turnover tax which applies to all the persons involved in the manufacturing of goods. Even if it was an innovative concept, the disadvantage of this system was the payment by each trader of this tax. This system was also initially transposed in Romania in 1990 [3].

Most of the countries adopted this tax in national legislation after 1970, being as a matter of fact an accession condition in the European Union. On the 1st of January 2014, VAT was introduced in 164 countries (out of 194 countries) of which 46 in Africa (out of 54), 15 in Central America and Caribbean (out of 34), 12 in South America (out of 14, but French Guyana is part of France and Falkland Islands of UK), 28 in Asia (out of 48), 51 in Europe, 8 in Oceania (out of 33) and Canada in North America [4]. USA never introduced VAT but they have sales tax at federal level.

The relevance of the analysis of the impact of the legislative amendments in the field of value added tax is given by the fact that this tax represents in the countries that newly acceded to the European Union, including in Romania, one of the most important sources of public revenues. In any budget structure and in any tax-budgetary strategy it is necessary to take into consideration the manner of regulation of this tax as the impact of any amendment is important.

It is important to mention, that from the analyses carried out by the European Commission, after the economic crisis, the level of the receipts to the public budget from VAT has significantly dropped. Starting from 2009, in order to counter the effect of the receipts' drop effect, the European Union member states have constantly increased rates, except for 4 states (Austria, Belgium, Bulgaria, Denmark). Thus, the average at the level of the European Union increased from 19,5% in 2008 to 21,5% in 2014.

From the analyses regarding the level of receipts from VAT carried out both at the level of the European Commission as well as at OECD level a difference („gap") between the value of the owed amounts from VAT according to legal provisions and the value of the actually received amounts has been found. Thus, the biggest differences on receipts from VAT [5], in relation to the value of the owed amounts according to the legal provisions are in Romania (2012 - 42.9%, and in 2013 – 41.1%), Slovakia (2012 – 38.6%, 2013 – 34.9%) and Lithuania (2012 – 36.5%, 2013 – 37.7%). The analysis carried out at international level [6] by the Economic Organization for Cooperation and Development has led to the fact that the voluntary degree of compliance of a person drops as the VAT rates increase, especially in those states that have a non developed administrative apparatus and that do not face the tax payers' challenges.

Within this article we shall briefly present the provisions newly introduced by the Romanian Government starting from the 1st of June 2015 by Government Emergency Ordinance no. 6 of the 7th of April 2015 on the amendment and supplement of the law no. 571/2003 on tax code [7] and maintained in the future Tax Code, as well as a few tax-budgetary practical issues that have has an impact on the amendment in the field of value added tax and we shall particularly analyse a few of the theoretical reasons on which the explanation of the VAT rate amendments is based.

2. Analysis of the amendments brought by the Tax Code in the field of value added tax

In 2013 the first measure for reducing value added tax rate was taken, namely the introduction in the special category of the 9% rate of all types of bread, bread manufacture specialties, wheat and rye flour, as well as raw materials triticum spelta, common wheat and meslin [8]. The motivation that at the base of this measure has been „the need to take some urgent measures in order to fight against tax evasion in the field of bread trade by the application of a VAT reduced rate of 9% for bread and on the entire bread production and distribution, respectively for wheat and flour[9].” The argument of the Government in adopting this measure is supported, as mentioned, including by the studies carried out by the experts of OECD or of the European Commission. Thus, the tax bodies have accepted that in this specific field of bread manufacturing and distribution there is a high degree of tax evasion, it is not possible to fight against this evasion by administrative measures and the decision of fighting against it by dropping the rate level so as to have no solid motivation to breach the value added tax condition has been made. Yet another tax policy argument must be considered, relating to the one specific to the Romanian tax system, namely of the principles that apply to the Romanian tax system. In the tax Code in force at this moment as well as in the future one [10], one of the [principles that apply to the tax system is the taxation equity principle. In the applicable Tax Code, the taxation equity principle is very simply regulated as being „tax equity at the level of natural persons, by different taxation of income, according to their size”. It is necessary to mention that this principle was included in the Tax Code since 2004 when the taxation of the natural person was made by using the progressive rate system.

Even if at first sight it appears not to have a strict relation it is necessary to mention that at international level, the adoption of such principle applicable to the tax system presupposes that the entire legislation must observe it. Thus, in international doctrine it has been highlighted that the states that have adopted the taxation equity principle must also take into consideration that the legislation in the field of value added tax must also observe this principle.

2.1. Analysis of the legal provisions in force from the 1st of June 2015

By the Government Emergency Ordinance no. 6 of the 7th of April 2015 on the amendment and supplement of the Law no. 571/2003 on tax code two important changes on the value added tax rate were carried out, even if the size of the concerned article is reduced. The normative act envisages just the fact that at article 140 paragraph (2), letter g) [11] is amended and letter h) [12] is introduced, the other articles from 1 to 5 comprising wholly other provisions.

For scientific clarification we mention that Article 140 par. (2) of the tax code envisages reduced VAT rate of 9%.

Thus, this VAT reduced rate applies to a larger number of categories of deliveries of goods and/or services starting from the 1st of June 2015.

The explanation of adopting this VAT reduced rate is to be found again in the preamble of this emergency ordinance in which it is mentioned that the Romanian Government has taken these measures envisaging the following seven arguments:

(i) „Tax budgetary strategy for the period 2014-2016 also envisages among other measures the gradual reduction of VAT in the next 4 years as far as the collection of budgetary revenues is improved";

(ii) „the VAT reduction measure is compliant with the European legislation and is likely to essentially contribute to the reduction of tax evasion";

(iii) „VAT reduction represents a particularly important instrument in terms of national economy development, by re-launching internal consumption, following the creation of necessary premises for dropping the prices if the goods and services in general";

(iv) „VAT level reduction contributes in the same time to the increase of productivity and implicitly to the increase of economic efficiency";

(v) VAT rate reduction represents a measure that is likely to increase equity, by the improvement of income distribution or by the fact that certain goods become more accessible for the entire population";

(vi) „the extension of application of reduced VAT rate of 9% for the delivery of food products and restaurant and catering services represents a measure likely to essentially contribute to the reduction of tax evasion and to the creation of an appropriate competitive climate in this field, including in the tourism field";

(vii) „ the extension of application of reduced VAT rate of 9% generates important positive effects on the business environment by the improvement of cash-flow flows too, diminishing thus a series of difficulties the economic operators face in this respect".

Obviously, within this article the above mentioned arguments cannot be all analysed, some of them being probably proven only by economic methods, therefore we will focus on three arguments, respectively the first two arguments and the fifth one. It must be underlined that the amendment of 2013 envisaged only one argument respectively the one of reduction of tax evasion in a specific field.

2.2. Tax-budgetary strategy concept and the analysis of Romania's strategies in the period 2014-2016 and 2015-2017

2.2.1. Tax-budgetary strategy concept

In 2009, Romania requested to the European Commission, International Monetary Fund and World Bank support within the mechanism for payment balance. Following the analysis carried out by the European Commission, the European Union Council adopted Decision 2009/458/CE of the 6th of May 2009 for granting mutual assistance to Romania [13] and Decision 2009/459/CE of the 6th of May 2009 for granting community financial assistance to Romanian on medium term. One of the points undertaken by Romania within the economic program, and mentioned as a matter of fact in the Decision 2009/459/CE is the one to adopt a normative act that establishes „medium term mandatory tax framework, set up of some limits regarding budgetary rectifications that can be performed throughout the year, including tax rules and the set up of a tax council that supplies independent and specialised analyses"[14]. Given this engagement, the Romanian Government initiated and subsequently the Parliament adopted the tax-budgetary responsibility the Law no. 69 of the 16th of April

2010 [15]. In the content of this law the tax-budgetary strategy concept appears for the first time, representing the „public policy document that establishes the objectives and priorities in the tax-budgetary field, the targets of the income and expenses of the general consolidated budget and of the component budgets of the general consolidated budget, as well as the evolution of the general consolidated budget balance on a period of 3 years".

Following the signature by Romania and subsequently to the ratification of the Treaty in the stability, coordination and governance within the economic and monetary union by the law no. 83/2012 [16] the amendment of this normative act was necessary in order to include the obligations on the budgetary pact.

Consequently, until the 31st of July each year, the Ministry of Public Finance is bound to send the Government the tax-budgetary strategy for the next 3 years, which must com[rise besides the statement on own liability:

(i) macroeconomic framework on which the tax-budgetary policy is based,

(ii) the tax-budgetary framework with the budgetary prognoses and

(iii) the tax-budgetary policy.

The Government has the obligation to submit the tax-budgetary strategy in the Parliament before the 15th of August each year.

2.2.2. Analysis of Romania's strategies in the period 2014-2016 and 2015-2017

The main objectives of the tax-budgetary policy synthesised within the tax-budgetary strategy 2014-2016 do not include any direct reference to the proposal of amendment of the value added tax rate, but it can be supported as being a result of the objective regarding the „Carrying on of the tax consolidation process by […] creating a more effective and equitable system, but also a better administration of budgetary revenues" [17], which also includes measures for fighting against tax evasion and gradual reduction of the value added tax as far as the collection of budgetary revenues gets improves. The tax-budgetary strategy for the period 2015-2017 envisages the reduction of the standard VAT rate [18], a table with the impact over the public budget in the next 3 years being also included.

Therefore, at the Government level the idea of amendment of the standard VAT rate as well as the amendment of certain rates according to certain strategies for the fight against tax evasion existed.

2.3. Motivation of reduction of value added tax rate

As previously mentioned, in supporting the reduction of the rate from 24% to 9% for certain products and services starting from the 1st of June 2015 several arguments have been considered but in our opinion two of them can lead to legal debates namely:

(i) „VAT reduction measure is compliant with the European legislation and is likely to essentially contribute to the reduction of tax evasion";

(ii) „the reduction of VAT rate represents a measure likely to increase equity, by the improvement of the distribution of income or by the fact that certain goods become more accessible for the entire population".

The argument that the reduction of VAT rate essentially contributes to the reduction of tax evasion in this field can be at first sight a sentence without much substance. But, actually, in relation to the studies performed at the request of the European Commission [19], it has been highlighted that the existence of high rates of value added tax does not automatically mean higher budgetary revenues. On the contrary, with regard to those states of the European Union that have no well set administrative system, the increased rates draw the breach of the applicable tax legislation. As a matter of fact, this is highlighted in the mentioned studies by the high value of the gap between the amounts owed from VAT according to the legal provisions and the actually received amounts, Romania occupying the first place. The identification of some economic activities generating tax evasion and application of a reduced VAT rate ca involve on medium and long term a gain as it increases the voluntary compliance degree. If at the level of the European Union measures for fighting against tax evasion of the „carousel" type can be taken, at national level each state has the obligation to analyse those sectors of its economy and apply all the methods allowed by the legislation of the European Union for the fight against evasion. These methods do not involve only the increase of the number of „nocturnal raids" in the vegetables-fruit warehouses but can also involve the amendment of the tax legislation by reducing the

rate. Another method promoted at the level of the European Union is the one of inversed taxation mechanism for certain categories of services and goods.

The second analysed argument regarding the fact that the reduction of the rate represents an equity measure, by the improvement of the distribution of personal income or by the fact that certain goods become more accessible for the entire population, is very interesting and often considered in carrying out tax policy by any state that considers the principle of the person's ability to pay („ability to pay"). Unlike Italy, for example whose Constitution at article 53 envisages that any person contributes to the public expenses according to its ability, in Romania there is no such provision, except for the provision of art. 3 lit. c) of the current tax code, on tax equity. Unfortunately, the current text refers only to the principle of equitable taxation of the natural person's income („direct taxes"), according to their size, principle that finds a partial application in the legislation in force. It is true, by the new tax code that will be effective on the 1st of January 2016 such provision has been also included, lodged maybe in a defective manner but particularly useful in the legal supporting of such measures.

The relevance of a text as the one introduced by the future Tax code is important when we envisage what is called in doctrine „indirect taxes", whose specificity consists in the fact that the tax load is not borne by the payer of the tax but by the end consumer. Thus any increase of the indirect taxation level impacts consumption, namely the ability of a person to purchase certain goods and services.

The reduction of VAT rate for the deliveries of food destined to human and animal consumption, domestic live animals and poultries, seeds, plants and ingredients used in the preparation of the food, products used to supplement or replace food, represents perhaps a populist measure but certainly is a measure used by the European states that have the obligation to observe the constitutional principle of the person's ability to pay taxes and impositions [20]. Obviously this measure is also beneficial to the persons with high income who will benefit thus from a wide range of consumer goods at a lower price.

3. Conclusions

From tax policy perspective, the introduction of a value added tax reduced rate can be supported on the one hand by the need of fighting against tax evasion in the specific field of delivery of food and restaurant and catering services, the actions of the investigation bodies in these areas being notorious. On the other hand, this value added tax reduced rate can be construed as a tax measure that applies the tax equity principle which provides thus the consistency of the tax system. Obviously, the effects in budgetary terms, respectively of the budgetary income level, can be only estimated at this moment, being subsequently analysed at the beginning of next year, based on the actual and clear data of the budgetary execution account.

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"g) the delivery of the following goods:

1. all sorts of bread as well as the following bread manufacture specialties: croissants, buns, batons, pretzels mini baguettes, ,mini French bread and twisters, that fall under the group of bakery products at NACE /CPSA code 1071;

2. white wheat flour, semi white wheat flour, black wheat flour and rye flour, which fall under NACE/CPSA code 1061;

3. triticum spelta, common wheat and meslin, which fall under NC code 1001 99 00, and rye, which falls under NC code 1002 90 00 from annex I to the Regulation (CEE) no. 2.658/87 of the Council of the 23rd

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[11] „g) delivery of the following goods: food including beverages, except for alcoholic beverages, destined to human and animal consumption, domestic live animals and poultries, seeds, plants and ingredients used in the preparation of the food, products used to supplement or replace food. The methodological norms establish the NC codes from annex I to the Regulation (CEE) no. 2.658/87 of the Council of the 23rd of July 1987 on the Tariff and statistical nomenclature and Common Customs Tariff, as amended by the application regulation (UE) no. 1.101/2014 of the Commission of the 16th of October 2014, corresponding to these goods;"

[12] „h) restaurant and catering services, except for alcoholic drinks."

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6. TAX BUDGETARY STRATEGY FOR THE PERIOD 2014-2016

7. TAX BUDGETARY STRATEGY FOR THE PERIOD 2015-2017

Some considerations regarding the legal nature and the status of central autonomous public authorities

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Abstract:

Based on art. 116 and art. 117 par. (3) of the Constitution of Romania, as republished, which enshrines the establishment and organization of central autonomous administrative authorities, taking into account art. 73 par. (3) of the Constitution which decrees the scope and authorities that are regulated by organic law and having regard to the considerations expressed by the Constitutional Court in the contents of its case law, especially in relation to art. 115 par. (6) of the constitutional text according to which the emergency ordinances do not affect the regime of state fundamental institutions, we aimed in this article at analysing some distinctions concerning the legal nature, executive / administrative or not, of the central autonomous authorities in relation to their constitutional or legal status.
Keywords: central autonomous authorities, autonomous administrative authorities, constitutional status, legal status, legal nature.

1. Preliminary issues - Constitutional and legal grounds on central autonomous public authorities

The current constitutional grounds on "Specialized central public administration" are contained in Section I, entitled as such, in the contents of Chapter V - Public administration, Title III - Public authorities, of the Constitution of Romania, as republished [1].

Art. 116 of the Constitution of Romania, entitled "The structure" of specialized central public administration, establishes the following categories of bodies:

a) ministries, which are organized only in subordination to the Government;

b) other specialized bodies which can be organized: in subordination to the Government or ministries, or as autonomous administrative authorities.

Therefore, in terms of their status and relations with other public authorities, the specialized central administration comprises two categories of bodies:[2]

1) subordinate specialized central bodies, i.e. subordination to the Government or to ministries;

2) autonomous specialized central bodies, that are not subordinate to any other public authority.

Law no. 90/2001 on the organization and functioning of the Romanian Government and ministries,[3] as amended and supplemented, provides for in art. 29 that: “The Government is in collaboration relations with the autonomous administrative authorities.”

Art. 117 par. (3) of the constitutional text enshrines the establishment of autonomous administrative authorities by organic law.

Thus, the autonomous administrative authorities are not indicated in the constitutional text, the jurisdiction for their establishment belonging to the organic legislator.

Instead, as we know, we find in the constitutional text the grounds for the establishment of other autonomous central public authorities, such as the Ombudsman, the Legislative Council, the Court of Accounts, the Economic and Social Council, whose organization and functioning is developed by organic laws.

2. The guide marks of the literature concerning the classification of autonomous central authorities

The autonomous central public authorities are classified in the specialized doctrine into two categories:[4]

1) the autonomous central authorities of constitutional rank, whose organization and functioning is subject to organic laws subsequently passed, such as:

The Ombudsman [5] - with a role in defending the rights and freedoms of individuals - art. 58 par. (1) of the Constitution of Romania, as republished;

The Legislative Council [6] - Parliament’s specialized advisory body that approves draft legislative instruments to organise, unify and coordinate all legislation and keep the official record of the Romanian legislation - art. 79 par. (1) of the Constitution;

The Court of Accounts [7] - exercises control over the formation, administration and use of financial resources of state and public sector - art. 140 par. (1) of the Constitution;

The Economic and Social Council [8] - an advisory body of the Parliament and Government - art. 141 of the Constitution.

2) autonomous central authorities created by an organic law, such as:

National Supervisory Authority for Personal Data Processing - established by Law no. 102/2005[9], a public body with legal personality, autonomous and independent from any other authority of public administration (...), aims to protect the rights and freedoms of individuals, notably the right to intimacy, private and family life in relation to the processing of personal data and to the free movement of such data;

The Competition Council - established by the Competition Law no. 21/1996 [10], national competition authority, an autonomous administrative authority, respectively;

The National Audiovisual Council - established by the Audiovisual Act no. 504/2002 [11], autonomous public authority under parliamentary control, is the guarantor of public interest in the field of audio-visual communication and single regulatory authority in the field of audio-visual media services;

The Romanian Cultural Institute - established by Law no. 356/2003 [12], an autonomous administrative authority with legal personality, under parliamentary control, aims to represent, promote and protect the national culture and civilization in the country and abroad.

In our view, autonomous central authorities can also be classified according to other criteria, represented by the legal nature thereof, executive / administrative or not.

We consider that authorities such as the Constitutional Court [13] and Court of Accounts, both with a constitutional rank according to the classification established by doctrine of specialty, are considered to be outside the three branches of government, legislative, executive or judicial - as stated in art. 1 par. (4) of the Constitution of Romania, as republished.

In the specialty studies about the organization of the Constitutional Court it has been noted that:[14]

“The provisions of art. 142 of the Constitution, which enshrines the role and structure of the Constitutional Court, do not specify the nature of this public authority, or its position within the state authorities. However, the organization of our court of review of the constitutionality of laws by virtue of the Constitution and its organic law, is done in the spirit guaranteeing its independence in relation to the legislative, executive and judicial powers.”

About the place of the Constitutional Court in the Romanian political system, the same author showed that:[15]

"In Romania, the Constitutional Court was established as an authority which mainly provides the review of the constitutionality of laws and which is outside the three state powers - legislative, executive and judicial - with the task of ensuring that public authorities forming them respect the principles and rules of the Basic Law."

Likewise, the legal doctrine reveals that: "The fact that judges of the Court are appointed by the legislative and executive powers (President of Romania) does not create a relationship of subordination of the Court to them."[16]

About the Court of Accounts it has been stated that "it was organized like the Constitutional Court for a term of 9 years for account advisers, with the renewal of one third of advisers every 3 years" and "it does not come within any of three powers - legislative, executive and judiciary, but contributes to their functioning and balance."[17]

Also, the Ombudsman "is difficult to fit into one of three traditional powers" and strict classification "is practically impossible.[18]"

The Constitutional Court, the Ombudsman, the Court of Accounts and the Legislative Council are considered by the established constitutional doctrine as "state organizational structures with the role of guarantees, counterweight and support of the balance of powers and of the balance between public authorities and citizens"[19], an opinion which we agree upon, as stated above.

However, some authors said that "state bodies which cannot through their duties be included either in the category of legislative bodies or in that of the courts, should be classified, with all their specifics in the category of executive, administrative bodies, because what is essential to these bodies is that all of their activities are undertaken based on the law and to the execution of the law"; "the fact that some of these bodies submit annual reports to Parliament on their activities and that their governing bodies are appointed by the Parliament are not arguments to change their legal nature, i.e. autonomous administrative authorities, which are established by an organic law, according to art. 117 par. (3) of the Constitution [20]."

In agreement with most of the opinions expressed in this matter, we consider it necessary that due nuances and distinctions between the two categories of central

autonomous public authorities be taken into consideration, according to the second criterion, i.e. their legal nature, as previously identified, “the strict classification within the executive branch of such structures with control responsibilities and constitutional origin, being questionable ”[21].

“To the traditional classifications and qualifications in the literature, they usually occur as domain bodies, which in turn can be three categories: a) synthesis bodies, b) coordination bodies (typical example: the Country Defence Supreme Council) and c) control bodies (typical example: the Ombudsman, the Court of Accounts, etc.). (...). The category to which we refer is not to be confused with bodies similar in terms of their type of activity (synthesis, coordination or control) that are organized in a structural dependency to ministerial administration or, where appropriate, to the Government.”[22]

Between central autonomous constitutional authorities and autonomous central authorities created by organic law “the essential differences exist in terms of dependence”: [23] the autonomous central authorities with constitutional status “obey the Government only to the extent that it adopts ordinances or normative judgments which are binding and enforceable against them as against any other subject of law”; for the central autonomous authorities with legal status “the rule established by art. 102 par. (1) that the Government exerts the general management of public administration has a greater extension and application” - they “exert jurisdiction made up of attributions of complementarity with the Government (...) without being regulated by the Government,” but acting within the framework created by the Government by the legislative instruments it passes.[24]

3. Aspects of the Constitutional Court’s case law regarding the legal nature and status of autonomous central public authorities

To illustrate the criterion of the legal nature of autonomous central public authorities, we will further render the example of the Romanian Cultural Institute, which has legal status, is organized and operates as an autonomous administrative authority, according to Law no. 356/2003, [25] republished, as amended and supplemented, in contrast to the example of the Court of Accounts which has constitutional status, it is organized operates according to Law no. 94/1992, republished, as amended and

supplemented through the considerations expressed by the Constitutional Court in the contents of its case law.

3.1. By Decision no. 737/2012, [26] the Constitutional Court rejected as unfounded the exception of unconstitutionality of the Government Emergency Ordinance no. 27/2012 regarding certain measures in the cultural field, objection directly raised by the Ombudsman.

The Court examined the relevance of the reasons invoked by the Government in adopting the emergency ordinance criticized in the light of its case law, as we will show in excerpt below.

The Court held that: Romanian Cultural Institute was established by Law no. 356/2003 as a public institution of national interest, with legal personality, under the authority of the President of Romania.

In the recitals expressed, the Court held that: the objective of the adoption of Government Emergency Ordinance no. 27/2012 is justified by the provisions of art. 116 of the Constitution.

Examining the reason invoked by the Government, the Court found that: the constitutional provisions of art. 116 provide that specialized bodies may be organized in subordination to the Government or ministries, or as an autonomous administrative authorities, and according to art. 102 par. (1) in conjunction with art. 111 the Government exerts the general management of public administration, except the autonomous authorities under parliamentary control. As a result of these constitutional provisions, Law no. 47/1994 on services subordinated to the President of Romania, republished in the Official Gazette of Romania, Part I, no. 210 of April 25, 2001, as amended and supplemented, does not contain any provision that public institutions of national interest having the legal nature of autonomous public authorities can be organized in subordination to the President of Romania.

Given the above, the Court considered that: the regulation of the legal framework for the operation of the Romanian Cultural Institute contained a defect of unconstitutionality.

