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The adoption procedure for european legislation. Brief considerations

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Abstract:
In principle, in the European Union, the legislative function is exercised equally by the European Parliament and the Council. These two institutions adopt legislative acts through two procedures: the ordinary legislative procedure and the special legislative procedure. Besides these two main proceedings, in the goal of making procedural rigidity more flexible by implementing several steps, the Lisbon Treaty introduces a number of institutional clauses (passerelle clauses brake clause, and accelerator clauses). These clauses propose different institutional mechanisms, but pursue a common objective, namely, facilitating European integration in "sensitive" areas. Based on these aspects, this article discusses features of the adoption procedure for European legislative acts in terms of the Lisbon Treaty.
Keywords: *Lisbon Treaty*, *the ordinary legislative procedure, the special legislative procedure, European Union legislation.*

Introduction

The signing of the Lisbon Treaty on 13 December 2007 is considered in the literature [1] to be the last step in the process of relaunching the Union's institutional and rendering the European project more credible again.

Also dubbed the Reforming Treaty, the Lisbon Treaty was drawn up as a result of the need to address the challenges of a deepening European integration and ensuring the functioning of its institutions in the conditions of an enlargement with new members states [2].

One of the novelties of this treaty consists in establishing seven legislative procedures that reflect the changes occurring in the Union. Specifically, the ordinary legislative procedure replaces the co-decision procedure established by the Maastricht Treaty in 1992. It is regulated in Articles 289 and 294 of the Treaty on the Functioning of the European Union (TFEU) and was characterized as "an

original combination that includes: technocratic proposals coming from the Commission, working with technical advice from experts from all Member States; involving the European Parliament that represents the citizens of the Union; involving the Council that represents governments of member states, reaching decisions by qualified majority" [3].

1. The ordinary legislative procedure under the Lisbon Treaty

According to Article 289 paragraph 1 of the TFEU, ordinary legislative procedure consists in the joint adoption by the European Parliament and the Council of a regulation, directive or decision based on a Commission proposal. Accordingly, the ordinary legislative procedure is initiated by the Commission, then, is mainly between Council and Parliament on the basis of their legislative prerogatives as joint authorities and involves several steps defined by Article 294 of the TFEU.

Thus, the Commission is considered to be the starting point for each union action, enjoying legislative initiative. By virtue of this law, it prepares and submits drafts of law proposals before the Council and the European Parliament, both on its own initiative and at their request [4], being the body that best knows areas where there are deficiencies that require action on the part of the Union.

Once the proposal is presented by the Commission to the European Parliament and the Council, the draft legislation has to go through three sequential steps designated as the "readings".

In the first reading, the European Parliament adopts its position and communicates it to the Council.

If the European Parliament's position is endorsed by the Council, the legislative act is adopted in the form that corresponds to the European Parliament's position, thus putting an end to the legislative process.

If the European Parliament's position is not approved by the Council, it shall adopt its position and forwards it. In the latter case, the Council fully informs the Parliament of the reasons which led it to adopt this position on the first

reading. In it turn, The Commission fully informs the European Parliament of its position.

According to Article 294 paragraph 7 of the TFEU, at the stage of the second reading [5], within three months from the submission by the Commission of its position, Parliament can:

a. approve the Council's first reading or not rule on the matter. In this case, the act is deemed passed in the wording which corresponds to the Council's first reading. Respectively, the act is submitted directly for the signature of the Presidents and Secretaries-General of the European Parliament and of the Council, and afterwards published in the Official Journal of the European Union.

b. reject the Council's first reading with the majority of the Members of Parliament, the proposed act is deemed as not having been adopted and the legislative process ends. Examining the case may be resumed only on the basis of a new proposal from the Commission.

c. to propose amendments to the Council's first reading, with the aid of a majority of its members. The text thus amended is submitted to the Council and the Commission, which issue an opinion on these changes.

As provided in Article 294 paragraph 8 of the TFEU, if within three months of receiving the European Parliament's amendments, the Council, acting through a qualified majority, approves all those amendments, the act is considered approved. Assuming that it does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament shall convene the Conciliation Committee within six weeks. The Council will make the decision unanimously on the amendments which were the subject of a negative opinion from the Commission.

The Conciliation Committee is composed of members of the Council or their representatives and an equal number of members representing the European Parliament. It has the task of reaching an agreement on a joint project, by a qualified majority of Council members or their representatives and by a majority of members representing the European Parliament. Decision must be

made within six weeks of its being convened, taking into account the positions of Parliament and the Council on the second reading. The Commission takes part in the conciliation proceedings and is actively involved in all necessary initiatives with the goal of reconciling the positions of the European Parliament and the Council.

If within the six-week period, the Conciliation Committee does not approve the joint text, the proposed act is deemed adopted. However, assuming that within that period, the Conciliation Committee approves a joint text, the European Parliament and the Council shall each have a period of six weeks from receiving the approval, in which to adopt the act in accordance with this project, and thus have the so-called third reading. Parliament must act by a majority of votes cast, and the Council by qualified majority. Otherwise, the proposed act is deemed to have been adopted [6].

According to Article 294 paragraph 14 of the TFEU, the three months and six weeks periods of may be extended by one month and two weeks respectively at the initiative of the European Parliament or the Council.

Last but not least, the TFEU provides that if in the cases stipulated in the Treaties, a legislative act constitutes the object of an ordinary legislative procedure by a group of Member States, or on the recommendation of the European Central Bank, or at the request of the Court of Justice, then paragraphs (2) (6) and (9) of Article 294 TFEU will no longer apply. In these cases, the European Parliament and the Council shall communicate to the Commission the draft proposal, with their positions from the first and second reading. They may request the opinion of the Commission at any time during the procedure, opinion which the Commission may issue on its own initiative [7].

Also, the Commission may, if it considers it necessary, take part in the Conciliation Committee as stipulated in Article 294 paragraph (11) of the TFEU.

2. About the special legislative procedure

As to the special legislative procedure, Article 289 of the TFEU states that such a procedure consists in adopting a regulation, directive or decision by the European Parliament with the Council or by the Council with the participation of Parliament in specific cases, as mentioned in treaties or provided for the adoption of legislation by a group of Member States, by the European Parliament, on a recommendation from the European Central Bank, or at the request of the Court of Justice or the European Investment Bank.

The literature [8] has highlighted the following differences between ordinary and special legislative procedure:

-if special procedures, Parliament and the Council do no act together, but each individually;

-for special procedures, legislative initiative comes not from the Commission but from another institution or from a group of Member States;

-special legislative procedures are not covered by general rules in the treaties, as it does on the ordinary procedure, but by separate rules for each of the cases stipulated in the treaties. Thus, in many cases, the special legislative procedure involves unanimity in Council and consultation of the European Parliament (e.g. Article 21 paragraph 3, Article 33, Article 64 of the TFEU etc.), in other cases, the legislative procedure requires unanimity in the Council and the consent of the European Parliament (e.g. Articles 19, 25, 82 paragraph 2, Article 86 paragraph 1 from the TFEU and so on), and yet in other cases, voting in the Council by a qualified majority while the European Parliament is only consulted, or the European Parliament has the main role and the Council need only approve the measures (e.g. Article 223 paragraph 2, etc. Article 226 of the TFEU).

Legislative acts adopted under the ordinary legislative procedure shall be signed by the President of the European Parliament and President of the Council and those adopted under a special legislative procedure shall be signed by the President of the institution which adopted them. Subsequently, legislative acts shall be published in the EU Official Journal and enter into force on the date

stipulated in them or, in the absence thereof, on the twentieth day following its publication [9].

Legislative acts are considered “intangible” in the sense that no admissible changes that are made after adoption and go beyond the tolerance limit of spelling or grammatical corrections. The principle of intangibility is absolute, since it constitutes, according to the Court of Justice the essential element of a European legal security [10].

Conclusion

Even if significant improvements to legislative process have made through the Lisbon Treaty, as detailed above, the objective of a better legislation in the European Union remains a priority and a constant challenge.

Proof of this concern is that the European Commission's work program for 2015 foresaw the objective of better regulation aimed primarily at reducing bureaucracy and eliminating regulatory burden. Also, please note that Article 39 of the Framework Agreement between the European Parliament and the Commission establishes that a new Commission may review at the beginning of its mandate, all legislative proposals that are still pending, in order to confirm them politically or withdraw them, based on the Parliament's point of view. Given this basis, the 2014Commission reviewed 450 proposals carried over from previous Commissions, which were still waiting for a decision in the co-decision procedure.

Also, the European Commission Program on proper and functional regulation (REFIT) proposes measures aimed at simplifying European Union legislation and reducing regulatory costs. It contributes to creating a stable and predictable regulatory framework, which can support economic growth and create jobs. It is considered [11] that the implementation of this program for better regulation will cause a systemic simplification that will benefit everyone from jurists and economic actors to simple European citizens. To achieve this goal, REFIT requires support from the European Parliament, European Council,

European Commission, Member States and interested parties [12]. Moreover, the decision from 19 May 2015, the Commission established the REFIT platform in order to carry out a dialogue with Member States and interested parties in order to improve European Union legislation.

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The Citizenship of European Union – "Diversity in Unity" or "Unity in Diversity"?

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Abstract:
Without having a universally accepted definition, the concept of citizenship has acquired through time a multitude of definitions putting, in general, the question of belonging to a particular community, which requires with priority political rights but also obligations, the citizen being the one that has rights and duties in a democratic society. The notion of European citizenship is based on rights and corresponding obligations, implying the fact that the citizens of the European Union benefit, in this quality, of the same rights that are traditionally awarded to own citizens in the internal legal order. By applying the "unity in diversity" principle which the united Europe is built upon, the European citizenship represents equality before the adopted laws and the problems and dissatisfactions of citizens can be the same regardless of nationality or ethnicity and common solutions need to be built for these. By the inclusion of rights, obligations, as well as by participating in the political life, the European citizenship has the purpose of consolidating the image and identity of the European Union and the more profound involvement of the citizen in the European integration process.
Keywords: *Citizenship of European Union, political life, legal order, obligations of citizenship.*

The citizenship – conceptual elements

The term *citizen* derives from the Latin: *civis romanus*, where the Roman citizens were considered only those persons who were entitled to take part in popular assemblies of the forum and participated in this way, directly to the conduct of public affairs, having full political rights, which the Romans called *jus honorum, jus sufragii*.

The concept of *citizenship* was proposed by Aristotle [1] and recognized by the State to its inhabitants who, as members of the Citadel, were participating in its government, his belief being that all communities exist because of the human impulse to cohabit and live together with others.

The citizenship – the short historical references

Throughout history, the French Revolution of 1789 brings to the fore the *Declaration of the Rights of Man and of the Citizen* which establishes the modern

citizenship in the sense that ties the concept of citizenship to the participation in the political life, equality of citizens being conceived as a mere legal equality, and freedom is inextricably linked to private property, defined by a sacred and inviolable report and where the couple fellow-citizen is inseparable: the citizen has rights, but their exercise depends on the law and therefore the sovereign nation.[2] Reporting citizenship to the State, to various governance practices, to the challenges of globalization and Europeanization, have shown that citizenship can not be seen as an end result, but as a dynamic concept, redefined and in a constant state of transformation that results in another possibility of redefinition. In the classical sense of the term, citizenship expresses a person belonging to the State, through the mutual rights and obligations provided for by the legislation of that State.

The legal nature of *citizenship* is found in the link connecting an individual, a group of individuals or certain goods with a particular State, either by the political and legal domination and subjection report of which flow rights and obligations, both as it concerns the individual against the State, or the State against the individual and differentiates the latter from the foreigner, as long as he is subject to the legislation of his own State, enjoying the rights the State has determined to confer him and meeting the obligations which it imposed on him. The quality of *citizen* can be acquired in several ways: by place of birth, relying on the principle of *jus soli* or through connection of blood after parents, according to the principle of *jus sanguinis*, but can also be acquired through special procedures for obtaining the nationality or for outstanding service to the country and nation, thus gaining the *honorary citizenship.* [3]

Under these perspectives, *citizenship* appears as a positive *status* [4], which serves to justify the individuals belonging to a particular political community with the consequence of granting a series of rights recognized and guaranteed by the community. The content of this concept is expanding and growing with the diversification of modes of presence at global level and of building ties with other participants in the economic and social life where

relationships and connections are becoming multiple and mobile given that, increasingly, the concept of State and in particular the concept of nation-State is no longer taken as the ultimate and legitimate holder of power. Thus, the State is *absolute*, in the sense of providing the model for co-existence in a world divided into territories quite clearly determined, and *legitimate*, in that it represents the public good as the sum of the individual good.

Without having a universally accepted definition, the concept of *citizenship* has acquired through time a multitude of definitions putting, in general, the question of belonging to a particular community, which requires with priority political rights but also obligations, the citizen being the one that has rights and duties in a democratic society. [5] The essential right of the citizen is to be able to create laws, the basic task being to follow the law that he created, exercising his freedom, organizing his relations with others within the defined legal framework. In a democratic society, citizenship implies individual's autonomy, moderated by responsibilities and by the knowledge to the legal and moral obligations implied by living the life together and respecting each other, in this sense, the citizen acquiring that delicate quality, but responsible of *co-citizen*, i.e. an individual who lives with and alongside others [6].

Marshall opined [7] that citizenship can be effective and efficient only when providing the citizen access to three main types of rights, thus selecting three main components of citizenship: the *civil component*, which includes rights relating to individual freedom and the institution directly associated with it is the rule of law and a judicial system; the *political component*, an example could be participating in the exercise of political power and to vote and to be elected in parliamentary institutions; the *social component* of citizenship, which covers rights to a decent standard of living and equal access to education [8], health, housing and minimum income.

From the viewpoints of the social nature, citizenship is one of the individual's identities and involves developing certain competences or a civic culture that enable the effective exercise of the status of citizen.

The citizenship of European Union – "diversity in unity" or "unity in diversity"?

The multitude of social, economic and political changes that have taken place in the last century led to a series of transformations undergone by the concept of *citizenship* from its inception to date when it was necessary to create a new concept [9] namely the *European citizenship*, concept that must, however, be clearly defined from that of *citizenship in Europe*, because even though the two concepts relate, the concept of *European citizenship* oscillates between constitutional tradition [10] and innovation, representing one of the foundations of a united political Europe in the making, while the *citizenship in Europe* only refers to modes of acquisition of the citizenship of each Member State, of each legal order of Member States.

Regarding the concept of *European citizenship*, aroused as a need for a new legal community reality, it was declared only in 1984 when the European Council in Fontainebleau formed a Committee of reflection, which is known as the Adonino Committee and made a first step in defining the European citizen, drawing up a plan aimed at facilitating the free movement of persons, a better information of them, boosting language learning, harmonization of European symbols: the anthem, the flag, the passport etc. Among the rights recognized also figured the rights resulting from the idea of economic integration such as the right to work in the chosen country [11]. Europe's economic evolution [12] through the development of the *Single Market* has created the possibility of giving European citizens a series of general rights in areas of the most diverse, such as: free movement of goods and services, consumer protection and public health, equal opportunities and equal treatment, access to employment and social protection etc. [13]

Later, in 1992, at Maastricht, it was foreseen but not clearly defined a new kind of citizenship, the *European citizenship*, which would give new legal status of citizens in each Member State of the European Union, assigning them specific rights which derived from their own State membership to the European Union,

setting their nationality: Every citizen holding the citizenship of a Member State is a citizen of the Union. *Citizenship of the Union complements the national citizenship and does not replace it - European Citizenship,* arth. 8 in 1992, subsequently converted in 17 of CET, with the last phrase addsed after the Amsterdam treaty – and is based on principles common to the Member States, included in the Amsterdam Treaty: the principle of freedom, the principle of democracy, the principle of respect for human rights and fundamental freedoms – rights and freedoms already established in 1789 by the *Declaration of the Rights of Man and of the Citizen* this being the fundamental charter that made in France and worldwide, the foundation of modern democracy – the principle of rule of law and results from the fundamental human rights and the specific rights granted to European citizens: free movement rights and civic rights, as described in the Treaty.

Provisions inserted in the second part of the Treaty of Maastricht under the heading *Citizenship of the Union* have the mission to serve as a potential guide to study the status of the European citizen but it should be noted that they do not present a perfect coherence being without anything spectacular to the rights European citizens already had. First, although it proclaims logically that citizens of the Union have not only rights, but are subject to the same extent to some obligations, the treaty is limited, in terms of obligations, to sending to *the duties of this Treaty*, without specifying their content, taking into account the legal standard for reference, not for enforceability.

The concept of *European Union citizenship* has two meanings of approach, one *vertical*, which captures the issue of immigration, asylum and citizenship in the European Union Treaties, and one *horizontal*, which covers human rights in the system of international relations[14] and European system. In this regard, on May 5th, 1949, in London were signed the Statutes of the Council of Europe, two of the main aims being to protect *human rights* and to strengthen democratic stability in Europe.

In this regard, Catherine Withol of Wenden pointed out that, *once the European Union built, citizens must be invented* [15], claim that she underpin ned taking into account that the *European citizen* is only created as a project that is taking shape around some fundamental lines: dissociation between nationality and citizenship, institutional innovation, with priority the constitutional one, development of a common culture [16] beyond State borders, acceptance of new civic values represented by non-discrimination, cultural pluralism, multiplicity of references and elections, etc., the current European citizenship trying to obey these imperatives, but the level of success being relative. It would first be a *reciprocal citizenship* based on reciprocity of rights between European nationals, according to the principles of non-discrimination and equality, then one of *responsibility* because it comes from the nationality of a Member State [17]. The Maastricht Treaty specifies that a European citizen has the right to free movement and residence in any Member State of the European Union, the right to vote and to be represented in the European Parliament, the right to diplomatic protection in a third State, if the State from which he comes has no consular representation, the right to petition to the European Parliament and the right to address the *Ombudsman*.

In recent years, given the status of the global crisis, it is increasingly circulated the idea that the *multiple citizen* status or the quality of *European citizen* led to a strain on the activities of officials and is seen even as a danger to the security of a State and, in this context States also began to see European citizenship more quickly as a threat. One of rights stipulated in the treaty, the free movement of persons within the European Union, is becoming increasingly limited because more and more States seek a reintroduction of border control.

Thus, the slogan of an united Europe, *unity in diversity* tends to slide ridiculous and remain only declarative, European Union leaders focusing primarily on economic issues, relegating to the background the social problems affecting pretty seriously the European identity, forgetting that, in fact, the economic and the social are interdependent and intertwined issues, but which

also largely depend on each other. Thus, at European Union level it is demonstrated that there are different visions and modes of action, which may lead to lack of solutions to solve this kind of problems.

Conclusions

In conclusion, the elements that build the *European identity* are not as well defined anymore, especially in a period in which political discourse has priority and the level of confidence of citizens of the Member States of the European Union in the values proposed by it drops as they are aware more of problems they face. Eventually, the system proposed by the Union is not infallible and delay in finding solutions affects the Union's image internationally. Declaratively, the *European citizenship* is ideal but if no action is taken, it shall remain at this level. The emergence and support of extremist parties in the European structures can lead to empowering some protest policies and maintaining a permanent revolutionary spirit, running the risk of creating a threatening abyss between mechanisms in Brussels and the European citizen and in this way no faith and no common value not will unite them, regardless of the diversity of cultures, and interested or not in politics, everyone will realize that the European Parliament has no power to defend their rights, being more a matter purely declarative, therefore great difficulties may occur while the Union's States have great diversity in legislation and differing practices for granting and withdrawing citizenship and practices as diverse as regards naturalization of foreign workers. Union States that restrict the acquisition of citizenship are likely to reluctantly accept opening their territory, their labour market, and their political rights to citizens coming from other more liberal Member States. The concept of *European citizenship* calls logically to a certain harmonization of laws on granting citizenship, harmonization currently feasible because of the great political sensitivity of the issue. The issue of European citizenship raises a number of problems crucial to the future of the European Union and its importance is well reflected in a number of other projects that could develop the concept of

European citizenship, adding other specific rights thereof such as: the right to good administration the right of access to documents. For the united Europe to remain a viable political project, citizens must have respect and trust both in institutions and in those who hold the authority, but also reciprocally, i.e., European authorities to rely on citizens, to capitalize them by really observing their rights, becoming aware that first of all Europe of the citizens and then citizens are of Europe's, which today is increasingly absent. A sense of common destiny and of belonging to the same community can not be created artificially but only a common cultural consciousness can engender this feeling, which is why Europe needs to focus not just on economic matters, but also on citizens' rights. It is therefore necessary to strengthen the means of social communication and increase their accessibility as a way to absorb the interest of citizens of the Union's States to participate with more passion in European public life and thereby to do all felt the democratic nature and implicitly the legitimacy of a politically united Europe. The most important *European "actor"* remains the State, citizens' interests being increasingly less taken seriously, and interests of the States are above the interests of the Union in this situation and the concept of *European citizen* may lose its significance, and European values are overshadowed by this crisis demonstrating that after years of reforms of the Treaties, yet united Europe is a Europe without European citizens.

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Human Trade

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***Abstract**:*
Regarded as a global phenomenon of our time, human trade has transformed into a complex mechanism, adapting it in terms of the objective pursued, contemporary society, diversity, complexity and size. Dangerousness of this phenomenon far surpasses the national and international statistics and forecasts.
***Keywords**: freedom, human, trade, society*

INTRODUCTION

Freedom is usually conceived as absence of any external constraints: the usual sense of the word liberty, it defines otherwise, and the meaning or origin. The origins of our civilization, freedom is provided free of man who is not a slave (servus) or prisoner. As opposed to slave, treated as a devoid tool of rights, or master citizen freely dispose of his person and actively participate in city life. Thus, freedom is first status, for a social and political condition, guaranteed by a set of rights and duties, before being conceived by philosophers, theologians as an individual characteristic purely psychological and moral.

Freedom also means that the individual must bear the consequences of his actions, he will be praised or blamed for them. Freedom and responsibility are inseparable. A society that does not recognize that every individual has their own values on which it is entitled to follow has no respect for the dignity of the individual and can not know freedom. Equally true it is that in a free society, the individual will be respected depending on how they use their freedom.

HUMAN TRAFFICKING

Regarded as a global phenomenon of our time, human trade has transformed into a complex mechanism, adapting it in terms of the objective

pursued, contemporary society, diversity, complexity and size. Dangerousness of this phenomenon far surpasses the national and international statistics and forecasts. As a body tentacular well organized trafficking continuously adapt to the social environment, speculation and possible weaknesses and crossing the barriers of law, annihilating a network traffic in a region of the globe, and may result in immediate reaction of self-defense, traffic proliferation elsewhere in the world.

Because trafficking is a danger raised serious prejudicing the rights and fundamental freedoms, the rule prosecution is an essential tool, even central, the activity of preventing and combating the phenomenon of anti-social.

Nationally, amid international regulations of the UN and regional European countries, Romania has criminalized in 2001, for the first time trafficking as a criminal offense. Responsive to extraneous legal transformations and in turn confronted with the phenomenon of human trafficking, while Romanian legislator chose to follow the model of the UN Protocol and the Council of Europe Convention, while adapting criminal law and the new membership of the European Union.The result is not negligible in terms of standardized legal issues, requiring constant but changes and additions, sometimes delayed by the many issues covered and in addition, the urgency which determines the priority of their regulation.

From analysis carried we appreciate that legislative progress in the area of trafficking are real, being so recognized expert reports of the UN, OSCE, USA etc. No special law. 678/2001 envisages key issues requiring regulation: prevention of trafficking, catching and punishing traffickers, protecting victims of trafficking. In this regard, special law and its implementing Regulation details in separate chapters rules of prevention, the substantive criminal criminalizing distinct and punishing offenses of trafficking or trafficking of minors, and acts in connection therewith, the procedural rules relating to criminal proceedings, legal provisions ensuring the protection and assistance of victims of trafficking and those which seeks to ensure international cooperation in the field.

From the point of view of form, but also, to some extent, content, Romanian special law seeks legal thread of the UN protocol. Definition of the crime of trafficking and the trafficking of minors are taken from international text, respecting the rigors detail on the ways and means of achieving the act, the purpose of it. However, the law makes no express indication related to criminalizing trafficking in national or cross-border, criminalizing both events based on the text of the law.

In fact, Romanian law by inserting improves UN definition of trafficking in organs as a specific form of exploitation of trafficked persons. Criminal penalties for the offense of trafficking or the trafficking of minors comply with the UN Protocol on the Community and the Council of Europe Convention, being proportional to the seriousness of the offense, distinct depending on the forms aggravated offenses and having an amount comprised between 3 and 12 years respectively 5 and 15 years for simple forms thereof. Another positive aspect is that of establishing distinct and trenchant mood of the passive subject of punishment of the crime of trafficking for acts committed during the operation.

The law also expressly states that the criminal liability of the perpetrator does not depend on whether or not the victim's consent manifested in its recruitment.

However, shortcomings that we show special law Romanian are not few, are generated as in other cases, the lack of timeliness in completing and changing the rules, action so necessary for updating the text to maintain its compliance with transformations of reality. We envisage, for example, the introduction of rules of law in reference to the Criminal Code which refers to the possibility of criminal liability of legal persons, this being regulated after the entry into force of the law, through the general criminal provisions. It would also be necessary to clarify in law the status of an active subject of organized criminal groups and refer in this respect to the criminal provisions of Law no. 39/2003 on preventing and combating organized crime. Another shortcoming of anti-

trafficking standards is the lack of criminalization of demand for trafficked persons in the sense of using services provided by victims, knowing the operational situation in which they are located. The draft Criminal Code criminalizing Romanian is already considering the future of this act, in accordance with the UN and the Council of Europe.
Amid legislative harmonization determined by membership of the European Union, Romanian legislature must consider the whole complex of EU rules affecting the legal norms anti-trafficking and targeting aspects of procedural criminal assistance and protection of victims of trafficking especially women and children etc. Thus, modification of Law no. 678/2001 should be done in tandem with that of all acts
Romanian regulations that touch issues of human trafficking, the criminal rule on the administrative, civil or of labor law etc. At present, although there are concrete proposals for completing the Romanian special law on anti-trafficking, their implementation has been delayed due to the development of new codes Penal, Criminal Procedure, Civil and Civil Procedure.
We appreciate that while systematizing regulatory accomplished by coding is essentially beneficial not believe that it is appropriate in the case of human trafficking.

The complexity of the crime itself rather requires special law that criminalizes keeping and filling them than replace this law with the substantive and procedural criminal rules, disparate contained in other legislation. Special law, in that it covers the main aspects of preventing and combating trafficking, equivalent to a normative guide in the field, creating an overall picture for the one that applies.

Which diminishes the effectiveness of anti-trafficking law is not the form in which the rules are present, but mainly Updates, precision of language legislation, plus a lack of institutional coordination for the structures involved in preventing and combating trafficking people, and a lack of financial resources, otherwise known matter in Romania.However, legislative efforts and institutions

of the Romanian state to prevent and combat human trafficking and cross-border are notable and constant, reflected specifically in the growing number of victims identified, the number of convictions for trafficking offenses in identifying and dismantling networks traffic in the region. Positive results are assured and direct and constant collaboration with the Romanian authorities correspondents of national states and international and regional: UNODC, UNICEF, Interpol, Europol, Eurojust, Frontex, etc. We also appreciate the beneficial creation of the National Agency against Trafficking in Persons, for monitoring the manifestations of the phenomenon of trafficking in persons to counter its activity that facilitates the coordination of activities to prevent and combat human trafficking at national level, according to the data supplied by that body.
What we do not appreciate, however, is regular change of the administrative hierarchy of the institutions involved in preventing and combating trafficking in persons, a situation that creates confusion addressing internally and internationally and difficult solve the problems related to traffic.