The Court also noted that: the intention of the delegated legislator as resulting from the adoption of the legal rule criticised and from the motivation of this measure has

been to react to defend the public interest, and (...) the extraordinary situation that requires urgent measures to protect the public interest may demand the establishment of rules of the organic law by emergency ordinance that, if it could not be adopted, the public interest in mind would have been affected, which is contrary to the constitutional purpose of the institution. [27]

That being so, the Court found that: in this case the emergency ordinance criticized contains no unconstitutionality extrinsic defect, as, they are, by the nature and purpose of their measures on the functioning and organization of the Romanian Cultural Institute provided for in the emergency ordinance criticized, necessary and urgent in nature and are taken to protect a major social and institutional interest.

Therefore, the Court found that: adopting the regulation criticized by way of an emergency ordinance meets the constitutional requirements imposed by art. 115 par. (4).

By presenting the excerpt statement of the Constitutional Court Decision no. 737/2012 we wanted to point out the following:

In line with the considerations expressed in the Court's decision, we note that there are no institutions and public authorities with legal personality, in general, and much less public institutions of national interest given the legal nature of autonomous public authorities, according to Law no. 47/1994, republished, as amended and supplemented, organized under the President of Romania. Moreover, in our view the status of an autonomous administrative authority of the Romanian Cultural Institute would have been inconsistent with the administrative authority status subordinated to it.

The presidential administration is represented by the public services available to the President of Romania to fulfil his duties [art. 1 par. (2) of Law no. 47/1994] and establishes cooperation relationships with public authorities (our emphasis) (art. 6 of Law no. 47/1994).

3.2. By Decision no. 544/2006 [28], the Constitutional Court upheld the exception of unconstitutionality raised by the Ombudsman directly and found that the Government Emergency Ordinance no. 43/2006 on the organization and functioning of the Court of Accounts, published in the Official Gazette of Romania, Part I, no. 525 of June 19, 2006, is unconstitutional.

Examining the exception of unconstitutionality raised, the Court held that:

Through its role, the Court of Accounts is part of the fundamental institutions of the state, and its activity is essential to ensuring the financial support of the operation of all state bodies. The nature of the Court of Accounts as state fundamental institution is equally underlined by its constitutional status, as well as by the fact that the organization and functioning, i.e. its legal regime, are regulated under art. 73 par. (3) l) of the Constitution, by organic law.

Thus, regulating the organization and functioning of the Court of Accounts by the Government emergency ordinance contravenes the provisions of art. 115 par. (6) of the Constitution, according to which emergency ordinances "cannot affect the status of state fundamental institutions".[29]

3.3. By Decision no. 55/2014 [30], the Constitutional Court upheld the objection of unconstitutionality formulated and found that the provisions of the Law approving Government Emergency Ordinance no. 77/2013 for measures to be taken in order to ensure the functionality of local public administration, the number of jobs and a reduction in expenses in the public institutions and authorities subordinated to, under the authority of or in coordination with Government or ministries are unconstitutional as to the criticisms made, relating to the art. 115 par. (6) of the Constitution.

Examining the objection of unconstitutionality, the Court found that it already established in its case law that: "fundamental state institutions are those expressly covered by the Constitution in detail or at least in terms of their existence, explicitly or just generically (institutions under Title III of the Constitution, as well as public authorities under other titles of the Basic Law). Therefore, the fundamental state institutions have "constitutional status" (section VII, 3.4. of the Court's Decision no. 55/2014).

4. Conclusions

As shown throughout this article, the autonomous central authorities with an administrative legal nature may be established by an organic law [art. 117 par. (3) of the Constitution of Romania, republished] and are not specifically mentioned in the constitutional text, while the autonomous central authorities without legal administrative nature are explicitly mentioned in the constitutional text and are recognized in the

literature as being outside the three traditional powers of the state and are enshrined in the case law of the Constitutional Court as a fundamental state institutions.

By colligating the recitals expressed by the Constitutional Court in its case law, which considerations, like the set of decisions of the Constitutional Court, are generally mandatory and are imposed with the same force upon all subjects of law (see Constitutional Court Decision no. 55/2014) [31] , we opine that: on the one hand, the central autonomous authorities with constitutional status, such as the Court of Accounts, have a legal regime which cannot be regulated by emergency ordinance as these ordinances do not affect the status of state fundamental institutions under art. 115 par. (6) of the Constitution, and on the other hand, autonomous central administrative authorities with legal status, such as the Romanian Cultural Institute have a legal regime that can be regulated by emergency ordinance, in compliance with the constitutional requirements imposed by art. 115 par. (4) (see Constitutional Court Decision no. 737/2012), although the establishment of both categories of autonomous central public authorities are regulated by an organic law, according to the constitutional text.

We believe that the distinctions mentioned may serve as many arguments for placing central autonomous authorities with constitutional status, such as the Constitutional Court or the Court of Accounts, outside the three branches of state, both through their legal nature and their role as enshrined in the Basic Law.

Another aspect we want to reveal by presenting some of the considerations expressed in the Decisions of the Constitutional Court, is that the legal status as autonomous central public authority with or without an executive / administrative nature, may not be compatible with the organization and operation of such authority subordinated to another institution or public authority, regardless of its rank (see Constitutional Court Decision no. 737/2012).

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– History of the Legal Profession in Romania – – moments, people and personalities –

- I -

Iosif F R I E D M A N N – N I C O L E S C U [1]
PhD. in Law

Abstract:
Short History of legal profession in Romania presents several personalities of national legal culture.
Keywords: *Lawyer, Palace of Justice, Tribunal.*

PROLEGOMENA

On December 6, 2014 we celebrated 150 years since the first modern regulation of the legal profession in the Dacian Romanian perimeter.

The Law no. 1709 of December 4, 1864 for the establishment of the Professional Body of Lawyers, promulgated by Prince Alexandru Ioan Cuza, has set a new face for one of the oldest professions in the world: THE LAWYER'S PROFESSION.

The Law no. 1709 of December 4, 1864 for the establishment of the Professional Body of Lawyers was at that moment one of the most modern pieces of legislation for the organization of the lawyer's profession in the world.

Continuing the modernization of the LAWYER's profession, the Law no. 51 of June 7, 1995 on the organization and exercise of the Lawyer's profession was passed 20 years ago.

These two events intersect with another international milestone of the Lawyer's profession: on December 10, 2014 the professional unions and the Bar Associations of Europe celebrated for the first time the European Lawyers Day, a moment of special significance for this profession, as it created a new vision of the Lawyer's profession. The decision to celebrate the European Lawyers Day, which will be celebrated annually, was made by the Council of Bar Associations and Law Societies of Europe, in order to stimulate the values of the legal profession and the role of lawyers in promoting the rule of law.

We will not forget the Romanian Lawyers Day, which is celebrated every year on June 24, in accordance with the Decision of the Lawyers Congress of 1998. June 24 is also the feast of the Nativity of St. John the Baptist.

ODE TO THE LAWYER'S PROFESSION

"The World of Lawyers" is a wonderful world.

It is "a world within a world", a true professional and spiritual universe, in the PALACES OF JUSTICE around the globe.

The PALACES of JUSTICE are true TEMPLES of JUSTICE.

The LAWYER is the Knight of Justice and Truth.

JUSTICE is done in the PALACES of JUSTICE where the LAWYER is the FIRST among FIRSTS.

You can only be the FIRST among FIRSTS, because you, as a Lawyer, have the sacred role to DEFEND MAN.

Everywhere in the world, Lawyers are the ones who maintain the standard of freedoms and rights as a living torch in fighting injustice and social inequalities.

In HALLS of LOST STEPS, aware of their role and place in society, Lawyers put their creative energies into the service of social progress, the affirmation of Truth, Justice and Law, in every file they investigate.

The history of the Lawyer's profession is the history of this fantastic universe, this wonderful world, and those who did not cross the threshold of a Court, really lived in vain.

The Court is a miniature world, we could say that it is the Universe itself.

Below you can find a few less known aspects, which constitute a challenge to the preparation of a complete history of the lawyer's profession in the perimeter of Dacian-Romanian spirituality, where many lawyers I have personally met over the three decades of my activity, are legends of this wonderful profession: THE LAWYER'S PROFESSION.

In an attempt to constitute a gallery of portraits - faces and images - professional bronzes, we will sketch biographies of lawyers who became legends of this profession and remained in the memory of their contemporaries for their contributions to the evolution of the legal culture and civilization in Romania. We will mention a few of those who have contributed to the culture heritage of this profession.

The lawyers' pleadings are lessons of legal philosophy and social philosophy, they constitute a true national treasure of legal culture and in many cases are connected to the universal treasure of legal culture.

Another category of those mentioned is the category of those who were lawyers, but excelled in other professional fields, their names being included in the national culture for their contributions to the world heritage.

Professional Bronzes, is one of the favorite phrases of the regretted Romanian Master of law practice, lawyer Constantin VIȘINESCU [2], a living consciousness of the national legal profession for about 65 years.[3].

Of course, not all lawyers that we will mention here have had a direct role in the development of the profession, but at some point they were members of the Bar Association. Membership in the Bar Association confers Lawyers a special aristocratic aura, shaping a unique personality.

Membership in the Bar Association confers sanctity to the Lawyer-Man, because - I repeat - a Lawyer defends MAN. The sanctity of a doctor who saves the lives of people in the grip of death.

Sacredness is conferred on those who defend Man, defending thus those made in HIS image and HIS likeness.

In many localities in Romania, lawyers have linked their names to the history of their community, becoming symbols of the culture and civilization, people of the City.
Lawyers, with their strengths and weaknesses, are also people of the City, who distinguished themselves as men of culture and action, particularly as politicians in various parties, covering the entire political spectrum, but also as people interested in the universe of their contemporary world.

Lawyers have been and are the vanguard of a modern nation.

Lawyers are people of spirit, and a society without lawyers is a Sahara and Siberia all together.

A country without lawyers is a desert covered by glaciers, where the night of injustices and abuses haunts and where life is extinguished forever by the death of freedom.

When a Lawyer's plea is not heard, the flame of the human dignity fades and injustices come to dominate society.

All dictatorships attempted to subordinate lawyers, to give the impression that freedoms are respected.

The blows against lawyers and the legal profession represent the beginning of tyranny, the subordination of Man and Nation to interests that are foreign to a democratic society. Colonization of a nation begins with harsh attacks against lawyers and the lawyer's profession.

The fundamental human rights were born from the efforts of Lawyers, in their struggle for equity, freedom, truth and justice, in the Palaces of Justice, these Temples of the free spirit.

The lawyer's profession in the Dacian-Romanian perimeter was not the subject of a separate study or scientific research, in an institutionalized and continuous framework, but the concerns of Lawyers for the history of their profession are found in many essays in the professional magazines, in many original works, and also on websites of Bar Associations.

In recent years, the professional journals and collective works published essays dedicated to the history of this wonderful and unique profession: LAWYER'S PROFESSION.

Below we will outline some less known aspects of the biographies of lawyers who in various historical periods have been recognized for their role in society and in the profession. Also, I will report what I have seen and heard during my three-decade career as a lawyer, when I was always present in the Hall of Lost Steps of the Palaces of Justice of Romania.

The history of Romanian law and the evolution of constitutional systems record the contribution to the development of society, of individuals and personalities who, accidentally or not, were (also) lawyers.

The lawyer's profession is a poem; a poem of social life that is rooted in solid professional, scientific training and unmatched ethics, in the fraternity and solidarity of this unique profession, in the education, mentality and culture.

The vocation of the lawyer's profession is one of BOHEMIAN ARISTOCRACY.

The mentality of this profession is of divine origin because the Lawyer is always by the Man; the Man who is in a social competition, the Lawyer being in the service of truth and justice, of sacred human values: Human LIFE and Human FREEDOM.

Lawyers are the first confidants of those they defend, in a relationship similar to that of the Holy confession, a mystery of life and also sacred by the will of divinity.

The poetical quality of this profession cannot be denied, but it has a cold realism in it, while the social philosophy perceived by the lawyer is often the cruel truth of the world in which he/she lives.

This innate professional vocation is incompatible with the ideas of professional social egalitarianism or the concept of professional union, because the individuality of every lawyer and his/her egocentrism (in the good sense of the word) are those that give HIGH CLASS to his/her unmatched and unique personality, in every historical age and social-economical system.

The career lawyer is the first intellectual in the City, and also a man of distinguished culture, whose soul vibrates to all that is human; in mentality, a lawyer is conservative, but also in the vanguard of the society as a promoter of the new.

Those coming into the legal profession from other backgrounds have visions and attitudes on Truth, Justice, Truth and Justice, different than the career lawyer.

The fight with the social system, the fight with the political system, the fight with the retrograde mentality of society, the fight in general is the prerogative of lawyers, their purpose is to be at the forefront of the spirituality of his/her society, standing out in his/her continuous and tireless struggle for new and progress, in the service of Man; At the same time, the Lawyer preserves what is progressive in society without denying tradition, adapting to the modern and seeing the future.

Lawyers - indeed - are part of elite thinkers, of the spirit of humanity.

Of course, nowadays, in the light of the global crisis of capital, the lawyer's profession has its declines, which often affect the substance of the profession, but never affect the Lawyer's ideals.

Unfortunately, many have a deeply mistaken perception regarding the Lawyer's profession, the Lawyer's art in the Justice Pantheon, often considered a labor market, which leads to the disappearance of the poetry of this profession.

When the Lawyer cannot expose in his/her plea everything in favor of his/her client, because he/she is not allowed to, the Lawyer is stopped to tell the TRUTH.

The lack of pleas in courtrooms is the punch in the mouth of Truth and Freedom.

The Lawyer's profession is as old, maybe even older than the Magistrate's profession, and its origin is one of divine nature, because Lawyers have to defend MAN. MAN, as human being, with human dignity, faced with a society usually poorly built, no matter who builds it.

LAWYERS defend the absolute divine creation: MAN.

MAN who is created in the image and likeness of the Creator.

The injustice done to MAN by the Legal System is also an affront to the Creator of the World.

The world is just, people judge it wrongly.

LAWYERS are PRIESTS, the mission of their profession is SACRED in the JUSTICE TEMPLES that are the PALACES of JUSTICE. Palaces that are as magnificent as the cathedrals where the sacred rituals are done.

The Justice Rituals in these Palaces of Justice are of sacred nature.

In the Palaces of Justice, real Temples of Truth, Lawyers and Magistrates wear Robes, reminding of the sacred vestments of High Priests.

The best Romanian lawyers I had the chance to meet in the Hall of Lost Paces of the Palaces of Justice, palaces created to be Temples of Justice, because JUSTICE is SACRED, during the over three decades of my career, argued rightly that the LAWYER's PROFESSION is the BAR MAGISTRACY.

The lawyer is a beacon that gives light to those around him [4].

In this multidisciplinary essay I will try to present in perfect harmony with the iconic figures of our national law practice, several portraits of lawyers who lead the contemporary world or who have imposed themselves in the culture and civilization of humanity, in different periods of social evolution.

One of the important Romanian theorists of law, career Lawyer, Mircea Djuvara defines the LAWYER: The lawyer is and must remain a defender of the legal order, ultimately representing the refined subtlety of reason and conviction, i.e. the Law itself, in the victorious struggle with the passionate and brutal force.

Predecessors

I will begin our journey with one of the most interesting and complex Romanian lawyers, with a a well defined place in the history and evolution of the legal profession and spirit.

ELLA NEGRUZZI

An emblematic personality of our national law , considered to be the first female barrister of Romania [5].

She was forced to fight hard in a society with an outdated thinking, where women had no right in the public space.

The legal profession was reserved only to men until ELLA NEGRUZZI.

She imposed herself in the Romanian public life due to the success against the system and remained in history as the first female Barrister in ROMANIA, a symbol of her profession for Lawyers today.

She studied at the Faculty of Law of Iasi, a city with a cosmopolitan and unique spirituality, an important capital of our national culture.

In 1914 she applied for the Bar Association of Iasi, but her application was rejected on the grounds that women had no voting right in society in accordance with the provisions of the Civil Code of 1865, and lawyers had to vote the law for the organization of the lawyer's profession.

ELLA NEGRUZZI did not give up.

She was an expert of the Romanian legal and judiciary system. So she was at law with the professional structures, and at the end of the fight, she entered the Bar Association of Covurlui [6], and from 1919 she was a Barrister in the Bar Association of Bucharest [7].

The fight of ELLA NEGRUZZI did not target directly the profession's structures, the Bar Association, but the mentality of the beginning of the 20th century, when women had not equal rights to men. The Civil Code of her time stipulated unequal civil rights of women in relation to men.

In "MARIANA Almanac” of 1946 published in Bucharest [8] I found a piece of information, unconfirmed by other sources, that ELLA NEGRUZZI's debut as a lawyer

was in 1923 (we assume that this was the year when she entered the Bar Association of Ilfov).

ELLA NEGRUZZI was presented in "MARIANA Almanac"in an article significantly entitled "Romanian Women who Dared" written by Alice Gabrielescu [9], article illustrated with a photograph of the barrister (the only photograph published in the press, based on our research), pleading to the bar of the Palace Justice in Bucharest, capturing the attention of her colleagues in the Bucharest Bar Association and of the magistrates of High Court of Cassation and Justice.

ELLA NEGRUZZI campaigned for equality of women in a conservative Romania, founded as President - Founder the Organization "Emanciparea femeii" ("Emancipation of Women"), with the stated aim: "emancipation of women towards their participation in all social areas and and employment in various functions based on their education and skills, and not on discriminatory criteria."

The organization was also concerned with the emancipation of women from the rural areas, where most women lived, and established cultural centers for educating women. Rural areas were at that time a treasure of feminine energies, which contributed to the preservation of the traditions of our national ethos, to the transmission of family ethics and the purity of human relations.

She founded "Women's Front" (1936), organizing numerous meetings and conferences meant to contribute to training women to defend their political, economic, social and cultural rights, in a world of men.

Considering herself anchored in her time, she joined the militant organization - the "Group of Democratic Lawyers", an organization founded in 1935, a group with democratic, center-left views.

The periodicals of that time mention ELLA NEGRUZZI as a Lawyer in the lawsuits of socialist militants, alongside other renowned Lawyers of the time who, even if they did not share the political convictions of their clients, have provided a competent defense.

She ran for the parliamentary elections of the '30s on the lists of the National Peasant Party.

She was a LAWYER who imposed herself in her profession, but also in society, as a militant for the rights and freedoms of her clients.

She is one of the most popular female lawyers from the beginnings of the formal organization of this profession in the Dacian-Romanian area. There are also countless biographies of women who are all milestones of this profession and who have outstanding professional achievements, often surpassing their male colleagues.

ELLA NEGRUZZI remained in the conscience of her contemporaries as a thoroughly moral and professional colleague, a landmark of her time.

ELLA NEGRUZZI is the successor of a famous family in the history of our national culture and civilization. ELLA NEGRUZZI's grandfather was Costache NEGRUZZI, one of the few Forty-Eighters writers who stood the test of time. Her father was the writer Leon Negruzzi, and her uncle, who also raised her after the early death of her father, was Iacob Negruzzi, founding member of the organization "Junimea" and first-class intellectual of his time, twice president of the Academy Romanian.

Thus, Ella was born in 1876 in this notable family of Romania. One might say, judging by today's standards, that Ella came into this world under a lucky star and had everything at her feet. When she was born, her grandfather, Costache Negruzzi had already been Mayor of Iasi, deputy, and in 1866, he was a member of the Romanian Academic Society, the forerunner of today's Romanian Academy. By the time Ella graduated the Faculty of Law in Iasi and applied for the Bar Association, in 1914, her uncle and foster father, Iacob, had already completed his mandate as a President of the Romanian Academy. Who and what would have stopped Ella?

After the Second World War, we find Ella Negruzzi in the Bar Council of Bucharest, along with other leading Lawyers, the only female counselor found in the governance of the legal profession in Romania's capital.

Another female colleague who was entered in the Bar Association [10] as a lawyer, since 1891 (according to some sources), was

SARMIZA BILCESCU (married) ALIMĂNIȘTEANU

SARMIZA BILCESCU [11] is the one who shattered in Paris a global myth, according to which only men could study at the Faculty of Law.

This universal myth of that time, according to which only men had the right to study in universities, was shattered for good.

She fought the system, and she won. Her victory was later capitalized by the legal profession worldwide.

SARMIZA BILCESCU is the first woman who studied at a law faculty and she is also the first woman to ever obtain a BA degree in law.

She is also the first woman to ever obtain a PhD in Law, in Paris, in 1890, with the thesis: "On the Legal Condition of the Mother in the Romanian Law and in the French Law", the thesis theme being also symbolic and significant.

She lived in an era when women did not have full civil rights, their social rights were incomplete and their political rights were not equal to those of men.

Upon enrollment at the Faculty of Law in Paris Sarmiza Bilcescu stated a logical argument that overthrew the old customs of a male-dominated University:

“In a country where even on the prison doors is written: Liberty, Equality, Fraternity, you can not prevent a woman to receive instruction just because she is a woman”.

This first plea of Sarmiza Bilcescu reshaped the very foundation of the academic world.

She entered the Bar Association of Bucharest in 1891, but she never practiced as a Lawyer, she worked as a counselor. We have obtained this historical information from the study "MUSEUM - studies and communication" - Museum of Viticulture and Fruit Farming - Golești, 1993 – 2005,Volume V[12]”.

Another absolute national premiere: she was the first Romanian woman who worked as a Consultant Lawyer.

We also note that SARMISEGETUZA (abbreviated Sarmiza, and in family Miza) BILCESCU ALIMĂNIȘTEANU is the first woman in the Kingdom of Romania who was part of a Board of Directors, namely, the Anonymous Society "CARTEA ROMÂNEASCĂ” one of the most prestigious national publishing houses during the inter war period of the last century.

She was president of the Federation of University Women in Romania and she ran for the elections of the '30s on the lists of the Liberal Party.

As she was highly appreciated by the Romanian intellectuals and aristocrats, she gave lessons of Romanian language to the future Queen of Romania, Her Royal Highness Maria.

A sincere and steadfast friendship was born between Lawyer Sarmiza Bilcescu Alimănișteanu and Queen Marie of Romania. The Queen visited the Lawyer at Românești – Câmpulung Muscel, in 1935, when she was seriously ill.

Lawyer Isanos [13] worked in Iasi, in her short life (April 17, 1916, Iasi - November 17, 1944, Bucharest) and she imposed herself in the Romanian literature as a very talented poet. She studied in Iasi between 1934 - 1938 and is a graduate of the Faculty of Letters and Philosophy and the Faculty of Law. She was married to writer Eusebiu Camilar. From 1932 and until the premature end of her life, she was present in journalism, being known as a poet and prose writer. In 1932 she published her first poems "I would like a fairy tale" and "Spring" in "Licurici" - the magazine of the High School of Chișinău, followed by her volume "Song of the Mountains"

From January 13, 1939 she is a lawyer trainee in the Bar Association of Iasi, working until 1944.

She is an active participant in the literary life of Iasi, publishing numerous poems and short stories in magazines.

EUGENIA CRUȘEVAN

From the limited data that we have, we can configure a short biography.

EUGENIA CRUȘEVAN was the descendant of a noble family [14], daughter of notary Epaminond Crușevan. She graduated high school in Chisinau, this Romanian - Dacian cultural capital and in 1918 she graduated from the Faculty of Law of the University of Moscow.

She is registered in the Bar Association of Chișinău as of October 17, 1919 (according to Cuvântul dreptății, a regional newspaper). At the cessation of Bessarabia she fled to the free territory, unwilling to remain under the Soviet dominance. She will practice Law in Buzău, then she moves to Timișoara [15], where she will remain throughout her life.

She also had social activity, dedicated to the feminist movement, being Secretary of the Organization of Romanian Women, from Great Romania, an organization

established in order to support the empowerment of women to obtain political and social rights.

The bright future of this colleague was destroyed like so many other destinies by the geopolitical vicissitudes and the illegitimate expansion of the Soviet empire, continuing the policy of the tsarist empire, of annexation by force of territories that never belonged to them, where they artificially changed the share of population to create a false majority.

The presence of Eugenia Crușevan on the Romanian free territory will add some color to the multicultural environment of lawyers in Buzău and to the cosmopolitan cultural capital of Banat, Timișoara.

From 1994, in the Republic of Moldova, in the central area of Chisinau, there is a street named after the first female lawyer in this ancient Dacian-Romanian perimeter.