We must recognize that in every area, including this one, world states actions are guided by their own interests and only secondarily to the common good, planetary. From this perspective, the UN sanctions system often proves ineffective, economic and political circumstances dictating the accountability of Member States for failure to fulfill obligations, including in the case of human trafficking.

Penal perspective, requires continuous adaptation dynamics of legislation and other measures social areas which require a careful study of the various laws that have very successful in combating and preventing trafficking. These regulations will serve as a model for the creation of national standards and international standards and in preventing and combating the phenomenon of which we have dealt with in this paper.

CONCLUSION

Regardless of the rigor with which the crime of trafficking in persons shall

be governed and sanctioned internationally and nationally, if the world's countries will not consider, first, taking the necessary measures to combat social and economic causes that maintain the phenomenon itself the fight will be lost ab initio.

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The Fall of Icarus- Human Rights as Arguments For and Against Austerity Measures

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Abstract
The financial crisis continues to have negative impact on both advanced and developing economies precluding the State to full fill the positive obligations assumed in order to protect human rights.
The article aims to discuss the main arguments used in the discourse of current austerity policies taking into account the particular situation facing Europe: strong financial crisis and an aging population, drafting an interdisciplinary approach.
Keywords*: human rights, financial crisis, austerity measures.*

1. THE FINANCIAL CRISIS

The economic globalization was thought to be an important step in the realisation and protection of human rights: globalization and trade liberalization offer great access to internal markets which benefits States and encourages the attainment of economical and social rights. This encourages the development of States programs enabling individuals to secure rights deriving from employment, healthcare and other goods and basic services.

Even if the globalization was aimed to be a boost for development, the advantages and disadvantages were equally divided. The important groups tried to retain control over the weaker groups through globalization. The globalization process has made developing countries more dependent on the rich ones due to the exports in global market phenomena and this is how small and poor countries became sensitive to international crushes such as the global economical crisis [1].

The crisis in 2007 stroke not only Europe, but the whole World turning the focus on a public policy characterized by austerity, restraint and cutting public

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spending. The crisis exacerbated existent deprivations, poverty [2] and inequality [3]. Statistics say that globally in 2011 205 million persons were unemployed [4] registering the highest number since records began. Moreover, due to the crisis, at least 55 000 more children are likely to die each year from 2009 to 2015 [5]. It has been noted a huge percentage of school drop out [6] due to the fact that little boys were included into the working class and little girls were given tasks of housework.

By 2009 at least 100 million people were hungry and undernourished [7] and the situation tends to get worse due to the growing food price.

There are two different opinions among the scholars when talking about the economical crisis. The first category of scholars claims that austerity measures are *a must* in order to achieve the economical growth and a higher degree of human rights protection while the second category claims that by promoting austerity measures the States preclude human development.

The article aims to point out that austerity measures can be an effective way to protect human rights in general and to achieve a long term economical growth.

It is true that even if human rights protection does not preclude the application of austerity, in general, this has great negative consequences on the enjoyment of human rights in general.

2. Why use human rights language when talking economy?

In order to analyse the impact of the austerity measures for human rights it is necessary to state from the very beginning why we must use a human rights language in economy and sometimes even an economic language when talking human rights.

It is clearly stated by scholars that law in general- and we could say that human rights in particular- is highly connected to many other areas and in the case of human rights and economy the connection is obvious. In order to achieve a high degree of protection of human rights the State has to have a strong public

policy that could offer a stable economy that could guarantee all the requirements necessary for human development in general.

The neo-liberal globalisation failed to give the promised result and grant an economical growth and if the economists want to improve the situation it is recommended to include the human rights language in their policies. The human rights language is in accordance with the law language and helps economists to make responsible decisions and policies in accordance with the legal framework and the positive obligations assumed by the States at an international level.

Most of the economists consider the word *rights* a foreign concept having a vocabulary limited to advantages and disadvantages or benefits and productivity [8] which is strange given the fact that economists design policies and institutions that nowadays affect the most intimate aspects of our lives.

It was brought to attention that while we know inflation rates, debts level, interest rates and so many, we do not have accurate statistics showing how data on malnutrition, hunger and other deprivations affecting children and their families for instance [9].

Economy is a part of the public policy due to the fact that it grants fulfilling of basic human needs and continuously improves our quality of life.

3. A nuanced austerity

Many countries affected by the financial crisis decided to implement many austerity measures in order to obtain financial stability and afterwards economical growth this being known as the 4 F crisis: food, fuel, financial crisis and fiscal austerity [10].

The International Monetary Fund (IMF) took action and demanded large fiscal adjustments when “the recovery is securely underway” as well as for structural reforms in public finance to be initiated now “even in countries where the recovery is not yet securely underway” [11]. Following this public position many developed and developing countries started to reduce public expenditure and to implement severe cuts in government spending along with increasing

taxes. This was caused by the fear that the budgets will be even smaller and that could lead to a refusal from the IMF to refund.

The austerity begun in Europe with Greece, Portugal, Ireland and Spain but soon France and the United Kingdom joined the list even if their economies were considered untouchable by the crisis. The crisis was so big at the end of 2010 that made impossible the get away without founding from the IMF or the European Union. The case of Ireland was particularly special due to the fact that, after pumping money to improve the economy, many banks and investors appeared. But, after the bubble burst the banks faced many losses that were genuinely covered by the Government. The main problem is that in fact the costs are covered by the people trough taxes and austerity measures.

Other non-state international actors were accused of promoting austerity measures in small and week economies leading to mass unemployment and straightening the crisis along with its effects on human rights in general.

The Romanian case of the austerity measures is also a difficult one. The Government decided to reduce by 25% salaries and pensions along with some other social benefits. This decision raised some discussions regarding its constitutionality that gave to the Constitutional Court the occasion to confirm that the austerity measures are in accordance with the Constitution.

The most important generation of rights affected by the crisis is represented by the social and economical rights and we will use their example in order to show how austerity measures can act as a catalyst for the human rights protection or as an inhibitor.

3.1 The austerity measures precluding the realisation of human rights

The austerity measures applied in case of financial crisis are considered the number one enemy of human rights. The answer is simple taking into account that most of the times large proportions of population are affected by the cuts made in public expenditure. It is true that cutting public expenditure affects

the free realization of social and economical rights and, in order to promote the austerity measures, Europe was forced to make a change in the public policy.

Even if the austerity measures were adapted to the specifics of every States` economy we can identify some categories: cutting public expenditure in social areas, progressive taxation and reforms of labour law and pension's law [12]. The first hand cuts were made in areas that always required great amount of money such as education, healthcare, employment or social services and protection.

3.2 The austerity measures helping to improve human rights protection

In order to understand how austerity measures can improve human rights protection, we must look at the bigger picture. When drafting a new public policy State actors must take into account many factors complementary to the financial crisis: demographic situation, State finances and sovereign debt.

Scholars say that rights `*must be interpreted in the context if they are relevant to resolving this crisis although this in itself appears to prima facie go against accepted principles of human rights scholarship that tends to view them solely as legal rights which inhere in individuals (that is, the macroeconomics of socio-economic rights provision is not a subject that receives much attention)* ` [13].

The crisis is highly contagious due to the globalization through global financial market being a huge danger for human rights enjoyment around the world and this is why many States counted on private investors to take over their debts which lead to spending more than they gain from tax collection. Investors leave the countries that seem unable to pay their debts and this has huge impact on the countries that have smaller debts due to the global financial market [14].

The austerity measures failed to help redressing economy as promised and they had quite negative impact on human rights, raising unemployment, affecting the health care system and education.

But, the important feature that those criticizing austerity measures forget is that every State action must take into account the current context. Europe, after facing a major financial crisis is also dealing with an ageing population and a quite particular demographic situation [15]. This has huge impact due to the fact that the working population has diminished and the unemployment has reached historical levels. This makes difficult for the State to support social systems like the pensions system or the social aid for those who do not have a job. Great percentage of population is already retired and in the last 20 years people have gained 6 years in life expectance [16] and this is expected to grow due to the medical discoveries and to the medicine evolution. Statistics say that, by 2020, a quarter of Europeans will be over 60 [17], so it is obvious that it will be a huge burden on the States` social policy challenging the medial system.

Knowing what the context is, it becomes obvious why the austerity measures are a real need preserving the current level of debt and growing the debt would mean to force the next generations to pay all their lives the bill of unconscious debts.

There is a strong need for new reforms on pensions, health care and long term and long term care strategies [18]. On this note, the most important goal is to restore public finances and to limit the burden put on the next generations and those two goals are to be touched only by accepting that austerity measures are necessary.

In the legal doctrine there were offered some arguments to prove that the State promotes the austerity measures just as a matter of policy, without solid grounds [19].

The first argument made was that the neo-liberal State finds austerity a convenient excuse in order to cut spending and there is nothing more wrong. The debts are real and the demographic structure does not help us to make it better. Even if by the austerity measures we might touch the realization of some important human rights, this is consider unavoidable, due to the fact that many of these rights are supported by public services-education, health care and so on-

services that are founded mainly from public funds. So, we can conclude that hurting the full enjoyment of these rights it is not a choice, but a necessity [20]. It is showed by statistics that most of the States use the public money to finance the public services connected with those categories of human rights [21].

Another argument is that States should borrow more in order to make possible the full enjoyment of rights for its citizens avoiding to apply the austerity measures. This argument cannot be hold to be efficient because, taking into account that we already have a huge amount of debt, it would be too irresponsible. The financial crisis transformed both children and new generations and those retired, but, by acquiring more debts, we would force the future generations to pay debts that were made even before they were born.

The solution is not to borrow, but to manage to pay the current debt with the minimum damage for the realization and the enjoyment of human rights. Even if in order historical moments [22] borrowing more was a great option, as we stated above, we must take into account the current status: the financial globalization, the common market and the aging population. Those are important aspects because the first two guarantee that if one economy crashes, all the others will follow. So there is no place for taking chances. Regarding the last feature, it is clearly that the demographic structure shows that the possibility to pay the debt is really small, due to the fact that Europe is aging and even if there are a quite good proportion of young persons, there is a huge degree of unemployment and the salaries are smaller and smaller.

Another interesting argument was that the State should cut expenses on military services or defense. In order to explain why this is not valid, we must state that national security is a key area for every State and, even if it is not directly responsible for granting social and economical human rights, it exists only for the protection of the individuals. Moreover, if we look at the statistics almost 60% of the public money is spent on protecting social rights and the welfare State. So, by cutting budget on military and security, we will not manage

to pay the debt or make significant economies at the State budget, but we will jeopardize the safety of our citizens.

4. Solutions?

We tried to shortly draft the current situation and we can state that there are two main problems that are strongly connected: the financial crisis and the aging population.

We showed that the austerity plans made by every Government were necessary, even if they did not had the planned effects.

Our problem seems to be like the fall of Icarus: when we had a functional internal market and we enjoyed the perks of the financial globalization we decided to take a chance and `fly too close to the Sun`. This is the reason why now, when almost every economy in Europe has made it through the struggle, we must pay attention and be cautious both with debt and expenses.

We must keep part of the austerity measures and reinstitute step by step the full enjoyment of rights keeping in mind that the aging population is a time bomb along with the financial crisis. Trying to fly too close to the Sun and release public expenses at the initial rate could trough us in a bigger crisis that the one we try to calm.

In the same situation, we must take care with the austerity measures because they affected human rights and the consequences are yet to come for some of them: an uneducated population unable to find a job or an unhealthy population that could overcame the health system are only few examples. Economy can be made, but not with the price of individuals` health and education.

Both the consequences of the financial crisis and the consequences of depriving individuals from basic human rights can destroy a society on a long term.

There is a possible escape for Europe: turning the migration crisis in a positive aspect. How? Considering the migrants the boost of youth that Europe needs.

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Brief considerations on the disciplinary liability of the French magistrates

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Abstract:
In a democratic society, the magistrate plays a very important role, considering that the state power is divided according to the principle of separation and the balance of powers in state, in the legislative, executive and judicial powers. The disciplinary liability of the French magistrates has a series of particularities against the common law, as well as in our domestic legal system. The present study aims a brief analysis of the disciplinary liability of the French magistrates, certain aspects being found also in our legislative system, others being necessary to be adopted by our legislation.
Keywords*: magistrates, France, liability, disciplinary deviation, disciplinary sanction*

As the French doctrine states A "the deepest modifications in the role of the judge in the democratic society must no longer be proven. Mainly, the role of the judge suffered a considerable amplification".

The statute of the French magistrates is provided by the Ordinance No 58-1270 of 22 December 1958[1] regarding the organic law on the statute of magistrates. The Commission for reflection on ethics in magistracy has defined the discipline as being "the repressive part of the deontology, allowing the determination of the violations of the deontology repressed by disciplinary sanctions"[2].

The Superior Council of Magistracy may be notified, after 2011, by any justice seeker who considers that the attitude and behavior of a magistrate are susceptible of being disciplinary qualified. In 2012, the Superior Council of Magistracy was notified with 283 complaints against the magistrates (unlike 421 in 2011), but only 13 of them were considered as admissible[3].

The disciplinary liability of magistrates is stated by Chapter VII of the Ordinance No 58-1270/1958, named the *Statute of Magistrates*.

The disciplinary deviation is defined[4] as being any violation by a magistrate of the obligations sourcing from his statute, of the honor or dignity. The violation of the obligations is represented by the serious and deliberate violation of a rule of procedure representing an essential guarantee of the parties' rights, violation ascertained by a definitive court decision. The action shall be ascertained by a member of the prosecutor's office or by a magistrate of the central administration of the Ministry of Justice.

Other articles of the Statute mention the idea of disciplinary offence, even if in an indirect manner, thus, Art 6 regarding the oath made by the magistrates before entering the function, Art 10 regarding the political activities of magistrates and Art 79 regarding the obligation to abstain for honor of the magistrates. Legal regulations also state other article tangential to the idea of disciplinary offence, for instance the articles of the Statute regarding the incompatibilities with the magistracy (Art 8, 9, 9-1, 32) B.

The disciplinary sanctions applicable for magistrates[5] are:

a) Reprimand registered in his personal file;

b) Disciplinary reprimand;

c) Withdrawal from certain positions;

d) Interdiction to be appointed or assigned in positions as single judge for a period of maximum 5 years;

e) Diminution of the level within the two degrees in which the magistrates are hierarchized;

f) Temporarily exclusion from the function for a duration of maximum 1 year, with a total or partial diminution of the remuneration;

g) Relegation;

h) Ex officio retirement or the agreement to end his activity if the magistrate is not entitled to pension;

i) Dismiss from the position.

Beside these disciplinary sanctions, Art 44 states the lightest disciplinary sanction, the warning. The warning is the only sanction which can be applied

without the performance of a disciplinary investigation. It can be applied by the chief inspector of the judiciary service, by the prime-presidents, general prosecutors and the directors or chiefs of service of the central administration, for the magistrates subordinated to them. The warning is also the only disciplinary sanction for which the Statute provides a term for erasure, precisely 3 years, if the magistrate does not receive another disciplinary sanction during this period.

The principle of the unicity of the disciplinary sanctions[6] states that a disciplinary deviation can be sanctioned only with one sanction and, moreover, if a magistrate is investigated in the same time for multiple deviations he shall be applied only one sanction. Though, the disciplinary sanctions, except the first two ones, can be accompanied by a complementary measure of relocation.

The disciplinary procedure is separately stated for judges and prosecutors, but, for the most part, is identical for the two categories of magistrates. The Minister of Justice, prime-presidents of the courts of appeal or the president of the superior tribunal for appeal (general prosecutors from the prosecutor's offices attached to the tribunals of appeal and the prosecutors of the Republic from the prosecutor's offices attached to the superior tribunals of appeal) notified by a complaint or informed about an action which could entail the disciplinary liability of the magistrate, if there is an emergency, they can request the approval of the Superior Council of Magistracy (SCM) for the prohibition of the investigated magistrate's positions until the adoption of a definitive decision. The SCM shall rule within maximum 15 days from its notification. If in maximum 2 months from the notification of this temporary interdiction, the SCM has not been notified about the commission of a disciplinary deviation, the interdiction ends *de jure*.

The notification of the SCM shall be possible in three means:

1. By the Minister of Justice, "the keeper of the seals";

2. By the prime-presidents of the courts of appeal or by the presidents of the superior tribunals of appeal, for the judges or general prosecutors from the prosecutor's offices attached to the courts of appeal or for the prosecutors of the

Republic from the prosecutor's offices attached to the superior tribunals of appeal.

In the case of the second mean of notification, copies of the notification and the attached documents are also sent to the Minister of Justice who may initiate an investigation of the general inspection of the judicial services.

3. By any justice seeker who considers that during the judicial procedure, the behavior of the magistrate during the exercise of his function is susceptible of a disciplinary qualification. This notification does not represent a reason for recuse of the judge.

Thus, it is established, within this mean of notification, a procedure preliminary to the notification of the authority competent to conduct the disciplinary investigation in the SCM.

The notification is examined by a commission for approval of notification of the SCM, competent for judges or prosecutors. The notification may be rejected or admitted by the commission for the admission of notifications, case in which the magistrate concerned shall be informed about it.

The commission shall ask all useful information from the prime-presidents of the courts of appeal or from the presidents of the superior tribunals for appeal, for the judges or general prosecutors from the prosecutor's offices attached to the courts of appeal or for the prosecutors of the Republic from the prosecutor's offices attached to the superior tribunals of appeal. They shall request, in their turn, from the concerned magistrate to submit his own observations. The information and observations shall be sent within maximum 2 months from the submitted request to the commission for the admission of the notifications within the SCM and to the Ministry of Justice.

The commission for the admission of the notifications shall hear the magistrate concerned and, if it is necessary, the justice seeker who initiated the notification. If it is considered that the offences brought to the attention are susceptible of being disciplinary sanctioned, the commission for the admission of the notifications shall notify the council of discipline or the organ competent to

perform the disciplinary investigation of prosecutors. But if the commission considers that the facts are not disciplinary, the prerogative of the notification of the SCM for the actions emphasized by the justice seeker remains in the burden of the other persons competent to submit such notifications.

The decision of the commission for the admission of requests shall be communicated to interested persons, as well as to the Ministry of Justice and it cannot be appealed.

After the notification of the SCM using one of the three means previously mentioned, the magistrate has the right to receive the investigation file and the documents of the preliminary investigation, if such investigation has been performed.

Within the SCM it functions the council for discipline for disciplinary investigation of magistrates and a competent body for the disciplinary investigation of prosecutors.

The president of the body competent to perform the disciplinary investigation (prime-president of the Court of Cassation, for the disciplinary council) shall appoint a rapporteur among the members of the organ he is presiding. This rapporteur is in charged to perform an investigation to determine the aspects concerning the disciplinary liability.

During the investigation[7], the judge is heard by another judge with the rank at least equal to his. Also, shall be heard an expert for the clarification of certain aspects.

The judge may be assisted by another judge, by an attorney in front of the Council of State and of the Court of Cassation or by an attorney enlisted in the bar.

The magistrate is called in front of the disciplinary organ, regardless if there was or was not performed an investigation because it has been considered unnecessary or if this investigation has been performed, in order to exert his right to defense. The summoned magistrate must be present in person, but the judge may be assisted as mentioned before. If the magistrate is absent from the

hearings, except the casus fortuitous, the decision shall be taken in his absence and shall be compelling for him. The meeting of the disciplinary organ is public, but for the protection of the public order or of the right to private life, as well as if there are any circumstances prejudicing the interests of justice, a part of the meeting or the entire meeting shall be secret.

If the competent organ ascertains the existence of a disciplinary deviation, the opinion upon the sanction is issued with majority of votes. In case of equality of votes, the president's vote shall be preponderant. For prosecutors, if the Ministry of Justice considers that it must be applied a more serious sanction than the one proposed by the disciplinary investigation organ within the SCM, shall submit a motivated proposal to the latter one, which after the hearing of the prosecutor shall issue a new opinion about it.

The decision for sanctioning is communicated to the investigated magistrate and generates effects from its communication date.

Regarding the appeal of the decision for sanctioning, the legal regulations[8] state that it cannot be appealed by the person who submitted the notification, which implies that only the magistrate has the right to appeal it, without stating the conditions and the competent court.

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[6] As in our internal law, also the French legislation states this principle, the legal regulation being given by Art 46 of the Ordinance No 58-1270 of 22 December 1958.
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Aspects Concerning Judicial Precedent in Republic of Moldova's Legal Sytem

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Abstract:
Although Republic of Moldova has a roman-Germanic legal system judicial precedent is included among the sources of law, even if the doctrine still disputes this aspect. There are actually domains where judicial precedent's use as a source of law is doubtless, while there are others where the opposite happens.
Keywords: *judicial precedent, legal system, source of law.*

Republic of Moldova's legal doctrine doesn't have a clear character regarding acknowledging judicial precedent as a source of law [1]. Still, judicial reality proves that the precedent is a source of law even if its position can't be compared to the one of the law within the sources of law system.

The notion of "judicial precedent" comprises a very precise sphere, specific to the functioning mode of common law's system. This notion is connected to the evolution of the English law, to its deductive approach (starting from facts) – compared to the inductive approach from the continental Europe. [2].

The role of jurisprudence is to interpret and enforce the law for specific cases. Thus, judge's activity is governed by two big principles: he always gives a solution for the particular case and has no right to set general dispositions beside it; the second principle involves the fact that a judge is not generally bound by a decision in a similar case sentenced by another judge or even by his own decisions [3].

It is to be noticed that there is currently an increased integration of the practices concerning judicial precedent from the Anglo-Saxon system of law in

carrying out justice according to continental system of law. The practice of examining the cases and sentencing by European Court of Human Rights proves this ascertainment. Judicial precedent's use is at an early stage in Republic of Moldova, the stage involving debates and questions. It is important to move on towards regarding judicial precedent as a source of law. Globalization and Europeanization are two processes undoubtedly leading to the closeness of the law institutions belonging to the continental system of law and the Anglo-Saxon one, by increasing the role of the judicial precedent. These two above-mentioned phenomena have no strict domains to produce their effects upon, leaving others unaffected [4].

Adopting the new Constitution of Republic of Moldova in 1994, July 29th signified the first step in bringing closer the national and the international and in acknowledging judicial precedent as a source of law.

As a legal base in acknowledging judicial precedent as a source of national law we can mention: article 120 of the Republic of Moldova Constitution, "Mandatory character of sentences and other final rulings"; Parliament's decision no. 582 dated July 19th 1997 about adopting the Strategy of consolidation the judicial system and the plan of actions to implement this strategy, revealing the necessity of unifying jurisprudence; Constitutional Court's decision [5] no. 55 dated 1999, October 14th regarding interpretation of the stipulations of article 4 in Moldova's Constitution, establishing "the principles and the stipulations unanimously recognized of the international law….become internal law norms"; the elaborated and adopted Codes of Republic of Moldova; the European system of protection of the human's fundamental rights and freedoms, based both on the concept of the continental system of law – The European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as on the Anglo-Saxon concept – The European Court of Human Rights' jurisprudence [6].

Article 1 of the Constitution stipulates that Republic of Moldova is a state governed by the rule of law, such obliging the legislator to adopt laws and the Constitutional Court to delimit the legal system and the constitutional equity from

the law, guaranteeing the supremacy of constitutional freedoms and rights and preventing the adoption of acts that would contravene the principles of law. The Constitutional Court's decision, if an act is found to be unconstitutional, has a general character and is compulsory for all subjects of law, courts being forced to follow it when dealing with civil, criminal or administrative cases.

International treaties signed by Moldova are acknowledged and have priority, article 8 of the Constitution stipulating that: "The Republic of Moldova pledges to observe the Charter of the United Nations Organization and the treaties to which it is a party, to institute relationships with other states on the basis of unanimously recognized principles and norms of the international law. The coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter." This is why D. Pulbere alleges that the Republic of Moldova acknowledges judicial precedent as a source of internal law [7].

The constitutional precedent may be consolidated as a source of internal law considering the stipulations of article 16 of the Constitution, consecrating the principle of equality before the law for all the citizens. This implies for each case sentenced by a court to follow the same rules. So, the Constitution indirectly acknowledges the judicial precedent.

The Parliament's decision number 174 July 19th 2007 [8] approving the Strategy to consolidate the judicial system and the plan of actions to implement it establishes the necessity to unify jurisprudence. Point 3.2 of this Strategy alleges that unifying the jurisprudence is requested by the deficiencies of the judicial system with direct impact on the act of justice and credibility in it, unequal jurisprudence as well as non unitary enforcement of the law.

In order to remedy this situation and to ensure the security of the legal relations according to the jurisprudence of the European Court for Human Rights, it is compulsory to apply the existing procedural mechanisms and to facilitate the judges' access to the international law courts' jurisprudence. In other words, the decision determines the unification of the jurisprudence, mentioning that it is

uneven and it is applied non- unitarily. In order to remedy this situation and to ensure the security of the legal relations, courts are obliged to follow ECHR jurisprudence in similar cases.

In order to sustain the acknowledgement of national jurisprudence as a judicial precedent [9] we mention also the actions to intensify the jurisprudence, selection of the relevant decisions from different branches of law pronounced by the Supreme Court of Justice and publishing them on the Supreme Court of Justice's web page as well as elaborating bulletins of European Court of Human Rights' jurisprudence.

The Constitutional Court's decision concerning "interpreting some stipulations of article 4 of Republic of Moldova's Constitution" number 55 from October 14th 1999 [10] stipulates that "principles and norms unanimously recognized of international law, international treaties ratified by the Republic of Moldova are part of the legal frame of the Republic of Moldova and become norms of its internal law".

In the descriptive part of the same decision, the Constitutional Court revealed that "according to theory and practice of the international law, the principles and norms unanimously recognized by the international law are the principles and norms consecrated of the international law with a general and universal character. The norms and principles unanimously recognized by the international law should be enforced by the Republic of Moldova to the extent of its expressing the consent to be bound by those international acts. Meanwhile, the constitutional stipulations concerning rights and freedoms can't be interpreted and enforced without admitting these principles. International treaties are also a part of the legal frame of the Republic of Moldova, besides the principles and norms unanimously recognized by the international law."

The Plenum of the Supreme Court of Justice of the Republic of Moldova, admitting the status of an internal source of law of the Convention for Protection of Human Rights and Fundamental Freedoms, explained in Decision number 17 from June 19th 2000: „*The Convention is a part of internal legal system and it*

should be enforced as any other law of the Republic of Moldova, with the difference that ECHR should be the priority in case of contravening domestic laws."

One example is case Olaru and others against Moldova from 2009, when the Court, as a result of a prolonged non-execution of courts' decisions and the absence of a remedy, issued the pilot decision from July 28th 2009, followed by the passing of the law 87/ 21.04.2011 concerning rectifying the prejudice caused by violation of the right to trial within a reasonable time of the case or the right to execute a court decision within a reasonable time, which targeted creating in the Republic of Moldova an efficient internal remedy. It is one of the main internal mechanisms aiming at the observance of the optimal and predictable time for deciding a trial [11].

Thus, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court for Human Rights' decisions, founded on this Convention and whose stipulations it applies being their supreme interpreter also, are acknowledged as a source of law and are directly enforceable in the national system of law. The European system of protection of the rights and fundamental freedoms is part of the legal reasons in sustaining judicial precedent's value as a source of national law.

It is unanimously admitted that the norms and principles of the international law are enriched and completed by the specific decisions of the international courts. Republic of Moldova ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms assumed the obligation to guarantee any person under its jurisdiction, the rights and the freedoms stipulated by the Convention (civil and political rights); it acknowledged the right to an individual appeal at the European Court of Human Rights; pledged to observe the final decisions of the Court in any case in which it is involved, as well as for all the cases referring to interpretation and enforcement of the Convention and of its additional protocols [12].

Thus the Republic of Moldova acknowledged the right to an individual appeal before the Court and the compulsory jurisdiction of the Court for both the national courts and the national public authorities.

Depending on the subject creating the judicial precedent, the doctrine draws up a classification: the precedent of the International Criminal Court, the precedent of the Constitutional Court, the precedent of the Supreme Court of Justice, the precedent of the European Court of Human Rights – the next one to be included – the highest rate of incorporation of the international law norms and principles in the Republic of Moldova, being the result of European Court of Human Rights' decisions.

Legal doctrine finds it appropriate to distinguish linguistic and conceptual the judicial precedent in two forms: judicial precedent with a normative or constitutional character and a judicial precedent with an interpretative or judiciary character [13].

The judicial precedent with a normative (constitutional) character regards a court's decision for a particular case that created a norm (constitutional, criminal), modifying or annulling the norm and it can be attributed to the Republic of Moldova's Constitutional Court's jurisprudence. This character is manifested by adopting a decision by the Court which modifies or annuls a norm stipulated by law, Parliament's decisions, the President's decrees, decisions and ordinances of the Government, international treaties.

Judicial precedent with interpretative (judicial) character regards a court's decision for a particular case stating a compulsory interpretation of the norm (constitutional, criminal) and it can be attributed to the Supreme Court of Justice or the Constitutional Court's jurisprudence. Most of the interpretations of the Constitutional Court regard the public authorities' competencies and respecting the principle of the separation and cooperation of powers in the state. The interpretative decisions have a specific significance, leading to the constitutional law shaping. The Court must not depart from the constitutional doctrine so that its decisions don't have an unpredictable character.

In many of its decisions, the Constitutional Court revealed that the interpretation of the constitutional dispositions targets eliminating the ambiguities, clearing the content, pointing out the principles of law, ensuring the unity and the correct understanding of their content and authentic meaning. The necessity of interpretation must be confirmed through the essence of the problem of law resulted from the uneven character of the constitutional dispositions. The prerogative of interpretation may be realized through functional or textual interpretation, insofar it can be deducted from the text of the Constitution, considering the norm's generic character, the specific situations that the legislator couldn't foresee at the moment of elaboration, the following stipulations (connected or contradictory), the complex situations when the norm must be enforced [14].

Thus official interpretation is imperative in cases where the uncertainty of the constitutional norms is determined by a specific situation and this uncertainty can't be solved by means of other judicial procedure. Between 1995 and 2011 33 decisions of Constitution's interpretation have been adopted. The interpretation of the constitutional stipulations has an official and compulsory character for all subjects of the legal relations.

Acknowledging the Republic of Moldova Constitutional Court's decisions as judicial precedents would contibute to the consolidation of the constitutional principles. The legal approach of the judicial precedent in the Republic of Moldova as a source of law is necessary and justified.

Acknowledging the quallity of source of law of the judicial precedent in a system which holds the law as the main source of law, brings along advantages as well as disadvanteges that must be considered in revaluating the place and the role of the judicial precedent in the sources of law system.

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Ethical and Legislative Aspects on The Legalisation Of Euthanasia From The Patient Rights Perspective

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Abstract:
Interest in euthanasia, also called "dignified death" or "death humanization" is relevant from the ethical and moral points of view, especially if it is oriented toward the detection of the motivations and conceptions of life subject to such practices. The movement of opinion in favour of euthanasia, currently active, has characteristic connotations and motivations, aimed at demanding legalization. Legalizing euthanasia will bring about profound changes in social attitudes toward illness, disability, death, old age and the role of the medical profession. Once euthanasia is legalized, it will increasingly become a 'treatment option', alongside regular medical or surgical treatments.
Keywords: *patient rights, legalization, euthanasia, bioethics, medical assisted suicide, palliative therapies, legislative reform*

1. Introduction

Human life has an intrinsic value. Judaeo-Christian tradition teaches that man was created in the image of God and therefore human life has dignity, sanctity and is inviolable. In that tradition, the principle that one should not kill is based on this dignity and sanctity.

Euthanasia, once legalized, would result in the killing of patients who did not want to die. The experience of the Netherlands shows that euthanasia, once legalized, cannot be effectively controlled.

Euthanasia, initially intended for certain well-defined groups, such as patients with terminal diseases, will be performed on other patient groups, including the elderly, the disabled, people with emotional disorders, the invalid and even children and infants with disabilities who cannot ask for euthanasia. From the experience of the Netherlands, at least one thousand patients, including children and new-born, are killed every year without expressed consent and / or against their will.

Patient autonomy will decrease once euthanasia has been legalized. Despite all the claims related to 'patient autonomy' formulated by proponents of euthanasia, eventually one or more doctors will have to make a decision that should not make, as to whether a patient's life is worth or not to be maintained or shortened.

If euthanasia became legal, the decision to preserve or to shorten the patient's life or to assist the patient with PAS will be a characteristic of the medical profession. Legalizing euthanasia will increase the power doctors have over their patients and WILL considerably decrease patient autonomy.

2. Theory

Law historians agree in finding that the penetration of Christianity in the Western world was, in this field, a turning point in terms of habits and thinking. Current opinions in favour of euthanasia are not identical to those advocating death from a sense of pity, characteristic to other historical periods. The current movement is not limited to the humanitarian understanding of the fact, where intervenes, as I said, the 'sympathy factor', but it targets legalization.

A connection is frequently and spontaneously made with the movement of ideas which in many countries has led to the legalization of voluntary abortion; actually it is not difficult to understand the common cultural background of the two requests to legitimize the "imposed death", which means knowing the value of the person; of course, the strategy adopted by the supporters of the two theories of death is the same: it begins with raising public awareness on "cases that arouse pity", the exaltation of the not too severe sentences of the tribunals, which have established criminal processes, to finally arrive at the request of legitimisation by law, of course, after the public opinion has been sensitised by the media and in public debates [1].

In the campaign in support of legitimizing euthanasia there is a new, characteristic, even terrible aspect, namely the social and personal attracting potential, which is much wider than what could appear, at least in the immediate

sense, in the legalization of abortion. An abortion can only be performed on certain people, whereas death is the destiny of all.

In the Marcozzi's definition [2] there are also other lawyers and moralists of recognized competence; thus euthanasia means "the painless of out of pity suppression of the suffering or of that who is deemed to be suffering who may suffer unbearably in the future." [3]

To complete the table of definitions, we must add that today is spoken of euthanasia not only in relation to the gravely and terminally ill patient, but also in other situations: in the case of the new-born with serious defects (*wrongful life*), in which case some suggest abandonment by elimination of food to avoid the suffering of the subject - they say - and the burden that they would represent to society; in this case we speak of the "euthanasia of the new-born." Another acceptation of the term 'euthanasia' is foreseen, that of 'social' euthanasia, which is presented as a choice made not by an individual, but society, as a result of the fact that the healthcare budget could no longer bear the financial burden represented by the assistance given to patients affected by long-term disease, in terms of both prognosis and costs. In this way, economic resources could be saved for patients who will return after healing to a productive and active life. This is one of the threats of an economy that would take into account only the cost-benefit criterion.

"Euthanasia is linked to the process of secularization of thought and life which is permeating our society and which is expressed mostly as the supreme form to claim the independence of man from - or especially - before God and, therefore, deems suffering unnecessary and refuses the religious symbolism of death "[4].

Euthanasia and suicide are the sign of man's claim of the right to dispose of itself, of its own life and death. Secularization is enhanced in the industrial era by productivist utilitarianism and, therefore, by the hedonist ethics, for which death and pain are elements of extreme disorder. For this type of culture, pain and suffering take on a load of non-value and determine refusal.

This is where the ‘taboo’ of death with all its procession is born, this is where the social demand of a kind of medicine to ensure “full physical, mental and social wellbeing” and a painless death is born. Death has become a ‘taboo’, a word that should not be pronounced and, as it was once the case with sex, it should not be uttered in public. [5]

The beginning of this type of ideology favourable to euthanasia is represented by the well-known *A Plea for Beneficent Euthanasia*, published in “The Humanist” (July 1974), signed by approximately 40 personalities, including Nobel Prize laureates, Monod, Pauling and Thomson.

3. Results and Discussions

Medical advances have aggravated the problem of euthanasia or, we could say, have revealed more the problem of ‘worthy death’. This has happened in two directions: towards the technological progress of assistance to the dying and towards the already mentioned direction of the socialization of medicine.

Technological effort in the resuscitation rooms is often accompanied by the isolation and seclusion of the patient, its separation from its relatives even at death, by loneliness despite the existence of the medical staff operating the devices.

These extreme situations raise ethical problems on the permissiveness and compulsoriness of certain technical resuscitation interventions beyond a certain point and raise the ethical issue of the compulsoriness of human, psychological help for this kind of dying.

The foundation of ethics is the respect for human truth, the respect of the person as it is: another real foundation cannot be conferred to ethics; ethics is directing the man from ‘being’ to ‘must be’; the other criteria consist of the usefulness of one over another, of the power of some over others, of the efficacy of this power, which is increasingly higher for some and oppressive to others. [6]

The exigency of the health condition, supported by the need for individual and social welfare, causes the congestion of hospitals and, consequently, a

depersonalization of healthcare, leading to the isolation of the dying in wards; all these are real challenges for the healthcare staff in switching from mere technical assistance to human assistance.

Morality cannot ignore this issue and the commitment to make death worthy of man and of the faithful: the phrase “dignified death”, when it does not refer to veiled forms of euthanasia, contains an acceptable and necessary indication from an ethical standpoint. It is true that many people die serene and we should not only think of extreme cases. It is very important today that at the time of death human dignity and the Christian beliefs on life be protected against a technicality likely to become abusive. In fact, some people talk about *the right to die*, expression which does not denote man’s right to cause its own death or to require death to be caused onto them as desired, but the “right to die with total serenity, with human and Christian dignity” [7].

Until the Declaration on Euthanasia of the Congregation for the Doctrine of the Faith, one spoke of ‘ordinary’ and ‘extraordinary’ therapeutic means, with this indication: it is compulsory to use ordinary means to support the dying, but it is allowed to renounce, with the consent of the patient or at their request, to the extraordinary means, even if this renouncement determines the anticipation of death. The ‘extraordinary’ character was defined in relation to the worsening of the suffering that such means could have caused, by their cost or by the difficulty of access for those who could not ask for them. Medical advances have made this distinction difficult because many means that until recently were considered extraordinary, have become commonplace and then, as noted by important people in hospitals and intensive care, the use of intensive care has saved many lives. [8]

Therefore it was necessary to find another reference criteria which no longer relies on the ‘therapeutic means’ but rather on the ‘therapeutic outcome’ that is expected of it; wherefrom some prefer to speak of *proportional* means and *disproportional* means.

In any case, the means could be well assessed, taking into account the type of therapy, the degree of difficulty and risk that would be entailed, the expenditure required and the application possibilities with the result that could be expected, given the conditions of the patient and its physical and moral strength.

When from the therapeutic point of view it is no longer really possible to stop the disease or its regression, medicine still has resources to use and therefore there is the obligation to resort to them whenever possible, not as an act aimed at healing and extending life, but out of respect for the patient and for its quality of life. These resources are the ordinary treatments and palliative treatments. The two concepts are not automatically equivalent.

Ordinary treatments consist of nutrition and hydration (artificial or otherwise), the aspiration of bronchial secretions, the cleaning of ulcerated bedsores.

In recent years, controversy arose regarding ordinary treatments, particularly in the US, as some centres tend to consider artificial hydration and nutrition as therapeutic interventions, even more, as having extraordinary character and therefore their application to patients is not a duty. In reality, this aid can help in many cases not so much to extend life, not being torture, but at making death less painful; it is also stated that nutrition and hydration cannot be a medical act, but an ordinary treatment, even though the means of administration is artificial. Of course, if the body is no longer able to receive it and use it, the treatment is no longer considered care and the obligation to administer it is extinguished.

Palliative treatments have a wider acceptance than normal treatments because they are used to relieve symptoms, primarily pain (but not only pain) to which we will refer further.

By palliative treatments we generally understand that care offered to patients with incurable diseases, more oriented towards symptom control than towards the basic pathology, by applying the procedures by which to allow the patient a better quality of life.

Palliative treatments consist in, for example: "*oncological palliative therapy* (surgery, radiotherapy, chemotherapy) applied to patients seeking treatment of symptoms" [10]; *support treatments*, which include: *non causal analgesics therapies* aimed at reducing or eliminating the perception of pain; *nutritional assessment and hydro-electronic regulation*; *the treatment of opportunistic infections*; *physiotherapy rehabilitation procedures*; *psychological support*, which has a very important role in supporting the patient and family; *the psychological surveillance of the healthcare team*, whose emotional performances are essential for the therapeutic optimization at this delicate stage of the chronic disease.

This strategy has resulted in the emergence of experiences such as '*Hospices*' and home treatments.

Several initiatives to legalize euthanasia adopted in different countries constitute incentives for legalization of euthanasia.

In the US that *Natural Death Act* (the law on natural death), document issued by the state of California and spread to other US states in equivalent terms, dates from 1976. Specifically, the act recognizes the right of every adult to dispose of the non-application and interruption of the "life support therapies" when found "at the extreme limit of essential conditions".

This provision (living Will) must be signed by the beneficiary in the presence of two witnesses, who are not connected to them by family ties or affinity, or recipients of its assets, not the treating physician or a subordinate thereof or of the treating institution. The provision, established in writing on a very precise form, provides its non-application if the patient is pregnant, and is valid for five years.

The *external existential conditions* refer to the terminal phase in which the use of therapies would delay death, but would not lead to the recovery of life. *Life support therapies* refer to any medical means or intervention which, by means of mechanical or artificial devices supports, restores or replaces a natural and vital function only leading to the delay of death. The patient must have a terminal diagnosis made by two doctors.

'United States Catholic Health Association' distributed in 1974 a document (*Christian Affirmation of Life*) which states: "I ask, if possible, to be consulted on the medical procedures that could be used to prolong my life when approaching death. If I am unable to make decisions about my future and if there is no hope of recovery for my physical and mental disability, I am asking that extraordinary means to prolong my life not be used." Other such initiatives have subsequently appeared, such as the "will of life" proposed by the Episcopal Committee for the Protection of Life attached to the Spanish Episcopal Conference [13].

However, there are significant doubts regarding the *living will* procedure [14], especially on legal and moral validity of a testamentary will expressed beforehand, in lack of the concrete conditions of the disease, over an asset which is life and not a thing. There also remains the background confusion on the interpretation in the specific case of what is called means of maintaining life and determining the conditions of irreversibility.

After the famous case of Nancy B. Cruzan, the US adopted in 1990 a law on self-determination of the patient (*Patient Self Determination Act*) which favours the patient's role in making decisions concerning its life, especially in the final stage of the disease [15]. A 'referendum' of 1991 in Washington (DC) state, while with a slight rejection, it ruled, however, in favour of those who reject euthanasia.

In Canada, the regulations called the *do not resuscitate policy*, declared ethical by the General Council of the Canadian Medical Association in 1974, goes beyond the limits set by *living will*.

Practically, this regulation consists in the refusal or failure to apply reanimation techniques to patients for whom it would be pointless and costly, even if this would cause an early death.

The practical application is varied, there are hospitals which require the opinion of the ethical committee, there are doctors who come to an agreement with the patient, explaining earnestly beforehand the condition and the prognosis

of the disease; there are doctors who claim themselves the right to evaluate the appropriateness of using resuscitation techniques.

It is clear that in the absence of objective criteria of instrumental and physical confrontation and given the existence of a variety of cases which cannot be generalized, this procedure presents more serious ethical issues. Then, the subjectivity of patients or doctors both in evaluating the lethal diagnosis and in the application of the rule has a wider and almost indefinite scope.

We shall also refer to the "Netherlands case" and to the regulations approved by the Dutch parliament. As is known, some research has highlighted the fact that in this country the medical practice of euthanasia was widespread [16] so that the law sought to be responsive to a practice like this, as if the task of the law were to legalize what was happening in practice, instead of the practice to comply with the provisions of the law. This law does not actually legalize euthanasia, but it dis-penalizes it; it does not act on the physician who, observing some well-defined points, interrupts the patient's life. Also, it does not change the essence of a conduct which is seriously condemned from the ethical standpoint, and opens the way to other forms of euthanasia, even involuntary.

The legislative issue of euthanasia and assisted suicide laws was enriched in recent years with various initiatives and standpoints. Besides the Dutch law commented above, is known the law approved by the Parliament of the 'Northern Territory' of Australia in May 1995. With the tile '*Rights of the Terminally III Act*', the law, which came into force on 1 July 1996, was the first in the world today, which approved euthanasia, considering it a right of citizen under certain conditions. The fierce debate that began in Australia on this law resulted in the approval of a federal law which abolished that of the Northern Territory (voted by the Federal Senate on 24 March 1997).

On June 26, 1997 the Supreme Court of the United States ruled on two decisions which nullified laws prohibiting assisted suicide in Washington and New York states. The Supreme Court overturned those rulings, saying that this alleged right cannot be included among the rights recognized by the American

Constitution and, therefore, states have the legal authority to regulate this situation. The motivation of the sentence states: “The State's assisted-suicide ban reflects and reinforces its policy that the lives of terminally ill, disabled, and elderly people must be no less valued than the lives of the young and healthy, and that a seriously disabled person's suicidal impulses should be interpreted and treated the same way as anyone else’s”[17].

Currently, more than 30 federal states consider assisting suicide as a criminal offense [18]. There have been numerous attempts to change this situation by various groups and associations favourable to euthanasia. After several failed attempts in some states, in 1994 it obtained approval of the law in Oregon, which approved assisted suicide for the terminally ill, under very restrictive conditions (prohibiting, for instance, that the patient be helped to die by injection, although it is known that the prospected pill method is ineffective in many cases).

The Constitutional Court of Colombia, a Latin American country, by the decision of 20 May 1997, approved euthanasia for terminally ill persons provided they give their consent [19].

The ethical question remains - can it ever be right to kill, even with the intention to alleviate suffering? In most countries the law is very clear. Killing a patient, even to relieve their suffering, it is considered homicide. This is why euthanasia is illegal in Canada and in most countries. Currently, euthanasia has been legalized only by the Netherlands and Belgium. Medically assisted suicide is also legal in the Netherlands and in Oregon, USA. Switzerland has legalized assisted suicide, even by a person who does not belong to the medical personnel.

The Hippocratic Oath states the same principle: “*To please no one will I prescribe a deadly drug, nor give advice which may cause his death. Nor will I give a woman a pessary to procure abortion*”. Hippocrates lived in the 5th century BC, thus the principle of the sanctity of life predates Christian teaching. The Declaration of Geneva of the World Medical Association in 1948 states: “I will

maintain the utmost respect for human life from its beginning." The right to life has been included in the Canadian Charter of Rights and Freedoms. The same principle was implemented in the European Convention of Human Rights, which states: "Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally..."

Euthanasia, initially intended for certain well-defined groups, such as patients with terminal diseases, will be performed on other patient groups, including the elderly, the disabled, people with emotional disorders, the invalid and even children and infants with disabilities. A change in legislation will lead to a disregard of human life, especially of the vulnerable members of society. "Euthanasia, once accepted, is uncontrollable for philosophical, rational and practical reasons. Patients will die without and against their will if such legislation were introduced." [20].

In 2001, a report made by Danish researchers shows that in the Netherlands, where euthanasia was legalized, a thousand deaths were recorded (0.7% of total) against the wishes or without the free consent of the persons [21].

Euthanasia does not stop with adults in the Netherlands. Nine percent of all deaths in new-borns in the Netherlands occurred due to the administration of medicines with the explicit purpose of hastening death. This was noted in two surveys of 1995 and 2001. At least 2.7% of deaths of children between the ages of 1 and 17 in the Netherlands were due to euthanasia. [22].

In Flanders and Belgium, more than half of the deaths of new-borns were due to doctors making life-ending decisions, usually by stopping the prescribed treatment. However, 7% of all neonatal deaths were caused by an injection of a lethal dose of medication. Most of the children had birth defects and / or were born prematurely. Three paediatricians out of every four four were prepared to engage in the euthanasia of new-borns [23].

In 2002, Belgium legalized euthanasia for adults who suffer from physical or psychological permanent and unbearable conditions, and who are sufficiently conscious to make the request to die. Killing children is a crime in Belgium.

Legalizing euthanasia would put pressure on the ill and on those who feel that due to illness, disability or due to expensive treatment, they have become a burden to society and especially to their relatives.

With the increase of the acceptance of euthanasia, anyone with medical trianing - not necessarily completed – will consider euthanasia as a method of treatment. Euthanasia will become accepted for conditions such as depression, stress, loneliness, fear of disease or fear of decline, but also for children or adults with disabilities. Euthanasia would become part of the armamentarium of medical treatment alongside conventional medical treatments such as pain treatment, antidepressant medication, radiotherapy and chemotherapy.

Legalizing euthanasia, societies will bring a fundamental change in the doctor-patient relationship, when patients will ask themselves if the doctor entering the room “is wearing the white coat of a healer or the black clothes of an executioner” [26]. The legalization of euthanasia will ultimately undermine medical care, especially palliative care, and will seriously undermine the doctor-patient relationship.

4. Conclusions

While euthanasia and assisted suicide (PAS) may appear attractive, on the surface, they have profound adverse effects in shaping society, in our attitude towards death and illness and in our attitude towards the sick or disabled.

Euthanasia, once legalized, could not be effectively controlled. The Dutch experience shows that around 1,000 patients are killed by doctors each year against their will or their consent. Euthanasia, initially intended for a specific group, for example patients with terminal illnesses, has also been applied to other groups, those who are sick or just consider themselves sick, and even on new-born babies with disabilities.

Legalizing euthanasia would put immense pressure on the elderly or ill and on those who feel that due to illness, disability or due to expensive

treatment, they have become a burden to society and especially to their relatives. 'The right to die' will soon become 'the duty to die.'

With the increasing acceptance of euthanasia or assisted suicide, there will be a change in the perception of illness, death and medical treatment. The example of legalized abortion shows what happens. Every pregnant woman must now decide whether to continue with the pregnancy or abort. Similarly, euthanasia, once legalized, will become a 'treatment' option for those who are diagnosed with a disease, not necessarily incurable, and who consider themselves ill.

It is always cheaper (and quicker) to kill than to treat. The legalization of euthanasia would undermine medical care and especially palliative care. Where euthanasia was legalized (for example in the Netherlands or in Oregon) the provision of palliative care appears simple and inadequate.

The legalization of euthanasia will adversely affect the doctor-patient relationship. Despite all possible precautions, patients will be wondering if the doctor is wearing the white coat of the healer or the black coat of the executioner.

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Alternative approaches of the „American model-European model" dichotomy

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Abstract:
This paper endeavours to briefly present European scholars' reflections upon the models of constitutional review and to propose a possible new model registered at European level, which is focused on individuals and their legal protection. This means it is necessary to rethink the classical approach of the constitutional justice in light of legal traditions, positive law within legal systems and comparative methodologies.
The criteria used for the distinction "American model-European model" have lost their topicality and relevance concerning the effective protection of human rights. As we can all agree, there are no differences in terms of results between the American and the European system of constitutional justice. In a globalized context of human rights, we meet a certain merger, a transformation of the legal world's diversity into a great unity.
Keywords: *constitutional justice, constitutional review, American model, European model, human rights*

Introduction

Clearly, the thesis' model did not occur neither spontaneously, nor fortuitous. At the same time, it is essential for us to understand how and under which circumstances did this method of thinking constitutional justice appear and to what extent and for what reasons it is anchored in the legal debates.

Despite its elegance, the thesis' model shows two series of difficulties. It fails to satisfy the given objective, namely constitutional justice as practiced law of the various states. This problem is added immediately to the empirical theoretical difficulties, related to the very methodology of building two models of constitutional justice.[1]

It appears frequently in constitutional doctrine that justice is divided into two main models: the American model on the one hand, and on the other, the European model. If the opposition itself presents obvious teaching advantages, its pertinence is not absolute.

The American system works from the early nineteenth century and may seem curious why it was not adopted in most states. Some European countries, such as Norway or Greece, have adopted similar systems. However, for the most states, it was excluded for the ordinary judges to verify the laws' constitutionality. Attempts in this regard have failed in France, Germany or Italy between the two world wars. The reasons may be various, but all can be summarized in a different understanding of the separation of powers' principle and a contrasting judicial framework. The American model has proved to be challenging in terms of transposing it outside the United States, which is why European countries have adopted a different system that was based on the constitutional justice accomplished by a court especially constituted for this purpose. [2]

Without resuming the distant origins of the American constitutional context or its descriptive features, the fundamental study of this type of judicial review implies highlighting the transposing ways and any other deterioration suffered while the adaptation process took place in some states, as well as its continuous influence.

Therefore, the American system, the first model available, experienced widespread under different legal orders, as well as severe harm of the initial model's pureness. Sometimes, transformations were so obvious that those states, especially European and Latin American countries, can no longer be assigned to the European model and, in consequence, we can talk about mixed systems.

Section I: Encountered difficulties during national transpositions of the two traditional models

Any transposition of the American system definitely presents some alterations, the pure system of judicial review being intimately connected to the American context and therefore difficult to implement quickly and effectively in a different institutional framework. This may explain the limited influence that it has shown in the Central and Eastern Europe's states. With rare exceptions, such as

Estonia, which established a system of diffuse control, most countries have preferred to adopt the European model of constitutional justice.[3]

In order to easily distinguish the European model, the following must be mentioned: it is a concentrated control, entrusted to a specific constitutional jurisdiction, which has monopoly over constitutional interpretation; it is an abstract control, which often coexists with concrete control, achieved through ordinary court's notifications to Constitutional Courts, in concrete proceedings; the abstract control can be both *a priori*, before the promulgation and *a posteriori*, triggered by representatives of the executive, parliament and various organs of the autonomous communities (in Austria, Germany, Italy, Portugal, Spain, Belgium); the absolute authority of judgments, with two exceptions, Portugal, which applies concrete review, as well as Belgium, in the case of preliminary rulings, which will benefit from the relative authority of *res judicata*. However, in the interest of legal certainty and equality before the law, the mechanisms allow accepting the same solution in similar disputes (strengthened relative authority in Belgium) or pursuing the abstract control (in Portugal). [4]

Among the many contributions brought by Mauro Cappelletti to the contentious constitutional study, his thesis explains the Constituent's leaning in favor of the American model or the European model of constitutional justice. According to it, in a Romano-Germanic system of law, which ignores the principle of *stare decisis* and is based on a concept of judicial function inherited from Montesquieu and Rousseau, it becomes impossible for European states to decentralize the constitutional control as successfully as in the United States. The various presentations offered by his thesis include two categories of explanatory factors: firstly, the constitutional uniformity of interpretation, and secondly, the legal culture of countries and especially the judges' mentality. In *common law* systems, judges are perfectly accustomed to the idea that they exert regulatory power distinct from the legislature, a relatively autonomous power in relation to the latter. [5]

However, the theory presents certain limitations, so the following remarks appear to be necessary. First of all, we have examples of countries that can be attached to the Romano-Germanic law family and which have developed forms of judicial review closer to the American model. In Greece, the power to control the constitutionality of laws develops mid nineteenth-century. In the same period, courts in Portugal assert the power to eliminate the unconstitutional law. Switzerland has organized a diffuse constitutional review of the cantonal laws since 1848, the sovereign federal law remaining intact. Another example is given by the Romanian judges who self-empowered themselves to review the constitutionality of a law, without that power being expressly enshrined by the Constitution. By decision no. 261 of 16 March 1912, the judges of the High Court of Cassation and Justice uphold the decision of the ordinary judges, restoring in this way the judge's faculty to declare laws contrary to the Constitution in case of violation of their provisions. Through the power of these examples, it is possible to relativize the idea that European judges are not able to exercise judicial review as a result of cultural aspects. Secondly, the question regarding the effects of the constitutional decision and the concentration of the constitutional review in the hands of a single organ or, on the contrary, the control's division within a plurality of jurisdictions, are totally independent of each other. It is perfectly possible that a decentralized constitutional review would result in decisions with *erga omnes* effects, as well as a concentrated review could lead to a decision with *inter partes* effects. Thirdly, the existence of *ad hoc* jurisdictions does not guarantee the uniformity of the Constitutions' interpretation. It is always possible for certain ordinary jurisdictions to keep some faculties in interpreting the Constitution which may leave room for differences or even conflicts. These various elements weaken Mauro Cappelletti's thesis concerning the reason why the European states are moving towards one or another model of constitutional justice. [6]

As we can all agree, there are no differences in terms of results between the American and the European system of constitutional justice. These systems have also common features in their application: similarities in aspects like

composition or organization of the courts, comparable responsibilities regarding the protection of individual rights, similar control techniques and common requirements of the institutional and social legitimacy.