The media of Banat has recently reported a first-class event in the activity of the Bar Association of Timis, the life of the oldest female Lawyer.

Lawyer RELLA FELLER born in Chernivtsi in 1914, celebrated her 100th birthday.

She graduated the faculties of Law and Letters of Chernivtsi, and after she finished her traineeship, she took refuge in Timişoara, as she did not want to remain on the Romanian territory invaded by the Soviets. She worked in the Bar Association of Timiș – Torontal from November 24, 1945, and then in the College of Lawyers Timis. She retired in 1975, after 30 years of productive activity in the field of law.

The oldest member of the legal profession in Romania (until now) was lawyer ION PODAȘCĂ born in 1911, deceased in April 2015 at almost 104 years old. He was a lawyer in the lawsuit of intellectuals, he was the defender of Constantin Noica.

He graduated the Faculty of Law in Bucharest, after graduating the Faculty of History, where he was the student of the world famous scientist, professor Nicolae IORGA, remembered as a very nice person, the courses of whom he never missed. Perhaps the accounts of Nicolae Iorga about the parliamentary activity made ION PODAȘCĂ to enroll also in the Faculty of Law of Bucharest.

Lawyer ION PODAȘCĂ told us one of the best decisions of a Dean of Bar Association. Dean was Lawyer Istrate MICESCU, who could not exempt him from paying the Bar registration fee, because the law did not allow this. Young ION

PODAȘCĂ was a war orphan and he did not have the amount necessary for registration, so Istrate MICESCU approved his request with great delicacy, putting the following apostille on the request:

“The payment of the Bar registration fee is deferred. Mr. Lawyer ION PODAȘCĂ will pay the fee from the attorney fees earned for his first lawsuit."

We continue our journey with the biography of another colleague, symbol of this profession:

RODICA OJOG-BRAȘOVEANU[16]

Few people know that the one who was called "Romania's Agatha Christie", was a Lawyer in the Bar Association of Bucharest for almost a decade.

The most renowned Romanian crime novelist of all times, she was the daughter of another famous lawyer, Victor Ojog of the Bar Association of Bucharest.

RODICA OJOG-BRAȘOVEANU – a top writer – published over 35 novels, mostly crime fiction, but also some historical novels and a SF novel. She also was the author of several scripts for television.

Romanian readers are used to see the lawyer's name on the bestselling books, that are printed in many editions by countless prestigious publishing houses, but few know that she was a lawyer.

RODICA OJOG – BRAȘOVEANU was married to an actor of the National Theater, Cosma Bașoveanu, actor of the golden generation of Romanian theater and cinema.

Lawyer Amalia ROSEN (born Ruckenstein, in Suceava county), was the wife of the chief rabbi of Romania Dr. Moses ROSEN [17].

Her husband, Moses ROSEN, Chief Rabbi of the Romanian Hebrew Communities [18], graduated the Faculty of Law of Bucharest in 1935 and was Lawyer for a short period of time, until 1937, in Falticeni, at the Bar Association of Bacau.

A colorful couple of lawyers was famous in Bucharest in the post-war period of the 20th century, until the '90s: spuses Carmen Thea KAHANE [19] and Puiu KAHANE, – who was very original - and who complemented each other temperamentally and professionally.

Lawyer Carmen Thea KAHANE a was the first female military prosecutor of Romania [20], and then the first Head of Notaries of Bucharest. Lawyer Puiu KAHANE [21] was known for his competent pleadings (specially in criminal matters), with fine humor and qualities that made his pleadings count.

Other colleagues that graduated the Faculty of Law are the actress of the National Theater during the inter-war period of the 20th century, Sandrina STAN [22] and the film critic Ecaterina OPROIU [23], chief editor of CINEMa magazine for 25 de years.

While I was compiling this short history of the Bar Association, I was very sad to hear that Lawyer Paula [24] Iacob [25] registered in the College of Lawyers of Bucharest on December 31, 1954, passed away, after over 6 decades of uninterrupted activity.

She was President of the Association of Women in Legal Careers, and a well-known public figure. She defended Romanian politicians after 1989, and was an example of dedication to her profession.

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We stop here the series of biographies and we will present other notable personalities of the Bar Association in a next number of the magazine.

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[2] 1920 – 2013.
[3] Veteran of the Second World War.
[4] Would the Ceahlău of Romanian literature, Mihail SADOVEANU have been so important in our national culture if he hadn't been the son of lawyer Alexandru SADOVEANU ? The great playwright Tudor MUȘATESCU, was the son of lawyer Alexandru MUȘATESCU from Câmpulung (Mayor and Prefect), himself a graduate of the Faculty of Law in Bucharest and lawyer for a short period of time. (In Toronto there is a Theater named "Tudor Mușatescu – Majestic").
[5] Born in Iasi County (village Hermeziu) on September 11, 1876, she passed away on December 19, 1949.
[6] The capital of Covurlui County was Galați.
[7] Bar of Ilfov.
[8] Page 98.
[9] Novelist and translator, born in 1899 in Bârlad.
[10] Bar's Dean at that time was Lawyer Take IONESCU, (born on October 13, 1858, in Ploiești, deceased on June 22, 1922, at Rome), he was a politician, MP and journalist, he was Romania's Prime-Minister during 1921-1922.

[11] She was born in 1867 and lived until 1935.
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[13] Daughter of Mihai Isanos and Elisabeta Bălan.
[14] Born in Fălești, Bălți county, in 1889.
[15] She died on March 11, 1976.
[16] Born on August 28, 1939 in Bucharest, deceased on September 2, 2002.
[17] Moses Rosen (born on July 23, 1912 Moinești, jud. Bacău – deceased on May 6, 1994 Bucharest).
[18] From 1948; he was Deputy in the National Assembly from 1957 to 1989.
[19] Born Dikman, in 1920, in Cernăuți (Chernivtsi) region.
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[21] Born in 1918; he studied at the famous Carabella High School of Târgoviște, currently Constantin Carabella National College.
[22] Mother of director Ileana CÂRSTEA SIMION (married to actor Nicu SIMION from Ion Creanga Children Theater).
[23] September 13, 1929, Bucharest.
[24] Paulina in civil status documents.
[25] Born on February 20, 1932, deceased on October

The European Union and Interational Treaties: is there a Step towards Better Compliance with International Law? [1]

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Abstract:
As the European Union intends to become a global actor, its position towards treaties is increasingly important for the issue of achieving the highest degree of compliance with international law. On one hand, the European Union might have an increasing role in concluding itself international treaties: in this case, the questions that appear are to which extent the EU has competence in this sense and what is the legal value of international treaties in the domestic law o the European Union and its Member States. On the other hand,
European Union law might affect treaties concluded by the Member States themselves: both in relation to third countries and in "inter-se" relations. This study attempts to examine these questions from the perspective of the security of treaty relations in general. At the same time, the study departs from the assumption that one of the essential components of international rule of law is its domestic implementation. Therefore, the role of the EU is analysed also from this perspective.
Keywords: *European Union, treaties, competence, rule of law*

Introduction

„Strict compliance with international law" is one of the values of the European Union [2]. One can notice the „nuance" provided by the word „strict" – that might be interpreted not only in the sense that the Union complies with international role, but envisages having an „active role" in ensuring full compliance with international law. The question might appear is whether the European Union genuinly provides the necessary mechanisms in order to fulfill the purpose enshrined by this value.

This question is very general and may comprise a wide number of aspects. This study focuses on treaties, which represent one of the main sources of international law [3]. The word „international treaties" was chosen in the title, even if it is pleonastic, in order to underline the distinction in relation to the founding treaties of the European Union: the Treaty on the European Union („TEU") and the Treaty on the Functioning of the European Union („TFEU"). Indeed, in international law, the correct terminology is „treaty": this term is a generic one that designate agreements between subjects of international law which are subject to international law and have legal effect in international law, notwithstanding their particular denomination and notwithstanding the

fact that they may be expressed in a single instrument or in two or more related instruments [4].

The phenomenon that the Member States of the European Union are witnessing is an increase in the number of the treaties concluded by the Union. Treaties concluded by the Union (named „agreements" in the terminology of the TFEU) are binding for the institutions of the Union and for the Member States [5]. It is true that the Lisbon Treaty introduced in the TEU a provision stipulating that the Union has legal personality: but treaties concluded by the Union are not something new. The Lisbon Treaty transformed the international personality of the Union into an „express" and „unique" one. Before its entry into force, the Union had an international legal personality, but an „implicit" one [6], and the European Community had express legal personality – to which the Union „succeeeds" after the Lisbon Treaty [7].

Two main questions appear in relation to treaties concluded by the Union –that shall be the object of this study. The first question relates to what the position of the Union is, towards the treaties it is a party to. One aspect concerns the competence and procedure, as an increasing tendency of the Union to „take over" the competence of the Member States to conclude treaties can be observed. Another aspect concerns the legal value that treaties take in domestic law. By „domestic law", both EU law and national law of the Member States should be understood. This is important, because the correct enforcement of treaties in the domestic law of the parties is an essential component of the way in which international law works: application of international law in domestic law gives effect to the „international rule of law" [8].

The second question that may concern the position of the European Union towards international law relates to the attitude that the Union takes with respect to the treaties which do not bind the Union, but the Member States. The issue may be analysed from two perspectives: first, the position of the Union towards treaties concluded between Member States and third States, and, secondly, the position of the Union towards treaties concluded inter se, between two Member States.

I. Treaties binding the Union

I.1. Competence and procedure

As any international organisation, the European Union acts on the basis of the principle of conferral [9]. Thus, whether States enjoy full capacity to enter into any international commitments, on the basis of their sovereignty, international organisations – as the European Union – may act only within the limits conferred by their members, on the basis of the constitutive act (for the EU – the TEU and the TFEU). The conferral is achieved by texts in these founding acts, which are of course subject to interpretation. Thus, the interpretation of the way in which the EU is given the power to conclude treaties witnesses the „battle" between the Member States and the institutions of the Union, where the States argue for a narrower interpretation of the Union power to conclude treaties, while the institutions „fight"for an ever-enlarging competence. As such „battles" are often arbitrated by the Court of Justice of the European Union, the result has been in favour of the institutions and the Union: a theory of „implied" competences has been created and the doctrine of „exclusive" competence has been postulated by the Court of Justice [10].

Case-law developments started in the 1970s, with the ERTA [11] ruling, when, essentially, the Court held that the Community had (exclusive) competence to conclude treaties when the parralel internal competence has been exercised. States could no longer conclude treaties, where such treaties would affect common rules or alter their scope. In the Kramer [12] cases, the Court admitted that competence to conclude treaties may be shared between the Union and the Member States [13]. Nevertheless, the competence would remain shared to the extent that the Union had not (yet) excercised its internal competence. The Inland Waterways [14] case was an interesting one, as the Court held that the competence of the Community would become exclusive even if the parralel internal competence has not yet been exercised: the criterion for triggering the exclusive character of the competece was the fact that Member States action would have affected the objectives of the Community. A series of cases, known as the Open Skies [15] cases, related to the situation where air transport agreements concluded by the Member States would have affected common rules or alter their scope – even if, in concrete terms, agreements concluded by the Member States with third

countries were not incompatible with EU law. Thus, the Court found the EU competence to be exclusive with respect to concluding air transport agreements (while the ”internal” competence of the Union in the field of air transportation remains shared).

This tendency – to increase the area of exclusive external competence, while the internal parallel competence of the Union remains shared can be noted in the process of “codification” performed by the Lisbon Treaty. Thus, article 3 (1) of the TEU regulates only five areas of internal exclusive competence, while the scope of the external exclusive competence (exclusive competence to conclude “agreements”) enshrined in article 3 (2) remains quite large. The exclusive external competence exists when: i) the conclusion is provided by a legislative act of the Union; ii) the conclusion is necessary to allow the Union exercise its internal competence and iii) in the conclusion would affect common rules or alter their scope. A parallel reading of article 3 (2) and article 216 (1) (the latter regulating the “general” competence of the Union to conclude treaties, covering both exclusive and shared competence) might lead to the simple conclusion that there is no more shared external competence left. The scope of the two articles is almost identical [16].

The continuous tension between the Union institutions and the Member States is reflected not only in the “exclusive” or “shared” feature of the competence, but also in the choice of a legal basis for concluding an agreement. The legal basis may be relevant for the voting procedure in the Council, when approving the negotiations directives, signature or conclusion of the agreement. Let us suppose an agreement covers trade aspects (for which qualified majority is required) and has certain clauses on justice and home affairs (for which unanimity was required – at least within a certain transitional period). How would the Council vote? The approach of the Court of Justice of the European Union relied on examining both the article(s) which represent(s) the legal basis and the text of the proposed agreement, establishing the criterion of the center of gravity: thus, if the agreement follows two purposes and one of them is merely incidental, the conclusion of that agreement shall rely on only one legal basis, which is the main purpose [17]. What can also be noted is the fact that the Court seemed to interpret the “incidental” character rather largely – the result has been the fact that the competence of the Union in fields like trade (which represents exclusive competence,

according to article 3 (1) of the TEU) has been considered as the sole legal basis for agreements covering also intellectual property [18] or readmission of persons [19].

The procedure for concluding the agreements to which the European Union is becoming a party is another “theater” for the continuing tension between the institutions of the Union – especially the Commission – and the Member States. The procedure, regulated by article 218 of the TFEU, largely reflects the international practice, establishing the following stages: authorization of negotiation, authorization of signature and “conclusion” (which, in EU terminology, signifies “expression of consent” – somehow similar to ratification or approval in State practice). The phase in which the tension between the Commission and the States appears more sharply is the negotiation.

First, the designation of the negotiator presents important challenges: a choice should be made by the Council, between the Commission and the High Representative for External Affairs and Security Policy, the latter being competent when the agreement “relates exclusively or principally to the common foreign and security policy” [20]. For example, does the agreement for the accession of the EU to the ECHR fall within this category? The adoption of the negotiating directives on 4 June 2010 witnessed such opposite arguments – but finally the Commission was chosen as the negotiator.

Second, one important source of tension is represented by the role of the “committee” regulated by article 218 (4) of the TFEU, which the negotiator (the Commission) has to consult while conducting the negotiations. In a recent case [21] – decided in July 2015 –the Commission has challenged before the Court the negotiations directives, arguing, inter alia, that an enhanced role of the committee composed by Member States breaches the principle of the inter-institutional balance. The Court upheld (at least partially) the position of the Commission, considering that the negotiation directives that empower the Committee to establish detailed positions, which could be binding on the negotiator, would be contrary to the TFEU [22].

As a preliminary conclusion, the idea that might be underlined is the continuous tension between the Union and its institutions, on one side – whose purpose is to increase the competences of the Union and the powers of its institutions (especially the

Commission) – and the Member State – whose purpose is to limit the increase of Union's powers or, at least, to control their exercise.

I.2. Legal effect of agreements in EU la and national law of Member States

The legal effect of treaties in the domestic law is subject both to "theoretical approaches", such as monism and dualism [23]. A pragmatic approach suggests that attention should not be focused on the theoretical approach, but on the way in which the constitutional law of States operates different techniques for incorporating international law in domestic law and for solving potential conflicts between international law and domestic law. Thus, States usually employ techniques, such as "automatic incorporation"/"transposition" or "conflict clauses" or "consistent interpretation" [24]. These techniques may be relying on constitutional texts or on jurisprudential developments. The question that arises is whether the European Union uses such "techniques" in order to allow for the application of international treaties in EU law – and, as a consequence, in the domestic law of Member States.

The TFEU contains little indication about the legal value of agreements concluded by the Union: article 216 (2) mentions that such agreements are binding for the institutions of the Union and for the Member States. This article is not by itself a provision reflecting neither "automatic incorporation" nor a "conflict clause". Therefore, the legal effect of international agreements in EU law and national law of Member States remained a jurisprudential construction.

The automatic incorporation was recognized by case-law in 1974, in the Haegeman case, in which the Court of Justice of the European Union held that an agreement concluded by the Community forms integral part of the EU law [25]. In the Bresciani case, the Court admitted that an association agreement forms integral part of the domestic law of the Member States and prevails in case of conflict with the domestic law of that State [26]. Case-law also has consecrated, with certain conditions, the "direct effect" of international agreements. The Court of Justice grounded the direct effect on the principle of good faith in the Kupfenberg [27] case, holding that a person can rely on an agreement concluded by the Union before a national court. One of the reasons was the fact that the legal effect of an agreement should not vary from one State to another. The Court also recognized that a person can rely on an agreement concluded by the

Union in order to contest the validity of secondary legislation, provided that the agreement the its provisions confer rights and liberties capable of being invoked in relation with the parties and the “nature and logic” of the agreement do not prevent the examination by the Court of the validity of an EU act [28].

One supplementary thing may be mentioned: as part of the EU legal order, agreements concluded by the EU enjoy the “traditional features” of EU law, in relation with the domestic legal order of the Member States. These features are: priority, direct applicability and direct effect in relation to the domestic law. EU law doctrine emphasizes that the “source” of these features is not represented by a constitutional technique of the domestic law of States or a jurisprudential creation of the same domestic systems, but must be found in the specific nature of the EU law [29]. Nevertheless, some domestic systems contain themselves constitutional provisions concerning the effect of EU law into domestic law. In Romania, article 148 (2) of the Constitution provides that EU (primary and secondary) law prevails over national legislation (”national laws”), in case of conflict (”respecting the provisions of the Act of Accession”). Thus, in Romanian domestic law, an agreement concluded by the EU will “benefit” of the “priority clause” provided by article 148 (2) of the Constitution.

Nevertheless, it can be noted that the case-law of the Court of Justice of the European Union established limits to the direct effect of an international agreement and to the possibility of private persons to rely on such agreement to invalidate secondary legislation. The criterion established by the Court may be seen as subject to interpretation: the “matter and purpose” or the “wider logic and nature” of an agreement [30]. On the basis of these criteria, the Court denied direct effect of agreements within the WTO, to which the EU is a party, as well as of the United Nations Convention on the Law of the Sea.

As a preliminary conclusion to this section, the EU law helps implementing agreements to which EU is a party. The features of EU law: priority and direct effect work in favour of the proper application of agreements in domestic law. However, in certain cases, the Court of Justice of the European Union provided the necessary tools to deny the direct effect, though rather large criteria [31].

II. Treaties binding only the Member States

II.1. Treaties between the Member States

The questions that appear is whether Member States could still maintain, or even conclude, treaties between themselves and whether the existing intra-EU treaties may continue to be in force. The question depends on whether the EU has competence in the area regulated by that treaty. Naturally, if an area is not subject to EU competence, or if the EU has competence of coordination and support – such as culture, for example – the power of Member States to conclude treaties between themselves remains unaffected.

When the matter covered by the treaty between two Member States coincides with a matter regulated by EU law, the question that appears is what are the rules governing a potential conflict between the two norms. Theoretically, if the EU law is regarded as another „inter-State" norm of an international character, the potential conflict would be governed by the general rule „lex posterior" expressed in articles 30 (3) and 59 (1) b) of the 1969 Vienna Convention on the law of treaties. Thus, article 30 (3) provides: „When all the parties to the earlier treaty are parties also to the later treaty but the earlier treaty is not terminated or suspended in operation under article 59, the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty", while article 59 (1) b) stipulates that: "A treaty shall be considered as terminated if all the parties to it conclude a later treaty relating to the same subject matter and: […] (b) the provisions of the later treaty are so far incompatible with those of the earlier one that the two treaties are not capable of being applied at the same time". Both articles contain a reference to „incompatibility". Thus, as far as a previous treaty would be incompatible with EU law, it might be argued that EU law would prevail as lex posterior [32].

The Court of Justice of the European Union dealt with the question of anterior treaties between Member States in the Exportur case [33]: the Court held that a convention between France and Spain, concluded before Spain's accession to the European Communities, could not continue to apply between two Member States, if it is contrary to EU law. The result may be seen as the same that would result from the application of articles 30 and 59 of the Vienna Convention, but the question that may be

raised is whether the Court of Justice of the European Union would not use the argument of the supremacy of EU law (notwithstanding any international law rules). The Court did not elaborate on this issue, but the opinion of Advocate General Lenz was indeed in the sense of grounding the reasoning on the general priority of EU law.

A general „problem" that witnesses the tension between the application of international law rules and the „EU law supremacy" is the relation between Bilateral Investment Treaties („BITs") concluded between Member States and the EU law. The question arised first in front of dispute settlement bodies competent to solve dispute grounded on the BITs. The defendant States – together with the Commission, acting as amicus curiae – argued that the BITs have been terminated by the action of EU law, which enjoys supremacy.

In Eastern Sugar v. Czech Republic [34], the defendan targued in front of an Arbitral Tribunal that by application of article 59, an intra-EU BIT had ceased its validity (arguing, on this basis, that the Arbitral Tribunal lacked jurisdiction to hear the case). The Commission intervened as amicus curiae, invoking the effective priority of EU law, which would cause the lapse of anterior treaties. The Arbitral Tribunal did not uphold this thesis, retaining that article 59 was not applicable, because the two treaties (the TEC and the BIT) were not relating to the same matter [35]. In Eureko v. Slovakia, the defendant State invoked article 30 (3) of the Vienna Convention. This time, the Commission also relied on article 30 (3). Both Slovakia and the Commission argued that the dispute settlement clause of the BIT was incompatible with the exclusive jurisdiction of the Court of Justice of the European Union. The Arbitral Tribunal rejected this argument and held that there is no violation of the EU law [36].

One could note the different views expressed by different fora: the Commission and the Court of Justice of the European Union (in the Exportur) case seem to rely on the principle of general priority of EU law, while investment arbitral tribunals applied the international law rules in articles 30 and 59 of the Vienna Convention, and even interpreted them in the sense that no incompatibility exists. The problem appeared again, but in a different manner, in Micula v. Romania [37]. This time, it was not the dispute itself that related to a potential incompatibility with EU law, as the facts submitted to the Arbitral Tribunal were anterior to the accession to the EU. However, the

Commission is sustaining that the execution of the Arbitral Award would breach EU law, representing an illegal State aid [38]. Indeed, the Romania finds itslef in a very difficult situation: if it executes the award, it would breach the EU law; if it does not execute the award – complying thus with EU law – it would face recognition and execution procedures, not only in Romania, but also in other States. The supremacy of EU law, supported by the Commission, comes into conflict with the traditional system of inter-State arbitration regulated by the ICSID Convention and by the vast network of BITs.

Concluding this sub-section, it could be noted that EU law seems to be „unfavourable" to treaties between Member States. In certain cases, it affects well-established systems, such as BIT arbitrations. What it might be seen asa difficult point is not necessarily the question of whether an incompatibility exists, but the legal basis for dealing with such incompatibilities: on one hand, international law could apply, but on the other hand, the supremacy of EU law could set aside any other treaty rule between Member States.

II.2. Treaties between Member States and third countries

Conflicting treaty provisions in relation between „third parties" is one of the most difficult issues in international law. The hypothesis is the one when a treaty between State A and State B contains obligations for State A which are contrary to obligations of the same State A under a treaty between it and State C. Practically, this is the general hypothesis of the relation between EU law and treaties concluded between Member States and third States. In international law, this issue is not dealt with by the Vienna Convention: it is not a matter of validity of the treaties in question, but it is a matter of conduct and State responsibility of State A [39].

The relevant provisions of EU law have to be taken into consideration. Article 351, first paragraph, of the TFEU establishes that treaties concluded prior to the creation of the European Communities or prior to a State's accession to the EU shall not be affected by EU law. Thus, „prior" treaties seem to be protected in case of conflict with EU law, while „posterior" treaties seem not to enjoy this regime. However, this appears to be only an superficial conclusion, as the second paragraph of article 351 radically changes the paradigm: it imposes an obligation for the Member States to use all necessary means to eliminate the incompatibilities between the treaties with thirds

States referred to in paragraph 1 and EU law. This might be regarded an expression of the principle of the supremacy of EU law [40], or, better said, the expression of the consequences of this principle on the foreing relations of Member States.

The obligation to use all necessary means to eliminate incompatibilities has been interpreted by the Court of Justice of the European Union in the sense that it comprises the obligation to denounce a treaty, in accordance with its provisions and international law. The Court also held that the political situation in that particular third State cannot justify the impossibility to re-negotiate a treaty [41].