The entry into force of the priority preliminary rulings on the issues of constitutionality (question prioritaire de constitutionnalité -*QPC)*, which does not fit within the models of constitutional justice, doubled by the example of the Supreme Court of the United Kingdom created by the Constitutional Reform Act in 2005, are questioning the opposition ”American model”-”European model” of constitutional justice. The QPC mechanism illustrates the truly hybrid nature of certain forms that can be taken by the constitutional justice because it remains a post and concrete control of constitutionality (American model), while its decisions of unconstitutionality are still having *erga omnes* effets (European model). With regard to the Supreme Court of the United Kingdom, it has no power in suspending the application of any Parliament’s Act, to the contrary of the American Supreme Court, much less to determine its disappearance (on the grounds of the Parliament’s sovereignty), as the constitutional courts do. On the other hand, the Supreme Court is closer to the American model by judging particular cases without being placed outside the judicial framework. [7]

Section II: Different perspectives in analyzing constitutional justice

This opposition supported by Charles Eisenmann, Mauro Cappelletti or even Allan Brewer Carias, has apparently reached the limits of its explanatory and descriptive capacities. The great evolution of constitutional review including its mutations, demonstrates the limits of the legal research on a concept that is not exhausted in the courtroom. Constitutional Court must decide between what legislators can logically do, what is legally acceptable, without excluding the important factor of what should be appropriate to do.

Alternatives approaches to this ”dichotomy” have been proposed. Some of these were reviewed in the *International treaty of constitutional law*: the distinction founded on concrete and abstract procedures of constitutional control

(Fromont M.), the distinction between models centered on law and models centered on the human rights protection (Lorente R.F.), the distinction between the constitutional control of the law and the constitutional control of the law enforcement (Fernandez-Segado F.), as well as the distinction based on the structure of conflicting rules (Pfersmann O.). [8]

There are others to be added like the one who finds its origins in the shaped relationship between the constitutional court and the other jurisdictions (Jouanjan O.) [9]or even the one that generates degrees of democratic legitimacy on different forms of the constitutional justice. [10]

Observing that some states located mainly in the South America, mix the features of both American and European models, Favoreu finds it necessary to consider that there is a third model. He even wrote that ”in matters of constitutional justice, the Latin American countries are not choosing between American and European model, they are simply making possible the coexistence of concentrated and diffuse control”. Indeed, he believed that besides the American and the European model there is also a South American model [11] But at the same time, he proposes a new model of constitutional justice, characterized primarily by a chamber of the Supreme Court specialized on constitutional litigation. Present mostly in Africa, it is an original system that cannot be found elsewhere.

A. Weber distinguishes between diffuse control, concentrated control, mixed or hybrid models (present in Europe and Latin America) and atypical patterns (especially in France). [12] The author insists that ”the growing trend towards mixed or hybrid models do not justify the dissolution or removal of two traditional models that can still serve as a starting point for a systematic classification”. [13] Despite an obvious gain on explanatory side, this way of reasoning is not entirely conclusive. The new ”models” are not a logical independent alternative, but a combination of the previous. Thus, it appears that adding new models to the existing ones is simply another indication of the failure

registered by this method. According to some scholars, organizing the positive law happens not by adding new models to the traditional doctrine, but by developing new methods of analyzing the contentious constitutional law. [14]

Francisco Rubio Llorente, a member of the Spanish Constitutional Court from 1980 to 1989, the vice-president of this institution until 1992 and then to become president of the State Council, made an original proposal in one of his articles. According to him, there are two arguments to abandon the antagonism between the European and American system. ”The opposition of these models is a method of reasoning or study that would be better to abandon to an approach on the grounds of similarity between the two of them, but also on the ground of the European diversity. Nowadays, speaking about the European model, it loses any interest if we take into account that the differences between some European systems are perhaps more important than the differences between the traditional models. Therefore, instead of these models of constitutional jurisdiction, he will use other models whose opposition is based on specific features of each of them, depending on their own purpose, which offer to the constitutional jurisdiction the very reason for being: models that tend to guarantee the constitutionality of the law, and by this, the effectiveness of the fundamental rights. [15]

According to M. Fromont, the model theory has ”little explanatory value”, mainly because the features of the two models blend in the positive law. This author is determined to ”propose another classification that provides, in a more logical manner, different organizational types of the constitutional justice. This classification is based, on the one hand, on the procedure whereby the judge is seized with a matter of constitutional law, and on the other hand, on the object or nature of the decisions that are likely to be pronounced. If the decision which settles a matter of constitutional law is taken at the request of a subjective rights' owner and bears on the specific situation of the person, the judge gives to the provided matter of constitutional law a response for which he necessarily takes into account the specific situation of the person. On the contrary, if the decision that settles the question of constitutional law was given at the request of a

political actor and carries on conflicting rules or official state's matters, it will result in an objective and abstract constitutional justice because it mainly aims to resolve an issue related to the proper functioning of the state, that has been placed by a person with the purpose of speaking on behalf of general interest. Starting from this point, the author reaches to these two logics: protection of the individual, on the one hand, and defending the state's interest, on the other. [16]

Highlighting the complexity of the situation, Constance Grewe finds a state of confusion especially in German law, because certain issues (connected or not to the division of powers) are not subjected to constitutional judge through the procedures already discussed, but through the individual appeal. For this reason, the superposition suggested by Michel Fromont is challenged. [17]

Rejecting the models' idea, Vlad Constantionesco and S. Pierre- Caps outlines a form of orientation towards the general theory of law. They manage to identify three forms of control in Europe: (1) the specific control, based on the notification of the constitutional judge by the ordinary judge; (2) individual appeal for protecting the fundamental rights; (3) the abstract control, triggered by the state's institutions. [18]

After establishing in detail the "bankruptcy of the bipolarity American model-European model", Segado F. Fernandez draws a replacement solution. He does not pretend to settle a new classification of the constitutional review's models, but, in order to achieve a greater analytical applicability, he finds it is necessary to differentiate a full set of variables, by which different explanatory ways of the constitutional review can be rendered. [19]

As it was already presented, the purpose is common, regardless of the adopted instrument in order to protect human rights, and the law's unification is an essential step in this process. Although a universally accepted solution was not found, it can easily be observed that at the center is placed the individual, aiming at his optimal protection. Given this fact, we can recognize at European level, the aspiration to create a model of human rights' protection, which implies imposing a certain standard of general use.

Indeed, there is such a model at ideological level, but the European Union is subjected to constant challenges like the economic crisis, the refugees' crisis, the possibility for Great Britain to leave the Union etc., challenges that threaten the very existence of the European organization and therefore, the existence of such a model. However, the accession to the European Union, with all the entailed consequences, allows us to preserve also a national degree of protection as effective as or perhaps even more effective than the European one, a theory supported by the complementary character of the European law too.

Conclusions

A matter of great importance is given by the fact that a model is a representation of the reality, describing it in accessible ways. This provides clarity to the perceived reality, retaining only relevant issues in treating a problem and establishing a framework for interpreting it. It does not claim to assert the absolute truth or to make the problem disappear, producing in this way its own success or the failure conditions. From this perspective, models prove to be useful, but their pertinence is not absolute.

While models involve two inseparable aspects: what it is and what it should be, the classification consists in dividing and distributing various types of control forms. Whether it is based on an empirical or theoretical approach, on inductive or deductive reasoning, a classification has teaching vocation. The fact that the models of constitutional justice are often presented as being extremely pedagogical demonstrates the double nature of a semi-invention. Therefore, the following consequences can be identified: the confusion between American and *common law* system or the European model and the Romano-Germanic legal system; the perception of constitutional justice as constitutional review; the model is not really a model, but a category, variety, defined by a set of characters.

In a globalized context of human rights, we meet a certain merger, a transformation of the legal world's diversity into a great unity. The criteria used for the distinction "American model-European model" have lost their topicality and

relevance regarding the effective protection of human rights. But time is a crucial factor in the development and lasting foundation of a model. Therefore, despite a considerable period of human rights protection at European level, it is still early to rule on the viability of this thesis. At the same time, a model can be descriptive and representative for a specific era and consequently it should be constinously updated in order to maintain its identity.

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Social Contract Theory and the Theory of Separation of Powers

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Abstract:
In a democracy power emanates from the people and it belongs. The essential principle governing in a state of law, the entire political organization, relations between citizens and public power, the relations between different branches of government, the separation of powers. In exercising political power appears a certain separation of powers (functions) authorities (powers) which do not involve a single division of political power but require a balance and cooperation between public authorities. If this organization is achieved through several categories of state bodies with clearly defined functions and features and characterized by organizational and functional autonomy and by mutual balance and collaboration, we are in the presence of separation / balance of powers. This condition is typical of democratic systems of government.
Keywords: *doctrine, the legal standard, state, law, separation.*

1. Influences on state theory

Theory of state supported by representatives of different influences social contract theory and the separation of powers. Regarding the creation of the state, **Hugo Grotius** (1583-1645) is committed contractualist theory, according to which most people are free and equal joined in a State organization to shelter from danger and to use each other transferring sovereignty without conditions on a man or more. So people transmit power and government determines its form of government. After the contract people lose the right to control them or punish government.

According to his theory concerning the natural law, Hugo Grotius analyzed society's right to punish those who disregard the laws and threaten its existence. This right must not be arbitrary, such as revenge, but must be a manifestation of reason, to be exercised within the limits of justice and humanity. The punishment must consider the benefit of both the one who committed the act and by that he had not committed interest and the whole world without distinction. [1] After Hugo Grotius's view regarding the social compact between rulers and the ruled, it must

take the form of an international treaty and not as internal documents, contracts. Grotius invoked the binding force of international treaties. On state sovereignty no longer exists, outside of divinity, nothing else than the rules of natural justice. In international relations, says Grotius, peace must be preferred war, but by virtue of natural law states have a right to defend itself, to use force against force and, therefore, situations legitimate to wage wars.[2] In a recent paper is considering that among the elements of sovereign equality of Member find rights and obligations: rights inherent in full sovereignty, the right of aces build your own system socio-political, economic, cultural obligation to respect the personality of other States, the obligation to commitments and comply with their duties imposed by law Interntional. [3]

Thomas Hobbes (1588-1679) state is created based on a social contract to maintain peace and security in society, because man is wolf to man (Homo Homini Lupus), and pre-existing natural state of humans is the war of all against all State (bellum omnium contra omnes). In Hobbes' conception, when the social contract gives people certain rights to the State but do not yield power, as Grotius, but their natural rights in exchange for peace. In Hobbes' conception of the state is an artificial creation, a machine that has absolute power omnipotent, unlimited individuals. The state provided with absolute authority necessary to prevent war between individuals. This is the typical representative of absolutism Hobbes. Fearing anarchy, Hobbes suppresses freedom to meet one requirement – order. In his conception Hobbes see salvation only through a state power that would be able to dominate in all sovereignty struggles and individual passions. State power is a summum imperium, is absolute, it is sovereign. The state is the only source of law, because only the state defines the right, because only he has the power to command and the law is a command.

John Locke (1632-1704) brilliantly symbolizes a democratic and liberal tendency, the opposite trend Hobbes's absolutist. In the conception of Locke man is naturally sociable and is not in a state of war, Hobbes, but in a state of nature that includes several fundamental rights: the right to liberty, the right to work, the

right to private property and so on for humans, says Locke, natural state is just society. What is missing is the authority that can guarantee these rights. The state is, for Locke, a reaffirmation of the limits of natural liberty that finds its guarantee in him. Individuals sacrifice only so much of law and freedom that makes possible the formation of the upper body protection. Establishment of public power, the citizens opens consensus thesis that once established the power, the will of citizens would retain a predominant on it could revoke at any time. Declared will of the people is sovereign. The state is no longer a mere expression of power or arbitrariness but must necessarily, by its nature, guaranteeing individual rights. Populi suprema lex Salux is certainly a fair rule so fundamental and that is certainly one who can do no wrong. [4]

Locke outlines the theory of separation of powers, arguing that the legislative power should be separated from the executive (administration and judiciary) and the federated (external defense of the State), theory will be later taken up by Montesquieu.

Jean Jacques Rousseau (1712-1778), the foremost representative of the social contract theory, holds that man is in a state of nature, man is a social animal but a poor animal with two trends: mercy and perfectibility, which make him human. In the social contract, Rousseau seeks absolution practical problem. He acknowledges that a pure and simple return to their natural state, after reaching the state of civilization, it is impossible. Rousseau notes that what constitutes happiness was primitive joy of freedom and equality, what matters is finding a way to return the civilized man possessing such rights to form political constitution after their rule.

After Rousseau, the social contract should be such: it is necessary for individuals to give their rights for a moment the state, which then plays them all names changed (will not be natural rights but civil rights). In this way, the act being met equally by all, no one will be privileged, equality is thus ensured. In addition, each retains his liberty for the individual is subject only to the state, which is the synthesis of individual freedoms.

To find a form of association which will defend and protect with the whole common force people and goods of each associate, and in which each one, uniting all, do not listen, however, only himself and remain equally free as before, this is the fundamental problem whose solution is the social contract.[5]

The social contract is only dialectical process by which individual rights and state converge emanating from him again reinforced and somewhat religious. The effect is that all men remain free and equal, as in the natural state, while protecting their rights becomes a guarantee that that state was missing. Individuals are subject only to the formation of the general will and they work together.

Law, for Rousseau, is nothing but the expression of the general will, therefore it is not an arbitrary act of authority. No authority is legitimate if not based on law, so the general will. In this general will consist true sovereignty which can not belong to a particular individual or a corporation, but belongs necessarily always the people, since it constitutes a state.

Sovereignty is, in Rousseau's conception, inalienable, indivisible and imprescriptible. Always sovereignty resides in the people, and he may at any time and a resume.[6]

We note that in Rousseau's conception pact is based on the totality of individual wills that blend into a general will, leading to a political community through merger. The general will is the public reason, the sovereign is represented by all citizens whether their will may be worth public will. However, democratic governance, said Rouuseau is an ideal, it is not adaptable to people. That makes the laws knows better than anyone how to be met and interpreted. It is not good that makes the laws to execute, nor the whole body of the people to divert attention from the general goals to attach to particular.

Referring strictly to democracy, Rousseau said: "A true democracy has never existed nor could there ever will. "[7] It follows, therefore, that Rousseau does not accept any democratic representative regime.

2. Definition of modern law

Hugo Grotius believes that natural law is the means to ensure the rational and peace. Natural law is given by all the principles which reason dictates, to satisfy our natural inclinations, social life.[8] Grotius thinks the immutable character of natural law and states that he would be there even if God did not exist.

Hugo Grotius's opinion, four fundamental precepts directs the entire law:

- alieni abstinentia (respect of all that is the other)
- promissorum implemendorum obligatio (respecting commitments)
- damni culpa dati reparatio (repair damages caused another)
- poene interhomines meritum (fair punishment for those who violate these principles)

These principles of natural law determines are embodied in what the author calls the right human volunteer. It is estimated that the doctrine of natural law Grotius is between current dogmatic Christian natural law, the natural law tends to subordinate divine positive law, natural law and the modern rationalist stream, which tends to eliminate the divine positive law as legal order.[9] As stated, the principle "pacta sunt servanda"..., establishes the duty of States to comply in good faith with its international obligations arising from international rules and treaties, treaties having binding if they are lawful and whether they were entered into with the free consent.[10]

Hobbes is that the law determines right, because the sovereign is the sole legislator. According to Hobbes, an act is legal if done according to the law of the sovereign. Moreover, Hobbes's conception was based on three main coordinates.

- Hobbes argues the existence of a natural law underpinning the peace and security of society, positive law not only means by which to achieve peace
- Hobbes not find the idea of limits by state law as positivists argue, because he argues that sovereignty is absolute and indivisible

- Political and legal system of Hobbes does not identify the positivist characterized by neutrality law. Positive laws, Hobbes, the ultimate goal to ensure peace and security of individuals are subordinated to natural law that shows what must be.

John Locke believes that there is naturally no society but instead is just the natural state for human society. Right must ensure freedom of individuals through its prescription categories: the right to control, limit, allowing prohibits etc. Fulfillment of agreements between rulers and the ruled can not be achieved by establishing a rule-based civilization, that is right. Moreover, Locke stresses the need for the survival of state laws.

Rousseau, the law is characterized by a generalization collective. The law is not an arbitrary act, it is the expression of the general will, which means that it is rational and legitimate. For that ensures freedom and justice, only the law can fulfill man. From this theory that Rousseau does not reject natural law, but the law makes it a natural analog because it has meaning and validity than through public reason and positive civil law. Rousseau note that it is not absolute positivism and makes law coming from God a human form. The difference between justice and the law may be raised from various perspectives such as for example, in terms of general features founding of existence, justice can be foundational value and the right can be întemeiatul.[11]

Charles Montesquieu (Charles-Louis de Secondat, Baron de La Brède et de Montesquieu, 1689-1755), in his fundamental *L'esprit de loi* states that laws are necessary ratios derived from the nature of things and that before existed proper said there were reports of possible justice. Legal interest laws, policy matters, criminal, civil, etc., are required depending on the achievements of a number of different factors, which may vary according to conditions of space or time in history: form of government, various forms of political freedom climate or the nature of the territory and a series of conditions acquired during social experience such as customs, trade, use of money, religious etc.

Spirit of the law is the fact that the law appears as a result of all the factors that influence human life, says Montesquieu.[12] Montesquieu's theory about the separation of state powers has had great resonance. Its director principle is that to prevent abuse of power, things have so ordained that the power to restrict power. When in the hands of the same person or the same body of officials is met legislative power and the executive power there is no freedom, because it can bear fears that the same monarch or senate same draw tyrannical laws that apply them tyrannically. There is no liberty if the judiciary is not separated from the legislative and executive powers. If she had joined with the legislative power over life and liberty of citizens would be arbitrary, for the judge would be the legislator, and if it combined with the executive judge would force an oppressor.[13]

3. Kant's conception of the Law and State

Immanuel Kant (1724-1804) states that the right foundation in man, an idea that is older and belongs to the natural law. The idea of leaving the man to reach the state, understood him as an synthesis rights founded in human nature has a reason profound and never could be dismissed in its entirety nor those who believed that crumbling social contract with historical arguments. Kant's merit is to be removed that confusion between historical and natural, purely rational principles affirming the value of natural law. Thus, natural law school ends Kant (naturrecht) and rational law school starts (vernunftrecht). Natural law is as rational.[14]

The conception on state Kant defines the state as "the union of a multitude of men under legal laws" but this variety should be designed and associated under contract by the will of all. Kant said that the state should be selected based on a social contract.[15] The social contract is the legal basis of the ideal state; it must be organized based on the recognition of individual rights as a synthesis of human freedom.

The purpose of the state, says Kant, is the protection of law. Kant believes freedom and equality of the most important legal asset; they are both rights

innate, natural, and most important rights to be governed by positive law, which is dependent on the will of the legislator but an important factor in determining its content is the social life.

The distinction between natural law and positive law is to Kant that natural law is based on reason and the right positive inspiration, therefore came to be arbitrary.[16]

In a modern state institution or set of institutions connected with the capacity to ensure the effectiveness of social rules elementary is the government, he effectively becomes the only institution able to resort to the use of physical force having at his disposal an overwhelming force, compared to the force it has provided any other group in the state and having the monopoly of the legitimate use of force except residual duty of every individual to defend himself.[17]

The state must ensure citizens to enjoy their rights, but they should not interfere in individual activities or to care for individual interests. He has fulfilled its function when it secured the freedom of all, and in this sense should be the rule of law. Freedom is affirmed in order to practice our conscience as a moral existence.

Conclusion

While the principle of separation of powers has found wide application in constitutional practice of Western countries, it has been criticized by a number of thinkers and politicians, including former US President Woodrow Wilson, who estimated that aplicaţiunea this principle to disappear, practically any idea of responsibility in government. German doctrine (Laband, Jellinek) considered Montesquieu's theory as illogical and unworkable in practice. Such was the view that it represents only a method of organization meant to weaken the omnipotence of the state to defend individual. Lawyers Germans, strongly influenced by ideas statist stressed that "following the weakening of political power by assigning attributions to various organs juxtaposed quasiindependente

each other, each having an area of own activity, although working on the same work overall, it was the inability of the state to create a new order, to meet the needs of a society in a state of flux ".[18]

From the legal point of view, the principle of separation of powers enshrined in constitutional law and numerous documents in many modern constitutions. Totalitarian political regimes of all shades have criticized the separation of powers, arguing that in fact the power would be unique and that it would belong to the people, and therefore could not be divided. In reality, willfully ignoring the separation of powers and the removal of its former practice of socialist states constitutions, it was favored concentration of power in the hands of people and denying any practical mechanisms for collective leadership. Principle of unity of power to pave the way for dictatorships, but also subordinate the entire system of political organization domination of a single party, a circumstance that resulted in the liquidation of political opposition, denying the principles of pluralism and finally removal from the major democratic principles of constitutional law validated by an entire historical experience. The return to democracy in Eastern European countries has gained widespread rehabilitation of separation of powers, recognizing its usefulness as a fundamental principle of political organization and premise of the settlement entire social life on humanist and democratic principles.

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The environmental limitations of the property right

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Abstract:
Sometimes, the two rights, the property right and the environmental right, are considered to be antagonistic, in the doctrine and jurisprudence they have attempted to reconcile them. In this work, we shall try to emphasise the fact that the Constitution must be revised, in order to highlight the protection and guarding of a "natural property" of any of the persons belonging to society.
The property right cannot be considered to be a convention, as this right exists irrespective of the agreement between the parties, and denying this right does not lead to its abrogation, but to a violation of a natural right.
As for the two fundamental human rights, things seem to be simple, but they are not; we must also learn from the experience of other countries, but we also need to improve the laws which do not confine the owner's responsibility. Each owner must comply with certain limits regarding the environment, in order to be able to enjoy their property in a harmonious, healthy and useful manner.
Keywords: *property right, environmental right, natural property, legislation*

For starters, we should consider the terminology of the word *property.* The property term comes from the Latin word *proprietas / proprietatis*, and it means own, undivided [1].

Considering the terminology of the word *property,* we can see that the concept of *property right* is especially complex. This concept is considered to be the result of a long evolution of life and juridical thinking within the continental law system. [2].

The property right has been discussed as far back as the epoch of the Twelve Tables, when the land came to be divided, making the transition from the collective property to the individual property. So, the property right appears at the same time as the state and law, and would disappear at the same time as their disappearance. [3]

The property right is inherently natural [4], it does not depend on any organization of society, as this rights derives from the human personality and freedom [5].

When we speak of property, we cannot exclude the owner, who is the holder of the property right [6], i.e. he is entitled to exert, in their own name and in their own power, the prerogatives granted by this right.

In the doctrine, they have given several definitions of property: Property has been defined by Prof.S.G.Longinescu as: *the most complete entitlement which the positive law acknowledges for us, to a determined corporal thing which has an individual existence* [7].

K. Marx defined property as the *individual's appropriation of nature within and by means of a particular social form* [8].

The French Civil Code, by the regulation of art. 544, has defined property as the *right to enjoy and dispose of things in the most absolute manner, provided they are not used in a manner prohibited by statutes or regulations* [9].

Property has emerged as a private property, based either on occupancy, i.e. seizing the objects of nature, or on labour, or on a social convention. [10]. Property has been regulated as a central institution [11] as far back as the Civil Code of 1865, while the Constitution of 1923 has continued to regulate it, as well as the current Civil Code, but also the Constitution of 2003.

Article 555 of the current Civil Code [12] stipulates (*1) The private property is the holder's right to possess, use and dispose of the asset in an exclusive, absolute and perpetual manner, within the limits set by the law.*

By means of the definition of the property right provided by the Civil Code, one consecrates the vision of an absolute (quality which aims at the ergaomnes opposability of the property right), inviolable and indefeasible right, which regards any object, whether *natural or made*, living or dead, corporeal or incorporeal (incorporeal assets such as clientele – Cause VAN Marle c. Holland, 1986, Iatridis c. Greece, 1999).

In other words, the property right is defined by itself, and not in relation to other rights. The property right is the only right that allows the holder to exert all the prerogatives it grants, in their own power and interest. [13].

The Constitution of 1923 guaranteed the property right of any kind, and the claims on the state, and provided that nobody could be expropriated unless it was for a case of public utility, and after a rightful and previous reimbursement set by the court of law [14].

The Constitutions of 1948 and 1952 provided the waiver of the public domain, and the Constitution of 1965 stipulated that the production means were a socialist property. Starting with the provisions of the 1991 Constitution, the property became unassignable, indefeasible and intangible.

The Constitution of October 2003 stipulated, in art. 41 align. (2), that *private property is equally regulated and protected by the law, irrespective of the holder. Foreign citizens and stateless persons may acquire private ownership of lands only under the terms as may arise from Romania's accession to the EU and from other international treaties to which Romania is a party, on a reciprocal basis, in accordance with an organic law, as well as by way of statutory inheritance.*[15], [16].

Although it mainly aims at other purposes, especially economic, property also directly contributes to the protection of natural factors.

Preoccupations related to the protection of the natural environment have appeared and developed in time. When we say natural environment [17], we say demography, fauna, flora, geographical environment, etc. All these factors configure and influence all the components of the right.

The preoccupations related to the *natural environment* have led to the occurrence of certain juridical norms, such as the Environmental Law – Law 265 of 29 June 2006 for approving Governmental Emergency Ordinance 195/2005 regarding environmental protection.

Objectively, the property right on the natural objects is a civil law institution, whose rightful norms regulate the ecological property relation as a state of natural appearance.

In relation to the environmental right, the property right implies certain obligations regarding environmental protection. These obligations are achieved

by adopting an environmental policy, in agreement with the economic development programs, as the state has the duty of coordinating the environmental protection activity [18], [19].

The right to a healthy environment is also provided by the Romanian Constitution in art. 35. We can find similar constitutional regulations in Spain, Portugal, Croatia, Hungary, Slovenia, and Moldova. The right to a healthy environment is also acknowledged at international level [20].

The duty of observing the environment lies with the owner. Thus, art. 603 of the Civil Code includes the rules regarding the environmental protection and good neighbourhood, as well as those regarding the compliance with the other duties which, according to the law or habit, lie with the owner.

By means of these rules regarding the neighbourhood relations, they have set both admissible limits of pollution, and the correlative obligation that the damages be borne by the polluter. Living on good neighbourhood terms with the others entails bearing certain normal consequences resulting from this state, the availability of a series of pollutions and damages which are admissible up to a certain threshold. The good neighbourhood terms also imply bearing certain obligations by everybody, in order to make cohabitation more pleasant.

Among the conduct and good neighbourhood norms, one can mention:

- The owners of the lands are obliged to contribute to the delimitation of the property boundaries.
- In the construction field, one must comply with the minimum 60 cm distance to the boundary line.
- The water that drips from the eaves must not fall on the neighbour's property
- The trees must be planted at least 2 m away from the boundary line, except for those under two meters high, plantations and hedges.
- The viewing windows must be built 2 meters away from the neighbours.

The empowerment based on the neighbourhood relations should be a preliminary phase, parallel to the legal one, which would not eliminate the possibility of resorting to the court of law.

The property right must be exerted dependent on the compliance with the concurrent rights. *Freedom consists in being able to do everything that is not harmful to the other person: the exertion of the natural rights of each person has no limits, except for those providing the other members of the society with the possibility to enjoy the same rights. (Article 4 of the Declaration of the Rights of Man and of the Citizen imposed such limits to the property right, limits related to the exertion of concurrent rights. Such a limitation tinges with the inviolable and sacred nature of the property right, and rejects the idea of an absolute right, in an arbitrary sense* [21].

In order to be sanctioned, the neighbourhood disturbances must not necessarily be excessive; it is enough for them to be abnormal. The current civil code maintains the civil subjective liability, having, as a juridical base, guilt and the need to sanction the doer, regarding the liability for one's own actions, but also regulates objective liability cases, which are the rule regarding the liability for somebody else's deed [22].

The significant increase of the juridical regulations regarding the environmental protection has affected the traditional concept of property. The phenomenon is expressed by complex limitations of the property right from the perspective of the exigencies of the major ecological interest, and on the other hand, by recording a tendency of ecology patrimonialization, by means of the emergence of a category of environmental public assets, the affirmation of the concept of joint patrimony [23]. As far back as 1993, the Commission and European Court of Human Rights have acknowledged the fact that environment can be considered a patrimonial value, thus the property incorporates the environment [24].

From the ECHR jurisprudence, one could conclude that environment *is a value whose protection suscitates, according to the public opinion, and*

consequently also for the public authorities, a constant and sustained interest. The property right should not take precedence over the relative considerations regarding environmental protection.

Constraints of the property right can be admitted, on condition that the just balance between the - individual and collective - interests are complied with in presentia [25].

The jurisprudence of the EU Court of Justice has stated that the *property right is part of the general principles of the EU law, which does not however appear as an absolute prerogative, but must be taken into account in relation to its function in the society.* As a consequence, one can bring restrictions to the use of the property right only if they actually respond to the objectives of general interest aimed at by the Union, and are not, in relation to the purpose aimed at, a disproportioned and intolerable intervention, which would reflect on the very essence of the rights guaranteed this way [26].

Conclusions

The concept of property right has been affected in time, due to the increasing number of juridical regulations regarding environmental protection.

In the classical legislation, property has generated an effort of adaptation to the new situations, such as those caused by pollution, by means of the rules related to good neighbourhood and repression of the abnormal neighbourhood disturbances.

Nowadays, the property right has been ascribed, on the one hand, a series of complex limitations of its attributes from the perspective of the exigencies of the major ecological interest, and on the other hand, certain tendencies of *ecology patrimonialization* have been recorded by the emergence of *public environmental assets.*

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Romanian and European legislative notions regarding sexual discrimination and the sexual harassment of women

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Abstract:
The following paper presents two deviation forms identified in the contemporary society: sexual discrimination and sexual harassment as well as the social reaction in the legal domain both on an international and national level regarding the social protection of women.
The material approaches the issue of defining the concepts previously mentioned as well as the presentation of legal provisions referring to the social protection of women and the community acquis. There will also be treated the system of proving the sexual discrimination cases.
The final part of the material will approach the legal issues of sexual discriminations and sexual harassment of women.
Keywords: *sexual discrimination, sexual harrasment, social protection of women, equality of chance.*

Sexual harrasment and sexual discrimination

The modifications made over time in what concerns the social position of women has brought in the contemporary period a series of transformations regarding the relation between femininity and masculinity. One of these is constituted by a broadly generalized attitude that allows men certain privileges related to power and prestige. Along with other forms of socio-sexual deviation such as abuse, rape or prostitution, sexual harassment appears on the grounds of the existence of some complex elements determined by psychological and sociologic factors.

Sexual harassment consists of threatening, constricting, intimidation, humiliation behaviour that a person has towards another person. Harassment can appear anywhere. In the organizational environment, the individuals are more aware of their rights therefore, he feels more injured, the mental pressures is felt stronger. Usually, the one who harrases is, hierarchically superior or equal.

The harassed person strongly feels frustration, on one side, the discomfort of coming to work and endure embarrassing situations and the impossibility to express themselves, on the other side, having a fear of being fired or promoted.

The legal provision clearly differentiates harassment, sexual harassment and sexual discrimination: sexual harassment [1] is the situation when an unwanted behaviour with sexual connotation occurs, expressed physically, verbally or non-verbally, having as object or effect the damage of a person's dignity and, particularly, creating an intimidating, hostile, degrading, humiliating or offending environment; sexual discrimination is the direct and indirect discrimination, harassment and sexual harassment of a person by another person at the work place or in other place where the person performs the activity [2].

Sexual harassment is understood by the majority of the subjects as being the attempt to have sexual relations by force, through threats or promise of a reward, love affairs in exchange of employment/promotion, behaviour or language with sexual connotation, without the consent of the person : kisses, inappropriate touches, hugs, sexual language.

The subject of sexual harassment is one that allows the existence of prejudice, stereotypes, misconceptions. Most of the time they are not circulated in bad faith but they are information received through different sources, generalized and not verified, unfiltered by every person, that are strengthened by repeated hearing and reproducing. There are many myths about sexual harassment that are not found in real life and that influence our behaviour and the way in which we relate to the sexual harassment situation. It is important to know that the person responsible for harassment is only the one who does it. Harassment acts, contrary to common prejudice, do not take place because of the exterior appearance of a person but from the harasser's desire to exercise power and control over that person .[3]

Legal notions referring to the social protection of women

Women's condition in the modern society is a subject intensively debated both by sociologists and the civil society. The desire of women to be present in the social and political life and in the business environment without being considered a secondary citizen has been supported by the legislative frame both national and international.

A historic step in this direction was the adoption by the General Gathering of the Organisation of the United Nations on 10th of December 1948 of the Universal Declaration of Human Rights. Within its content, there have been consecrated fundamental principles of labor law and there has been materialized the desideratum regarding the free access to employment and equality of chance and treatment.

The promotion of the equality of chance principle between men and women has been officially stated by many declarations or international treaties, the importance granted to this principle growing over the last decades, mostly in the last years. On an international level there have been signed the following declarations or treaties.

On an international level:

- The Universal Declaration of Human Rights (1948);
- The convention about the political rights of women(1952);
- The convention about the citizenship of the married woman (1957);
- The convention no. 111 regarding employment and profession execution discrimination'
- The convention regarding the marriage consent, the minimal age for marrying and the registration of marriages (1962);
- The international pact regarding economic, social and cultural rights (1966);
- The international pact regarding the civil and political rights (1966);

- The declaration regarding the elimination of women discrimination (1967);
- The convention about the elimination of all forms of discrimination towards women (CEDAW) (1979);
- The declaration containing the engagements of all participant countries and the Platform for Action of the Conference of Beijing (1995).

On a european level [4]:

- The European convention for the protection of human rights and fundamental liberties (1950) and additional protocols;
- The European Social Charter (1961);
- The revised European Social Charter (1996).

Equality of chance and treatment between men and women is also found in the Treaty establishing the EU (The Treaty of Maastricht in force since 1993) as well as in the secondary legislation -10 community directives regarding equality between men and women as well as the jurisprudence of the Court of Law of Luxemburg.

Along with the coming into force of the Treaty of Amsterdam (1999), the European Union has decisively engaged in promoting equality between men and women and to include gender equality on all levels and in all community activities. Thus, the promotion of equality between men and women is found as a specific object in the content of the treaty, beeing provided in part 1 – Principles, on art. 3 point 2, and by art. 13 there is established the necessity to take concrete actions for fighting sexual discrimination.

The member states of the EU have adopted the European social Agenda which has the main objective to constitute the modernisation of the European social model. A fundamental element of it is the promotion of equality of chance and treatment between men and women.

The Community Strategy for Gender Equality (2001 – 2005) wants to combine the integration of the gender perspective in all politics and programmes of the European Union, at the same time with the promotion of specific actions in favour of women.

The communitary aquis regarding sexual discrimination and sexual harassment

- The Recommendation 99/131/CEE of 11.27.1991 regarding the protection of the dignity of men and women at the work place. The conduct code regarding the measures for fighting sexual harassment;
- The Resolution of 12.13.1991 regarding the application of the third Council Directive referring to the progressive application of the Principle of equality of treatment between men and women regarding social security (79/7/CEE of 12.19.1978);
- The Declaration of the Council of 12.19.1991 regarding the application of the Recommendation of the Committee referring to the protection of the dignity of men and women at the work place, including the practical code designed to fight sexual harassment;
- The Directive 97/80/CE of the Council of 12.15.1997 regarding the Frame Agreement to the proof duty in the sexual discrimination cases.

Bringing proof in sexual harassment cases

The Council Directive 97/80/CE of 15th of December 1997 regarding the proof of the sexual discrimination cases has taken into consideration the opinion of the European Court of Justice according to which the establishment of some rules regarding the duty of proof is needed when there is an apparent discrimination and that, when this situation is confirmed, the application of the principle of equality of treatment is done if the proof duty comes to the convicted part.

The directive is applied to the situations covered by article 119 of the CEE Treaty and by directives 75/117/CEE, 76/207/CEE and, if there is sexual discrimination, by directives 92/85/CEE and 96/34/CE. It also operates within every civil and administrative procedure regarding the public or the private sector that provides appeal according to national law, while applying the stated dispositions, with the exception of amiable procedures, of voluntary nature or provided by national law.

On the grounds of art. 4 of the directive the member states, according to their law system, must take the necessary measures in order to, when a person is considered injured by not keeping the principle of equality of treatment and presents to the justice facts that allow the presumption of the existence of a discrimination, direct or indirect, be able to devolve upon the convicted to prove that there was no violation of the principle of equality of treatment. [5]

This inversion of the proof duty is specific, as known, to the labor law.

The indirect discrimination appears when a disposition, criterion or practice, seemingly neutral, affects a higher proportion of people, with the exception of the cases when this dispositions, criterion or practice is not necessary and cannot be justified by objective factors, independent of the gender of those interested. [6]

Furthermore, The Directive 97/80/CE does not prevent the member states from imposing rules of evidence that are favorable to the plaintiff.

The provisions of the directive do not apply to criminal procedures, apart from the cases when the member states state otherwise [7].

The sexual discrimination and the sexual harasment of women

Being a detriment brought to the dignity of the person, within the European Union, it is considered that sexual harrasment is an obstacle for the good functioning of the labor market. Certain groups are especially vulnerable, namely divorced women, the women that are new on the labor market, the ones with difficult socio-economic status, the disabled ones, the ones coming from rasial

minorities etc. The victims of sexual harrasment at the work place can be employees representing both sexes.

Yet by the Resolution of 29th of Maw 1990 of the European Union Council there has been wanted the establishment of some direction lines for employers, unions and workes, in order to prevent sexual harrasment.

Also, in order to aknowledge the problem of sexual harrasment at the workplace and the consequnces of this abnormal behaviour, the European Committee has addopted the Recommendation 131/CEE/92 regarding the protection of the dignity of men and women at the work place. According to it, sexual harrasment is defined as being:

- any abusive behaviour that injures the abused person;
- the fact that a person, by refusing to accept such a behaviour from an employer, hierachically superiour or co-worker, explicitely or implicitly justifies a decision that influences the rights of the person concerned regardin professional training, employment, maintaining a job, salary etc;
- Any kind of behaviour that can crate an intimidating, hostile, humiliating environment towards the abused person.

Law no. 202/2002 introduces for the first time in romanian law the notion of sexual harrasment at the work place, beeing regarded as a form of sexual discrimination.

However, it would have been more appropriate if in the text of law there would have been a broader notion of harassment, as it is included in communitary acts, especially in Directive 2000/78/CE of the Council, regarding the creation of a general frame in favour of the equality of treatment in the employment domain which, unfortunately, has not been taken into account by the romanian legislator. We remind that the communitary directive consideres harrasment as being a form of discrimination when an inappropriate behaviour related not only to sexual orientation but also to religion, convictions, disabilities

or age has as object or effect denigrating a person or creating a hostile, intimidating, degrading, humiliating or offensive environment.

The incrimination of sexual harrasment in romanian law is an evident progress as the implementation of the employers' obligations regarding the inclusion in the internal order regulations of disciplinary punishments ment to abolish such manifestations from the workplace.

The romanian labor code, in its turn, has included as a fundamental principle of work relations the principle of equality of treatment towards all employees and employers, prohibiting any form of discrimination, direct or indirect [9].

On an international level, Romania has already assimilated through ratification the standards adopted by the Organisation of the United Nations, of the International Organisation of Labor or of the European Council.

The sexual discrimination and the sexual harassment of women

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- any abusive behavior that injures the abused person;
- the fact that a person, by refusing to accept such a behavior from an employer, hierarchical superior or co-worker, explicitly or implicitly justifies a decision that influences the rights of the person concerned regarding professional training, employment, maintaining a job, salary etc;
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International Regulations on War and Peace

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Abstract:
Peace and war represent two realities that are inter-related in a dual perspective: the conceptualization prospective and the juridical prospective that is focused upon the regulation process. The queries resulted from the theoretical approach and from the practical application of the legal aspects concerning war and peace are combined, supposing a simultaneous approach that will be customized by means of some nuances that derive from the peculiarities of each element. In the present paper we aim to highlight the peculiarities of the legal recognition of peace as a human right enshrined within the category of solidarity rights and also the peculiarities of war and of its regulations under the guise of ensuring a connection between the two realms. The connection between peace and war is upheld at the theoretical level- from this deriving, at a practical level, the unspoiled link between the two socio-juridical realities that are studied. This article does not reclaim as a scientific objectiv the descriptive reminder of the defining elements related to war and peace; rather it aims to place the previously mentioned elements within the analytical and interpretive paradigm. Consequently, amongst the research methods hereby implemented we mention the deductive method (considering the progressive exposure of information because their difficulty is gradually revealed from general aspects to the special aspects of the discourse) and the hemeneutical method (centered on developing arguments and critics upon the study of war and peace).
Keywords: *peace, war, international regulations, conceptualization process.*

Analysing the connection war-peace within the framework of multidisciplinarity

War and peace are complementary notions within the international law system. First, both concepts bring into discussion human rights and the protection of the individual. Second, from a theoretical point of view, both terms share a multidisciplinary character, evoking philosophical and juridical implications.

At the conceptual level, the complementary quality results from the idea according to which peace is defined by virtue of war and war is defined through the signification of peace. In his studies, Johan Galtung attaches to the concept of *peace* two senses thus distinguishing between *negative peace* – the absence

of war and *positive peace*- cooperation and solidarity between individuals, States and Peoples. [1] Keeping in mind the positive and the negative pattern of peace, doctrinaire studies [2] have advanced the proposal of defining the notion of *war* according to the *positive-negative rationale.* In this sense, Myres S. McDougal advances in his work the *negative conceptualization* of war as the absence of peace meanwhile the *positive conceptualization* of war consists in the presence of violent acts.

The demonstration of the complementary nature of the war-peace relation by refering to the standard of human rights was achieved in doctrine by introducing the concept *human security.* In simple terms, human security relates to the protection of the individual through guaranteing his fundamental rights. Specialized studies [3] associate human security with the significance established in the Development Programme upheld by the United Nations Organization in 1994 that has the purpose of solving socio-humanitarian problems like famine, maladies, oppression and any other circumstance that may disrupt the natural manifestation of human life. The main issues of war and of post-conflict period consists in the re-establishment of human rights that were violated and in ensuring reparations in favour of victims. Hence, human security expresses an ideal established around human solidarity and around the objective of ensuring the highest level of fulfilment of human attributes. According to the previously cited doctrinaire opinion, peace and human security are presented in inter-related connection within the Atlantic Charter of 1941 – a document by means of which United States and United Kingdom desired to establish the objectives that would be fulfiled when the Second World War will end. Formally structured as a declaration, the Charter presents in paragraph 6 the connection between *peace* and *human security : after the final destruction of the Nazi tyranny, they hope to see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all lands may live out their lives in freedom from fear and want.* The cited content underlines first the importance of respecting the

independence and sovereignity of the Peoples as a *sine qua non condition* of maintaining peace and of obtaining human security. Granting all nations the possibility of living in safety within their own borderlines is in compliance with other dispositions of the Atlantic Charter that underline the need of supressing the expansionist desires of States (of territorial nature or of other nature), the right of the Peoples to choose their own form of government and the restoration of self-government and sovereignity to those Peoples that were deprived, during conflicts, of such prerogatives. If the aspects that were commented up to this point are linked to the theory of international law and constitutional alw, we observe that the final formulation of paragraph 6 of the Charter *freedom from fear and want* has a peculiar character. The latter relates to mutidisciplinarity because freedom from fear and want represents a request that has psychological, philosophical and juridical implications. In order to limit our comments to the juridical field and in compliance with the aspects that were evoked within the field of international and constitutional law, freedom from want and fear represents, in our opinion, limiting the expansionist desires of all nations regardless if they are originated in the scope of political and territorial domination or of economic domination. Hence, the formulation *freedom from fear and want* comprised within the Atlantic Charter of 1941 is the juridical premise that allows enclosing the mention of equality between large and small nations within the Preamble of the UN Charter of 1945. In this token, we construe *equality between Peoples, the right of Peoples to self-determination and the respect for State sovereignity by means of limiting the expansionist tendencies* as premises of ensuring peace and human rights.

By approching the multidisciplinary argument which expresses another common point of war and peace, we observe that some philosophical implications of the analysis are bound to be manifested. The philosophical approach promotes the correlation between war and peace as a natural aspect, validating the argument of complementarity of the two notions. The introduction within the juridical framework of the issues that relate to war and peace was

detailed by Immanuel Kant in the work *Towards Perpetual Peace. A Philosophical Sketch* [4]. In Kant's work, the diffciulties generated by conflicts are countered through the concept *pax aeterna* which aims to ensure permanent peace between Peoples by applying a set of moral principles. Amongst the kantian legal laws advanced in the scope of limiting conflicts and preserving peace is first enunciated the law according to which *a peace agreement is not valid if it is made under the mental reserve of engaging in a future war.* The peace agreement closed under the reserve of engaging in a future war is immoral and, consequently, it cannot create moral obligations for the Contracting Parties. In the same token, it is against the peace-keeping process between Peoples the possibility of dominating a State as a consequence of receiving an inheritance or a gift. Likewise, it is contrary to *pax aeterna* – being deprived of moral sense- the act of mobilizing the national army and of benefiting from military services as it may be construed as an agression act by other Powers/States. In the same vein, it is mentioned the principle of non-intervention in the organization and governance of States (reminded within the Charter of the United Nations Organization, article 2, paragraph 4) and the principle of applying universal hospitality in achieving the concept of World Citizenship. The latter is elaborated within the previously cited kantian work as being applicable in juridical sciences under the guise of the *foreigners' right of not to be treated as enemies*.

The transition from political philosophy to religious philosophy in the conceptualization process of peace and war is obvious through the use of the term *ahimsa* – moral principle of jainist inspiration that pleads for the removal of all forms of violence (physical and moral) with the scope of obtaining peace between individuals and social equilibrium. [5] On the other hand, the conceptualization of peace and war from a multidisciplinary perspective is highlighted also in African philosophy. The latter has a peculiar existence created from myths and customs developed within the collective mental and its applications are both moral and juridical. For instance, the principle *benyaogba ukpikator* promotes the need to mitigate the conflict and to re-establish peaceful

relations between potential adversaries. As specialized studies have demonstrated [6] African philosophy in the field of war and peace pursues the conservation of equilibrium (therefore, of peace) between individuals with the scope of ensuring social development. Peace is not in itself a simple philosophical premise that is needed so that the African society may subsist; rather it is the main premise needed so that the African individual expresses its identity by afirming its adherence to the community. The practice of the African society of preventing conflicts must be accepted by each individual so that it can persist in time.

Theoretical assumptions on the juridical approach of war

Within the relationship peace-war we observe the issue of legitimacy (of morality) that is formulated in reference to war as peace is the desirable state. The main juridical issue concerning peace may be elaborated in connection to the acknowledgement of *the right to peace* as an autonomous juridical prerogative.

Commenting upon the lawfulness of war, Hugo Grotius imposes as a rule in the process of establishing the just or injust character of war the evaluation of the motives that determine conflict. [7] The criterion of the motives that determine the conflict is very important but it must be interpretated in a dynamic sense rather than in a static sense; the author argues in his paper that there is the possibility that the war starts from just causes and during conflict the causes become unjust. From our point of view, the alteration of the character of the cause and implicitly the transformation of the cause from just to unjust does not necessarily entail the replacement of that particular cause with another but it entails the alterations of the conditions, of the initial circumstances that were taken into account at the begining of the conflict. For instance, the author presents as unjust reasons of starting a war (1) a simple act of aggression against a stat or (2) the possible material advantages acquired as a consequence of pursuing the war. Denying that aggression is a lawfull reason to

engage within a war does not equate with the interdiction of retort in case of self-defence. On the contrary, the exclusion of a simple aggression from the category of the causes of just war must be understood in the sense that not every inamical act between States legitimate a violent response but only those acts that directly violate the right to self-determination of the Peoples and national sovereignity.

Refering to the morality of war or to just war, doctrinaire studies [8] identify the main rules that are ought to be respected in order to qualify the war as just/moral : *(1) the equal morality of the belligerents, (2) the immunity of non-belligerents, (3) the privileged status of prisioners.* We feel that the rule of equal morality of the belligerents expresses both equality in rights and liberties (as equality of juridical status) and equality in dignity.

By corroborating equality in dignity and in rights results that life –as a human value and as a fundamental right of the belligerents is guaranteed equaly and independently from the premise under which fight the respective beligerents. In other words, we cannot apply the criterion of just or injust cause of war with the purpose of prioritising the lives of the belligerents. The equality of moral status of the belligerents determines the consequence of non-discrimination between the combatants that are engaged in war by virtue of injust causes and the belligerents who entered the war by virtue of just cases. The second rule of just war is established in correlation to the first one : if there is equality between belligerents than between belligerents and non-belligerents will exist discrimination. The latter is natural in the relation belligerents/nonbelligerents because of the difference in status and of the difference in war involvement. Belligerents and non-belligerents are different categories thus equality is present exclusively between belligerents and/or between non-belligerents, without crossing the two categories. The belligerents are differents from the non-belligerents because the latter are considered to be innocent of any act of war. War would become injust if the attack would extend including upon individuals who are not directly involved in acts of aggression. In the given case, discrimination between combatants and non-combatants is not only necessary

but also natural being in accordance with the humanism principle. In the same token, the privileged status of prisoners is justified taking into consideration the fact that they were initially involved in the conflict fighting alongside the enemies but when they were captured they can no longer exert their hostile actions. Taking into consideration the impossibility of exerting the attributions circumscribed by the status of belligerent, prisoners must be treated with dignity and humanity, non-discriminatory, in compliance with the provisions of article 13 of the Geneva Convention regarding the treatment of war prisoners of 12 August 1949. The cited article protects human dignity in reference to the aspect of prohibiting medical/scientifical experiments, reprisals, violent acts, or intimidation, physical mutilations and any other acts that might cause the death of a prisoner or the damage to a prisoner's health.

Theoretical assumptions upon the juridical approach of peace

As we have argued in the content of the previous section of our paper, the lawfulness of war represents a problem of moral and legal assessment. The ethical manner of developing war (or just war) combines the moral and the legal element thus establishing by the provisions of the Geneva Convention the fair manner of treating war prisioners. The respect for human dignity- as the main juridical and moral value -is the essential premise for leading a just war. The dilemmas concerning peace are not of moral nature but of juridical nature. The recognition of peace as a moral value expresses the conception of the international community taking into consideration the fact that the United Nations Organization afirms as a main purpose of its activities the achievement of peace and security. The recognition of peace as a juridical value does not equate to the *the plano* recognition of the right to peace. The organization of human rights in three generations advanced by Karel Vasak allows the highlighting of solidarity rights that comprize *the right to peace.* The distinction between the three generations of rights and the qualification of peace as an autonomous human right produces multiple problems. First, the generation of solidarity rights –

although enjoys an extended recognition within doctrinaire studies,- it is little theorized. The difficulty of identifying the peculiarities of solidarity rights resides in the complexity of the signification attached to them. Third generation rights refer to the human value of *solidarity* – which evokes the commitment of the individuals towards others. Hence, upon the correct understanding of solidarity depends the understanding and the coherent application of solidarity rights and, by default, the understanding and coherent application of the right to peace which is included within the latter category.

We feel that *solidarity rights* do not equate to *collective rights/the rights of groups.* Between the two categories there are theoretical differences that must be born in mind. First, solidarity rights are different from collective rights due to the fact that *the values that are protected within the sphere of the two categories of rights are different.* In this sense, we observe theat collective rights have as objective the *conservation of the traits that are specific for certain groups (traits that are needed for establishing the identity of the individual- we refer to religious identity, linguistic identity, ethnic or rasial identity, etc.).* Solidarity rights circumscribe *social values that are more comprehensive and that refer to the progress of human kind, achieving harmony between Peoples and individuals.* Pursuing to highlight the essential human values that are protected through solidarity rights, the final act of the symposium that took place in Mexico in 1980 concerning issues related to third generation rights, [9] underlines the idea that solidarity is a value which imposes a *new ethical code upon humanity* that is necessary in order for all individuals to recognize the existence of a common destiny of human kind. Secondly, the difference between solidarity rights and collective rights (or group rights) is enhanced by means of *the type of interests that are protected.* The previous argument was centered upon *the human values* that were protected and the character of the values determines *the type of interests* that are to be promoted by means of the rights that are studied. If the common values of human kind make the object of solidarity rights then the logical consequence consists in the fact that *the protected interest* is an extended one

as it regards the whole human family. In the case of group/collective rights, the interests are specific for a certain human category (such as minority groups). Regarding the values circumscribed to the two categories of rights, we deem that some clarifications are nedeed: *the values that are protected* by means of solidarity rights represent common aspirations of human kind meanwhile *the values promoted by collective rights* express the aspirations of certain groups.

Thirdly, solidarity rights do not cause problems regarding the violation of certain categories of human rights as it is the case with collective rights. Doctrinaire studies [10] argue that collective rights are opposed to the individualist perspective upon human rights that is promoted by the Western doctrine given the fact that, in time, serious violations of human rights were commited by communities by virtue of the collective rights that they have assumed. The most common example resides in the violation of women's rights in African and Asian States by relating to cultural practices that were promoted by the membership community. Solidarity rights have humanist and universal vocation so that through their nature they cannot lead to specific violations of human rights. The social values that are protected and the interests that derive from these exclude the the possibility that solidarity rights may violate some categories of human rights.