Moreover, the obligation to take all necessary means was „extended" in the case of the new Member States that acceeded in 2004, 2007 or 2013. For example, in the case of Romania and Bulgaria, article 6.10 of the Act concerning the conditions of accession to the EU provided expressly that the Acceeding States have the obligation to ensure: withdraw from trade agreeements and ensure incompatibility between EU law and other treaties that they are a party to, before the date of accession. This time element represents an important difference in relation to the „old" Member States. Moreover, the same article 6.10 provided that if incompatibilities could not be eliminated through negotiations before the date of accession, the Acceeding States must denounce the respective treaties with third countries.

In practice, the Acceeding States were „used" by the Commission as „pioneers" of ensuring „priority of EU law". In many instances, the thrid countries in relation to which negotiations were conducted replied with the (somehow relevant) argument that no similar proposals had been received from „old" Member States.

Another question that arises is: what represents an „incompatibility", in the sense of article 351 (2)? Two aspects could be revealed. First, the incompatibility could relate to a overlap of the competence to conclude treaties. If the European Union has exclusive competence to conclude a treaty in a certain field, on the basis of article 3 (2) of the TFEU, such an incompatibility would arise, even if the substantial provisions of the agreement concluded between a Member State and a third country would not run contrary to EU law.This was the case, for example, in the Open Skies cases, in which the Court of Justice held that exercised shared internal competence triggers exclusive external competence [42]. Second, the incompatibility may relate to aspects of

substance: an obligation within EU law could not be fulfilled while complying with an obligation in the agreement with the third Country. Indeed, the Court of Justice of the European Union has expanded this hypothesis: even if there is no concrete substantial incompatibility, but the EU institutions have the power to adopt potential measures that would eventually be contrary to the provisions of an agreement with a third country, an incompatibility would still be deemed to exist. This was the case of the cases concerning Bilateral Investment Treaties against Finland, Sweden and Austria: the Court held that the provisions of the BITs concerning free trasfer of funds were incompatible with the power of the Council to restrict the free movement of capitals in relation with the respective third countries (even if no restrictions were in place and no such restrictions were even envisaged) [43].

In case of a multilateral treaty, holding that the area governing by that treaty belonged to the exclusive competence of the EU, may trigger the conclusion that Member States may have to withdraw from that convention [44]. Ironically, some Council of Europe Conventions provide that the EU and the Member States will have together the number of votes within the body created by the convention, equal with the number of the Member States that are parties to it. Thus, an obligation for the Member States to withdraw would might not take into consideration the political interest of the EU with respect to that respective treaty body: instead of having 28 votes, the representative of the EU will be left with one.

The EU institutions, especially the Commission, should look “beyond the fence” and realize that an equitable balance should be achieved between the “ever increasing” exclusive competence of the EU to conclude treaties and the maintenance of reasonable treaty powers within the hands of Member States. Does the EU really have the capacity to manage the vast relation of treaties concluded by 28 Member States?

Conclusion

The conclusion to this study is rather mixed. Does the EU help in the real enforcement of treaty law? Yes and no. Yes when it comes to the treaties concluded by the EU: they are sources of EU law and, for this reason all the “benefits” of their application in the domestic law of Member States follow. Treaties concluded by are part of the domestic legal order of Member States, and they enjoy priority over national law

and over secondary EU legislation. Under certain conditions – it is true, they are rather "vague" (the "nature and general logic" of the agreement) – the treaties concluded by the EU have "direct effect".

Despite this positive trend, two other elements could be noted. First, there is an increasing tendency of the European Union to expand its competences to conclude treaties. This is not a "win-win" situation: the competence of the European Union to conclude treaties extends to the detriment of the competence of the Member States to do so. It is long established that Member States can no longer conclude trade agreements. But soon, areas like mutual cooperation in criminal matters or even international criminalization of foreign terrorist fighters may be recognized as exclusive EU competence. Second, the general attitude of the EU institutions towards treaties concluded by the Member States can be labelled as generally "negative": the Commission relies on the general paradigm of EU law priority in order to determine the Member States either to renegotiate, or to denounce or withdraw from treaties with third countries.

The situation is "worse" for the treaties concluded between Member States – the EU institutions mitigate for the general application of EU law as "generally superior" to these treaties, notwithstanding relevant rules of international law. Relations between Member States appear, indeed, as rather "domestic" affairs.

The question that appears is whether this trend is helpful for the general promotion of the rule of law on international level. Generally, it is not bad that the EU begins to "behave like a State" on the international level. However, much depends a lot on the "attitude" the EU institutions have with respect to international law. Until now, the Court of Justice of the European Union, even if it had established the fact that treaties concluded by the EU are integral part of the EU law system, has been criticized for its "reluctance" towards international law [45] and international jurisdictions [46]. The recently established European External Actions Service has a legal office in charge of international law composed of only three to five persons. If the EU really intends to become a global actor, it would have to develop a "culture" of international law, at the level of the institutions and of the Court.

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[1] This work was supported by a grant of the Romanian National Authority for Scientific Research CNCS-UEFISCDI, project number no PN-II-RU-TE-2012-3-0355; Această lucrare a fost realizată în cadrul unui grant acordat de Consiliul Național al Cercetării Științifice CNCS-UEFISCDI, numărul proiectului PN-II-RU-TE-2012-3-0355;
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Considerations Regarding Professional Training

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Abstract:
Professional training is a learning process that implies accumulating knowledge, refining competences, concepts, rules or changing attitudes and behaviors in order to improve people's performances both at the work place and in their day to day lives. Gaining knowledge and competences through life is a fundamental condition for individual and professional development, for the growth of the adaptation and employment capacity. Within this material there will be approached aspects referring to the presentation of the present legal and institutional environment of professional training in Romania; also it will treat some aspects referring to the stimulation and protection of this activity.
Keywords: *professional training, professional education, initial training, continuous training.*

The Definition of the Concept of Professional Training

Professional training is the activity performed by a person before employment in order to gain the general and specialty knowledge in order to have a profession. The professional training is regarded as a continuous process that is objectively determined by the progress of society, the continuous development of science and modern technique.

Professional training is defined as a systematic training in order to raise people's capacity to take social functions on the labor market, in other words it covers every range of education and qualification activities. [1,379]

In the professional training domain there are utilized a series of terms such as: permanent education, continuous and initial training, training which must be based definition.

Thus, the Romanian Institute of Standardization has elaborated the National Standard Project in the domain of professional training according to which:

- Professional education is a concept according to which educations is regarded as a long term project that begins at birth and continues throughout life.
- Professional training is a component of permanent education that regards the participation of a person to professional training activities throughout life. It is composed of initial and continuous training.
- Initial training is the professional training of a person as pupil, apprentice or student.

 Continuous training is that professional formation of a person after the termination of initial training so after the beginning of that person's active life. It has the purpose the adaptation of the person to the changes in technology and labor conditions, favoring social promotion through access to different levels of culture and professional qualification and contributes to the cultural, economical and social development.

Professional Training of Employees

According to the legal provisions of the domain [2, art. 189] they are realized through the following methods:

- participation to the classes organized by the employer or by professional training services in the country or abroad;
- stages of professional adaptation to the requests of the workplace and the post;
- stages of practice and specialization in the country or abroad;
- apprenticeship organized at the workplace;
- individual training;
- other methods of training agreed between the employee and the employer.

The legislations gives the employer the obligation to ensure employees periodic access to professional training either by initiating and financially supporting the employee to follow a training program or by the agreement he gives to the employee's request to follow, in a certain period of the work time, such a program. [2, art. 190]

Professional training is made by levels of training and specializations taking into account the needs of the employers, the requests of the posts that the employees have and the promotion possibilities or employment. [3,296]

The participants to the professional training programs cannot be obligated to attend other activities than those provided in the training program. The providers of professional training who organize the programs finalized by certificates of qualification recognized at a national level, close professional training agreements with the participants. The professional training agreements are registered at the committees who license the providers of professional training at a county level or in Bucharest, named licensing committees.

The licensing committees have the purpose to license the professional training providers, to give consultations to the professional training providers as well as to

monitories the activity of the professional training providers and in certain situations to notice the violations of the law made by them and to withdraw their license.

The license can be withdrawn by the licensing committee if the programs for which the professional training provider has been licensed are not respected or if, repeatedly, the results of the evaluation tests are not satisfying. In these situations the professional training providers whose license has been withdrawn can request a new license only after a year from the date of the withdrawal.

Professional training of adults is financed by the employers' funds, the budget of the unemployment allowance fund, as well as by donations and sponsors.

In the period they participate to the professional training programs financed by employers, the employees receive salary rights established by the individual labor agreement for the normal working program. If these programs are developed in another city than the one of the employee's workplace the employers must pay the traveling expenses in order for the employee to participate to the professional training programs.

Professional training is present in searching for competitiveness, in the apparition of new labor organizations or new methods of managing the work force in the fight against exclusion, in social cohesion. It must conciliate the democratic and economic demands of the social market and life.

Individual Professional Training

Individual professional training is established by the employer in agreement with the employee concerned taking into account the criteria of the annual plan of professional training and the conditions of activity performance at the workplace. [4,334]

The professional training programs must include:

- duration;
- the objective expressed by the professional competence that is to be acquired;
- the qualification of the trainers;
- the methods of transmitting knowledge and of training practical skills;
- training program;
- necessary equipment and materials;
- Evaluation procedure.

In what concerns the choice of the concrete method of professional training, the rights and obligations of the parts regarding its development, duration and any other aspects referring to professional training there is provided that these are the object of an additional act to the individual labor agreement.

Professional training can be made either for unemployed or employed people. In the first case the person who wishes to follow a professional training program ending with a certificate of qualification or graduation recognized at a national level closes a professional training agreement with the provider of professional training.

Employees can follow professional training programs at the initiative of the employer but with the employees' consent. In this case there is closed an additional act to the individual labor agreement in which there are provided clauses that have incidence over the closed labor agreement. Not respecting the obligations of the additional act by the fault of the employer gives the employee the right to compensation based on the contractual responsibility.

The conditions of professional training can be the object of certain clauses of the individual labor agreement from the moment of its closure. In this situation the additional act mentioned above is no longer necessary except for the case when the employee and the employer agree to modify the initial provisions referring to professional training.

Expenses Related to Professional Training

Referring to the expenses caused by the participation of the employee to a professional training program initiated by the employer, the legislation [2, art. 194, align. 2] regulates two hypothesis:

- if the participation implies taking the employee out of the activity for a period that does not overcome 25% of the daily duration of the normal working time the person will benefit, for the whole duration of professional training, from the whole salary of the post with all the inseminations, increases and additions;
- if the participation implies taking the employee out of activity for a longer period than 25% of the daily duration of the normal working time the person will benefit from the basic salary and, where appropriate, from the long service allowance. [1, 406]

A third hypothesis provided by law [2, art 194, align. 3] states that if the participation to the professional training stage implies the complete taking of the employee out of the

activity the individual labor contract is suspended and the person benefits from an allowance paid by the employer provided, where appropriate, in the applicable collective labor agreement or individual labor agreement.

If the employer has the initiative then he is the one who pays all professional training expenses. Likewise, the employee cannot be obligated to participate to classes or stages of professional training if he did not agree to it in the individual labor agreement.

When the employee is completely taken out of activity, due to the fact that he no longer performs the labor he was hired for, the individual labor agreement is suspended and the employee receives an allowance paid by the employer. [5,315]

The Labor Code regulates the situation when, after graduating the professional training class initiated by the employer, the employee resigns. In this case the employer no longer benefits from the activity of the employee whose professional training he has initiated and has paid for, given the needs of the certain unit. In order for the employee to not make such a drastic move, the Labor Code establishes that the employees that have benefited from a professional training course longer than 60 days, taking them out of activity for a period of more than 25% of the normal daily working time or with complete taking out of the activity, they cannot terminate the individual labor agreement for a period of at least 3 years from the graduation of the professional training courses. If the employee does not respect these obligations he has to pay all the expenses of professional training, proportional to the period when he was not working of the period established by the additional act to the individual labor agreement.

The duration of the employee's obligation to work in favor of the employer after graduating the course as well as other aspects regarding the employee's obligations after professional training is established by both the employer and the employee through the additional act or through the individual labor agreement.

The employee does not have the obligation to refund the expenses of the employer if during the class or the stage of professional training he has been taken out of his daily program for a period that has not overcome 25% of the normal working time or if the stage lasted up to 60 days even if he resigns before meeting the term of 3 years. [6,274]

The finality of the refund clause of the individual labor agreement or of the additional act is not preventing the employee of his right to resign and neither is the excessive limitation of this right by establishing an exaggerated or disproportionate refund in the case he does not respect the agreed term.

At the same time the period in which the employee has agreed to work for the employer after graduating the class or stage of professional training is not similar to a clause of guaranteeing the workplace, the individual labor agreement being able to terminate through the agreement of the parts, through the dismissal act emitted by the employer or through law termination. The refunding clause is a counterpart to the commitment taken by the employer to ensure on his expense a certain professional training that benefits the employee.[3, 300]

Professional Training Leave

If the employee follows professional training at the initiative of the employer there is no issue of leave because the stage or class of professional training is included in the work program, including the necessary time for theoretical preparation and taking examinations throughout or at the end of the certain period.

Also, there is no issue of professional training leave when the participation to the stage or class of professional training initiated by the employer implies completely taking the employee out of the activity. The situation is similar when a person closes a professional qualification agreement where the person is obligated to follow the professional training organized by the employer as well as in the case of professional adaptation agreement.

Unpaid Leave

It is granted by the employer at the request of the employee that follows a professional training by his initiative. The request must be addressed to the employer with at least a month before the exercise of the leave and must include the date of the beginning of the stage, the domain and duration as well as the professional training institution. Based on this data the employer can check if the employee intends to follow professional training. The employer can reject the unpaid leave request of the employee only if the next conditions are met:

- he has obtained the agreement of his union;

 The absence of the employee would seriously prejudice the development of the activity.

The unpaid leave for professional training requested by the employee can be utilized and divided within a calendar year for taking the graduation exams of some forms of education or for taking the exams for graduating to the next year within the superior education institutions.

During the unpaid leave for professional training the employee benefits from all the rights appropriate for his work time except the salary.

Paid leave for Professional Training

This is a right of the employee if he is in one of the following situations:

 is at the age of maximum 25 and in a calendar year the employer had not ensured the employee's participation to professional training on the employer's expense;

 Is over 25 and within 2 consecutive calendar year the employer had not ensured the employee's participation to professional training on the employer's expense

The duration of the leave in these situations is of 10 working days. The leave allowance is calculated in the same way as the allowance for vacation.

The employee can follow any form of professional training even if it is not necessary at his work place. Moreover, the legal texts do not impose a certain general work seniority or at the employer when the employee presents to him the request for unpaid leave for professional training. Also, the legal provisions state that the duration of the professional training leave cannot be deduced from the duration of the annual leave. [2, art. 153]

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The Civil Legal Liability – Social Implications

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Abstract:
The common meaning of the notion of liability is that of an obligation to bear the consequences of not conforming to a specific rule of conduct by the party guilty to have committed an act contrary to the rule and who is always subject to social disapproval of such a conduct. Therefore, the legal liability is defined as a legal situation specific to the public constraint entailed by the breach or non-compliance of the legal norms in effect. Having regard to the need for the legal liability as a constraint legal relation that arises following the breach of a legal provision by a natural or a legal person, one may consider the legal liability to be the complex of rights and related obligations which, according to the law, arise following the making of an illicit act, and constitute the framework for performing the public constraint by way of applying the legal sanctions for the purposes of ensuring the stability of the social relations and guiding the members of the society towards complying with the order of law.
Keywords: *liability; order of law; the legal liability; legal norms; the public constraint.*

1. Social determination of the civil legal liability

The legal liability can be defined [1] as that form of social liability prescribed by the State as a result of the breach of the rules of law by way of an illicit act which entails the bearing of the appropriate consequences by the guilty party, including through the use of the compelling force of the State for the purposes of reinstating the order of law prejudiced this way. The notion of liability is not exclusively specific to the law; it is also used in all domains of social life. The liability may be of the following nature: political, moral, legal, religious, etc.; and it has a correlative, and a political, moral, legal, religious, etc., feature, respectively. Through the initiation of the liability and the bearing of the consequences deriving therefrom, the violated order of law is reinstated. The legislation and jurisdiction do not define the notion of legal liability, the lawmaker prescribing only the conditions in the presence of which a person may be held liable, namely, the principles of liability, nature and extent of the sanctions likely to be applied and the limits thereof. The situation is similar also in the legal practice, which does not give a definition of the legal liability or of any of the forms thereof; however, the practice has brought a valuable contribution to the explanation thereof and clarification of the conditions and forms of the legal liability.

According to some authors [2] [3], the legal liability is the obligation to repair the prejudice and the criminal liability is the obligation to bear and execute the penalty. Therefore by defining the liability this way, namely, by identifying it with the sanction, the scope of the liability is reduced. Another opinion considers that the legal liability occurs only in the case of a breach of a rule of law and is followed by the application of the public constraint by means appropriate to the degree of social hazard of the act committed.

Therefore, the legal liability is defined as a legal situation specific to the public constraint entailed by the breach or non-compliance of the legal norms in effect [4]. Having regard to the need for the legal liability as a constraint legal relation that arises following the breach of a legal provision by a natural or a legal person, one may consider the legal liability to be the complex of rights and related obligations which, according to the law, arise following the making of an illicit act, and constitute the framework for performing the public constraint by way of applying the legal sanctions for the purposes of ensuring the stability of the social relations and guiding the members of the society towards complying with the order of law.

From a linguistic perspective [5], the liability is a personality acknowledging their duty in relation to the society, a community, understanding the meaning and significance of their behaviour.

In jurisprudence [5], this term has acquired another meaning, different from that of the usual language, namely: it highlights the negative consequences occurred when an illegal act is committed by a natural or legal person.

The legal liability includes, in itself, only those consequences of the breach of law which are translated into the occurrence of a new obligation or other means of obligations occurred within the already existing legal relation.

These means, as well as the newly occurred obligations must be in relation to the negative consequences unsatisfactory for the person having breached the order of law.

The evidence of the liability as a special legal system, beyond the application of the constraint measures for the execution of the existing obligation, relates to the contents of the relations that occur in a specific case.

The constraint to execute the obligation cannot be considered as liability, because the public constraint applies only for guaranteeing the obligation. By means of the public constraint, the participants to the relation are in the position of having to be in compliance with the legal requirements.

Through its remedial function, the civil liability aims at restoring the patrimony of the prejudiced person to the previous condition, by removing all harmful consequences of the illicit act. The rules on which the legal practice and the specialized literature, but especially, the civil law is based as the core principle of the civil liability, relate to the remedial obligation.

As part of the liability for the breach of the rights and obligations within an existing legal relation, the illegal behaviour is reduced to the breach of a right relating to a deviation of the real behaviour of the model, consolidated by means of a legal relation. This difference existing in the civil legal literature receives the expression of the delimitation of the contractual civil and tort liability.

The contractual civil liability is the obligation of the debtor of an obligation under a contract to repair the prejudice caused to the creditor thereof or by the fact of not complying, to a broad extent, with the provision owed, namely, the late, inappropriate or actual non- execution thereof, in whole or in part.

The civil tort liability is a person's obligation to repair the prejudice caused to another one by an off-contract illicit act or, as appropriate, the prejudice for which it held under the law liable. Regarding the relation between the two forms of the civil liability, please note that the civil tort liability represents the common law of the civil liability, while the contract liability is a liability having a special, derogatory feature. Whenever it is not about the contractual liability, the rules on the civil tort liability shall apply.

The range of differences between the contractual and the tort liability allows, however, to claim that they exist as part of the civil liability unit. By establishing certain limits to the application of the tort or contractual liability, the lawmaker position on which of these forms is capable of being as effective as possible able to influence certain peculiarities of the civil relations, stimulating thereof to making optimal decision in specific situation. The lawmaker's choice of the form of liability is performed with due regard to the functional specificity of the contractual and tort liability and, for this reason,

this situation is to be taken into consideration when improving the legation on enhancing the victim's protection.

When examining the legal and civil liability as a means of protecting the victims, the functions thereof must be underlined, because it allows the determination of the limits for the actual application for the purposes of achieving the envisaged [7] objectives.

The specialised [8] literature examines to a large extent the issue of the combination between the contractual and tort liabilities. Certainly, this issue may be discussed only when, between the party having caused the prejudiced party a contract that is duly concluded exists, and the non-execution of which has caused the prejudice.

A principle that is needed in the legal practice is that it is not possible to make any combination within a mixed action, of the rules that apply both as part of the tort liability, and of the contractual liability, nor to apply, as a supplement, to the contractual action based on which compensations have been awarded.

2. The legal liability conditions

1.1 The prejudice

Among the core elements of the legal liability, the prejudice is the one the existence of which entails the least discussions. The expression of the prejudice belongs to the current language and signifies the injury, damage, harm of honour, of reputation, of the reputation of a party.

The term prejudice has two meanings: a traditional one, which, in the broad sense, derives from the Romanian law and designated the prejudice or the injury, and another one, relating to the compensation. The first meaning is the correct one, because the compensation relates to the value of covering, of replacing the damage.

The prejudice [9] repairing is characterised by the fact that the wealth passes from the patrimonial area of a participant to civil legal relations (the prejudicing party) into the patrimonial area of another participant to civil legal relations (the injured party). For this reason, the prejudice repairing is, in itself, the liability of a participant to the relation before the other one, and, for this very reason they are different from other forms of the legal and civil liability, which are directly connected by the lack of a right

somewhat civil (for example, the seizure, for the benefit of the State, of what a party has received by concluding a covenant contrary to the interest of the State).

The prejudice may be considered from a social and legal perspective. In its social sense, any breach of the law entails a prejudice, because it has a negative effect on the social relations. In the legal sense, the breach of the law may also not entail a prejudice.

The prejudice may be caused both to the person and to the goods thereof; we may mention that, in the former case, the prejudice is to be repaired only it was caused to a specific natural person.

If the prejudice caused to the victim can be appraised by means of money, it is a patrimonial prejudice. The prejudice caused by way of damaging or destroying a good or the prejudice caused to a person who has lost in whole or in part the working capacity, are typical examples.

If the prejudice is not likely to be appraised by means of money, it is a moral (non-patrimonial) prejudice.

The patrimonial prejudice has two components:

- the actual loss suffered;
- the unrealised benefit.

One of the principles of prejudice repairing is the full repairing thereof.

The actual loss suffered consists in a reduction of the active value of the consumer's patrimony, while the unrealised benefit is the lack of the increasing patrimonial asset that would have occurred should the illicit act not have happened.

The manner of the compensation in kind or in the form of money is selected by the court of law in correlation to the actual circumstances of the case. Certainly, the interests of the natural persons are also relied on. The repairing in kind of the prejudice as a result of the legal liability implies selecting the means most appropriate for the form and seriousness thereof.

The repairing in kind is the activity of removing the prejudice suffered by a person by way of using practical means and procedures (such as the replacement of destroyed goods by other goods of the same type, making technical repairing, etc.) which, depending on the specificity and seriousness of the concerned prejudice, are able to

lead, to the largest extent, to the accomplishment of the principle of the full repairing of the prejudice and to the restoration to the previous condition of the injured person [10].

Within the contractual liability, the repairing manner differs according to the nature of the obligation non-performed, performed late or performed in a faulty manner.

2.1 The illicit act.

The illicit act represents the objective condition of the legal liability. The behaviour is illegal if it violates a rule of law regardless of whether the concerned subject did or did not know they were violating such rules. The rules of the civil law establish different requirements for the behaviour of the participants to the civil circuit, also including for the economic agents and consumers.

Then, the illicit act is examined as an element of the civil tort liability, and the objectivity, the exterior manifestation of an attitude of conscience and will of a certain person is implied.

The illicit act consists in actions and inactions. The specialised literature mentions that both the actions and the inactions are characterised by the same internal signs. From the legal perspective, the inaction cannot be reduced to the mere passivity of the subject, but it represents the non-execution of those actual actions to which they were bound under the law or the contract. Therefore, the inaction is the illicit act; whenever the illegal rule binds a certain person to act in a certain manner, the legal requirement has not been observed. This interaction would represent a specific behaviour, an action against the law, likely to engage the liability of the author thereof. It is possible that the same illicit behaviour of an economic agent meets, at the same time, both illicit actions and inactions.