Amongst solidarity rights, the right to peace is in direct connection to the protection of human rights because only by preserving a peace climate there is the possibility of ensuring the promotion and the effective achievement of human rights. As we have previously mentioned, the actual recognition of the right to peace as an autonomous prerogative represents a difficult juridical demarche. The doctrine [11] has identified two theoretical perspectives in the assessment of the right to peace : (1) the recognition of the right to peace by virtue of promoting it within international instruments of soft law and (2) the rejection of the right to peace as an autonomous prerogative and the recognition of the right to peace exclusively as a consequence of the fulfilment of human rights. We join the first opinion because mentioning the right to peace in non-binding instruments of

international law is a process that, from our point of view, may lead to multiple juridical consequences. In order to underline the juridical consequences brought by the stipulation of the right to peace in non-binding juridical documents we deem that is necessary, from systemizing reasons, to exemplify the main soft law documents that attest the right to peace.

Thus, we are bound to mention that in 1984 the General Assembly of the United Nations Organization approves through resolution 39/11 of 12 November the *Declaration on the Right of Peoples to Peace* establishing in this manner the basis for recognizing the right to peace as an autonomous right. The Declaration re-afirms the objectives of maintaining peace and security which initially were the foundation of the activities of the United Nations Organization according to its Charter. Mainly, the Declaration establishes the righ to peace upon two coordinates : (1) peace as a sacred right of all Peoples and (2) the maintainance and the promotion of peace implementation as a fundamental obligation of each State. Likewise, it is interesting to notice point 3 of the Declaration which exposes the negative conception concerning peace, underlining in this sense *that the right of peoples to peace demands that the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations.* The Declaration approaches at a basic level the problem of the right to peace and the exposing of the manner of achieving the right to peace is inspired by the provisions of the Charter of the United Nations Organization.

The recognition of the right to peace by means of the UN's Declaration [12] of 1984 has represented a pattern of good practices at both regional and national levels. In Spain, the legal initiatives concerning the recognition and the promotion of the right to peace were developed inclusively at sub-national level. The Luarca Declaration regarding the right to peace adopted at 30 October 2006 constitues the juridical product resulted from other sub-national initiatives undertaken in Spain : the Universal Declarations concerning the Human Right To

Peace adopted in Guernica (30 November-1st December 2005), Oviedo (27-28 July 2006), Las Palmas de Garn Canaris (17-18 August 2006), Bilbao (15-16 September 2006), Madrid (21-22 September 2006), Barcelona (28-29 September 2006), Sevilla (13-14 October 2006). [13] Unlike its predecessor, the Luarca Declaration refering to the right to peace develops many moral aspects (mostly in its Preamble) and also some technical aspects of theoretic nature by means of which is pursued the explanation of the application of the right to peace. From the structural point of view, the Declaration comprizes three categories of norms : (1) norms that are bound to clarify the juridical peculiarities of the right to peace (*exempli gratia* the holders of the right to peace-article 1, the right to human security- article 3, the right to resists and to oppose barbaric acts- article 6, the right to obtain a refugee status- article 7, the right to disarmament – article 11), (2) norms that establish correlative obligations with the purpose of achieving the right to peace (article 16), (3) norms that create mechanisms of supervising and implementing the Declaration (articles 17 and 18). Through the Santiago Declaration regarding the right to peace [14] the structure and the content of the Luarca Declaration are reiterated – aspect that expresses the idea according to which there is a national consensus upon the conceptualization/the explanation of the right to peace and upon the qualification of the right to peace as an autonomous prerogative enshrined in the category of human rights.

Taking into consideration the propositions made at national level, the UN has appraised the possibility of expressly qualifying the right to peace by means of organizing in 2012 a working group which had a mandate of negociating the progressive redaction of a technical document that pursued the establishment of the juridical status of the right to peace. In 2013, the initial form of the Declaration draft was modified, being upheld an innovatory and a comprehensive prospective upon the right to peace, especially oriented towards respecting human rights, human dignity and inserting women in the process of peace-bulding. [15] The Declaration’s draft regarding the recognition of the juridical status of the right to peace was a fragile initiative in the realm of human rights protection because in

the frames advanced by the expert group for debating are not identified the relevant measures for counteracting violences, for preventing potential conflicts and for protecting human rights in this types of cases. UN States were reluctant to accept the right to peace in the circumstance in which the drafts of the Declaration that were advanced did not presented peace in its negative conceptualization – that is in relation to war -and the consequences that conflict brings upon the process of respecting human rights. In april 2013, when discussing the draft of the UN Declaration concerning the right to peace, was underlined the idea according to which although there are some aspects of the right to peace (in its negative conceptualization) like security, non-resorting to force and to the threat of force, non-interfering in the internal affaires of States- that are already circumscribed in documents with binding legal force amongst which the most eloquent is the UN Charter, the UN member States are skeptical in regard to the enforcement of the right to peace and its effective implementation.

The soft law initiatives of qualifying the juridical status of the right to peace are usefull because they establish standards (good practices) that may be further used in international regulations of hard law category. From our point of view, the juridical relevance of mentioning the right to peace in international non-binding legal instruments consists in the following : (1) to underline the concern of the international community in regard to the right to peace, (2) identifying, within the international community, of the need to counteract the protential threats addressed to order and security, (3) acknowledging the need to consolidate the degree of human rights protection and the promotion of the concept of human security.

The main argument by virtue of which we sustain the juridical relevance of mentioning the right to peace within the content of international documents belonging to the soft law category consists in providing benchmarks of good practices on the basis of which we can subsequently consecrate the right to peace in international juridical documents of hard law category. In other words,

the soft law juridical instruments forseen problems that would be consequently taken and implemented by means of some juridical instruments of hard law.

Regarding the right to peace, its provision in juridical soft law intruments has been doubled by its mentioning in juridical instruments of hard law like the African Charter on Human and Peoples' Rights, the Maputo Protocol [16], the Ibero-American Convention regarding the Rights of the Youth. Article 23 of the African Charter on Human and Peoples' Rights expressly establishes *Peoples' right to peace and national and international security.* We deem that article 23 corresponds with the legal philosophy prescribed in the Preamble according to which the aspiration of African Peoples resides in the supression of any form of colonialism. The colonisation of African territories represents a social reality that, once transposed into juridical coordinates is interwined with the breaching of democracy, of national sovereignity and of the right of African Peoples to self-determination. The right of every People to choose their own destiny – affirmed under the guise of the right to self-determination- entails a dual dimension (socio-economic and political and civil) and constitues the essential premise of asserting national sovereignty. Article 20, paragraph 2 of the African Charter on Human and Peoples'Rights expresses the right to self-determination of African Peoples as follows : *the right of colonized or opressed African Peoples to be set free from the bounds of domination through the resort to the measures recognized by the international community.* By means of interpretation we infer that the expression *measures recognized by the international community* evokes the resort to dialogue, cooperation, diplomacy and other peaceful means given the fact that within the UN Charter violent measures are excluded from being applied. Thus, the right to self-determination and the right to peace-as they are exposed within the African Charter on Human and Peoples' Rights – present some connection to the juridical content.

The Additional Protocol to the African Charter on Human and Peoples' Rights presents the right to peace in connection to women's rights as human rights. Furthermore, article 10 of the Protocol consecrates within the content of

the right to peace the possibility of women to actively participate to the process of ensuring peace by means of being involved in programmes and structures whose objective consists of establishing the right to peace. It is worth noting that article 10, paragraph 3 of the Additional Protocol establishes as an obligation of States Parties to take the necessary measures of restricting the expansion of military structures and of investing in social development and, particularly, in the protection and promotion of women's rights. Specifically, article 10 of the Protocol establishes the equivalence between women's right to a peaceful existence and the right to peace. The Protocol advances a juridical advantage by comparsion to the provisions of the Charter because article 10 of the Protocol defines the right to peace as the right to a peaceful existence. Article 23 of the African Charter is restricted to establishing the right to peace and national and international security without attaching an explicit definition to the right to peace. Although it doesn't offer an explicit definition to the right to peace, article 23 has the merit of enumerating the premises that concur to the juridical guarantee of the right to peace (1) developing State relations by virtue of the principles of security and friendship enshrined in the UN Charter, (2) the individual who exerts the right to asylum cannot engage in subversive activities and (3) the territories of States cannot be used as the basis for developing terrorist and subversive activities against the Peoples of the State Parties to the present Charter.

The Iberoamerican Convention On Rights of Youth [17] declares peace as a human right in article 4, without expressly establishing the meaning of the respective right. The right to peace is associated with a series of peculiar values like *life witthout violence, fraternity between human beings, the culture of peace, the stimulation of creativity, the education in the spirit of fundamental human values so that democracy, justice, solidarity, friendship, tolerance and understanding are promoted.* The highlighting of youth's education in achieving the right to peace constitues a practical provision as it transforms education in an instrument that shapes the spirit of future generations in the sense of obtaining a culture of peace.

In the rows above we have argued the fundamental necessity of recognizing the right to peace in international juridical binding documents as autonomous right, enshrined within the category of third generation. The binding character of the African Charter on Human and Peoples' Rights, of the Maputo Protocol, respectively the binding character of the Iberoamerican Convention on Rights of Youth cannot be denied. Likewise, we have highlighted the essential contribution brought in the realm of the juridical recognition of the right to peace in binding legal documents previously enumerated by means of the *soft law* process. The latter has ensured the recognition of the right to peace through international non-binding documents (declarations) thus guaranteeing the premises of the subsequent recognition of the right to peace by means of international binding documents. In the demarche of achieving the right to peace as an autonomous right through processes of *hard law* and/or *soft law* a main important observation is imposed: the international system of human rights protection developed under the auspices of the UN recognizes the right to peace through non-binding specific instruments meanwhile the regional systems of human rights protection (African and inter-American) suggest introducing the right to peace in binding juridical documents. The dissension international/regional is translated in the juridical field and in the realm of the right to peace within the dissension soft law/hard law. If we accept the idea according to which the international system enshrines within its structure regional legal systems, then the most adequate solution regarding the conceptualization of the right to peace derives from the acceptance of the influences exerted by the regional legal systems upon the international legal system, the result consisting in the recognition of the right to peace as self-standing perrogative in the sphere of the general theory of human rights. It is clear that at the regional level, the recognition of the right to peace as an autonomous prerogative by means of binding juridical documents resides in acting against the colonialist tendencies that existed, through history, within the region. In the given context, the pressure that is exerted by the regional system upon the international system with the

purpose of recognizing the right to peace within binding international documents are lawfull because preventing colonialism is a responsability that is bound to be affirmed at the level of the international community.

Theoretical and practical assumptions derived from the juridical recognition of the right to peace

As we have stated in a previous section of our paper, in the rationale of war and peace, only the aspects related to war can be questioned in the aspect of lawfulness. Weather it is established in documents with binding juridical force or in international instruments belonging to the soft law category, peace is recognized as a juridical value. As we have affirmed in the rows above, the main juridical dilemma created in relation to the right to peace resides in its official recognition through documents that have legal binding force under UN. The hypothesis of recognizing the right to peace as an autonomous right pertaining to third generation rights by virtue of adopting a document with binding force by the UN is able to produce some juridical issues. *Exempli gratia,* the effective assurance of the right to peace by the international community may produce, *de plano,* the assurance in favour of the international community, of the right to not be subjected to war? In other words, corroborating the negative and the positive understanding of peace (as both are exposed in the introductive section of the paper), the right to peace must be understood as that juridical prerogative that comprizes within its content (1) *the right of not being subjected to war* and *(2) the right of living in a climate of inter-State cooperation and human security?* By transfering the relation between war and peace in the legal paradigm the result will be double-sided. In this sense, specialized studies [18] underline the fact that the paradigm of war and peace is combined in dualism so that war is produced in the context of breaching human prerogatives meanwhile peace implies human security and the protection of human rights. *The dualism* evoked by doctrinaire studies mai evolve into *antagonism* – especially if we take into consideration the

negative conceptualization of war (the absence of peace) and the negative conceptualization of peace (the absence of war).

Second, the recognition of the right to peace as an autonomous right enshrined in binding international documents generates, besides the problem of clearly establishing the content of the right to peace (we refer to the option of choosing between the positive and negative conceptualization), the problem of *creating the adequate premises for ensuring the manner of applying the right to peace.* We deem that the main feature created in favour of applying the right to peace resides in *educating future generations in the spirit of cooperation and of eliminating violences.* In this sense, through a series of documents [19] UN has developed the concept of *culture of peace* in close connection with the individual mental and behavioural patterns. *In expresis,* the explanatory memorandum attached to document A/52/191 underlined the idea according to which the notion of *culture* is intrinsical connected to the notion of *culture of peace* so that the latter may be explained by reference to *people's manner of thinking and relationing.* In its elaborated form, *the culture of peace* entails an active process of transformation of the collective mentality by means of accepting, respecting and integrating the differences between individuals. The culture of peace designates the process of *individual formation* through which it will be ensured the guiding of the individual in the spirit of justice, solidarity, respect for human rights, equality, tolerance, political, religious, cultural pluralism.

Tertio, the recognition of the right to peace as an autonomous right through the binding international instruments adopted under the UN leads to another juridical issue : *the modus operandi in the implementation of the right to peace.* We think that the invocation of the right to peace as a juridical autonomous prerogative is highlighted in post-conflict situations. The latter illustrate both the negative conceptualization of peace (the absence of war) and the positive conceptualization of peace (the development of a climate of justice and of respecting human rights). The positive conceptualization of peace coincides with the peace reconstruction process undertaken in the post-conflict

situations. Doctrinaire studies [20] assess that the process of peace building entails, *inter alia,* the ensurance of social and positive human conditions for human rights protection and for preventing potential conflicts. In relation to the aspect of human rights protection there is the question of *of re-establishing the rights that were violated during conflicts.* Hence, amongst the positive socio-human conditions that are favourable to the fulfilment of human rights is *the elimination of impunity, respectively the assurance of helding legally liable all individuals that are guilty of acts of human rights violations.* As a consequence of the war of former Iugoslavia and of the Rwanda genocide, the process of peace reconstruction has etablished the objective of creating international criminal fora that are competent to re-establish the rights of the victims of human rights violations by holding responsible the criminals.

The main concern of the international community following the cessation of the conflict for the former Yugoslavia consisted in the peace-building process by means of improving the concept of *human rights.* The Dayton Peace Agreement [21] established the objective of ensuring the respect for human rights in the context of re-creating a regional democratic community. Annex number 6 to the Dayton Agreement enshrines regulations whose purpose consists in guaranteeing human rights to all persons who are found in the jurisdiction of Bosnia and Herzegovina. Doctrinaire studies [22] underline the fact that human rights that are guaranteed in favour of all individuals who reside in Bosnia and Herzegovina must be asured according to the Dayton Peace Agreement, at the highest level possible. It is expressly stipulated the fact that the degree of human rights protection that was ought to be guaranteed is built by considering the pattern set out by the European Convention on Human Rights and Fundamental Freedoms. Specifically, the Dayton Peace Agreement states that in Annex number 6 the rights guaranteed to all persons who reside within the jurisdiction of Bosnia and Herzegovina are detailed in the European Convention and in its Additional Protocols as well as in other international instruments amongst which we remind, for example, the Convention for Preventing and

Punishing the Crime of Genocide, the Convention for Eliminating All Forms of Racial Discrimination, the International Convenant for Civil and Political Rights, the International Convenant for Economic, Social and Cultural Rights. In Annex 6 of the Dayton Agreement are consecrated in an absolute manner (without indicating limitations/restrictions) 13 rights [23]; the latter are mostly enshrined in the category of first generation rights and have correspondance in the catalogue of civil and political rights contained in the European Convention on Human Rights and Fundamental Freedoms. Annex 4 of the Dayton Agreement creates the premises of instituting a democratic society in Bosnia and Herzegovina through the formulation of a Constitution that attests in article I, paragraph 2 that Bosnia and Herzegovina will be a democratic State organized by virtue of the the rule of law principle. We assess that the main constitutional provision in the realm of human rights is found in article II (2) : the rights and freedoms established in the European Convention and its Additional Protocols will be directly applied in Bosnia-Herzegovina and will have preeminence by comparison to other domestic laws.

Following the war for the former Yugoslavia, the right to peace is applied in both its senses : being mostly underlined its positive meaning. As we have previously argued in our paper, the peace-building process was oriented in particular towards the assurance of human rights and also towards consolidating a legal system inspired by European legal standards. In the South Sudan civil war, the violences have started since December 2013, amid the public declaration made on March 2013 by vicepresident Riek Machar according to which his main political objective resides in eliminating the president Kiir Salva from power. Consequently, vicepresident Riek Machar was dismissed. Although the recognition of South Sudan independence in July 2011 was regarded as an exercise of Peoples' right to self-determination and as the fulfilment of a peace condition for the region, the inner conflicts within South Sudand continued to escalate. The main cause of the inner conflict of South Sudan resides in the split between the two political leaders – Riek Machar and Kiir Salva- a split to which

has contributed the different tribal membership (Machar is ethnic Nuer and Kiir is ethnic Dinka). Doctrinaire studies [24] observe the historic circumstances amid which has appeared and escalated the conflict between ethnic tribes Nuer and Dinka : in the context of the Bor massacre – developed in November 1991- that determined the murder of 2000 Dinka civilians by the Nuer fighters led by Riek Machar. The Dinka ethnicity is notorious for undertaking agricultural activities meanwhile the Nuer ethnicity has as central preoccupation the breeding of animals and military training, outruning the Dinka ethnicity in military skills. The conflict of South Sudan has brought limitations in the field of human rights – especially in regard to the civil population- on account of the inability of Government forces to correctly manage violences. The application of the right to peace (understood in its positive sense) in the context of the civil war in South Sudan has generated the concern for inserting human rights in domestic juridical documents. *Exempli gratia,* until 2013, the legal framework of South Sudan did not transpose the main instruments adopted under the UN auspices in the field of human rights like the International Convenant for Civil and Political Rights, the International Convenant for Economic, Social and Cultural Rights, the UN Convention against Torture, the UN Convention for the Elimination of all Forms of Discrimination against Women, and others. We take notice of the fact that, similar to the process of peace reconstruction that was undertaken in Bosnia and Herzegovina following the termination of the Bosnian-Serb war, the process of peace reconstruction undertaken in South Sudan has in the center of its objectives the strengthening of the domestic legal framework in the realm of human rights. The peculiarity of the peace reconstruction process developed in South Sudan resides in the fact that it takes place in unsuitable conditions as violences continue at present. The Transitional Constitution of South Sudan adopted in 2011 mentiones in its Preamble the idea of establishing a democratic State based on justice, equality and on the respect of human rights and the Second Section of the Constitution – comprized between articles 9-34 enshrines

the *domestic bill of human rights established (according to art. 9 of the Constitution) between the People of South Sudan and the Government.*

The manner of enforcing the right to peace in South Sudan is in nature *suis generis.* As we have previously mentioned, in the conflict for the former Yugoslavia, the application of the right to peace is acheived in both its coordinates (positive and negative) because the Dayton Peace Agreement pursued both the prevention of new conflicts and the democratic reconstruction of society thus highlighting the interest of protecting human rights. In the case of South Sudan, the conflicts continue so we cannot discuss the invocation and the application of the right to peace in its negative dimension (the absence of conflict and the prevention of future conflicts). On the other hand, the application of the right to peace is present in its positive dimension –respectively in the sense of ensuring the protection of human rights and of counteracting the violences against the civil population. The commitments adopted by the Republic of South Sudan in the field of human rights through : (1) joining the standards imposed within the framework of international customary law by means of the dispositions of the Universal Declaration on Human Rights and also through (2) the ratification of the instruments of international humanitarian law such as the fourth Geneva Convention refering to the protection of civilians in time of war and both the Additional Protocols [25], reflects the concern for the protection of human rights. The attention of the national community of South Sudan concentrated towards human rights issues is all the more important as UN authorities responsable with the managing of humanitarian problems in the region have assessed the factual situation as having the highest level of severity in the matter of human rights violations.

Conclusions

At the international level, violent manifestations and the assurance of peace represent aspects that are inter-related and that do not benefit from clear and coherent regulations. Mentioning the right to peace in both international

juridical binding documents and in international juridical *soft law* instruments and as well the complex conceptualization of the right to peace (by combining the positive and the negative senses) constitues aspects that determine practical consequences in the application of the right to peace from the perspective of its *content* and of identifying *the manner of application.* The recognition of peace as an autonomous juridical value elevated to the position of a human right enshrined in the category of solidarity rights generates some war related and *legitimacy* related issues. The purely theoretical aspects that characterize the right to peace discloses some difficulties that are underlined inclusively regarding the aspect of practising the right to peace. Thus, if the negative dimension of the right to peace is defined as the absence of war then the existence of peace is inherently connected and conditioned by the pre-existence of a conflict. Although war has as fundamental consequences the violation of human rights and the alteration of the democratic framework that exists within a given society, if peace (in its negative sense) cannot exist apart form conflict, then the question of the *legitimacy of conflict* is not *per se* a real juridical problem. On the other hand, if we choose the positive conceptualization of peace, the juridical paradoxes appear in the practical application of the right to peace. If in its positive form, peace supposes a process of re-establishing rights and re-constructing rights that means that, concretly, the state of conflict conditions the state of peace. The case of the former Yugoslavia and, more recently, the case of South Sudan highlight the fact that, in its positive form, peace implies the exercise of re-establishing order and democracy in post-conflict conditions (the former Yugoslavia) and even in the conditions of an on-going conflict (South Sudan).

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Contemporary law - plurality, complexity and transdisciplinary

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Abstract:
This article attempts to cap the contemporary law issues analyzed multidisciplinary author previous other materials through innovative approaches, the proposed solutions, the originality of the research scientific, regarded even by right relationships with ethics and aesthetics but also the specifics of their interaction. The material is structured main themes and overall guidance to the problem we distinguish between original law in general and contemporary law between domestic law and international law. Broadly, there are two conceptions, the one hand, a conception transcendental or iusnaturalist, which sees as the expression of universal principles and timeless, and, on the other hand, a conception positivistic and instrumental, which sees as a technical pure, neutral and empty of meaning. However, from an ethical and aesthetic perspective on contemporary law characterized by plurality, complexity and transdisciplinarity.
Keyword: *contemporary law, public international law, European Union law, transdisciplinary, ethical,aesthetic*

1.Argumentum

This article attempts to cap the contemporary law issues analyzed multidisciplinary author previous other materials through innovative approaches, the proposed solutions, the originality of the research scientific regarded even by right relationships with ethics and aesthetics but also the specifics of their

interaction. Ethical and aesthetic have their origin in the human longing for a perfect life and are complementary values of good, truth and beauty justified and mutually explanatory. The material is structured main themes and overall guidance to the problem we distinguish between original law in general and contemporary law between domestic law and international law. Broadly, there are two conceptions. On one side, a transcendental conception or iusnaturalistă, which sees as the expression of universal principles and timeless, and, on the other hand, a positivist conception and instrumental, which sees as a pure technical, neutral and empty of meaning. Indeed, one can speak louder meaning in the first case and about a weaker effect in the second, the influence of globalization on contemporary law characterized by plurality, complexity and transdisciplinarity. In other words, under these conditions we speak right classic and current law, the judges as chaining relentless global or regional courts jurisprudence is right for a conscience that lives as a spirit of ethics and aesthetics. From a historical perspective, the man tried to avoid the right time, but it has not ceased to recover. Philosophy has also taken efforts to free man from this influence trying to appeal to rationality; reason that should motivate human thought and action throughout that must be lived according to law. To live according to the law is to decide by our conduct a series of harmonized relations between us and the universe between us and others, in our being as try to answer Dumitru Constantin Dulcan in his most famous, "Intelligence material"[1]. Lucian Blaga criteria settled by „Philosophical conscience". For example, education tame right since envisages the formation of individual personality through social integration and cultural transmission, including legal education, with the support of the right reason, and ethics or aesthetics.

Only that human reason is always a conquest, conquest fragile a divided sense, anyone can believe, for it is determined by sensitive experience. It is based on the axiomatic certainty on dogmatic resources that are thrown so many bridges between the universe and the meaning of meaning. These certainties may vary from one company to another or from one era to another, but the need

for such beliefs remain constant.[2] There is an objective sense in the natural world that we can find it; meaning is necessarily established. To become a subject endowed with reason, the human being must have access to a universe of symbols within which both herself and the things that surround it acquires significance. Before you can be judged as debtor of life which has been given, man is born creditor of a sense of this life. A teach every child to speak is the first way to satisfy the debt. But this process requires of educational child to obey the rules that constitute language, and only achieve this he will be able to freely express themselves, giving rise to new thoughts. "When a philosopher or psychologist as a result of its reflections, enters the scene with a system that makes *tabula rasa* of all notions preceding it is no less true that all his ideas we, as revolutionary as may be defined by the terms of language, but in any case, that none of the ideas can not be indiscriminately designated for existing words and there is a priori a time to meet new distinctions better than others.[3] "Heteronom language is necessary so all; it is a condition of discussion and can not therefore be subject to discussion. A world where each should or pretend to reinvent the language would be an insane world. It appeals to common sense is to appoint a "law" without wondering what "law". Similarly, there is no reason for a driver to go right or left, but if anyone should decide alone each time meaning circulation, then death on the roads would include millions. Language, custom, religion, law, ethics, aesthetics, ritual are so many forms of human being founding earning an existing order, it will thus be able to frame their action, be it appeal.

To establish the rationale is to allow every human being to harmonize physical finitude of its existence with its inner infiniteness of the universe. Each of us must learn to enter in the universe of meaning threefold contemporary law circumscribing limit: plurality, complexity and transdisciplinarity. Learning these limits corresponds to a culture of reason. To give meaning to contemporary law, it is to understand that we follow the chain of generations, which are tributaries of life, and through this to understand the very idea of causality. Hence the

significance of our title that appears accurate diagonal between two different works: Homo Juridicus. Essay on anthropological function of law, and Judges and globalization. New revolution of the law[4]. Books mentioned are successful Sudi comparative authors make considerations scientific and philosophical intended to express on the one hand, the world of contemporary law from a threefold perspective - plurality, complexity and transdisciplinary - and, on the other hand, new functions of law contemporary arranged through a sieve and fundamental principles of justice, ethics and aesthetics.

New features contemporary law

New features of contemporary law are determined and new functions of the judge by law transmit contemporary influence, but creates law. Such movement of motivation is favored by the dominant influence of law and judicial practices of common law. In this tradition, indeed, the judge is obliged to justify and explain its decision in an elaborate way. This culture gives an important function of narrative and argumentative reasons. Judge common law is used by nature rational interpretation of this exercise, which is sometimes called, especially if the British argument from multiple sources. Judges can actually cite not only of judicial decisions but also teachers or famous commentators. Quoting between jurisdictions is much older and more widespread than in the common law of the Roman-Germanic law. But this argument in detail and justification of the decision is not associated with a form of narcissistic judicial lyricism. Rather, a pragmatic concern to find the right solution in terms of a particular case, judges multiplies arguments, we weigh carefully on the pros and cons and will always by their decision to determine that the right to appear in the best aspect of it. Common law right is not isolated as a set of abstract and general rules: it is guided by the concern from the start of responding to practical problems.[5]

The exchange between the judges when it relied more on jurisdictio than imperium, so that dual meet specific requirements of effectiveness and consistency argumentative, both one and the other strengthening the legitimacy

of the decision. Commissioning report jurisdictions resemble the famous metaphor of Ronald Dowrkin on writing a novel multi-hand 'novel right, "says the latter is a novel collective, a succession of judgments that their function narrative and argumentative, seeking a form of consistency, enriched each time through individual cases to be cut. This is what seems to illustrate the judgment Pretty: Delivered the European Court of Human Rights (ECHR) in Strasbourg on the "right" to assisted suicide, this ruling concerns the decision of English you must evaluate, and citing it Canadian decision itself [Ibid.]. That decision is extracted from Canadian judge's opinion cited above and resumed by the European Court of Human Rights, it is an interpretation of a legal instrument total stranger European Convention of Human Rights (namely the Canadian Charter of Rights and Freedoms). These decisions - Canadian, British, European - will be inside each other, passing through the filter each time judges interpreters. Global reasoning could be defined as a second grade reasoning that articulates in an original manner different decisions worldwide.