2.2 The causality relation

For a person's liability to be engaged, it is sufficient for an illicit act and a prejudice suffered by a person to simply exist, but it is necessary for a causality relation to exist between the act and the prejudice, namely, the act to have caused the concerned prejudice[11].

Often, the causality report in terms of the prejudice caused to the consumers may be easily established. Some other times, the concerned report is harder to

establish, especially when the effect has been preceded by a multitude of human actions or other circumstances.

Although any human action is an unitary action of a physical and physical feature, it expresses not only an objective exteriorisation, but also, an attitude of conscience, affectivity and will; however, when it comes to analysing the causality relation between the illicit act and the prejudice, abstraction is made of the subjective attitude. The psychical matters form an important element for liability establishment: guilt. [12]

2.3 Guilt. Grounds for the exoneration of the liability for products.

The current legal literature [13] defines guilt as representing the psychical attitude the author had when making the illicit act or at the moment immediately prior to the illicit act, in relation to the act and the consequences thereof."

This wording relates, on the one hand, to the elements of intellective and volitive order [14] (physical attitude) and, on the other hand, it proves the connection of this subjective side of the man and the act thereof to the consequences thereof, i.e., the objective element.

It is to be mentioned that guilt is a physical attitude in relation to the illicit act and the consequences thereof, but it is an attitude negatively subjective, ignoring the legal rules established within the community, which are considered valid and accepted as valuable at a specific time. It is not any subjective attitude that constitutes the deed, but only the attitude involving the acknowledgment of the social significance of the deed thereof, of the antisocial feature thereof and the guilt to have committed the act and undertaking the consequences thereof.

As a psychical process, the structure of the civil guilt includes the intellective and volitive element. The psychical processes, as components of the guilt, are not different from those constituting the psychical basis of any human action. From an intellective perspective, the voluntary act of the man contains a complex cognitive process that involves knowing the object, acknowledging the needs, wills, valorising the reasons, purposes, means and correlating thereof through the prism of the requirements of the own self and of such objectives. [15]

The individual cannot be held liable in a civil manner if they have not known the social significance of the acts thereof [16]. Man must realise that the deeds thereof are likely to injure the subjective rights of the other members of the community, i.e., they have to acknowledge the antisocial feature of the conduct thereof.

The volitive factor – relating to will – represents the physical activity oriented towards the reaching of certain purposes, which involves the deliberation and decision-making in relation to a specific behaviour to be followed.

Guilt may be approached from the perspective of the forms of expressing thereof, putting an emphasis on its structural elements (intellective and volitive). This is the point of view from which the degrees of guilt are analysed, i.e., the form of the intention of the non-intended form. Although the degree of guilt does not have a specific legal relevance in civil law, however, in some cases, the seriousness of the guilt causes specific legal effects, which are briefly outlined below.

1. The courts are oriented towards appraising the prejudice extent more broadly, when it is about an intended act or committed by way of imprudence, and, in this case, there is a tendency for the extent of the repairing to be larger.
2. If non-liability clauses are accepted in the matter of the civil tort liability, they will be valid only for the slight negligence, and, on the contrary, they will not apply when it is about intent or gross negligence.
3. In the case of the combination between the civil tort liability and the contractual liability, in some cases, the solution depends on the seriousness of the guilt.
4. When, additionally to the guilt of the perpetrator, the guilt of the victim is also found, the degree of the perpetrator's guilt is important in terms of establishing the prejudice they are to repair.
5. In the matter of the hidden flaws, the effects may be different for the hidden flaws that were not known and the flaws hidden by fraud. Unlike the illicit act and the causal connection as objective elements of the civil liability, the guilt (generating legal liability) represents the subjective condition. As the physical attitude of the subject in relation to the act thereof, the guilt may be found both for the natural persons, and the legal persons.

The guilt of the legal person is reviewed through the guilt of the collaborators thereof during the professional obligation execution, according to the position held or the specificity of the work performed. Since the legal person is a debtor, the actions of the debtor's workers for the purposes of executing the obligations thereof are considered to be actions of the debtor.

The legal and legal practice doctrines in the field [17] admit to the existence of a form of civil tort liability without guilt.

The contractual civil guilt is the reproachable subjective attitude of the debtor of the contractual obligation in relation to the act thereof (and the consequences thereof) consisting in the non-execution, inappropriate execution or late execution of the obligation incumbent thereupon.

The volitive factor in the contractual matter consists in the contractual debtor's will to making the illicit act, choosing a conduct contrary to the law or the contractual clauses.

In the case of the civil tort liability, the perpetrator's act [18] is connected to an act having defeated the lawmaker's will, breaching the obligations established by the latter. In the case of the contractual civil liability, guilt is connected to the obligations arising from the contract, being a type of guilt modulated to the contractual condition and cannot exist outside thereof. According to the civil legislation [19] in the contract matter, the debtor is liable regardless of the form of the guilt thereof, i.e., regardless of the fact that the non-execution of the obligation or the inappropriate execution thereof was intended or merely by imprudence.

Conclusions

Therefore, it can be concluded that it is not any psychical attitude of the man that may entail the qualification thereof as guilty, but only the negative one that is reproved by the law, which reflects the ignorance of the legal rules established within the community, and which are considered valid and accepted as valuable at a specific time, in the general axiological system of the specific time. It is about the psychical position of the individual, which involves acknowledging the social significance of the act thereof, of the antisocial features thereof and of the will to commit the act and undertake the consequences thereof, as part of the rule of law. As a consequence, the author of an

illicit act is guilty because they violate a command, an order, a stipulation of the law, considering that they would have had the possibility to conform, therefore exhibiting a flaw of the will, because they are held liable for the results of the behaviour thereof. Therefore, it can be said that guilt remains, also for the future, the idea that explains the engagement of the civil liability for the parties' own acts, taking into consideration the actual capacity of the perpetrator to understand and appraise, in full, the significance of their acts in the social projection thereof, by comparing the perpetrator's behaviour to their usual conduct which is, in fact, the subjective criterion for the appraisal of the perpetrator's guilt, according to which, only in the event that they, with due regard to their individual attributes, were not entitled to consider that the damaging results would not occur or could have foreseen the antisocial consequences thereof, they shall be liable for their act.

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General Considerations Regarding the Classification, Record and Prevention of Occupational Diseases

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Abstract:
The occupational disease is an affection whose specific etiological agents (physical, chemical or biological adverse factors) exist at the work place and are associated with certain industrial operations or with exercising certain professions or crafts. The prevention of the occurrence of occupational diseases is made by applying some technical, organizational and sanitary methods that ensure the avoidance or diminution of the action of the risk factors on the human body.This material treats the notion of occupational disease, its judicial framing, classification and record; also there will be approached aspects regarding the activity and methods of avoiding occupational diseases.
Keywords: *occupational disease, the classification of professional diseases, attributions of the labor medicine services, protection through medical services, measures of preventing occupational diseases.*

Occupational diseases, according to the appropriate legislation, [1, art. 5, let. h] are affections that occur after exercising a profession or craft, caused by physical, chemical, biological or psycho-social adverse factors specific to the work place as well as by overstraining different mechanisms and systems of the organism during the labor process, regardless of the type of labor agreement between the employer and the employee.

There are also marked as being occupational diseases the affections occurred in the previous conditions, affections suffered by pupils, apprentices, students, while performing practice.

Sometimes overlooked, occupational diseases are more frequent than we might imagine and the physical examinations performed periodically or every time a health problem occurs prevents the development of the disease. An important aspect is fast diagnosing the affection due to the fact that the main therapeutically method is leaving the adverse environment.

According to the opinion of Dr. Constantin Cernat, it is indicated to change the work place when the conditions require it knowing that health is the most important thing in the world. Diseases or imbalances the consequences of our activities will change our lives. There are many categories of occupational diseases some known, some

anticipated and some undiscovered, emerging along with new professions and disappearing with others. They are the consequence of the adverse factors that repetitively occur, deteriorating in time certain functions of the human body. Any aggression of the exterior environment, if repeated, can become a risk factor for the occupational illness so as this chapter is a dynamic one that must be constantly adapted to the social realities. [2, 313]

Occupational diseases can be chronically intoxications, allergic, infectious, parasite, rheumatic, tumor diseases, according to the causative agent and the duration of the exposure.

Fortunately, as science allows detecting these effects, methods of protection are created with appropriate equipment and treatment.

In general, the skin and the respiratory tract are the most frequently affected because they are in direct contact with the exterior environment therefore with the toxic agents.

However, sometimes the toxic effects manifest from a distance, in time, as it happens with renal impairment or tumor formation. [2, 314]

Occupational diseases are tracked by the Ministry of health through the Institute for public health in Bucharest, that manages the National Operative Register of occupational diseases constituted by the Order of the Ministry of Health no. 188.

According to the Government Decision no. 955 art. 166 there is established the constitution at a national level of the National Center of monitoring the risks within the MS-ISP Bucharest of the National Computerized Operative Register of occupational diseases that is monthly updated by the dated of the files of declarations of occupational diseases.

The main causes of occupational diseases are in most cases found in the existence of a toxic environment, over the allowed limits, at the work place, where workers have performed their activities until retirement.

Unfortunately, after retirement, the evolution of the health state of pensioners, according to the environment where they have performed their activities, cannot be found in the official statistics.

Occupational diseases are affections whose specific etiological agents exist at the work place, associated with certain industrial operations or exercising a profession (definition given by the World Association of Health).

In Romania, according to the Explanatory Dictionary of the Romanian Language [3,210] „occupational disease" is defined as „the affection occurred after exercising a craft or profession, caused by adverse factors, chemical or biological, characteristic to the work place as well as overstraining different organs or systems of the body during the labor process."

So that an affection of the body to be qualified as an occupational disease there must be met three conditions:

- to be caused by exercising a craft or profession,
- to be caused by adverse factors, physical, chemical or biological characteristic to the work place or by overstraining,
- the action of the adverse factors over the body must be of long term. [4, 280-281]

The pathological process is slow and affects either the general state of the body or certain systems or organs. In many cases the action is reversible: by removing the diseased from the adverse environment and applying an appropriate treatment the consequences of the disease are attenuated or disappear completely.

For the damage of the work place to be recognized as etiological factor of an occupational disease there must be proof of a quantitative relation between the dose of the certain damage absorbed by the body and the effect it had on the body. The dose - effect relation was established by anumber of adverse factors and there have been imposed the maximum admitted limits.

The Classification of Occupational Diseases

According to the nature of the risk factor that has generated the occupational diseases, the author Constantin Buga makes the following classification : [5, 143]

- Intoxications provoked by inhaling, ingesting or the contact between the skin and the toxic substance;
- Pneumoconiosis, caused by inhaling toxic powders;
- Diseases caused by exposure to radiating energy;
- DIseases caused by exposure to high or low temperatures;

- Diseases cause by exposure to noise and vibrations;
- Diseases caused by exposure to low or high atmospheric pressure;
- Occupational allergies;
- Occupational dermatosis;
- Occupational cáncer;
- Infectious and parasite diseases;
- Diseases caused by overstraining;
- Other diseases (that are not part of the previous categories)

According to the period of exposure to the action of the risk factor [6] there are:

- Acute intoxications (they are analyzed both as an occupational disease and as a labor accident), generated by a short exposure to the action of the risk factor but to high doses of it.
- Chronic intoxications (they are analyzed as occupational diseases), usually caused by relatively small doses but have prolonged action over the human body.

Declaration and Record of Occupational Diseases.

In the paper of the author Cosmin Cernat there are mentioned the following aspects. Therefore, „the attributions of the county public health institutions who complete the forms forwarding them to the Institute of Hygiene, Public Health, Leading and Health Services of Bucharest. The record of the confirmed occupational diseases are kept in a special record. Also, this record is also held by the labor medicine cabinets. The pneumoconiosis and occupational cancer cases are registered at the last unit where the diseased has worked and where there exist the factors that could cause the certain diseases.”[2,319]

The record of occupational and multifunctional diseases are the basic documentation for evaluating the health state of employees in relation to the risk factors to establish prevention methods.

By order no. 615/2012 of the Ministry of Health there have been completed the attributions of the labor medicine services within the units:

- organization and participation to the evaluation of professional risks;

 monitoring the health state of the employees through: physical examinations before employment, physical examination of adaptation, periodical physical examination, physical examination when resuming work;

 professional rehabilitation, reinsertion, reorientation, in the case of labor accident, occupational disease, disease caused by profession or chronic affections;

 communicating the professional risk to all the factors implied in the labor process;

 counseling the employer regarding labor adaptation to the psycho-physical characteristics of the employees;

 giving emergency medical assistance in case of labor accidents or acute diseases during professional activity;

 counseling the employer regarding the substantiation of the health and security strategy at the workplace;

 participating to the national informational system regarding labor accidents and occupational diseases;

Art. 62 of the methodological norms institute the obligation for the doctor of the unit and the cabinets of labor medicine to analyze occupational and multifunctional diseases specifying the causes and prevention measures.

Occupational diseases newly discovered are monthly reported during the month when the disease has occurred by the county public health authority or the one of Bucharest to the profile institutions on a national level and to the territorial structures of the insurer.

The Protection of Employees Through Medical Services.

According to the legal provisions the employers have the obligation to ensure the access of the employees to the medical services of labor medicine. [7, Art. 182]

The Ministry of Health issues obligatory norms regarding labor hygiene and approves standards and normative acts that regard the employees' health at the work place. Just as the employer has the obligation to ensure the employees' security at the work place he also has the obligation to ensure their access to medical services of labor medicine.

The general labor protection norms state that employers from the public, private or cooperative sector, including foreign capital, are obliged to ensure the supervision of the health state of all employees through medical services of labor medicine.

The Labor Code provides that the medical services of labor medicine can be an independent service organized by the employer or a service ensured by a employers association. The duration of the labor is calculated according to the number of the employees, according to law. [7, art.183]

The medical structures of labor medicine, according to art. 34 of the General Labor Protection Norms are:

- cabinets of labor medicine within units;
- labor medicine cabinets of medical centers, public or private;
- sections of labor medicine from public health institutions;
- clinical or compartmented sections of labor medicine and occupational diseases;
- Compartments of labor medicine from territorial public health institutions.

The appropriate legal provisions state that the doctor of labor medicine is an employee, licensed in his profession or according to law, holder of a labor contract closed with an employer or with a employers association. However, the doctor of labor medicine is independent in exercising his profession. [7, Art. 184, align. 1]

Art. 10 of the Convention no. 161/1985 of the International Labor Organization provides that the personnel that provides labor health services must benefit from complete professional independence towards the employer, the employees and their representatives in relation that concern the attributions of this category of personnel.
Although the doctor of labor medicine can be an employee of the employer, his subordination (characteristic to the individual labor agreement) does not concern the exercise of the profession, domain in which he is independent. [8, 275-276]

For example, the employer cannot give orders to the doctor of labor medicine regarding the medicine that must be administrated to a sick employee or the duration of the medical leave.

The main tasks of the authors according to art. 185 align. 1 of the Labor Code are:

- prevention of labor accidents and occupational diseases;

- the actual supervision of the hygiene and health conditions in labor;
- Ensuring the physical examination of the employees both when employed and during the execution of the individual labor agreement.

Measures of Prevention of Occupational Diseases

The measures of prevention are technical, organizational, hygienic methods through which labor security is realized; with the help of these prevention and protection services there are eliminated, avoided or diminished the actions of the risk factors over the human body. [9, 39-40]

The main organizational measures for preventing labor accidents and occupational diseases can be classified in the following order:

- medical examination;
- psychological examination;
- training the personnel;
- propaganda in the domain of labor security and health;
- organizing the activity and the work place;
- Technical measures especially referring to the means of production and the work environment.

The technical measures of preventing labor accidents and occupational diseases can also be divided into three categories, therefore we can speak about different methods of protection:

- individual protection;
- collective protection;
- intrinsic protection. [10, 625]

Physical and Psychological Examination

In his treaty, professor Alexandru Țiclea considers that the medical analysis is an important measure of prevention contributing to the elimination of the causes of labor accidents or occupational diseases that have as a substrate the lack, insufficiency or deficiency of some physical or psychological skills of the executants or the abnormal state of his health. In the industrial labor conditions the physical exam has an important prophylactic purpose. [11,236]

Equally, the psychological examination has the purpose to create an optimum efficiency and a maximum security of the employee, this is why the psychological examination must have an important purpose.

Together with the physical one, the psychological one has two essential objectives [11,236] :

1. ensuring a total congruence between the objective tasks and requests of the profession, in general and of the work place, specifically and the real capacities of the individual;
2. detecting and preventing the psychological causes of the dysfunctions and accidents within the human labor task production methods labor environment system.

Instructing The Personnel

Instructing the personnel in labor security and health represents the total of organized activities that aims knowledge retention and gaining labor security skills.

Considered one of the most important measures of preemption, instruction has the purpose to eliminate or diminish the number of human errors that occur from the lack or insufficiency of labor protection knowledge. It is practically realized through the instruction process – process of transmitting information in the labor health and security domain. [12, 5-6]

The content of the instruction process is the total of the information afferent to the labor protection sphere that, through assimilation and repetition, lead to the formation of the normal, optimum behavior in labor, develops the correct orientation towards risks and stimulates the mobilization capacity regarding these.

Instruction in the domain of labor security and health is part of the professional training and it is realized either at the work place or in educational institutions (college, after college and/or superior).

Propaganda in the Labor Health and Security Domain

The author Sanda Ghimpu defines propaganda in the labor security and health domain as a total of actions, methods and means of influencing the human behavior. [13, 213]

In relation to the health and security demands of the objective work of the propaganda activity in the domain of labor health and security can be formulated thusly:

- modifying the individual and collective behavior in relation with the demands of labor security;
- influencing and correcting the personal and collective features that can lead to labor accidents;
- cultivating the collective and individual security instinct (self defense) during the labor process;
- promoting an appropriate attitude towards risks;
- Creating and maintaining an individual and collective receptivity disposition for the concrete activity of preventing labor accidents and occupational diseases.

Technical Measures Referring to the Methods of Production and The Labor Environment

Within the technical measures of preventing accidents and occupational diseases there are three main directions for action: individual protection, collective protection and integral protection.

Individual protection means equipping employees with protection measures (helmet, mask, costume, boots).

The totality of the individual methods of protection that is attributed to the worker during the exercise of the activity are his individual protection equipment. By this method of protection the risk factors are not removed; the individual protection equipment interposes as a shield between the damaging factor and the body, diminishing or eliminating the action of the risk factor over the employee. [14, 150]

According to the legislation in force collective protection is the total of the technical methods and means that diminishes or eliminates the action of the risk factors over two or more employees. In practice, collective protection is materialized, mainly, by endowing the installations and machines with devices specially conceived to protect workers during the exercise of the labor process. Collective protection is realized by endowing technical installations with additional devices for labor protection, conceived independently from the tasks of the technological process and that have the sole purpose to protect workers during the exercise of the labor process. By this method of prevention the deficiencies of the machines as well as the parameters of the labor environment are corrected, bringing them into security limits.

Intrinsic protection is a method of preventing labor accidents and occupational diseases through technical means of prevention and through the action over the form, place, manner of assembling, functioning or construction principle of an installation, equipment, device or machine without adding elements specially conceived to realize labor security and health. Also, it is an optimum method of eliminating risk factors of accidents and occupational diseases characteristic to the means of labor and consists of integrating security principles with the productivity and reliability ones from the conception of the technical systems.

In conclusion, we state the fact that every element of these measures must be thought so as to ensure the simultaneous meeting of the production function and the security criteria during the life of the product, regardless of the exploitation conditions.

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The cultural defense : possible correlations and applications within the framework of women's rights

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Abstract:
In the present paper, we aim to reveal in a non-exhaustive manner the peculiarities of the cultural-juridical institution that is circumscribed to the American system of justice : the cultural defense. By applying the deductive method of reaserch, we will proceed to presenting the conceptualization patterns of the cultural defense so that finally, we will undertake the case-law analysis of the cultural defense and of the impact that it has upon women's rights. The essential idea that we will upheld throughout our paper consists in the suis generis character of the cultural defense – a suis generis character that becomes notable even in the hypothesis of applying the cultural defense in the field of women's rights. We deem that, the possible legal recognition of the cultural defense represents a manifestation of legal pluralism and of substantial equality – the latter being based upon the right of the individual to being different. In the same token, we deem that, the formalization of the cultural defense as a mitigating factor of the punishment constitues a legal instrument that will ensure the equilibrium between the right to identityof the cultural communities – as a collective right and the individual rights of women that are circumscribed within the more extensive sphere of human rights.
Keywords : *the cultural defense, women's rights, community rights, universalism, relativism*.

This work was supported by the strategic grant POSDRU/159/1.5/S/141699, Project ID 141699, co-financed by the European Social Fund within the Sectorial Operational Program Human Resourses Development 2007-2013"

Argumentum And Conceptual Delimitations

Cultural defense is a concept that links together the most important aspects of the individual existence : culture and the legal official norm. Although the concept of human rights has imposed itself within the conscience of humanity, the protection of the individual continues to remain a concept whose content is difficult to penetrate taking into consideration that, the respect for cultural diversity is a prerogative that is unanimously recognized as pertaining to the realm of human rights. Within this context appears the theoretical aspect that we have nominated as the human rights' dilemma : if the right to culture is enshrined within the more extensive category of human rights, then is it legitimate the liberty of cultural communities of applying the practices that limit/violate other categories of rights? The previously announced dilemma is circumscribed to the cleveage between human rights' universalism and cultural

relativism. The universalism of human rights attests the immutable, absolute nature of human rights – offering preeminence to the latter regardless of the context in which human rights are invoked meanwhile, cultural relativism has its starting point within the idea according to which every community enjoys an assembly of cultural rules that must be obeyed for the purpose of maintaining the identity of the respective community in its external relations.

In the field of women's rights, the cultural defense is applicable because, taking into consideration the patriarchal character of regional cultures, women's subordination as a consequence of applying cultural communitarian practices is bound to happen. In this situation, there is a contradiction between women's rights –conceptualized within the individualist pattern advanced by the concept of human rights and the collective perspective upon the right to community-identity. In a subsequent section of our paper, we will demonstrate the manner in which the cultural practices of the minority communities have legitimized the violent/criminal action of men against women. In the given circumstance, men will be the beneficiaries of the cultural defense clause as they will argue that, extreme violent actions against women have been commited in compliance with the cultural norms of the membership community by virtue of confirming their adherence to the respective community. In the Kimura case, the cultural defense clause will be legitimized against women but, the context of applying the cultural defense will be different : the woman who is betrayed by her husband is bound, according to cultural norms, to practice suicide in order to remove the dishonour produced by the husband that is reflected upon the entire family; likewise, th ebetrayed woman must murder the children that have resulted from the marriage for the purpose of protecting them from the pain caused by loosing their mother.

As we will argue in a distinct section of our paper, the hypothesis of invoking the cultural defense clause by women is different by comparison to the hypothesis of invoking the same defense by men because the violent acts commited by women are usually directed against themselves. In extenso, the violent acts directed against children are legitimized by the cultural norm of compassion and protection because the mother aims, by murdering her children, to spare them from a life deprived of maternal

love. By comparison, the violent acts commited by men by virtue of the cultural defense are legitimized by means of the argument of re-establishing male authority.

The cultural defense is a concept that is difficult to define. First, the cultural defense does not rejoice a suis generis regulation in the American system of law – where it is originated. In this sense, the cultural defense is exposed as a mitigating factor that may be taken into consideration by the Courts of Justice when pronouncing the final decision. Thus, the cultural defense is an analytical element that is highlighted within jurisprudence, sustaining the unlawful conduct of the subject by resorting to the individual's adhesion to the cultural norms of the membership community. The influence that the cultural factor brings upon the subject by determining him to adopt an unlawful conduct may be analysed, form our point of view, by means of two interrelated coordinates : (1) forum externum – the pression imposed by society upon the individual by creating cultural norms; (2) forum internum – the individual' s acknowledgement of the cultural norms imposed by society. In connection to the previously mentioned issue, we formulate the problem of the quality of the individual's conscience in commiting the illegal act. Concretely, it is just to ask ourselves if the conscience of the individual engaged in performing the illegal act is authentic or not respectively, if the individual who perpetrates the unlawful action acts according to an authentic conscience (his own conscience) or according to a false conscience (attributed as a consequence of the cultural norms formulated by the membership community).

In light of the above mentioned ideas, we underline the difficulty of creating a genuine theory of cultural defense. Regarding this aspect, the doctrine [1] has tried to overcome the difficulties in theorizing the cultural defense clause by resorting to the juridical situation that is encountered by the immigrant who wants to abide in a different country with a different culture. Hence, the clause of cultural defense has the status of a para-juridical instrument presented by the immigrant that is a member of the minority culture in front of the judge so that the latter would take into consideration the cultural evidence sustained by the immigrant with the purpose of reducing the punishment that the immigrant is liable of. In other words, the cultural defense represents the explanation of the illegal act that is formulated by the immigrant who is member of the minority culture. The respective explanation is based on cultural evidence that is

peculiar within the membership community and is identified as cultural practices, attitudes or acts –accepted within the respective community. According to the cultural defense clause, the individual is the product of his culture- thus, the cultural coordinates of the membership community are so strong that they pre-determine the individual to act within a certain pattern which, according to the membership community, is accepted and desirable. Although the immigrant pertaining to a cultural minority accepts the official rules of law advanced by the residency State, he is more attached to the cultural norm –the result being the commiting of acts that are against legal norms accepted by the majority culture. Thus, the cultural defense is a suis generis institution of juridical-cultural nature that implies the interaction between the cultural norm (that is specific for the minority culture) and the legal norm (that is specific to the majority culture).

It is just to affirm that, the cultural defense is a jurisprudential argument used in favour of the individual who is not initiated in the dominant legal culture so that he may plead for cultural determinism –as a mitigating/exonerating circumstance. In the case evoked by the cultural defense, the cultural determinism collides with the principle of the complusoriness of acknowledging the law, surpassing the latter by arguing the impossiblity of prohibiting the individual to commit the illegal act because his conscience is moulded by some cultural rigours that are derived from the membership community.

Cultural determinism represents, from our point of view, the foundation of the cultural defense that characterizes the individual's conduct according to the following reasoning : the individual manifests adherence towards the cultural norm imposed by the membership community because it is assimilated, throughout its existence and it is finally, interiorized. Although the individual recognizes the official regulation that is imposed by the dominant community, the latter is formally observed by the individual and serves only to moulding the individual's social conduct, without having any influence upon his conscience. The most relevant doctrinal opinion in the matter of the cultural defense institution is sustained by Alison Dundes Renteln [2] who is in favour of the cultural defense in view of the need for improuving the act of justice. In this sense, if the judge must correctly solve all the relevant factual and juridical aspects of the case, it is necessary to take into consideration the cultural circumstances that have determined the individual to adopt a certain conduct.

At first glance, the cultural circumstances may be qualified as simple factual aspects that may interest the case. Nevertheless, a profound analysis leads us to the conclusion according to which within minority communities (exempli gratia Asian or African communities), cultural norms configurate the individual's conscience and, subsequently, regulate the individual conduct like a genuine rule of law. Taking into account these premises, we may affirm that, the thesis upheld by Alison Dundes Renteln may be construed in the following manner : for the equitable rendering of justice, the judge must analyse the cultural circumstances that have shaped the individual conduct and must establish, for each cultural norm, the quality of factual or juridical element. In this manner, by understanding the intimate reasons that have led the individual to commiting a certain unlawful act, the judge may correctly and completly solve the case in question.

Renteln utilises the enculturation argument in order to legitimize the utilisation of the cultural defense clause at the jurisprudential clause. [3] The idea that we have underlined in terms of customizing the individual's conscience by menas of culture is expressed by Renteln under the enculturation process according to which, the standard conduct of the normal/resonable man must be established in a peculiar manner, by considerating the representation that the individuals have upon existential things/phenomenons when applying the peculiar cultural lenses. In other words, the enculturation process entails that the individual is the result of the membership culture because he ajusts to some cultural norms throughout all his life, thus the respective cultural norms are interiorized. Renteln argues that, in the hypothesis in which the judge does not take into consideration the cultural defense (that is mostly used by the members of the cultural minorities), the decision of the judge will be biassed, denying the elements of cultural diversity and promoting an ethnocentric perspective.

Finally, in the present section bestowed to arguing the choice of the theme and the clarification of concepts, we will highlight some determinations refering to culture – as the main concept of the cultural defense theory. We deem that, the main difficulty that limits the practical applicability of the cultural defense clause resides in the difficulty of defining culture. The latter lays within the hybrid content of culture that may present some moral, ethical, religious aspects; these content elements are (should have) be

perceived in a dynamic-evolving manner like the legal norm. Nevertheless, the religious dimension is, amongst the cultural elements, the only element that is resistent to change, being defining for the identity of a given cultural community. From our point of view, the static aspects of culture determine the impossibility of placing the individual – member of a minority cultural community next to the standards of the majority culture – hereby the difficulty of inserting the cultural defense within the legal system as an autonomous institution. Acknowledging the limit of the impossibility of defining culture stricto sensu, the cultural defense clause may be analysed by means of academical debates like a theoretical-artificial construct that has a limited applicability. The invocation of the cultural defense at the jurisprudential level as it is realized within the American legal system, is a circumstantial fact because it dependes on the manner of constructing the defense of the individual and on the power of assessment of the judge in absence of the legal norm that would give guidelines in the matter. As observed in doctrinary studies [4], the difficulty of conceptualizing culture and the clause of cultural defense – as a similar institution- determines the distorted applicability because, in countless cases, the cultural defense was invoked as a mitigating factor that is similar to provocation or self defense.

The Possibility Of Formalizing The Cultural Defense And The Implications Upon Women's Rights

The discussion concerning the formalization of the cultural defense is, as could be anticipated, of ambivalent nature. In his work [5], Sikora analyses the positive and negative aspects of formalizing the cultural defense, reaching the conclusion according to which is beneficial the admission of the cultural defense as a mitigating factor and not as an exonerating factor. The arguments presented by the author in favour of formalizing the cultural defense clause may be resumed in the following manner : (1) the application of the principle of equity and individualizing justice; (2) the punishment applied in the case of admitting the cultural defense maintains its purpose of discouraging a certain illegal conduct; (3) the cultural defense will allow a better analyse of the cause and a fair individualisation of punishment; (4) the admission of the cultural defense clause removes the unforseen for the solution of the cause so that it may allow all immigrants belonging to a minority culture to utilize the cultural evidentiary for

justifying the illegal conduct. Concerning the first argument, we feel that the legal regulation of the cultural defense constitues a relevant solution for ensuring a equitable and fair individualisation of justice. In the spirit of the thesis sustained by Renteln, the equity of the jurisprudential treatment of a cause lays within the assessment, by a judge, of all the relevant aspects of the cause and, in the hypothesis in which the individual belongs to a minority culture, the cultural factor must be assessed in a mandatory manner.

On the contrary, it was exposed the opinion to which we do not resonate, according to which tolerating the cultural evidentiary sustained by the immigrants belonging to cultural minority equates to the violation of the equality principle applied to respecting the right to life and the right to freedom.[6] The cited opinion sustains that, the legal official recognition of the cultural defense imposes a discriminatory situation between the citizens pertaining to the legal majority culture and the immigrants belonging to the minority culture because the cultural defense is accepted only for the latter. We do not subscribe to this opinion because we feel that the problem of equality is equivocally formulated : the acceptance of the cultural defense in favour of the immigrants belonging to the minority culture is, form our point of view, a confirmation of the principle of equality before the law and not a denial of the respective principle. Equality means the acceptance and the celebration of the differences between individuals and not the attempt to standardizing them. Thus, it is logical the solution of guaranteeing the cultural defense exclusively in favor of minorities because the citizens belonging to the majority culture do not need it. Of course, the acceptance of the cultural defense as a juridical institution destined to cultural minorities is equitable only if the cultural defense is regulated as a mitigating factor of liability and not as an exonerating factor. The latter solution is, in our opinion, the only one able to produce equity because the individuals of the minority culture enjoy a just assessment of the case but, at the same time, it is not admitted the preeminence of the minority culture upon the majority culture so that the aggressors (although it is proven that have actioned by means of the cultural norms of the membership community) are sanctioned proportionally with their guilt.

The arguments presented in doctrinal studies in favor of regulating the cultural defense as a mitigating circumstance of the punishment are interrelated. It is clear that, the regulation of the cultural defense clause as a mitigating factor endorses the educative purpose of the punishment. Likewise, the admission of the cultural defense as a mitigating factor guarantees the equality principle in two senses: (1) on one hand, the judge may understand completley and correctly the circumstances of the act produced by the individual belonging the minority culture thus ensuring the substantial equality between immigrants and non-immigrants; (2) on the other hand, the application of the cultural defense as a mitigating factor ensures, as we have already mentioned, the equality between individuals limiting the unforseen in the assessment of the cause by the judge. The latter may be obliged to take into consideration the cultural proofs presented by the individual in the case of officially regulating the cultural defense.

In the negative sense, the study undertaken by Sikora presents the arguments against the cultural defense : (1) the promotion of the stereotypes specific to some cultures and thus implicitly determining discrimination; (2) the positioning of women and children in an inferior status; (3) the difficulty in regulating in detail the cultural defense; (4) determining the balcanization of the justice system. We deem that, from all the arguments contrary to the legal recognition of the cultural defense, the argument regarding the difficulty of regulating in detail the cultural defense has the highest degree of relevancy. Indeed, there is a difficulty in establishing the specific coordinates to the regulation of the cultural defense because the definition of culture is per se a problematic aspect. In the same vein, the regulation of the cultural defense entails the existence of a trial; the notion of culture – delimits the elements that the individual may invoke within the cultural defense. We do not consider the other presented arguments as relevant. The cultural defense does not implicitly determine cultural sterotypes because the cultural practices of cultural minorities are, in general, recognized by the dominant culture and the affirmation of the latter by means of the cultural defense does not contribute to the creation of cultural stereotypes. Regarding the manner in which the cultural defense affects women and children we admit that, the cultural defense allows the use of culture against women's and children's rights (the Chen and the Kimura cases) but, this use is not unilateral because there is also the possibility of invoking the

cultural defense in favor of women (the Friedman case). In regard to the balcanization of the justice system, the cultural defense will not impose in favor of the immigrants a different system of justice that will allow the impunity concerning facts that are commited in relation to their cultural belonging. On the contrary, the cultural defense as a mitigating factor will maintain untounched and in unity the national juridical system but it will not give an adequate customizing in favor of individuals who belong to national minorities.

The relationship between cultural defense and women's rights is a peculiar one : during time, cultural communities have upheld the violations of women's rights by virtue of culture and the collective rights of cultural communities were put in opposition to the individual rights of women, - the first having preeminence. As we have underlined in the lines above, there is the hypothesis according to which men are able to use the cultural defense against women arguing facts as passion or honour crimes by virtue of cultural provisions hence excusing the anger state in which was found the man when commiting the crime. Nevertheless, we underline that, in the hypothesis in which we would deny the right of immigrants to use the cultural defense as a mitigating factor on the grounds of gender this would lead to a discriminatory situation that disadvantages men while favouring women. Furthermore, the denial of the cultural defense on the grounds that it may lead to using it, by some men, in order to justify crimes against women is the equivalent, form our point of view, with the clevage between two types of individual rights : men's rights to use the cultural defense and women's rights to be protected against the cultural practices that endanger their essential prerogative like the right to life or the right to physical and psychical integrity.

It is difficult to achieve a segregation between the two types of rights as long as both are individual rights and both have an essential relevance for the sphere of human rights. The sole criterion of delimitation is, in our opinion, the possibility for those two rights to be guaranteed for each of the two genders. Exempli gratia, the right of the immigrant to resort to the cultural defense is guaranteed independently from gender – being an instrument that can be used for both women and men. Women's right to be free from cultural practices that violate their prerogatives is, generally intended for women exclusively because, during time, mostly women were subjected to the violation

of their fundamental human rights in the name of cultural dispositions. Taking into consideration the previously presented arguments, we feel that, women's rights of being free from cultural practices that affect their fundamental rights must have preeminence upon the cultural defense. Nevertheless, the definitive renouncement of cultural practices that are against women's rights constitues an objective that cannot be achieved otherwise than in a gradual manner, though never completly. As we have previously mentioned, the application of the cultural defense must not lead to the exoneration of the perpetrator but only to the mitigation of the punishment –thus obtaining, in our opinion, a fine equilibrium between the recognition and the protection of women's rights as human rights and the application of the cultural defense. In the subsequent section of our paper we will analyse the manner in which the cultural defense is applied in the matter of women's rights.

The Case-law Analysis Of The Cultural Defense And Its Implications Upon Women's Rights

In the Deng-Lu Chen case, the issue of cultural defense reveals two important aspects : (1) ensuring the equality in rights of individuals in performing justice; (2) the violation of women's rights by virtue of cultural norms. In fact, the Chen case refers to an Asian couple of immigrants that was established in the United States of America, leading their public existence according to the norms of the legal dominant culture (the American legal culture) and their private existence in accordance to Asian cultural norms. The latter establish the subordination of women in the private sphere by imposing the male authority. The male authority is exerted upon the entire family and upon all aspects of the existence. In this sense, the doctrine underlines gender roles within the Asian communities as follows : the man is the person who decides the cultural norms that are to be applied and imposes, by means of these, the female subordination, meanwhile women are silenced and their rights and obligations are mainly established by reference to the personal sphere. In the mentioned cause, the defendant Chen has killed his wife after discovering her infidelity. Chen's lawyer has argued in front of the Court of Justice the cultural defense according to which, female infidelity must be punished by the male authority because, as a consequence of the female infidelity, the man is humiliated and his authority is disparaged within society.

The Court of Justice has accepted the cultural defense advanced by Chen's lawyer and the latter justifys the aggressiveness of his client in commiting the murder (hammering the victim's cerebral area) by resorting to the individual's lack of actional and mental freedom. In the Chen case, the Court of Justice has assessed culture as a mitigating factor as a consequence of applying the cultural defense. The doctrine [8] has shown that there is no coherence within the cultural defense endorsed by Chen's lawyer so that the defendant has stated in the plea of proving his innocence that the state of psychical tourment that he felt when discovering his wife's infidelity was determined by the cultural norms that undermine the male authority in case of female infidelity; at the same time, Chen argued that, when he has commited the action he has reasonable acted in compliance to the cultural practices applied by the membership community.

Under these conditions, the doctrinal opinion previously cited reveals that, Chen's cultural defense comprizes two perspectives : (1) the rational perspective (the cultural defense sustains that the state in which the individual was found when commiting the murder has determined him to act absent reason) and (2) the volitional perspective (the cultural defense sustains that the individual has reason when commiting the act but he chose to solve the problem in accordance to the cultural norms of the membership community. The American Court of Justice has allowed the cultural defense, mentioning that Chen is the product of his culture but it was not his culture that determined him to act, nevertheless it has facilitated the criminal action. Hence, it is just to retain the cultural argument as a mitigating factor and not as a absolving element.

In the Kimura case, the situation is presented in a different manner than in the Chen case because in this particular case are presented the consequences of male infidelity and the female reaction dictated by cultural norms. The factual situation of the case is presented likewise: a Japanese immigrant to the United States of America discovers her husband's infidelity and actions according to the cultural norm oya-ko-shinju that requested the betrayed woman to practice suicide in order to rehabilitate the honour of the family and to produce the death of the children so that they do not suffer from the absence of maternal love. The Japanese cultural norms maintain women in the private sphere; within the family realm, the woman has the obligation to maintain the harmony and to satisfy the needs of its members. Kimura kas attempted to perform the

oya-ko-shinju ritual with the purpose of complying to cultural norms, by attempting to murder her two children and to drown herself in the Pacific Ocean. The consequence of her actions consisted in the death of her two children, Kimura being charged for this murder. The defense lawyer has upheld the cultural argument oya-ko-shinju and the Court of Justice accepted it, as in the Chen case, as a mitigating factor but not as a exonerating factor.

Specialized studies [9] sustain that the leniency demonstrated by the Court in the Kimura case results from the convergence between the Japanese cultural values and the American cultural values. In both cultures, women who are mothers are perceived as protectors and caretakers of their children and the hypothesis according to which a woman may kill her own children equals to a mental disease – thus, additionaly to time in prison, Kimura was obliged to take counselling sessions. Likewise, it was argued that, by means of the leniency of the Court, in the Kimura case, was originated the idea of maternal sacrifice prescribed by the Japanese cultural norms - that is in accordance with American norms. Comparing the Kimura case to the Susan Smith case – the previously cited opinion underlines the fact that, in the Smith case, the Court did not grant mitigating circumsatnces to the defedant because the motif of the crime did not serve the fulfilment of the maternal vocation – that is to protect children and to prevent their upbringing in the absence of their mother (as in the Kimura case). On the contrrary, the Smith case evokes the situation of a mother that murdered her children by immobilizing them in the car and crashing it in order to satisfy the desire of her boyfriend who was gelous of her two children. In the Kimura case, the woman mainly pursued her suicide with the purpose of rehabilitating the honour of the family and the murdering of the children was alternatively an act followed out of maternal love, out of the desire of not allowing her children to live without maternal love.

The cases Chen and Kimura present some peculiarities that cannot be denied : in the Chen case, the Asian cultural norms are invoked in favour of the male authority which has the right to act violent as a consequence to the wife's infidelity meanwhile, in the Kimura case, the cultural defense serve to protect the woman that is accused of the death of her two children. In the latter case, the criminal conduct of the woman towards her children is dictated by the cultural norms that pursue maintaining the family honour

and the prevention of the children form suffering. In the Chen cause, the cultural defense presents the consequences of the female conduct that is not subject to the male authority whereas in the Kimura case, the cultural defense presents the situation of a woman that is found in a cleavage between the love for her children and the achievement of the maternal role according to the cultural norms prescribed by the custom oya-ko-shinju.

Both cases are circumscribed to the criminal field and the cultural defense is used in both cases for mitigating the punishment for the crime. In the Friedman case, the cultural defense is used in a civil lawsuit, the purpose of the plaintif being that of obtaining damages form the State of New York for the physical and psychological damages caused by the plaintif's forced abandonment of the mountain cabin where she was stuck with her male friend. The plaintif has argued her attitude of leaving, by improvised means, the cabin with the risk of suffering physical and/or psychological damages, out of respect for the cultural norms related to the religion practiced by the plaintif as she belongs to the cult of ultra-orthodox Jews. In light of the Rabbi testimony, the Court has stated in favour of the plaintif, accepting the cultural defense that prohibits women to remain in a closed space with a man because it would determine the social disparage of the respective women and of her family. Specialized literature [10] sustains that, the Court of Justice has taken into consideration both the cultural defense of the plaintif and the aspects that refer to the negligence of the authorities of the State of New York in ensuring the maintanace of the ski cabin and in the preventing the possible physical and psychological damages that would cause shortcomings to the plaintif. The doctrinal opinion that was previously cited is a subsidiary source that has influenced the Court of Justice, questioning the situation according to which the plaintif would have won the case if the negligence of the New York authorities would not have been proven.

In the Kong Moua case, the defendant (belonging to the Hamong culture, immigrant to the United States of America) has kidnaped the victim Seng Xiong (also immigrant belonging to the Hamong culture) form her family home and brought the victim to his own house where he has raped the victim various times. The victim did not immediately report the rape, first she addressed the authorities for reporting the freedom deprivation so that, atferwards, she has confessed the rape to the authorities.

In his defense, Kong Moua has sustained the cultural argument demonstarting that, within his cultural community, forced marriages are practiced. According to this practice, the young man who wishes to marry a certain woman, will kidnap the latter and will forcely consumate their union so that subsequently, the forced marriage would be upheld by society. Authorities have agreed to the cultural defense of the plaintif correlating the cultural defense with the fact that, the victim and the aggressor knew eachother and with the fact that, the victim did not immediately claimed the rape. As a consequence of the cultural defense, the aggression commited by the defendant was not qualified as rape and as kidnaping but as false imprisonment – that is a misdemeanour. Although the Moua case is often invoked for illustrating the successful application of the cultural defense, we deem that the case is illustrative for observing the manner in which women's righst are violated under the pretext of cultural defense. From our point of view, in the Moua case, the cultural defense was applied as an exonerating factor and not as a mitigating factor of criminal liability. Corroborating the factual situation (the kidnaping and the sequestration of the victim) with possible physical and psychological trauma experienced as a consequence of the facts commited by the aggressor with the criminal liability of the perpetrator for a small deviation from the criminal norm, we seize a grievous inconsistency. The theory of the convergence of cultural values exposed within specialized studies does not apply, in our opinion, to this case. It is true that, the American case-law has demonstrated the leniency of the judges towards the defendants for rape crimes if the victim and the perpetrator are friends but, in the Moua case, the cultural norms invoked, consist in the express recognition, by the membership communit of the immigranty, of the man's right to compel a woman to marriage by means of kidnaping and repeated rape. Or, it is clear that, in this hypothesis, the cultural convergence does not exist.

Conclusions

The cultural defense designates a controversed aspect – being an element that is invoked in the American case-law without finding its in expresis regulation in any of the legal system of the American States. The controversy connected to the cultural defense is both formal (as we have previously mentioned, the cultural defense is mentioned within case law although is not regulated) and substantial (being possible

that, through its application would be violated the individual rights of women). The cases that were analysed within the previous section of our paper advance an assembly of ideas : (1) the cultural defense is accepted within the American case-law system by virtue of the cultural pluralism and of ensuring equality between immigrants and non-immigrants for achieving a fair judgement; (2) per a contrario, the cultural defense is not accepted by virtue of cultural convergence. In other words, Asian or Jewish cultural norms exposed in the previously analysed cases do not have an identical correspondent in the American cultural norms; (3) the cultural defense is a democratic solution of any legal system as long as it is implemented as a mitigating factor and not as an exonerating factor; (4) although recognized as a mitigating factor, the cultural defense must have a limited application, under the condition of the proportionality between the facts commited and the possibility of re-establishing the rights of the victim/the violated social values; (5) the cultural defense has not exclusive applications against women's rights – in this sense, are eloquent the cases Kimura and Friedman.

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Considerations regarding cross-border crime and institutional cooperation

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Abstract:
Technological development and the socio-political evolutions from the last decades, visible especially in terms of expanding communications and increasing mobility of people, have revealed new phenomena with a high risk potential which ignore the geographical or administrative constraints of borders. Thus, cross-border crime has become, by size and also by its impact in time on people and society, a major challenge of national security and a real commitment to European institutions and organizations. Using a holistic approach, this study aims to emphasize the danger of cross-border crime to the national security of all states and also to underline the main European directions in preventing and combating this form of organized crime.
Keywords*: cross-border crime, organized crime, institutional cooperation.*

1. Introductory considerations

The end of the twentieth century was highlighted by a profound transformation, visible in all socio-economic areas of life, mentality, and also lifestyle, being absolutely natural that this transformation to bear down on the criminal phenomenon.

Therefore, we are witnessing a phenomenon of the globalization of financial markets, trade, protection of fundamental human rights, environmental protection.

This tendency of globalization has led to the elimination of borders between national, regional and international, world becoming a single state, and, in the same time, has led to the intertwining of political, economic and social problems, globalization expanding, in this context, also in the sphere of criminality, which caused the emergence of organized crime at transnational and transcontinental level.

Among the areas covered by this typology of criminality we can mention: drug trafficking, illicit arms trafficking, illicit trafficking of nuclear or other radioactive material, terrorism, prostitution, pedophilia, money laundering, theft and smuggling of expensive cars, looting and smuggling of cultural heritage objects, corruption in multinational companies, perversion of government officials, maritime piracy, environmental pollution and cybercrimes.

In this context, the national legislations of the states all over the world no longer can contribute in an effective manner to combating this scourge, extraordinarily harmful for society, taking appropriate measures also at the international level becoming crucial. Organised crime, by taking a globalized aspect, causes substantial prejudice to public safety, eclipses the sovereignty of states and hinders the development in optimal conditions of the activity of political, economic and social institutions [1].