If arguments can travel and can detach himself tool that must interpret them - discussion on the Canadian Charter of Rights and Freedoms is resumed just the European Court of Human Rights - this is not only due to the fact that they seek the best solution for a specific situation, but also because they concern "fundamental principles of justice". Such an exchange extends the legal community to what we might call a "community of principle". Community Reference judgments globally is the set of countries whose jurisdictions have the same concern for justice principles, principles that they are able to make them prevail in relation to national traditions and cultures. It is a rational argument, not an argument in fact: the reference to the criterion of "civilization" does not aim to put an end to the talks, but on the contrary, opening the possible arguments against an impossible sliced to judge. The other tradition - the European tradition - is not resumed its universality, but as a singular example that we can expand.

Many references to foreign jurisprudence copy has this status, which is likely to produce a new link between the general and the particular. Motivation,

decision, opinion foreign are repeated, not as a general rule of judgment, but as examples of what has been done elsewhere, in different systems, but considered close enough by their history, their traditions have their habits political and legal . Foreign decisions are like actual achievements of these principles, their concrete incarnation.

To avoid falling into an interpretation ideological principles of justice, must therefore recalled their character regulator and not substantial: the reference to "personal autonomy" to "Western civilization" or "which requires justice and impose fairness" is not a reference to a system of natural law placed over positive rights, but a means to resolve individual cases in the most rewarding as possible. The exchange between judges support this effort "to judge correctly" because the movement decision opens up new possibilities. This is also the only way to make the idea of fundamental rights becomes effective. The fact that these principles are subject to a judgment of values or a subjective interpretation, it does not threaten these references, but on the contrary, reinforces their use in a society that wants to be democratic, open, progressive, centered on exchange, and authority persuasive. So, on behalf of the same principles of justice, the pooling of decisions in a global forum also devotes an approach „consequentialism" thereof: the quality of a decision is determined by reference to the principles they put into practice, but also according the consequences entailed. Therefore exchange between judges, even if it is essentially argumentative dialogue is not yet a scholar: it is to discuss problems and solutions, and not only just to enunciate norms, concepts and doctrines.

Considering the consequences of such reasoning action closer. Judges are vested with a function that forces them to anticipate and measure the consequences of their decisions, which is a political virtue. Decisions in similar cases elsewhere, who have been largely implemented, thus acquire an experimental value for the decisions that they are preparing to decide. When consulted by foreign judges, decisions are henceforth acclaimed both in terms of their purity doctrinal - which the judge pirate often do not know him very well -

and from the point of view on one side of the argument directly comprehensible and, on the other hand originality or effectiveness solution designed. Wring decisions sometimes not only national law and sovereignty statal.

Right contemporary and fall statehood

Whether it is about the European arrest warrant, on international commercial arbitration or about citing foreign decisions, every time, developing the exchange of judges seems to be at the expense of states' sovereignty. Moreover, the separation of judges to the right of performances developed nation crystallizes the main criticisms against what some see as an "international judges". "International institutions supervises and directs negotiated at various levels, laws and international agreements. International non-governmental organizations claim that they represent "global society" or "peoples" of the planet. The regime of global governance is promoted and conducted by interconnected networks of elites transnational composed of lawyers and international judges, activists of NGOs and the UN, officials of other international organizations, directors of international corporations and a few supporters coming from governments of nation states. Transnational progressives, former leftist protesters in 1968, and right MNCs are also part of the elite. However, there are supporters of the "judicial anti globalization" as representatives of the radical left.[6] No doubt that the debate is more complex than it seems. Although everyone agrees on the democratic deficit of this new way of creating law, is it reasonable to believe that we could still reverse course? After all, the values that these judges put them into practice, are they not first confirmed by the constitutions on which they watch? This exchange does not extend the separation of powers enshrined in defining our state law? In fact, the denunciation exchange between judges would be easier if it would not be very democratic source dynamics, even if it had not responded to a logic born of globalization. How do now, to combine political legitimacy, whose headquarters

remain at the national level, on the one hand with the practical need for this exchange, and on the other hand with the desire to have importance in this new global judicial scene? How to conceive democratization of these new exchanges without bullying them, but looking for a way to reintroduce here statehood while the judges legitimacy is questioned?

Where will draw legitimacy of these judges, who are regarded as having a central role in developing a global jurisprudence? The issue is not on the same terms, but depends if we place ourselves under the angle of the political community which yielded these judges, the international community to use an expression consecrated or lawyers community worldwide. These three groups is based on very different legitimacy are combined. Own sphere within the national legal system, in its natural environment, its first gain legitimacy judge there. Legitimacy must acquire international jurisdictions, supranational and transnational combines this primary legitimacy, especially due to the mechanism of geographical representation, each judge being important in its national title.[7]

Magistrates respective importance in the international arena is likely to depend in part on the recognition enjoyed by the country from which they come. Thus, "big" supreme court jurisdictions have more weight than countries without a strong legal tradition or without legal history as glorious as that of the US or Britain. Because Pinochet had wide resonance because the decision emanated from British lords, magistrates among the most respected in the world. Furthermore, this exchange of judges makes sense only if carried out among their peers coming from state law: if, as we have seen, they are not indifferent to issues of political and economic influence, what to say of others? However, they met judges coming from dictatorships or authoritarian regimes that have demonstrated a freedom of spirit and independence that could inspire usefully judges Westerners (eg the first judge Chinese called the International Criminal Tribunal for the former Yugoslavia).

The legitimacy provided internally can be exported to international jurisdictions, but it is not enough. International criminal justice, for example,

requires not only technical legitimacy, so that power is expected from judges is not strictly legal. Considering the matter of this particular international justice, often combined have more powers: judicial experience, of course, but also a diplomatic competence. Elections of judges of the International Criminal Court for example, trying to ensure a balance between judges come from diplomacy, universities and legal practice. The legitimacy that we expect from this Court, whose skills are at the crossroads of criminal justice and international relations comes from the intersection of so many professional culture. Therefore, the state for these international judicial functions, not necessarily just called national judges, but also law professors, lawyers or politicians.[8] Model "formal rational" Max Weber would say, characterizing the law and shall be added and others more specific the judicial world trade. Representativeness, for example. What is not generally seen favorably present the European Court of Human Rights, where each country must be represented, or the International Criminal Court, where each region of the world must be represented. Find representativeness, combined with impartiality in colleges of international referees. It is possible to attempt to compensate defects organic connection with the state by strengthening the procedural legitimacy. Much of the legitimacy of the judiciary globalized also keeps the ability to fix some circumstantial, to propose relevant solutions that will seem more acceptable, as the procedures followed to reach them they will be perceived as fair and transparent. This legitimacy must therefore be permanently conquered.

Community lawyers ultimately generates forms of legitimacy that we might be tempted to qualify as "pre democratic" such as prestige or reputation. Part of the respect enjoyed by a decision taken by the personality of the person who actually pronounced. This is evident if international commercial arbitrators. They very discreet, are elected intuitu personae. They are selected carefully according to their experience, but especially by their reputation. This is the best guarantee that they can offer parties: every expertise, they have to prove their impartiality and justify that deserves its reputation. As the imperium falls, these judges are

tempted to present not only the legitimacy of increasingly rational and argumentative, as has been said, but other special qualities recognized in domestic as well as mastery of international law, openness to the world and interest in other systems or more, the ability to play a role as a cultural interpreter. International criminal court, for example, must be able to translate and interpret an individual drama in terms of globalizing experiences. To achieve this, he must ensure continuity between players, between law and territory, between global and local. In this respect, the position of cultural interpreter incumbent judge is political: it restores social connections beyond the borders of the nation state. This function of mediation does not belong only to judges: it is the fruit of complex activities previously from non-governmental organizations to the procedure itself, through those natural performers who are lawyers.

Primary legitimacy that the judge get in their own country is of course the purest, yet the most difficult to export. The more it departs from its internal foundation, the more fragile. Lawyers French shocked the European Court of Human Rights shall recognize transsexuals will not be relieved knowing that this decision was given by a judge Irish, German, Spanish and Turkish, all appointed legally by their own government. These judges will appear not as illegitimate but as detached from any territory in the state of weightlessness. They may well express on behalf of a community of "civilized nations", however, this community will not have an existence constituted, while nevertheless there is a national political community, which is the recipient of this right and You will have to comply with rulings. This route between a "people" which mandates that supports the judges and their decisions, forces us to ask ourselves this circuit legitimacy, subject to strong risk of collapse because of too many wanderings.

On the contrary, the legitimacy founded on prestige, reputation judges, seems better suited to the world as it evolves horizontally in the same way as "government network" described by Slaughter.[9] It is true that there remains less fragile. Should not actually afraid of a "club effect" and elitist size characterizing these new legitimacy? Self-referential in these practices, there is a risk of

disconnection between those who hold the keys to discourse and those who are faced with realities on the ground. We like it or not, there is an international environment which has its own code, his right of entry, their usages, their caste, etc. Judges expect from a judicial mediation between cultures, but they are really capable of this? Are not they themselves cut off from their own culture? This is all the more important as the trade awaited judicial mediation is not just technical. To be recognized, justice must be felt and lived as a true space mediation. Before acting judges is so restricted: they are required at the same time to master the language and codes becoming more general, while to respond, particularly if international criminal justice, calls extremely precise and concrete.

So here, as in these brief arguments are breaking new features contemporary law: plurality, complexity and transdisciplinary raised the most of globalization law that can lead to the darkest of consequences, alteration to, but worse, the statehood located in a serious decline.

Globalization and the case-law altered

What globalization means right? Rather than a rigorous orderly global architecture, it represents a kind of vast regulatory DIY we are witnessing. By choosing to observe this globalization through the work of the judges, so I tried to evade the passion that approach would involve a globalized too. Best observation area is not so much deterritorialized sphere of trade, as the people themselves, their concerns, their exchange and their new functions. Otherwise, we will not be surprised to see judges dedicating such assemblies, they are legally constitutive divide between the political pact, on which to watch and demands justice to be formalized between "creative forces" of law and states. At the same time public officials and independent lawyers, older performers a right, but a right that debate and the globalized converted requests of private and public interests defenders, judges play interface within globalization.This interpretation of their mandate in terms of "DIY" moderates usual cosmopolitan interpretations. Perhaps it would be useful to make the distinction between the different "high-level cosmopolitanism" and "cosmopolitanism at the grassroots

level." The first term could have considered located in the states of concern if they would be willing to merge into a world state or to join in a "federation of states" intended to resolve conflicts and avoid wars. As for the second, it does not go through this constitution unlikely. Rather it designates a present experience, awareness of interdependencies increasingly more powerful, inexorable, resulting in exchanges but also tensions and oppositions, and that should be given to an ethical sense. This second kind of cosmopolitanism arises field and is distinguished by three characteristics of "cosmopolitanism higher level. First he starts from the particular and not from universal, being built entirely from particular cases that judges are trying to settle in a way as rationally as possible. There is no transcendent point of view to prevail, what prevails is the only confrontation of viewpoints. Sharing judges not base its authority on some prescriptions often saturated universal understanding globalization. He is not the expression of American power. If it happens to inspire national interest, then he must pass through a sieve argumentation and obtain approval from others.

This "cosmopolitanism at the grassroots level" is certainly not insensitive to the antagonisms that exist in any human society, but this is the second characteristic of his that can overcome by putting them in a common language. This is as cosmopolitan as in a paradoxical way: on the one hand he aspires to pacify relations globally, but on the other hand emphasizes the tensions between legal systems between legal cultures. The exchange between judges really combines concern for coordination and struggles of influence. Kant can find the most appropriate formulation of this apparent contradiction: the achievement of a cosmopolitan society is driven conflicts and confrontations, what Kant referred to by "irritable sociability" of people[10]. This cosmopolitanism must finally admit an important limitation: that the political will and the exchange between judges "can not give direct answers to questions primary political scene: Who governs? Where authority lies? Who makes the law become applicable? ». Therefore judiciary remains conditional exchange policy and is unable to trigger this "new world order" or the "common law". If a "common world" really occurs through

these exchanges judiciary, in reality they do not provide any "community", or "system". Various judicial forums allow above all a rationalization of globalization.

Sharing court therefore does not produce anything that can replace national systems or which can establish an international order. Portrait of judges that we can change in globalization can not rally their exchanges that the teleological visions pursue a sole purpose, achievement of universal legal order and therefore a better world. However, «cosmopolitan ambition" characterizing these views about globalization law can be maintained, provided proposing a more nuanced cosmopolitanism, that is based on a law adapted (cosmopolitanism lower level).

It is a vision of "liberal realist" of cosmopolitanism, if we can say so, relying on normative regulations abstract, impersonal and rational, but without appreciation vanguard of a global future. Described the exchange of judges has certainly seductive power of the great post-national theories. He does not aim orders, no unification, and leaves unanswered many political interrogations, which as we have seen, involve other spaces for debate than judicial premises. In this sense, cosmopolitanism to which it leads may seem disappointing. Not only did he remove the power relations between states, but it is incomplete undoubtedly become impossible to complete and about. But there: the judges are exchanged between them and realize a society. And force these exchanges so keep this existence to be taken into account and the character scale, conflict and partly representing their mark which departs from the aesthetic right, but mostly from ethics it and dissociation Maiorescu style the aesthetic of social, ethical policy, that law is still inoperative for study. I thought that after almost 50 years of communism and 26 democracy not going to have the opportunity to meet the "decoupling". To be wrong when he wrote Aristotle ethics? To have lost the compass and world sailing between the two sides - ethics and aesthetics - guided only by Machiavelli?

By the next section I do not propose to bring out the importance of understanding the concept proposed by Wittgenstein to say that ethics and

aesthetics are one thing, but expressing their own opinions I tried to express my ideas that sometimes contradict the words of Wittgenstein, and sometimes argue with he implemented the concepts of perfection. It may be a good opportunity for self-examination and clarification of moral and existential issues. I also regard the question to be asked from the beginning is: If what we mean by ethics and aesthetics, then turn the word explanation aesthetic or exceed the epic scope of understanding of contemporary law?

Ethics and aesthetics in contemporary law

Preliminary issues

Defining clearer (from different perspectives: philosophical, artistic, psychological, historical, legal) of the two fields, ethical and aesthetic but also the specifics of their interaction involves delineation of a theoretical foundation for a concept that allows the values of cognitive and ethical to be interpreted as aesthetic values and presenting multiple arguments supporting the idea that specific report of ethical and aesthetic helps shape personality, influencing the self-knowledge and inter-relational behavior. Right as art reflects moral values but at the same time provide, in turn, moral education that receives the opera lawyer or artist.

Discussing the material to the dilemma on three approaches ratio ethical and aesthetic: moralism (ethical values expressed directly influences the aesthetic value of creation), autonomy (aesthetic value is independent of ethics) and immorality (defects ethical law confers aesthetic value) are some aspects to be examined and critics tooth specialists.

Our attempt discusses human values, ethical or non-ethical, moral or immoral and tries to enrich subjective experience and contribute to the awareness of differences between beneficial and destructive, immoral acceptable between moderate and unacceptability. Possessing relevant ethical and aesthetic merit is why, directly contributes to a diversification emotional empathy and sensitivity to personal development. Right refreshes our register perceptive, reveals what is essential, exemplary or expressive in the world and life, having a

formative educational, preventive and punitive Analyzing interpretations contextual relation between ethics and aesthetics, we seek to reach an agreement as how proper historical context, term, reflects the value of many moral or immoral human creations such as the right. Challenging new research themes that has at its core ethical and aesthetic report, understood as a dynamic source of personal development and modeling complex will facilitate a new approach, transdisciplinary, the accompanying ethical values, define and give meaning to the right.

About Ethical and Aesthetic public perception of everyday language

The explanation aesthetic meaning of the word can generate a conflict in understanding the phrase "ethics and aesthetics are the same". The explanation starts with "what produces pleasure." On the one hand we have public perception that produces aesthetic pleasure through understanding, through ethical and rhythmic thinking of various forms of life[11]. On the other hand, we experience pleasure aesthetic attitude that causes beyond their understanding, generating effects and follow conscience in the form of "non-sense" sites. How can we have a sense of something unethical? The explanation depends on the meaning of the word ethical form of life and our culture that puts ethical concept, in a certain context. Why we need language? In order to communicate with other people? So that we can reconcile, even when we disagree?

Ethical express logical thinking, constant rhythm of the human mind generated by its fundamental laws unanimously accepted. Life form perceive and understand the world through their own language sphere. Besides we propose two major questions: What is the explanation of the meaning of the word "pleasure"? And beautiful is a matter of taste, or a matter of language? The natural thought, man tends to regard self-evident explanation of the word "pleasure"[12]. It is beautiful love or what love is beautiful? This is the most common remark on this concept. Regarding the second question of personal taste, in fact, it is a matter of public language. Which produces a language understood by the game, love, and what comes out of logical thinking, generating

nonsensical causes discomfort, that discomfort. Therefore, "what produces pleasure" should generate a language understood by the public transmitted[13]. In order to be understood, "language game" go through the filter of their own beliefs and values generated by the life form of the person receiving the message transmitted. If these values differs from the language context of the game, there will be a sense of understanding of mental cramp. The phrase, "everything in sight" captures only those generally accepted meanings of all life forms such as for example: What love is beautiful, and what is beautiful, love. But the explanation meaning of the word "color" or "red" color implies a feeling, a sensation of red, how perceive as taste, smell, vision, touch, mentally? If a particular color is perceived differently by their filter values of a life form or another, how can it generate the same meaning within the mental knowledge of the receiver? Maybe just associate that color with something familiar with a known value, as close to its own system of knowledge. Such a combination may mean by ethics.

What happens to those who build right? They may have an aesthetic attitude? What is the meaning of ethics and aesthetics for right? How to merge the two concepts in their view? Take the case of actual judge. To judge aesthetic is taught by ethical beauty is primarily a matter of technique. What you like, like that behind this whole pleasure is a refinement of the technique. When the technique is accustomed meaning and pleasure is by ethics goes beyond ethics and aesthetics then becomes something else. Through its judgments can attract litigants by these two methods by something that is aesthetically namely form, dynamism, harmony, but also by so-called "tricks" of art that produce a feeling of satisfaction. To judge it is hard to accept this combination of ethical and aesthetic concepts that become the same. Judge learn technique, he expressed by ethics but play with her and manages to exceed[14]. Ethical and aesthetic are two concepts that attract and lead each other, and sometimes wins this confrontation ethic other times aesthetics, but most of them are dependent on each other. To better understand the unexplainable, that by merging the two concepts,

produce rhythmic impact on thinking, we try to find explanations for ethical and aesthetic essence of living. We assume ethic is mind, thinking rhythmic language understanding and aesthetic essence is the divine breath revealed by experience. Will produce a language game will start in the mind to realize their own condition. We can correlate the act of feeling and utterance, the act of having an aesthetic attitude? Unite them somehow? Devine ratio of aesthetically and ethically the same as the utterance and feeling? Feeling beautiful is it consistent with the meaning of the word beautiful explanation? Can we talk about a civil code Shakespearean play such a masterpiece? November somehow overcome the sphere of knowledge through written language? Or we are subordinated understanding and leave to chance the body side acts? (Hand movement, breathing, heartbeat, blood pulsing even lip movement and vibration of vocal cords when talking long as lawyers prepared their arguments for their cause).

Directly, we start from the premise that what is said and thought, equally understanding. Nothing can affect the inner rhythm of the music that has a resonance through what was "given" and feeling. Narrated in the wording of the world, are data that can make the connection between what is written and what is said. Pleading with writing the note substrate is now nonexistent. I find the courage with which leads to uncertainties secret world based on understanding rhythm. The space in which language operates inner spirit world is undeniable. The concept of existence in the world, the effect of the allegation and gender bias, between ethics and aesthetics, between the mind and experience. Knowledge tends to new opportunities in clarifying the true good (beautiful) and the dichotomy that exists in himself and the ability to give vent to emotions, produce aesthetic attitude and generates a break in rhythm mental comfort in the context of weightlessness divine voice. They are simply presented below. Inability to understand their likely lead to mental discomfort and produce a mental cramp, leaving to confuse what is real with what is unreal. Immateriality bring out the inner spirit and anxious direction this road leads uncertain. Fighting triggering

adverse reactions highlighted the inability to say what happened and heard. The Private becomes public and combat the said leads to nothing, they occur after denotation explanation and reversible. Yearn for meaning accessible to everyone and go into the unknown, in the world to make the word to lose its usefulness. Need to know to possess an unknown world to undo minds and fight with him. Long-debated issue of routes aristocratic thinking, creates the foundation, principles of humanity and acquire a meaning worthy of being heeded. Ethics can not give an explanation to something that may not have understood the language sphere. If the world would have known as it really is, I did not care for tomorrow lead the existential needs what we do know and feel that we are living. Fighting a world that must be accepted and played in its authenticity, destroy everything that is beautiful and wonderful in it. Especially as baseless mirage things, produce a mental cramp and leaves the reader to enter their own existential concepts in his explanation, beyond the sphere of ethics by aesthetics. Finally, after these words much philosophical flavor to a halt in the concrete world of contemporary law rooted in the aesthetic normal, but located too far from the shores of ethics.

Ethical and aesthetic in contemporary law

The codes and laws are best seen core ethical law, which is what remains standing even though his magnificent aesthetic is canceled slouch. And, while it came, surely you've heard about the relation between ethics and aesthetics in many jurists; whatever meaning, this does? At first glance, joining the epic aesthetic in law is called the sonority of two words, made as if to rhyme and urge games postmodern, as are the letters of a word are put in brackets because if you pull out into another word. In the second plan, talking about ethical and aesthetic thought immediately takes us to the character of the legislature. The report ethical-aesthetic seems that it is, in fact, the relationship between nature and nature legislator law. How I love to judge people, this is the plateau on which to install, comfortable, most of us. From this level, some say it does not matter at all what the author as a man, it's important work! We, the Romanian legal culture,

a huge list of great artists who were, excuse the expression, like jerks. Some suggest, in such cases, separating the work of the author. Others, however, believe that a compromise author can not have a valid work. To their credit, we had in our legal culture and some of those who could match their great creation as a character. Those who, being impeccable as people could not be more aesthetic than mediocre plan hardly talk, just remain in the collective memory for great successes and great failures.

Finally, a third level of discussion about ethical and aesthetic message related to a particular work, be viewed individually or as part of a broader creations. For instance, today we agree that, in relation to ethical, legal legislature Romanian products, like all products made for propaganda purposes legal electoral failures are not only aesthetic, but also ethical failures. The law, therefore, always has an ethical message. Not everyone agrees with this, but those who practice the right judgment and ethical criterion, combining thus the ethical and the aesthetic. Any creation, as, moreover, any man does, is both ethical and aesthetic, it can be very easily measured and ladder play - ugly and scale well - sorry.

All these approaches, however, seem superficial, however. Have a tabloid (in the case of character judgment author) and a simple, elementary school (if judging ethical code of the message). The most interesting perspective of ethical-aesthetic ratio seems to be that the moral probity of the author, as seen in his work. Ethics is a law made by the author that's being put on the table and working with her. Is more than sincerity is more than serious. It is, very small, our creator repetition of gestures, that of God, who built his creation through the sacrifice of his Son. For we who have no vocation or creative experience is perhaps more difficult to understand, but that work ethics is that the creator makes the pieces of it. When the pulsing heart of the opera is the very heart of its author, then we have a work ethic like no valid too happens in our case, the Romanian legislation.

We have in mind here, primarily, confusion and failures in justice, they bring decisions of the Constitutional Court of Romania (CCR still) which declared unconstitutional several articles of justice codes. Then, to clarify the role of the Public Ministry is a ministry without portfolio, or part of the Executive - which would be desirable under current conditions - or be completely removed under the umbrella of Executive power. Then it has clarified the issue related to CCR, how to report, through exceptions of unconstitutionality in the courts. More specifically, what happens for a long time to CCR: intervenes High Court of Cassation and Justice of decisions given in the interest of law or, more recently, on matters of dispensation of law, after intervening CCR on the same issue and decide another way. You must decide, remains the High Court that unifies the practice courts and to pronounce judgment on matters of actual or CCR remains, by specific means? *Exempli gratia*, more favorable criminal law, the High Court through a complete have to rule on a matter of dispensation of law, ruled in a certain way. All courts, by law, had to take account of that judgment. CCR subsequently settled and changed it and said no, taking account of the whole package institutions in code and when the amount is shown as it is favorable or not.

The problem is that such interruptions occur that confuse not only the judges, but also individuals, because man does not know what to report. This is one aspect. The second is that we have a big problem about how codes were drawn civil, criminal, civil and criminal procedures have a problem with the CCR. Sure, we should respect the decisions of RCC, but the result obviously for us citizens is that courts are disturbed roles. Another concrete example, the camera pre - judgment in chambers, an institution organic law adopted by Parliament. That project was very long public debate. Preliminary chamber judgment in chambers not cited parties nor the prosecutor. It examines the legality of all the evidence by the judge to ensure rapidity, after which the judgment, where all parties have access. Pre-Trial Chamber it was thought to be an antechamber to the proceedings, to a speedy trial and the process itself to achieve a result. He

came CCR and said it's not constitutional that preliminary chamber without summoning the parties, which meant a strain on excessive role of the courts, and lost time for citizens, injured parties to civil parties, because they are called upon once again the trial. Thus was born an institutional issue. It is clear that these institutions either did not work from the beginning and were not thought out well and we have to see why.

So often there is a problem in how these new institutions have been created, or we have a problem in the interpretation of them by CCR. Eventually CCR belong to this society, it must be integrated into all previous discussions occurrence of such laws and should understand the mechanisms that led to a legislative solution. I do not know where is the truth, but the revision of the Constitution, can find solutions which we take from RCC, give the High Court, especially since judges are political appointees from the CFR! How to do this filter so as to reach a consensus because it must function codes and codes work when not appear serious consequences such as remoteness ethical idealism, which otherwise is very tied in terms of good. Wave erosion and regulations and infringement of fundamental principles of law have brought us to the point where we are now. In this small desert rhetorically, are nevertheless an important idea on good law, a shadow analysis can argue with that. It is about reinventing jus cogens rules that can ensure availability to sociality and solidarity.

The role of jus cogens in contemporary law

Preliminary issues

States now recognize the existence of mandatory rules, as otherwise recognize the need jus cogens legal regime established to be universal and exclusive, with no possibility to derogate from it by agreement inter se. Compliance imperative, however, is an important step in the evolution of international law, because it marks the establishment of a core of international law binding on all states, a set of principles and rules that states can not derogate between them.[15] Therefore, we aim to emphasize the importance of mandatory rules under international law, provided that he can not be considered

a autistic to the evolution of international relations and, even more so in light of the events of the last period characterized by intensifying armed conflict in spaces increasingly extensive negative consequences for humanity, including increased scale migration, and secondly to demonstrate the need to respect the rules of jus cogens, given that there are remarkable differences in terms of socio-economic development of states, that difference can generate the best idea wins. Moreover, you can not do right in its content without mandatory rules, for then it would not longer be entitled, but would only be moral. Consecration of jus cogens institution is the direct result of social development and history. It thus requires international cooperation, which, due to its complexity, is conditional on a minimum of order and legality in international relations.