It becomes clear that in this era of globalization, organized crime cannot be fought only within the borders, because the very quintessence of it is to be transnational. Given that the offenders are in a permanent motion, committing criminal acts in more than one state, the internationalization of the fight against transnational organized crime comes as a natural consequence, this representing a fundamental strategy of penal policy [2].

The evolution of contemporary societies reveals that despite the greatly expanded measures and interventions of institutions or specialized agencies of social control against acts of delinquency and crime, in many countries we can see an increase and proliferation of crimes committed with violence, but also those in the economic and banking field, fraud, extortion and corruption [3].

This constitutes a real social problem, whose way of expression and resolve concerns not only the factors of social control, but also public opinion, such offenses and crimes committed by violence and corruption tending to become, in today's society, extremely penetrating and also harmful in terms of balance, sustainability and security of state institutions, groups and individuals, being most often associated with organized crime, terrorism and institutionalized violence, typical for subcultures of violence and professionalized crime [4].

2. Cross-border crime - significant component of "organized crime"

Even if the causes that underlie the intensification of violence and organized crime are extremely difficult to distinguish and prove, because of the existence of significant differences in terms of proportion and their intensity from one state to another, most experts argue that the origin of these phenomena consists in maintaining and the sustainability of political, economic and legislative forthcoming structures, in the persistence and intensification of social and economic disparities between individuals,

groups and communities and in the accentuation of social and ethnic conflicts and tensions.

Therefore, cross-border organized crime constitutes, in contemporary, one of the most important threats to the national security of all countries of the world, and the transnational illicit networks can be eliminated only by intertwining some homogenous measures taken by all state actors specialized in fighting against crime and criminality.

Cross-border crime is a significant component of what specialty literature calls "organized crime".

In the context where specialized structures of application in concrete of law are obliged to act within the law and specific regulations, cross-border crime is privileged to not carry out activities in the sphere of coercion imposed by legislation, acting not only asymmetric, but also illegal, cross-border organized crime being the beneficiary of a wide mobility and a varied spectrum of options. In this regard, continuous progress of the instruments and mechanisms which allow cooperation between EU Member States, in order to neutralize organized crime and the harmful effects for society caused by it, becomes a sine qua non condition.

The fundamental principle of cross-border cooperation is establishment in border zones of some contractual areas in order to discover common solutions to similar problems, the state entities recognizing, with respect to their marginal communities, the specificity of the proximity difficulties that these collectivities might encounter.

It takes shape, thus, both the need to ensure continuity of regional identities, and the need to ascertain that the process of European construction takes advantage of the dynamism and particular genius of local and regional authorities, located on either side of a border, when these are struggling to jointly develop a authentic partnership, fully consistent with the idea of an united, diverse and competitive Europe.

Among the factors that contributed decisively to the expansion of the transnational illicit networks in the European area we can mention the geographic characteristics of Europe, and here we refer particularly to the small and medium dimension of Member States, the socio-cultural-economic diversity, as well as to the tremendous development of communication networks.

3. The necessity of institutional cooperation

In the same time, we also can distinguish a creative benefits vision in relation to security requirements of all states forming part of European Union. Under these circumstances, we can talk about an overriding need to attain some concrete actions in identifying the phenomenon of cross-border crime by setting the correct instruments in compiling the statistics, capable to highlight in an objective manner this kind of activity in each Member State, which would lead to the identification of some optimal solutions in relation with the interests, fissures and fragilities of European states, but also to a certain distinction regarding the duties of law enforcement institutions, institutions capable of distinguishing between different phenomena of criminality and to provide all the necessary resources for ample actions, common to several Member States.

Institutional cooperation involves, in reality, the allocation of human resources, extremely well trained, who possess the capacity for synthesis and analysis of the criminal phenomenon at transnational level [5].

The scientific literature has grouped, based on common characteristics, the forms and methods of inter-state cooperation within the European Union: traditional cooperation, cooperation relying on networking in a rather formal way or on an ad hoc basis, co-active cooperation, trans-border cooperation, the establishment of shared institutions (for example: Europol) or the establishment of shared databases (for example Schengen Information System), collaboration based on the principle of mutual recognition [6].

The police and judicial cooperation, both concepts circumscribed to prevention and investigation of cross-border criminality, represents major aspirations of criminal policy for each Member State of European Union.

A significant contribution to the development of police cooperation in the European area it has Maastricht Treaty, by adding the Third Pillar - Cooperation on the field of Justice and Home Affairs, designed to facilitate and secure the free movement of persons across the European Union territory. Title VI of the TEU- Provisions on cooperation in the fields of Justice and Home Affairs - extends the scope of cross-border law, the main concern of this chapter of the Treaty on European Union being the internal security of the European Union.

The policy of elimination the controls at national borders was accompanied by the requirement of rethinking the common policies of the European Union on non-EU nationals, asylum or visa applications and considering the problem of illegal immigration. The Member States of EU have concluded that by the disappearance of ability to perform controls at their common borders, has enhanced the cross-border organized crime potential.

4. Building up a legal arsenal regarding institutional cooperation

The regulations introduced by the Maastricht Treaty were shown to be deficient and inadequate, because of the various fundamental positions adopted by Member States of the European Union, expression of concerns in terms of emptying the content of the concept of national sovereignty and expression of the differences between the organizational structure of the police and judiciary in the Member States, the voices who were calling for increasing the efficiency level and the democratic control being hesitant and, somehow, anemic.

Amsterdam Treaty reformulated the content of the Title VI of the Treaty of Maastricht, renaming it Provisions on police and judicial cooperation in criminal matters. In the same time, some of the areas that belonged under the Maastricht Treaty to the third pillar of the Union have been moved to the first pillar (free movement of persons, asylum, immigration, etc.). So, in Title VI of the Treaty on European Union have remained activities to prevent and combat racism and xenophobia, terrorism, human trafficking and offenses against children, drug trafficking, arms trafficking, corruption and fraud.

The Council of the European Union adopted, on 29 May 2000, the European Convention on Mutual Assistance in Criminal Matters, which aims to encourage and modernize the cooperation between judicial, police and customs authorities from the European area, by supplementing provisions of the existing legal instruments, by respecting, in the same time, the European Convention on Human Rights adopted in 1950, and which, also, confers a new vision of cross-border police and judicial cooperation in the European Union.

The title V, Chapter IV from the Lisbon Treaty states that the European Parliament and the Council may establish minimum rules concerning the definition of

criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

Also, the European Parliament and the Council, on the basis of developments in crime, may adopt a decision identifying other areas of cross-border crime that meet the criteria specified in the Treaty and may establish measures to promote and support the action of Member States in the field of crime prevention.

The Internal Security Strategy for the European Union approved by the European Council on 25 and 26 March 2010 sets out the main crime-related risks and threats facing Europe today and which adapts extremely quickly to changes in science and technology in their attempt to exploit illegally and undermine the values and prosperity of European societies. According to the Strategy, these are: terrorism, serious and organized crime, drug trafficking, cybercrime, trafficking in human beings, sexual exploitation of minors and child pornography, economic crime and corruption, trafficking in arms and cross-border crime.

Through European Agenda on Security for the period 2015-2020, the European Union has created a set of instruments to help Member States law enforcement agencies strengthen their capacity to fight terrorism and criminality, the success depending on the effectiveness of cooperation between institutions and agencies of European Union, of the one part, and the Member States and national authorities on the other. Abovementioned instruments can be better used due to the Agenda on Security because this will create the premises for a greatly improved information exchange and an increased cooperation.

5. Conclusions

In the view of failures and weaknesses in the institutional structures of the EU member states, and not only, organized crime constitutes a serious threat to the national security of each state, to the harmonious and balanced development of the rule of law, to the sustainable economic and social development, consistent and harmonious, as well as to the citizens of these states right to live in safety.

In order to increase efficiency and effectiveness in preventing and combating transnational organized crime it is stringent the creation of optimal conditions for

strengthening the investigative capacity of the organizations empowered for that purpose and for the operative tracking of the offenses characteristic of serious crime, for fundraising and the development of human resources in the field of police and justice, for increasing the capacity of identifying illegal transactions, for improving demarches of confiscating the resources arising from offenses, for facilitating the exchange of best practices with the institutions and competent authorities of other Member States of the European Union.

Only the experience generated by a jurisdictional framework, well-defined, alongside a newly approach judicial practice, in conjuncture of renunciation at the internal borders within the European Union, can support an effective management of the specialized agencies in combating and preventing the different forms of cross-border crime.

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Aspects of comparative law regarding the causes which remove the criminal character of the deed, respectively the justifiable causes and the impunity causes

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Abstract:
This paper focuses on research into the causes that remove the criminal nature of the act and of the justifiable causes and impunity causes respectively, under various legal systems, both in Western Europe and Asia. This panoramic approach allows the observation of both similarities and differences regarding this institution under the studied criminal codes, regulatory arrangements being similar, but also different at the same time, compared to the Romanian legislation and that of the Republic of Moldavia. Differences refer not only to the name or location within the criminal law, but also to the very foundation and conditions these causes must meet.
The comparative research of criminal law in various countries are of special theoretical and practical importance, being able to provide viable solutions to the problems and non-unified solutions within the national law. Moreover, comparative studies are commonly used in the preparatory processes of law drafting, the method of comparative law having a double role: it facilitates the creation of new law, and leads to a supranational unification of Rights.
Keywords: *criminal codes, legal systems, Western Europe, Asia, comparative research*

1.THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights [1] does not distinctly regulate the causes eliminating the criminal nature of the act, those being regulated in a subsidiary way, as of linking them to the fundamental human rights which enshrine them. This allowed self-defense is a justifiable part of the illegal violence against an individual, the defense being subsumed within the right to life provided in art. 2 Title I, which provides:

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of death sentence of a court following his conviction of a crime for which his penalty is provided by law [2].

2. Deprivation of life shell not be regarded as inflicted in contravention of this Article where it results from the use of force that is no more than absolutely necessary:

a). in defence of any person from unlawful violence;

b). in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

c). in action lawfully taken for the purpose of quelling a riot or an insurrection.

The right to life is a fundamental right that is grafted on all other human rights; due to its importance it occupies the first place among the rights and freedoms enshrined in both the European Convention on Human Rights and the fundamental laws of states in general.

Due to subsumed regulation, in relation to the right to life, only acts that result in death of the person should be considered; this is the sole situation under the provisions of art. 2.

However, the European Court of Human Rights held [3] - although jurisprudence is rather highly demanding in this case - that the provisions of this Article shall not be interpreted narrowly, any damage to physical integrity, under certain circumstances, being allowed to fall, be that only exceptionally, under art.2, although they are usually made in the realm of art.3. Thus, once before such a request, the Court cannot de plano reject judging it under art. 2 but it can be done only after a preliminary verification of all the circumstances in which injuries occurred and only whether they put life at risk, threatening the very existence of the person. Also in this regard, one should bear in mind that states have not only a general negative obligation to abstain to cause the death of a person, but also a positive obligation to take all necessary measures ensuring effective protection of the right to life, which includes for example, sound expertise in case of a death (see: Yaşa v. Turkey, September 2nd. 1998 Salman v. Turkey, June 27. 2000)[4].

Under art.2 fall the situations where a person is sentenced to death when, although the effective death cannot be taken into consideration, the execution of the capital punishment is imminent [5].

The exceptions provided in the second paragraph have only a seemingly restrictive role of the right to life; they are but ways to guarantee and defense it. The state has the obligation to defend the general interests of society, and if a person breaks the law by one of the methods provided in para. 2, due to their social risk of facts, the state must intervene assuming, as a last resort, even the right to life of the guilty, in favour of safeguarding the right to life (and other rights) of the innocent.

Although most authors [6] claim that in the second paragraph letter a). it is self-defense - as the cause that removes the criminal nature of the act -;we only partly agree

with those views, considering that when the actions of defense of person are carried out by state agents we are in the presence of other similar cases, namely: the exercise of a right or performance of an obligation. This is because - under the previous penal code - we are followers of production in personam and not in rem of the effects of self-defense. All statements set out in para. 2, wherein causing the death is justified, are mainly, by their nature, modalities for the exercise of a right or performance of an obligation by the state agents under the general positive obligation for the Member States to protect effectively and efficiently the lives of people under their jurisdiction. Precisely by virtue of the active subject of defense: a state agent - that in order to fulfill their duties, receives special physical and mental training –mental coercion cannot be relied on to determine a lack of guilt, self-defense foundation. In this case the agent acts with free will and conscience; what justifies the deeds, however, is their lack of social danger, being targeted towards defending the very interests of people. Law itself regulates such professions and allows, permits or requires it to carry out such actions, which in normal circumstances would constitute a criminal offense. Applying the cause that removes the criminal nature of the act within the right or fulfill an obligation (to the duties performed) excludes the incidence of self-defense.

So what causes the absence of criminal nature of the act of murder (possibly and exceptionally of injuries) in the cases provided by art. 2 para. 2 committed by an agent of the state is in our opinion the lack of social danger of the crime; and not the absence of guilt.

If we analyze, however, these situations as justifiable causes - as they have been designed and provided as such by the European Convention on Human Rights and effectively enforced by the European Court, and later taken up by the new Criminal Code - then, we do admit we are in the presence of a particular form of self-defense, given that this time the effects are produced in rem. So from this perspective, for the application of the benefit of self-defense only objective elements will be taken into consideration: the existence of the attack and the danger created by it, that state of self-defense, excluding the subjective elements: the presence or absence of guilt due to psychological coercion (such as in personam report of the effects of self-defense).

We appreciate that we are in the presence of a particular form of self-defense, because of special preparation of the active subject of defense, so the use of force must be absolutely necessary and the force used must be strictly proportionate to achieve the purpose authorized and monitored. What is the essence of this special case of self-defense is that public order agencies must have unquestionable and reasonable belief that at the time of the offense there was a dangerous situation even if it would be later proven not to have been according to reality [7]. In terms of proof when the provisions of Art. 2 are applied, the burden of proof is the obligation of the government of that particular state [8], and in proving the state of facts and assessing the evidence the Anglo - Saxon common law principle of "beyond reasonable doubt" [9] should be applied.

As far as the art. 2 para. 2 letter a) is concerned, we must point out that so far the European Court has not known any practical application of this text. Judge Corneliu Bîrsan [10], however, makes reference to a case that although being trialed under subparagraph b), has had the provisions of letter a) applied in relation to the facts.

2.CRIMINAL CODES OF SOME COUNTRIES FROM WESTERN AND CENTRAL EUROPE

The French Penal Code [11], Chapter II "causes that remove or mitigate criminal responsibility" of Title II "criminal liability" includes the following causes: irresponsibility (art. 122-1), coercion (art. 122-2) error (art. 122-3) exercise of a right or performance of an obligation (art. 122-4), self-defense (art. 122-5) and the presumption of legitimate defense (122-6), the state of emergency (art. 122-7).

What is surprising, however, is the proportionality requirement , both for self-defense, and in the state of emergency, which refers to the means used and not to the intensity of defense or the severity of consequences of the deed as the Romanian practice, doctrine and legislation rightly provide. We believe that the condition of the equivalence of the means used creates an disadvantageous legal situation for the defendant, the latter not having enough time, nor any real possibility to evaluate those means.

The German Criminal Code [12], in Chapter 4 provides two causes that remove the illegality of the act: self-defense (§32-33) and the state of emergency (§34-35).

In §33 it provides the term of justifiable excess of self -defense, so that in §35 we also find a special regulation that removes from the benefit of the state of emergency he who created the danger himself, or is related to the person who created it.

Criminal Code of the Netherlands (adopted in 1881 [13]) in Book 1 "General Provisions", Title III "Exclusion and worsening of responsibility" stipulates five causes eliminating the criminal responsibility, namely: recklessness (art. 39), force majeure (art. 40) necessary defense (art. 41), the enforcement of a legal requirement (art. 42) and executing an official order (art. 43).

It is noteworthy that the Dutch criminal law lacks a state of emergency, situations of this kind being probably settled under force majeure. It is also interesting how they antagonistically regulate the causes eliminating the criminal nature of the offense with aggravating circumstances, while attenuating circumstances are covered separately in Chapter III, as "Reasons for reduction of sentence".

By regulating self-defense, one is allowed to defend himself, other people, his honour or property against immediate unlawful attacks (art. 41 para. 1). At first glance we might consider that property, reputation and pride of a person are granted a privileged position. Analyzing, however, case law [14] - contrary to appearances created by the mere reading of the legal norms, loaded with a patina over a century - it can be seen that priority is given to the rights that are inextricably linked to the life and integrity of the person, even if that person is the very attacker.

In para. (2) thereof the justifiable excess is provided in a formulation similar to the Romanian Penal Code.

The Criminal Code of Sweden [15], in Chapter 24, considers as falling under the class of causes that remove the criminal responsibility the following: self-defense (sec. 1), the authorization of use of force (sec. 2 and 3), the state of emergency (sec. 4), the consent of the injured (sec. 7) the execution of the order (sec. 8) and the error (sec. 9). Section 5 states that will benefit from the application of the cases covered in the section. 1- 4 whoever else assisted (takes part alongside) the person so entitled, which suggests that the effects of these reasons apply in rem.

Section 5 states that will benefit from the application of the cases covered in the section. 1- 4che who assists (takes part in alongside) the person so entitled, which

suggests that the effects of these reasons apply in rem. The justified excess, for the situations described in sections 1 to 5 is provided in section. 6; this time the effects occurring in personam. The use of force is allowed in the case of the police (sec. 2) and the military (sec. 3) for special circumstances expressly regulated both by the rules of this Code, and by the norms to the special laws referred to in their very contents.

The regulation of similar cases of authorization of the necessary use of force are found, as we have shown, in the European Convention on Human Rights art. 2 Right to life, para. 2 [16].

Although both in the Criminal Code of Sweden and the European Convention on Human Rights, these cases are dealt with together or joined with the self-defense we should not consider them special forms of it, but causes eliminating the criminal nature of a completely distinct act. Categorical distinction between the two categories of cases is the fact that self-defense is a cause that removes guilt, while authorizing the use of force averts the social danger. Those entitled to it (police, military etc.) are persons specially prepared for extreme situations and thus they will act with lucidity, professionalism, guilt does not disappear; it is a useful and necessary action for the society that removes the social danger, not the guilt; so their foundation is completely different.

This approach however is specific to our previous legislation and jurisprudence, where the effects of self-defense were found in personam and not in rem. To the extent that they are to be found in rem - as is the case in most western laws - professional categories listed above may benefit from self defence too.

Danish Criminal Code [17], addressing the causes that eliminate the criminal nature of the act in a manner similar to that of Sweden, includes in this category: self-defense (§13), the state of emergency and relatively minor offense (lack of social danger) (§14), irresponsibility (§15) and minority (§16).

The similarity lies, on the one hand, in the fact that, in the very wording of the regulation of self-defense timeframes of the imminent or ongoing (§13 para. 1) attack are set, a less common aspect in other kind of criminal legislation, this task being part of this doctrine, on the other hand, it lies in the fact that in §13 para. 3 the use of force is authorised, which this time is even assimilated to self defence, the legislature providing

that similar rules apply to necessary actions when executing an order, making an arrest or preventing the escape of a person lawfully detained.

The justifiable excess of defence is present again, being covered in §13 para. (2).

Polish Penal Code [18] in Chapter 3, "Removing criminal liability" regulates the self-defense (art. 25), the state of emergency (art. 26) an experiment (art. 27) mistrial (art. 28), error law (art. 29, 30) and irresponsibility (art. 31). A question that incites interest but raises a series of controversies both ethical and moral, and especially legal ones is that provided in art. 27- an experiment. It is laudatory that the Polish legislature pays special attention to development of science and technology, but we believe that priority must be on the protection of the population from possible violations of fundamental rights such as the right to life, to health, to an unpolluted environment etc. In such cases the settlement of this case should be thought out long, so as not to prioritize the development of science and technology in relation to fundamental human rights.

On the other hand, we can see the lack of other causes common among other legislations, such as the physical and moral coercion.

3.CRIMINAL CODES BELONGING TO ASIAN COUNTRIES

In Asian countries, although they have a tradition and a culture different from the European ones, we find legal regulations that are quite similar, this situation appearing with regard to the causes that remove the criminal nature of the act in Chinese and Japanese criminal law.

The causes eliminating the criminal nature of the act are dealt with in the Criminal Code of the Republic of China [19] in Section 1: offenses and criminal liability of Chapter II: Crime, comprising unforeseeable circumstances and force majeure (art. 16), minority (art. 17) irresponsibility (art. 18), blindness and deaf mutism (art. 19), self-defense (art. 20) and the state of emergency (art. 21).

Highly unusual and, at the same time, discriminatory is blindness and deaf mutism regulation (art. 19) as a mitigating circumstance or cause which removes execution. Under the circumstances we must consider that the political system of this country is a communist one, a totalitarian system and that in general this kind of

regimes treat people with disabilities in a discriminatory way. At the same time, however, willing to maintain an appearance of equal treatment of these individuals and even special social protection, they resort to solutions that are profoundly demagogic, which do nothing but reinforce the idea of discrimination and differential legal treatment, even if here we are in the presence of the so-called positive discrimination.

Also, the legal treatment for justifiable excess presents certain peculiarities. The Chinese law maker means to admit its effectiveness, as an exception, only in the case of self - defense and only when the attack materializes in an act of murder, robbery, rape, kidnapping or other crimes of violence that seriously threaten the security of a person (art. 20 par. 3).

Pardonable excess is provided both in self-defense (art. 20 para. 2) and the state of emergency (art. 21 para. 2); it may be, however, either mitigating circumstance or a cause that eliminates the execution. A scoring welcome, in our opinion, is contained in Art. 21 para. 3 and it concerns the fact that he who has rescuing as part of his daily work will not enjoy the benefit of the state of emergency (Example gratia: firemen, police, military, etc.).

Surprisingly, the Criminal Japanese Code [20] uses a very similar name to the one used by the Romanian or the Moldavian law maker and at the same time, revealing to the nature of the causes which eliminate the criminal nature of the act, giving name to the 7th chapter that includes them -The reduction of punishment and the insufficiency of the criminal nature. The regulated causes are - the exercising of a right 9 art. 35), the self -defense (art.36), the state of emergency (art. 37), the error, (art. 38), the irresponsibility (art. 38), the minority (art. 41). The justified excess and the excusable excess are dealt with together in the same paragraphs, both in the paragraph about the self-defense (art. 36, al. 2) and in the one about the state of necessity (art. 37, al. 1), specifying that the application of one or the other can only be determined while considering the circumstances of the respective cause.

On the second paragraph of the 37th Article we find a similar provision to that in the Chinese Criminal Code, by which the persons who carry rescuing actions as part of their working obligations are removed from the benefit of the state of necessity, provisions that we find in Romania and in Moldavia only within the special laws [21]

which regulate the respective professions. Thus, for a better understanding and systematization of the institutions of self-defense and state of necessity, we find this provision appropriate and, de lege ferenda we propose its inclusion in the Romanian Penal Code and in the Moldavian one, especially if we consider that in Criminal Code Carol II [22] it was found under art. 131.

On a critical note, it is worth noting that most of the surveyed codes incorrectly name, the causes eliminating the criminal nature of the act as causes eliminating the criminal responsibility, the difference of which is an essential one: in the presence of the first category of causes the crime, the illicit character is excluded, non-existent; while relatively to the second category, the act retains its criminal character, the criminal liability being the one that is removed.

Also, in a critical manner, we see that very often they are treated together with the mitigating or even aggravating circumstances, institutions of law so different that they have totally divergent effects and only lead to augmentation or diminution of punishment, having no impact whatsoever on the existence of the criminal act.

The wrongful lawmaking so similar to these institutions within the criminal codes in Western Europe is probably due to the fact that initially these cases were dealt with as such in the Napoleon's Criminal Code [23], which was the model for most criminal modern codes. It includes the Romanian Penal Code of 1864 [24] that was structured in the same manner including causes that eliminated the criminal nature of the offense in Title IV causes that defended the penalty or decreased the punishment.

The current special regulation of western and eastern countries is the result, on the one hand, of the obsessive tendency of the communist regime which, in an attempt to get rid of "bourgeois remnants" created new codes; and on the other side of the traditionalism of democratic countries - excessive even if we consider that Dutch criminal law is in force since 1881 - under which the same line was kept, remaining dependent on old approaches.

Although we are advocates of preserving tradition, we must confess that without jeopardizing the idea of belonging and continuity, when science is evolving - and we appreciate the Romanian Penal Code of 1968 as superior to those of Napoleonic origin

- we believe we urgently need to tap into the new ones, otherwise we risk to fall into disuse.

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The European Union political economy reflected through the associations and foundations activity

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Abstract:
The concern for the control and management of money received by the Romanian state through the European programs aimed at developing the civil society was mostly noticedafter 1993. In 1994, the EU delegation head Karen Fog came up with the idea of establishing a foundation to manage money for NGOs. Under these circumstances, in 1994 was founded the Foundation for the Developing of the Civil Society (FDSC) which represented an important step in developing this area. The nonprofit sector development was possible due to the legal regulation that allows every employee to donate 2% of income tax to NGOs. In Romania, this was possible starting with 2006, as part of the European Union`s influence with respect to the social economy concept. Once Romania joined the European Union its influence was felt through the Sectoral Operational Program "Human Resources Development" 2007-2013 which allocated money for this sector. The developing of the social economy model in the E.U., but also in Romania has determined both at a European and local level to promote this type of social affairs, social entrepreneurial and the microfinance of this type of sector. The fulfilment of these objectives is pursued by the European Council and the European Parliament for the period 2014-2020. A legitimate question would be what Social Economy is in fact?
Keywords: *nonprofit sector, associations, foundations, social economy, social enterprises*

1.Short resume of the NGOs evolution influence in the social-economic reality in the post-revolutionary Romania

In 2015 there were registered in the register of associations and foundations over 80,000 associations, foundations and federations. Their number increased constantly since 1990 and reveal their importance in the social and economic environment. The Romanian state inefficiency in spending, control and manage public money, but also disastrous social policies can be noticed in recent corruption scandals at the highest levels, including fraud with public money. The suspicion has also been noticed on certain NGOs.

The Romanian state has proved to be ineffective in managing and spending public money in a transparent manner which was reflected in the society. Without the existence and activity underpinned by NGOs, the way in which these expenditures are made, would be even more deficient.

During the 1990s, the NGOs sector in Romania was mainly covered by charity foundations and associations, as well as the sportive ones.

Currently, associations and foundations have diversified their activity while the social activities continue to be considerably more active. These are followed by the NGOs that are representing educational purposes and the sportive foundations. It is obvious that the Romania`s state social services are still unreformed or partially reformed, therefore it would be an even more unfortunate situation especially for vulnerable groups if these NGOs wouldn't exist. The NGOs got involved in a series of informative campaigns and created the first services in this domain.

A clear example on how the Romanian state proves its inefficiency is related to the home care system. The Romanian State does not have such a service, this being only provided by NGOs through financial support received from external sources (donations) without the involvement of the state. In order to have a clear view with respect to the state financial support towards NGOs, it will be important to mention that Romania is on the last place in the EU.

The lack of financial support for NGOs, rapid economic and political changes or the working market put a significant pressure on the public administration and this makes it really difficult. Most frequently, the solution and support came through the coagulation and development of the nonprofit sector. The development of this sector could be made possible due to the legal regulation, according to which, an employee can give 2 % from their payable taxes towards NGOs. At the moment, there are over 26.000 NGOs that have access to these donations and over 7500 organizations that offer social services.

The first solutions agreed by the Romanian State representatives in relation to the financial aid for NGOs was the Government ordinance 26/2000 which refers to the state public utility?!

Besides financial aid from the national budget, the NGOs have also received offices with modest rents in many unclaimed properties under the state administration Protocol State Organization with the possibility to purchase these premises under market price, which led to many abuses.

According to the `Public Opinion Pole NGOs` - survey realized in 2011 by F.D.S.C- the financial support from the state us just 7% - very low compared to the average European rate.

In 2011, it was founded the Office for the relationship Govern- NGOs whose duties are being undertaken by the Political and Associative Relation Service. The main scope of this administrative scheme was to improve the partnership with the associative environment and the governmental policies in this domain.

2.Social economy in Romania

Although from a declarative point of view, Romania does well in terms of new institutions, when it comes to financing, administering and spending the public money, we are facing with real problems, mainly due to the numerous bureaucratic systems, doubly qualified and unprepared to take decisions.

In 2008, The Romanian state has receivedfrom the European Social Fund (FSC) 30 million euros to develop the new type of social enterprises. The purpose of their establishment is to reduce the number of socially excluded people by integrating them into the labor market in Romania. On the same occasion, a new concept of social economy has begun.

The concept of social economy has emerged from the need to identify solutions for finding and providing jobs for those who are in need.

In Europe, the social economy is also called "third sector" separated from the public and the private and is called nonprofit sector in the US.

The term social economy in Europe originates from the French Language and refers to "organizations enterprises that are neither private nor the public sector.

An attempt to define the social economy is made by the International Centre for Research and Information on Public Economic, Social and Cooperatives (CIRIEC) that the social economy is "the set of undertakings formally organized, based on freedom of association, producing and providing services, where decision-making and profit distribution are not directly proportionate capital contribution or when the contributions are paid.

The social economy can function on several principles:

- Religious organizations that provide social welfare services
- Certain groups aimed at helping the citizens
- Public Social Structures, the so-named business incubator
- Non-profit organizations

- Charities, associations and foundations

In Romania after years of debate and delays the social economy law was adopted.

At this stage, we can discuss about a legal definition of the concept. Under these law circumstances, the social economy is defined as "all activities organized independently by the public sector , whose purpose is to serve the general interest and the interests of a community and / or personal interests patrimonial by increasing the employability of persons belonging to the vulnerable group and / or production and provision of goods, services and /or works .

According to legal procedures, the social economy has three major objectives, these being:

- To contribute at the social and economic cohesion
- To create and integrate people who find themselves under risking situations on the working market
- To develop social services for the above group of people

The same legal agreement confirms the principles underlying the social economy that need to be respected by the entities belonging to this concept. Among these:

- Individual`s priority and social objectives for increasing profit
- Allocate the largest part of its profits to achieve objectives
- Solidarity and collective responsibility
- The democratic control of the members regarding the activities conducted.

The same law is eligible to define the social enterprises as ‘any private legal person operating in the social economy, which has a certified social enterprise and follows the principles listed above’.

In order to be accepted as a social partnership, the entity will need to obtain a qualification. The criteria that need to be met by a judicial entity are:

- To action with a social purpose or to represent the general interest of the community
- To provide at least 90% from their profit towards a social scope
- In the event of liquidation, to send the remainingassets toone or more social enterprises

- To provide fair wage levels (to minimize the wage differences on scale from 1 to 8.

Under the law, social enterprises can have the following forms of organization: cooperative societies, credit unions, associations and foundations, unions of employees or pensioners, agricultural companies or other legal entities that meet the criteria for certification of social enterprises.

As seen from above, the forms of social enterprises they are present in almost all fields of the economy (services, agriculture, food industry, trade, industrial production). Besides the specific forms of social economy, there are new forms such as the protected authorized societies (UPA). The protected units are social economy entities known in Europe under the name of social enterprise for integration into work (Work Social Integration Enterprises- WISE) or enterprise employability. Social enterprises for work integration are autonomous economic entities whose main objective is the professional integration of people experiencing serious difficulties in the labor market. This integration is made on the open labor market, in sheltered workshops or training and qualification. Businesses employability structures are active in various fields; in Europe the most common are: manual activities (construction, carpentry), the collection and recycling, maintenance of green spaces, public cleaning and packaging.

In Romania, there is a rich legislation supporting the development of this type of sector and emerging forms. Among these, please note: GEO 26/2000 on associations and foundations , supplemented by Law 540/2002 on the unions , then OUG99 / 2006 supporting credit institutions more specifically credit unions , law 448/2006 amended and supplemented UPA- further on the protection and promotion of persons with disabilities , the law 346/2004 to stimulate SME creation and development of small and medium- sized law IFN - Law 93/2009 regarding non-banking financial institutions growing role in the economy CEST types of associations or foundations.

The social economy is present where the state has performed unsatisfactory or failed through the policies used or due to the irresponsible administration of the public expenditure. As it was already shown, a specific form of social enterprise mentioned by the social economy policy is the insertion social enterprise, where:

- At least 30% of its employees are part of a vulnerable group;

- Need to fight against exclusion, discrimination and unemployment by inserting socio-professional activities for disadvantaged groups of people.

The social economy is fully contributing to reducing expenditures on social welfare, increasing the number of disadvantaged people and those with a certain disability, but who are professionally eligible to be on the labor market or by developing the consume, such as a new type of more reasonable entrepreneurship and solving social problems at a local level, providing new opportunities and lastly developing new mentalities. The result is visibly occurring while improving the quality of life of individuals and communities in which they live by preserving traditions and customs. In support of this idea it will be worthy to mention statistical data on the portal Atlas of Social Economy which uses data on income taxes / income with contributions to health insurance paid by social economy organizations in 2011 and 2012, showed that in 2011 social economy which contributed to the state budget 334.369 RON, the taxes and other contributions increasing in 2012 to 498141.Comparing these amounts to the total taxes on income, profits and capital gains from businesses and employers contributions from state budgets 2011-2012, it is considered a contribution to the social economy sector 4.18% from total corporate taxes and employer contributions in 2012, so it can be seen a significant increase compared to 2011. The social economy sector(associations, unions,cooperatives) provided 115,000 jobs for employees in Romania, representing 2% of the labor force in Romania. Given that 41.7% of Romania's total population at risk are people / situations of poverty and exclusion, 50 % of social services in Romania are provided by associations and foundations for 150,000 beneficiaries.These statistics are impressive considering that most of the social economy sector was formed and developed only in the last 25 years.

Due to new regulations, foundations have strengthened in recent years the role of foundations and social service providers expanding their activity in rural areas, which are most disadvantaged. However the social economy sector in Romania is far from what is recorded in other member states. There are countries in Europe where the social economy sector employment reaches 10 % of the total workforce employed.

Another aspect that needs covering is represented by the implication of the civil society through volunteering opportunities.

The problem of financing the social economy is being increasingly challenged by representatives who demand that tax incentives be made directly to the sector because now the criteria for granting such financing are more related to non-profit organizations that organize economic activities directly or through a company.

For this type of organizations it will be in place an exemption from corporation tax to 15 000 per year exempted from payment of reinvested profit for UPA have exemption from customs duties , VAT for CAR have tax and reduce the amount paid for rented premises from local authorities. The social economy act recently adopted by the Romanian Parliament mentions a number of facilities. They are taken from some of the EU countries is needed to create a more favorable framework but especially for its development. Social Economy Coalition supports maintaining the old facilities of the previous Fiscal Code and will introduce new ones as well.

- tax relief / tax on buildings , buildings used for providing social services , buildings used by associations and foundations used exclusively for non-profit activities and buildings used by social enterprises insertion;
- the possibility of granting councils , decrees , exemptions or reductions from tax / tax due for the following buildings and land used by social enterprises buildings and agricultural buildings owned by social cooperatives based on Law 1/2005 andagricultural cooperatives laws.
- Exemption from VAT in terms of services provided and/or goods delivered, as well as services provided by the final consumer which are offered by the insertion social enterprises.

In addition to these measures other financial and non - financial measures can be integrated such as the integration of many social and community interest in public procurement procedures, social impact in terms of the public tender procedure. The role of the social economy is recognized and supported at EU level by the European Parliament that supports and promotes an active social policy through the creation of structures more versatile crisis,national and local partnership development at EU, through a stimulating legislative and financial system.

In order to support and develop this sector, the EU, through the European Strategy earmarked 958 million euros for the period 1 January 2014-31 December 2020.

The social protection system should encourage social inclusion, active economic and social entrepreneurship. For this need and because of the changes occurring in the nonprofit organizations from15-20 years ago, labor was voluntary (Red Cross) and now, for the most part, it is specialized and remunerated. Therefore, we could say that the term nonprofit is outdated and that the most important thing is the goal or mission of the Foundation as a criterion for the definition of organizations.

As a brief conclusion, we can say that the foundations meet the needs of association in terms of self and autonomy from government and these help crystallize and empower the civil society better, while providing territorial communities or professional prospects for some people-centered services and the public good.

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State of Emergency Decrees and Laws Legislative Delegation in the Rule of Law

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Abstract:
Like any state, and the rule of law can go through moments of crisis, triggered either by internal factors or external factors. Serious hazards may threaten the rule of law and the normal social life, economic and political. In such situations it is needed sometimes prompt and vigorous measures limiting citizens certain rights and a transfer of certain powers of Parliament over the Executive. Taking these steps should be within the limits set by the Constitution, taking into account that today constitutions are based generally on the idea of rule of law.
Keywords: *constitution, rule of law, legislative delegation, state of emergency, law decree*

1. GENERAL CONSIDERATIONS

The old Roman principle “salus rei publicae suprema lex” (state saving is the supreme law) He meant that when exceptional circumstances that can put in danger the very existence of the state, its bodies may take appropriate action even if to do so would violate the law. Under this principle, as saving the state is the supreme law, all others must obey its laws.

Principle "Salus reipublicae suprema lex" reported to the idea of rule of law or as we express Cicero, "inter weapon silent leges" would be to say: whenever occurs a state of emergency, state bodies can assess the circumstances the extent to which laws will be applied. [1, p. 126] If the end of the last century some German jurist of great prestige (Gerber, Ihering, Jellinek) tried to argue that the state ceases to be subject to the laws that he himself set when they no longer serve their interests, today is outdated one also because conception is not compatible with the idea that the state is not only an instrument in the service of the people. Since the State can not invoke the interest of which would be in contradiction with all rights, rule of law can only be foreign to the idea that he ceases to be subject to the laws when those rights are contrary to the interests of. [2]

To combat the serious dangers that can threaten the rule of law and strong measures should be taken without further delay. As the prolonged debate and parliamentary procedure involves the assertion of divergent views, it is too slow to be able to react in exceptional circumstances. Therefore, to combat hazards that threaten the existence of the state is required by the government exercise of duties which parliament. This may be because it is an organ of state government based on a closer cooperation and solidarity among its members and is endowed with the capacity to act faster. [1, pp. 126-127] Thus, in the special circumstances necessary to limit citizenship rights.

Given these realities inherent in any society, most constitutions based on the idea of rule of law allow a transfer of certain powers of parliament over the executive in exceptional conditions and limitations on citizens' rights. The problem presents no difficulty in legally if flexible constitutions. Thus, in England, as parliament powers are limited by legal rules with a higher value ordinary laws, it may delegate any of its powers to the government to deal with exceptional conditions. There were also practiced in England delegate powers during the two world wars, in emergency situations.

We must point out that the English parliament has used its power government delegation in peacetime, when in exceptional circumstances considered that it was unable to act quickly enough.

For countries that have constitutions rigid matter is more complicated, however, and the US Constitution in 1787 which is the oldest constitution in the world, contains provisions Crisis allow parliament to transfer certain powers of government or make restrictions of individual freedoms.

When the constitution of a country includes provisions Crisis allow parliament to transfer certain powers of government or make restrictions on individual freedoms only condition that is required for these measures to take place is that this is done within the limits set by constitution. Any empowerment of the government is limited in time. [3, p. 200]

Today all constitutions based on the idea of rule of law and include provisions for exceptions for the state of emergency. Astfe, the Italian Constitution of 1947 states: "In

exceptional cases of necessity and urgency provided by law authorities public safety may take provisional measures that must be communicated within 48 hours to the judicial authorities and if the authority does not confirmed in the next 48 hours are considered as retracted and remain without any effect" [Article 13 (IV)]. Article 77 of the same Constitution provides that "no government delegation Chambers can not bring decrees having the force of ordinary law." The Constitution specifies both where the state of emergency can lead to the loss of certain freedoms and the conditions that allowed a transfer of powers from parliament to the government.

And the German state of emergency constitution is object of regulation. Thus, article 80 of this constitution recognizes that Parliament may delegate certain powers to the federal government, a federal minister or Länder governments provided by law to determine the contents, purpose and scope of that authority. By Federal Law of 24 June 1968 the German was introduced X section devoted entirely to state regulation of defense.

The state of necessity in the French Constitution of 1968 has a vague regulation in art. 16; This articolr states: "When the institutions of the Republic, national independence, territorial integrity or her execution of international commitments are threatened in a manner serious and immediate and regular functioning of public powers constitutional interrupted, President of the Republic shall take measures required by these circumstances, after formally consulting Prime Minister, the Presidents of the Assemblies and the Constitutional Council. He informs the nation by a message. "According to this article two guarantees were instituted to prevent the abusive exercise of his powers the President of the Republic. A guarantee is that if implementation of article 16 of law Parliament meets, and the second is that the National Assembly can not be dissolved during the exercise of exceptional powers. [4, p. 201]

We have given some examples of rigid constitution which allowed even by their text transfer of powers from parliament to the executive in crisis. We must emphasize, however, that not all European constitutions rigid based on the idea of rule of law have established in the past (eg the French Constitution of 1785 or the Romanian Constitution of 1923) provisions to allow a delegation of power from parliament to the

government when there is a state of necessity while others do not devote even today (eg Belgian Constitution) provisions on the delegation of powers from parliament to the government when necessary but mostly by setting curfew certain powers to ensure public order State temporarily transferred from the jurisdiction of civilian bodies on the military authorities.

If the Constitution does not contain provisions regarding the authorization of Parliament to delegate, in crisis, some of the functions of government, but also for governments introduced by the revolution up until the election of a new parliament legislates about government decrees fundamental problem was that the constitutionality of legislative measures taken on the basis of such decrees. In this case there were extensive discussions that one of the rules of public law is that "delegata potestas non delegatur".[5, p. 7] This means that since the constitution has assigned a specific skill organ it may not in whole or in part, to pass on to other state bodies. To do so would be a breach of the letter and spirit of the Constitution, which aims to ensure a balance between state powers through its division of powers between the organs so that it can be declared rights and freedoms. [6, p. 9]

Literature has tried to justify the practice of MPs in crisis conditions have vested the government with broad powers even though the constitution does not contain any provision in this respect, so the government has become a legislator goes to adopt so-called decree laws, that acts which varied, suspended or repealed laws. The justification for recourse to such laws empowerment starts from the idea that there is a practice of the State is that sprang from the general belief and become established within the human community of the state that is the right of Parliament that in exceptional circumstances to delegate the government its powers. [7, p. 5] true custom would be made in this respect and has criticized G. Vedel. [8, p. 499] Of course, it is difficult to accept such an explanation because it is not true that a communis opinio this content would exist in different countries resorting to laws of delegation of powers of parliament and the practice decrees law is considered by eminent jurists and important sectors society as unconstitutional.

Another theory in this regard Parliament raises the possibility of turning some legal regulations legally binding regulations by administrative regulations. The government is competent to intervene with its own legal acts in areas of social relations determined.

As stated prof. Tudor Draganu justifications tested material are not convincing and so many authors have concluded that in countries that have constitutions stiff devotes theory the state of emergency "any law that some powers of Parliament would be delegated by the government is unconstitutional therefore decrees and laws based on government data they are illegal." [1, p. 130]

In terms of political government can be accused to the extent that invokes immediate and serious danger to the state under which it operates. In such circumstances, however, the government must submit to Parliament for ratification at the nearest law decrees session to make government act into law. We should mention that the ratification defects are rectified decree law only for the future but not the past. [2; 9]

We share the view prof. Tudor Draganu, that the only solution which we consider rigorously grounded in legal terms is that in a democratic society are inevitable state of crisis, and the idea of rule of law requires that they find regulations appropriate in the constitution whenever they have a rigid character.

In Romania, the Constitutions of 1866 and 1923 did not contain any provision which would allow parliament to delegate some executive functions of the state of emergency. However, in practice the State recognized executive decrees the right to take the necessary measures to preserve state laws provided that they are subsequently ratified by parliament.

2. REGULATING THE STATE OF EMERGENCY AND LEGISLATIVE DELEGATION IN THE CONSTITUTION OF 1991

The question of necessity and state legislative delegation have occupied an important place in the development preoccupations Constituent Romanian Constitution in 1991. The exceptional measures that can trigger a state of emergency since 1991 revised Romanian Constitution regulates two assumptions:

a) in the event of armed aggression against the country President of Romania is authorized to take measures to repel the aggression, and will immediately bring them to the attention of Parliament (Article 92). If Parliament is not in session it shall be convened de jure within 24 hours; in the event of mobilization or war, the Parliament continues its work throughout these states.

b) of the state of siege or emergency (Article 93). The 1991 Constitution does not specify the conditions under which the state of siege or state of emergency may be proclaimed or legal consequences of their establishment. The Constitution establishes the competent body to (President). Since the establishment of the state of siege and emergency involves the restriction of individual rights and freedoms, article 93 of the Constitution of 1991 subject to the condition that a Romanian president to seek Parliament's approval for the measure adopted within 5 days of taking them.

Legislative delegation is regulated by the 1991 Constitution distinct from the revised state of siege or of emergency, being conceived as an independent procedure to the existence of exceptional circumstances. A special way of conducting relations between parliament and government is the legislative delegation (article 115). Whereas legislative delegation involves transferring some powers of the parliament by the government this involves a special law enabling the nature empower the government to issue ordinances. This law must specify the deadline by which such orders may be issued, provided that orders can not be issued in matters covered by organic laws (eg property regime, the status of civil servants etc).

Another way of legislative delegation consists ordinances. They will come into force only after their submission to Parliament for approval. If the parliament is not in session shall be convened necessarily. Parliament can approve or reject those orders through a law that explicitly specify this. It explained this solution because according to the Romanian Constitution the Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the country. According to the view expressed by the authors specialty parliament has unlimited jurisdiction because it received from the people directly related to the exercise of sovereign powers of power. [4, p. 200] This principle, which has become established in the constitutional practice is

not limited only to the condition of not violate the constitution or parliament to substitute other organs, which would contravene the principle of separation of powers. As regards government, whatever its empowerment to issue normative acts is normal to be limited in time and subject to certain circumstantiation relating to the areas it must cover. For this empowerment laws should define all the ways in which government legislative competence (jurisdiction exception) may be exercised. [10, p. 81; 11, p. 103]

In the theory, underline the fact that a law enabling the Government to issue ordinances by its simple content can not be regarded in itself as unconstitutional, but only orders that would be issued under the Act where they depart from constitutional principles. The jurisprudence of the Constitutional Court on the matter established that the meanings and limits enabling the Government action. The Constitutional Court Decision no. 75 of 13 July 1994 stated that, taking into account the provisions of Article 114 (Article 115 as revised in 2003) of the Constitution that the special law enabling the Government to issue ordinances can not concern the areas covered by organic law that sense of empowerment is the power investiture Government to establish legislative measures but not in any way affect these areas. Thus, materially, empowerment has a limited nature intended purpose not only in enabling law and the constitutional prohibition to go beyond the ordinary law through interference with the organic law. [12, pp. 201-211] The 2003 constitutional reform said better relations between Parliament and the Government and the circumstances in which the Government can issue emergency ordinances.

CONCLUSIONS

Establish a curfew and state of emergency in the future supposed to be adopted in an organic law which determines, based on Article 73 of the Constitution, the limitations that will bring the rights and freedoms and possible transfers of competence from civil to military authorities. Thus, by joint decision of the Boards Parliament declares state of siege or of emergency, and if the President of the Republic, by decree, would establish such a measure; these bodies should operate to implement a pre-existing organic laws would only establish the territorial limits when and where individual freedoms and restrictions of transfers of competence to become operators.

According to article 115, paragraph (4) of the revised Constitution, the Government can only adopt emergency ordinances in exceptional cases, the regulation of which can not be postponed, and the urgency required to motivate their contents. The changes are in line with proposals made in the literature are likely to provide better and proper demarcation between the powers of parliament and government, avoiding situations where ordinances were adopted without taking into account the circumstances which really determines the use of this procedure thus respecting and monitoring reports of the European Commission on the issue of emergency ordinances.

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