Jus cogens again about

Mandatory rules, jus cogens are today recognized in both the theory and practice of international law[16]. The authors have specialized demonstrated and explained the existence and states have accepted and confirmed the conventional practice. It seems logical to start - the definition of jus cogens - the definition in the Vienna Convention on the Law of Treaties, namely that "a peremptory norm of general international law (...) is a norm accepted and recognized by the community international States as a whole as a norm from which no in derogation and that can not be modified only by a subsequent norm of general international law having the same character.[17] " References to mandatory rules are in Articles 66 and 71. Mandatory rules, jus cogens norms are primarily of general international law. They look so legal relations arising between the member states of the international community, which, in turn, those rules were accepted and recognized as being so important that it does not derogate from them in relations inter se. It is also worth noting that a rule of this kind can not be changed unless it is accepted and recognized in the community of States as a whole, another mandatory rule regarding the same matter. Relying on the definition in the Vienna Convention (1969), "Dictionary of Public International Law" gives the following definition for the concept of *jus cogens*

gentium: "Latin phrase meaning international law imperative, designating all the principles and norms of international law Universal valid binding on all states, so that their agreements are not derogate from them.[18] " The existence of a universal international law necessarily implies the existence of an international legal order. But as any legal order requires legally binding rules along with the suppleness is understood that international law contains such rules that doctrine defines them as "standard that is not allowed any exemption conduct which provide the only possible "[19]. The issue concerns the definition of mandatory rules increasingly more. Interest in this issue is legitimate, because emphasizing the importance and expansion of jus cogens corresponds to the stage of development of international law in the contemporary era, a law intended to defend the peace and freedom of peoples to distinguish it qualitatively from the international law of historical epochs earlier[20]. Regarding the significance of the concept of "mandatory rules", it seems most appropriate to describe those rules by their importance for peace, sovereignty and independence of states do not allow any derogation; so jus cogens would designate all existing mandatory rules.[21] If the law by mandatory rules means the rules from which no derogation by contracts between subjects of law, not about violating those rules by unilateral acts of the subjects of law, but an attempt to establish - by contract - a legal regime different from that required by those rules, in terms of international law, they have expressed opinions that mandatory rules should be defined not only in relation to agreements derogatory, but also report any violations of these rules.

Rules of international law, whether mandatory or devices, binding and their violation entails responsibility of the Member guilty. Unilateral acts contrary to these rules shall not derogate from the rules of international law, but are by definition unlawful acts. You have made the necessary distinction between violation and derogation of international law, because if the exemption at a time automatically implies the formation of other rules - to the more restricted whereby the parties agree to create a legal regime different from that in force under more

general rule violation occurs - usually - by unilateral acts.[22]

The notion of mandatory rules can be defined in international law as in law - according to the rules restricted nature. Speaking of acts contrary to international law, they are unlawful acts and is not derogate from these rules; their recognition or acceptance of their effects by international law topics can be conducive to the formation of an international agreement or a custom character confined to derogate from these rules[23]. The object approach to scientific research is therefore the mandatory rules (jus cogens) in the sense of rules binding on all subjects of international law and from which they may not derogate between them. So, what encompasses the peremptory norm of international law is the same as in law, in terms of legal technique: the prohibition of derogation in relations inter se. It must not forget that the beginning of the new millennium significantly influenced human society was characterized by fundamental changes in the structures of both the European continent and in the world. All these changes have caused, searches and elaborations us, considering that a new concept should be defined a new strategy should be established. In these circumstances arise and new meanings of the concept of jus cogens. This is more alive and more necessary than ever, given that there is serious violations of human rights, ethnic or religious harassment or influxes of migrants.

We believe that the new meaning of the concept of jus cogens is revealed precisely in that concept and should be a powerful magnet to gather people together, which should underpin a human community based on the forces that unite people and not its split

Jus cogens role in the international legal order

In the absence of public authority powers legislative, executive and judiciary through which to adopt legal rules and to enforce their binding force of international law is based on the agreement of the Member manifested in a double sense. Members of the international society due to their common interests resulting from relationships of interdependence, accepts in principle that a body of rules is absolutely necessary to order them conduct. Only through a

system of mandatory rules can avoid such situations of anarchy that would prejudice the interests of all. Starting from this premise, the Member shall jointly and their agreement on concrete rules of behavior in various areas of their relationship. Binding of these rules thus derives from the will of states, as the carrier of sovereignty. This agreement is the creation of and respect for international law[24]. It is unlikely that states will adopt rules contrary to their own interests or intent to infringe. Exposure with the way the agreement will, in theory was emphasized that States must not always express consent exposed to every rule of international law. The consensual nature of international law envisages the consent of the Member States of the international society at a time on the set of rules that form the international law of that period. Thus, the new Member appearing in international society, they are, in principle, enforceable international law in force at the time of their occurrence[25]. In contemporary doctrine stresses that freedom of action of states in matters considered part of their national jurisdiction, as the general problem of their freedom of action internationally, derives from international law and not an affirmation of discretion of each state. Thus, the establishment of specific rules of behavior between two or more states can not be achieved only with the observance of principles and rules essential for the maintenance of international order[26]. An example in this respect is required standards of contemporary international law in guaranteeing human rights and fundamental freedoms.

In developing a rule of international law, establishing consensus on certain regulations states of their conduct, it is clear that more powerful states will try to steer the process towards convenient to their interests. It thus appears that international law is nothing more than a simple transposition into alleged international legal order, relations of power and, ultimately, economic force and military state or group of states that have influence on will only seemingly autonomous states that have such a force in a lower grade. It is true that until early this century rules of international law expressed, predominantly, the interests of member who could impose their position weaker partners, reflecting

the power relations and the primacy of international law over international politics. With the development of international society and as a consequence of multiple interdependencies between states, recorded the existence of common interests and values of the international community, whose promotion and application could not do than by rules of law. At the same time, the rule of law once adopted gradually gaining a life of its own, which in political terms is hard to ignore even by countries whose interests may be harmed as a result of the application of this rule. In this regard, we may cite, as an example, entry into the UN Charter, the Western states at the end of the Second World War, the concept of "right of peoples to dispose of themselves," which served later as a legitimate legal basis and the process of decolonization, with direct consequences for the interests of many supporters of this right. It follows, therefore, that international law is not only an instrument of international politics, a way of formalizing Internationally, the foreign policy of countries, but also a determinant of their behavior, once the rule of law has been agreed.

Incidence policy, the specific interests of various countries, in particular the powerful, the law should not be levied only on the individual scale, depending on everyone's foreign policy, but also globally, the international community of states. States are forced to cooperate in the development of rules of international law on the coordination of their economic exchanges, supporting the growth in the less advanced environmental protection, combating terrorism, the issue of refugees etc. In these circumstances, international law no longer appears as a transposition autonomous, plan legislation, certain hegemony in international relations, but reflects, rather, on the one hand, common interests which unite the subjects of international society and, on the other hand contradictions and antagonisms manifest in international society as a whole at a time.

The binding nature of international law lies in their authors' decision of which lies in the foreground states to respect them and to provide them binding. From the moment a rule of international law is justified in terms of the interests of the whole international community and is respected as such by the international

society members, compliance with which is not based primarily on coercion, sanctions. Moreover, in any legal system, not the foundation sanctions compliance, but consciousness subjects of law that such rules deriving necessarily from social well-defined commands.[27] The use of sanctions occurs when a state commits an act or an illegal from the point of view of international law, against another state, or when the unlawful act resulting from a violation of a mandatory, considered the category of international crimes. Normative restore order after the occurrence of violations of the rule of international law, raises at least two questions: Who qualifies as an act or fact is illegal and who is empowered to impose a penalty and what kind of sanction against the State violator of the rule. State finds victim and prove the unlawful nature of the act and can go to penalties. The assumption is violated when a norm of *jus cognes* category of international crimes is in the interest of all states to take appropriate measures for mandatory rules to be respected.[28]

Regulating relations/international relations between states by norms of international law to promote a specific behavior of all actors comply with those rules of international life. This conduct proper legal relationships between subjects of international law - a legal requirement in the first place, but also a moral exigency - the primary aim of legal regulation in this area, "the rationale of international law."[29]

By their purpose any acts contrary to mandatory rules aimed at them, so as to exclude any deviation from the legal regime that it creates. They have a specific prohibition of any derogation and derogatory nullity agreements meant to ensure the prevention of acts contrary to these rules, as they are all the more serious since this violation of norms.[30] Also, another effect of mandatory rules is to prevent the formation of rules of customary derogatory nature regional or bilateral. It makes sense to be so, for admitting it the existence of derogatory legal regimes, such regimes can not bear the way custom. Acts of violation of mandatory rules by some states will not lead to the formation of customary rules restricted derogatory. The existence of mandatory rules requires the belief that

states have an obligation not to derogate from it, so even if two or more states would violate repeatedly imperative norm, they could not attribute legal conviction that characterizes a rule of law.

The question is what effect a mandatory novel over international agreements and customs in force when this rule is established. It is of course impossible to admit coexistence imperative norm with opposing legal regimes. So that after formation of the new mandatory rules, treaty or customary norm is - in reality - derogatory, although they were previously set. In these circumstances, the treaties will turn off automatically, as customary rules. This automatic extinguishing both treaties and customary rules have become derogatory takes place by virtue of any repeal, for repeal is based on intention (declared or implicit) of the parties expressed in training when the new rules. It occurs by virtue of the binding nature of the new rules of general international law. In accordance with Article 53 of the Convention on the Law of Treaties of Vienna in 1969, "A treaty is void which, at its conclusion, it conflicts with a peremptory norm of general international law". So we notice that the sanction for non-compliance is imperative agreements derogating nullity of agreements. As is known, it is a nullity sanction applicable legal acts (in our case Treaties) that ended with violation of the law; therefore it either does not exist in terms of the law, whether they have legal validity and therefore not binding on the parties within the meaning of the Treaty. Nullity is classified in the doctrine of international law as the most serious crisis that may strike an international treaty. If Treaties conflicting with a peremptory norm of general international law is a case of void that can not be covered. Compared to the vastness of the problem and not exhaustive title enunciative our approach, reasons to complete scientific research techno editorial understand by concluding some feedback.

Conclusions

We need law? As a whole functions and its core values ensures the right uniform and universal respect for and protection of institutions and values which society attaches key importance to its progress, for its very existence. These

rules have a special significance for a community made up of a large number of sovereign states bound by international treaties; they necessarily derive from the requirements of maintaining peace and security, development cooperation partners range between equal rights and sovereign. Consecration law and its consequences is the direct result of social evolution and historical transformations occurred in international relations that lead to changes in contemporary law, and his doctrine.

Law doctrine implies a set of shared values and principles, which recognize the two concepts, the transcendental or iusnaturalistă and the positivist and instrumental, and preservation areas of autonomy for each of the two streams integrated with the consequence of creating reports complementary or divergence, making it necessary in both cases, internal dialogue. The pull of the law is rooted precisely in the most important doctrinal diversity. A monolithic doctrine is incompatible with pluralism attitudes and choices of the human spirit.

Keeping individuality of each concept is not only a doctrinal justification, but a strategic one. But in the absence of a set of values and principles that underpin contemporary law can not ensure consistency of a vision of the common future, no unity of doctrine that wants to implement such a vision, especially if it is a court. It is not essential that these values and principles to be reflected equally, convictions and beliefs of all those who share that vision and all members of society, but it is necessary for them to regain at least some of these values and principles, and the others consider them acceptable, be compatible with their beliefs and their beliefs.

In this regard, owing to its complexity, international cooperation is conditional upon a minimum of order and legality in international relations. Under these circumstances, the right of structured Western societies, and this relationship founding need to rethink the new terms of globalization, as in the case of the EU law, where such an approach, if it could replicate selected EU countries, we have 28 the little individuality and Europe with common values and without a community spirit. In fact already been moments of crisis have

highlighted the role of the Council to the detriment of the Commission, the intergovernmental so at the expense of community, although others would say it has remained the dominant legitimacy to the democratic choice "of unelected power" in reference to the Eurocrats and EU officials.

In these circumstances, structured contemporary law between plurality, complexity and transdisciplinary, ethically and aesthetically, was and probably will be to everyone's attention, as a matter of utmost importance. I felt that now, on current law. And I confess, I could say that I am, like most, a mid-level lawyer interested to learn new things that I would facilitate research work. But I am concerned about my safety and my fellows. It would be hard if I lose it or if any tyrant would block my work. And if they happen to leave right into the wrong hands? Therefore I turned to writing, to understand what will be the world's decision makers. I did not enter here into the details of a future project, we wanted to emphasize, however, a work of a man approaching normality desired and initiated a series of debates, including through this material, with sales advisory of current opinion different to correct any inaccuracies.

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The contribution of local public authorities to perform the tasks, which were settled out in the EU-Moldova Association Agreement

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Abstract
Legal status of the staff from local government, which is well defined, provides these public authorities efficient governance.
Purpose of the present article is to study the normative acts and the literature concerning of the legal status of persons of local public authorities, for based on the analysis to make some proposals for improving the Moldovan law on the modernization of the activites of the staff from public local administration.
Keywords: *local public authorities, association agreement, reforms*

After the collapse of the Soviet Union, Republic Moldova became an independent state and the Constitution, adopted in 1994 abandoned the socialist regime of the government with the transition to a democratic regime based on market relations. This change could not be achieved only through a whole series of reforms in all fields of the state activity: political, legal, social, administrative, etc. For this purpose, have been developed the National Strategies, laws and other normative acts to ensure implementation of reforms in public administration.

In this context, were elaborated and implemented new principles of public administration, in general and local public administration, particularly, arising from provisions of the European Charter: autonomous exercise of local power, a document ratified by the Republic of Moldova on July 16, 1997[1].

Moreover, the Republic of Moldova has chosen the path of European integration, which has accelerated the process of democratization but, Joint Action Plan EU – the Republic of Moldova from ENP, from February 2005 contributed to the gradual economic integration and political development and social-economic development of our country. Cooperation has manifested itself in multiple areas of common interest, including in the areas of good governance, justice, freedom and security, trade integration and enhanced economic cooperation, political framing in the labor and social, financial management, public administration and reform of public services, institutional development, poverty reduction and sustainable development. Consequently, cooperation has changed for the better image of public administration and improved relations between them.

Meanwhile, based on European requirements, it was drafted a new legal framework for regulating public administration, under the new democratic principles, generally recognized, which contributed to the improvement of relations between government and civil society by creating a climate favorable of its manifestation.

These and other changes wrought to the government in Moldova, represent a positive trend and constitutes roughly a size that synchronizes with the process of democratization and gradual adjustment, although incomplete, the government of our country to European norms.

To implement the provisions of the EU-Moldova Association Agreement: "... *the development of an efficient and accountable public administrations* ...", according to the National Action Plan for implementation of the Agreement [2], Moldova will develop a range of activities the governance both at central and local level in various fields. The most important domains are: *"institutional development and functioning of public authorities to ensure the process of decision making and strategic and effective planning, participatory and transparent; modernization of public services, including introduction and implementation of e-governance, in order to increase efficiency of service*

provision for citizens and reduce their costs; creating a professional body of civil servants based on managerial accountability principles and the recruitment, training, assessment and their remuneration, carried out in fair and transparent conditions; effective and professional management of human resources and career development; promoting ethical values among public officials".

The most important activities that must be undertaken to achieve these administration tasks laid down in that plan are: *"adjust the legal framework to constitutional principles on local autonomy and decentralization of public services, as well as the European Charter of Local Autonomy; local public bodies competencies review of the first and second level, in accordance with the principles of decentralization; developing an effective mechanism for transfer of local authorities competencies based on administrative capacity of communities; application performance management system based on objectives (public authority, subdivision, public servant) and performance evaluations at every level: modernisation of public servicies, including introduction and implementation of e-governance; coordination, monitoring and evaluation of implementation of personnel procedures in public authorities: monitoring and evaluation visits and reports elaboration; ensuring transparency and increasing access to vacant public function using governmental portal www.cariere.gov.md; implementation of all instruments of financial motivation of civil servants (advancement on the salary, performance, suppliment for collective performance, annual award); elaboration of the Programm of Professional staff development from central and local public authorities for 2015-2016 years; advisory necessary support for leaders of public authorities, civil servants from human resources services, on the implementation of procedures/tools of , human resources management; takeover best European practicies in the domain: organization of training courses attended by partners from EU member states; ongoing study visits, etc*".

In this context, we should mention that the Moldova-EU Association Agreement establishes both general tasks for the whole public administration, and, specific tasks, realization of which related to local public administration.

Within general tasks, we can mention: *" continuation of public administration reform and capacity building of civil servants accountable, efficient, transparent and professional; ensure effectiveness in the fight against corruption; policy development and reforms in the Republic of Moldova; development of a modern public financial management in Moldova, which is compatible with the basic principles of EU and international principles of transparency, accountability, economy, efficiency and effectiveness; improving and systematizing regulatory documents related to budget systems, accounting, treasury and reporting; near the existing procurement practices at EU level; improvement of the internal control system in state and local authorities, taking into account, generally accepted international standards and methodologies and EU best practices; implementation of external audit standards accepted on the international level by the International Organization of Supreme Audit Institutions; development of adequate financial inspection that will ensure adequate control of revenue and public expenditure; regulations adapting in the financial services needs of an open market economy and ensure adequate and effective protection of investors, etc".*

But, the commitments of our country through the Association Agreement, which have direct impact on the functioning of local public administration are as follows: *"tax reform and strengthening of good governance in the tax area with a view to further improving economic relations, trade, investment and fair competition; improving and developing the tax system and tax administration in Moldova, including collection and control capacity building to strengthen the fight against tax fraud and tax evasion; administrative capacity building at local level in the planning, evaluation and implementation of agricultural policies based on the exchange of knowledge and best practices related to rural development policy to promote the economic well-being of rural communities; promote the*

modernization and sustainability of agricultural production and improving the competitiveness of agriculture, efficiency and transparency of the markets; sustainable development and greening the economy by developing a comprehensive strategy on the environment, regulating the planned institutional reforms and the division of powers in the environmental management at national, regional and municipal level; development of sectoral strategies on air quality; water quality and water resource management; waste management and resources; biodiversity and nature protection; industrial pollution, industrial risks and chemicals, noise, soil protection, urban and rural areas, eco-innovation, including timetables and benchmarks defined in terms of implementation, administrative responsibilities and financing strategies for infrastructure investment and technology; develop and promotion of local tourism by strengthening a competitive and sustainable tourism sector while respecting the integrity and interests of local communities, particularly in rural areas; decentralization of decision-making from central level to regional communities and enhancing of the partnerships between all parties involved in regional development; involving of local and regional authorities regarding cross-border cooperation and regional development, improvement of the legal empowerment, capacity building and promoting cross-border, regional, economic and trade networks; implementation of regional policies, governance and partnership on many levels, with particular emphasis on the development of disadvantaged areas and territorial cooperation; developing the capacity of local public authorities to promote cross-border cooperation in accordance with EU regulations and practices, to ensure the economic welfare of local communities and homogeneous development of the regions; European territorial cooperation with regions of the Eastern Partnership with the EU bodies, including the Committee of the Regions, as well as their participation in various European regional projects and initiatives, etc".

As we see, the tasks which our country has taken in the process of European integration, are as diverse as complex, but, the successful

implementation thereof, depends largely on the efficiency of all categories of staff within public administration, both central and local.

At the same time, these tasks depends on the integration of Moldova into the European Community, because, all countries, which aspiring to its membership, must submit to strange reform of public administrationf for to meet the membership criteria imposed by the Treaties of Copenhagen and Madrid. Also, candidate states have the task to adjust national legislation to EU legislation.

According to some authors, public administration in Moldova will be European brand, in the direct sense, and will be supported by these structures under the complex system of organization and state management will serve as a foundation for the successful implementation of the principles of decentralization and local autonomy, the main elements of the progressive forms of disposition state [3].

We support the view prof. Manuel Guţan as the public administration, through its fate, is permanently connected to socio-economic and political changes in society and thereby permanently ready for reassessment and restructuring components and even its general principles of organization and operation. Therefore, we can say, without generalizing, that public administration is consistent to its mission to satisfy public interests by the most useful, rapid, and efficient new mechanisms, levers, institutions or principles. Legislation applied to public administration is in constant motion and involves a constant search of the quality of administration. From this pragmatic perspective, any other values are relative. Pragmatic vision, exclusively synchronic, focusing on a constant juggling with legal institutions, which outlines the public administration as a whole, is threatened, on the one hand, the danger of irrational legal import. In both cases, it can flagrant neglect clerical body's ability to respond competently and efficiently to institutional transformations designed in the law abstract. It is true, however, that a legislative building is not achieved by the ability of "absorption" of it in the application and enforcement of the right. But

legislative building should be interested in detecting and removing obstacles that could make that process a failure [4].

Therefore, the contribution of LPA in the process of European integration is indisputable but, the efficiency of local public administration, in our opinion, depends very much on the professionalism and legal regulation clear to each staff within these authorities (elected officials, dignitaries, official public employees), which currently requires modernization.

This is argue the necessity of forming a network of faculties (schools) of administrative sciences in our country. As an example, schools of administrative sciences serve from the European Union.

From this point of view, it is important to pay attention to the training of personnel from the local authorities, so that they can exercise local function effectively. This is possible, in our opinion, by opening at the State Universities, apart from Bachelor studies, Master and Doctorate studies in Public Administration specialty, the different types of courses both for preparation of local elected officials and local civil servants, granting several budget places in the creation and development of local professional body of civil servants, stable and impartial.

Referring to adjust the legislative framework in the domain of local public administration, we welcome, systematize all the documents in this area by developing a code, for example, Code of local bodies, after the French model [5], ie encompassing both substantive rules and procedural and regulate this area as a whole and contributing greatly to the improvement of local government activity. Much simpler it would be if we could found all provisions related to the organization, functioning, powers and jurisdiction of the local government staff systematized in a single act. This Code, further, will enable local institution in a particular branch or a sub-branch of administrative law – Law of local authorities, deeper study and improvement of rules that right.

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Respecting the right to private and family life of Roma and nomads in European Union

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Abstract:
Situated at the "edge of the society", Roma citizens did not represent in the collective conscience the example of a disliked society, unorganized due to poverty and humiliation, but a society with a high degree of internal organization, autonomous. Though the majority looks at their way of life as not being compatible with a "normal" life and all the less modern, it is specific for many Roma communities. It is rather considered a way of surviving than a way of life itself, where modern society is tolerated or ignored to a certain extent.
Keywords*: discrimination, roma and nomads, human rights, forced sterilization*

Discrimination, as an explicit behavior of biases represents the negative attitude based on a person's group belonging. Social stereotypes as the ones imposed by the ethnical, race, economic or confessional status are the foundation of social discrimination [1]. It is a well known fact that a great number of stereotypes maintained by the dominant groups (the majority) imply that minorities have a disadvantage because they are made up of people who are lazy, non educated or less motivated to work and make an effort. The majority's discriminatory behavior with the disadvantaged groups is often justified by these stereotypes. As a consequence, the disadvantaged groups are interested in both fighting discrimination and the biases and stereotypes justifying these discriminatory behaviors.

And yet, why are the Roma citizens discriminated? Roma citizens are seen everywhere in the world as a population with an inferior status related to whom, the large population displays a more or less negative attitude to a different extent.

Situated at the "edge of the society", Roma citizens did not represent in the collective conscience the example of a disliked society, unorganized due to

poverty and humiliation, but a society with a high degree of internal organization, autonomous. Though the majority looks at their way of life as not being compatible with a “normal” life and all the less modern, it is specific for many Roma communities. It is rather considered a way of surviving than a way of life itself, where modern society is tolerated or ignored to a certain extent. But the main condition is still as follows: they shouldn’t disrupt too much the “normal” social life or disturb too much.

Forced sterilization of Roma women

From the beginning of 1970’s under the influence of the Eugenics considerations of the late communism, sterilization as a method of birth control was a measure of the national and regional policy disproportionately promoted within the Roma community by the social workers. These parctice represented from the beginning a worrying issue concerning human rights raised by the dissident Czechoslovakian group.

After communism fall, the new government stopped financing the promotion of women sterilization as a birth control method. Even so, some health department professionals acted against the law, not ceasing to practice sterilization of Roma women without their complete and informed agreement, in the post communist period both in Czech Republic and in Slovakia. Cases have been also identified in post communist Hungary.

This practice aimed mainly the Roma women. During communism the social workers aimed the Roma citizens living outside the society, whose families were considered as most likely to contribute to what it was called “a raised and unhealthy birth rate”. In the post communist era in Czech Republic and Slovakia social workers were not involved anymore but a recurrent script involved doctors sterilizing Roma women either during or after their second C- section. In some cases the consent was not expressed at all for the surgery to be performed. In other cases, women’s signature was obtained during the birth or just before the

birth, during the partum, in circumstances of possible intense pain or stress for the women. Another set of cases involves the agreement given upon a misunderstanding of the terminology used to describe the sterilization procedure, sometimes using false information and/or lacking explanation of the side consequences of sterilization or complete information concerning the birth control alternative options.

Frequently, mainly during communism, the social workers placed pressure on Roma women to choose sterilization, including material incentives or threats of stopping the social benefits (such a case was reported in the Czech Republic in 2007). In some of these cases, the race reasons seem to have played a role during doctor-patient consultation and the ethnical origin of the patients was noted in the medical documentation. Many of these women still suffer negative physical and psychical consequences as a result of their sterilization with no fully informed consent [2].

Among the three countries where illegal sterilization performed after 1990 were documented, only the Czech Republic admitted and manifested regret for “the error cases” in November 2009. The acknowledgement of the Czech government in 2009 was important whereas Slovakia denied many times the existence of such practice. Hungary never expressed regret concerning this issue.

None of these three countries adopted a general mechanism of remedy for the victims of this practice. The Czech court sentenced different ways of remedies for some of the victims, including financial compensation or written apologies from the hospitals. Added difficulties showed up because the medical documents of the victims were seemingly destroyed by the hospitals or lost during fires or floods. An important obstacle is that the three years limit was calculated from the moment of the sterilization, not from the moment when the victim became aware of this fact, which often occurred later.

All three countries revised their legislation or general policy concerning avoiding this practice; even so, the possibility of performing an “emergency”

sterilization of the women without their informed consent is still a legal possibility in Hungary. New cases were reported in the Czech Republic, Hungary and Slovakia. No doctor or social worker was ever punished in any of these three countries for forced sterilization.

The former Commissary, Alvaro Gil-Robles expressed, in his 2006 report concerning Roma citizens, his concern about the Czech Republic and Slovakia, concluding: *„sterilization of the women without their informed consent is a serious violation of human rights. All accusations regarding these sterilizations including the possibility of race reasons must be effectively investigated. While the victims may look for legal compensation, in these cases, the trial faces drawbacks. These include slowness and the costs of legal representation, extremely high probative standards, investigations' and court's difficulties to work for Roma's needs. It is therefore important to offer other remedies also, for example an independent commission requesting the right to compensations or apologies for the victims."*

Commenting the sterilization problems, as a follow-up of his visit in November 2011 in the Czech Republic, Commissary Hammarberg said that he saluted expressing the regrets by the Czech government in 2009 regarding the illegal sterilization of women, a phenomenon affecting mainly Roma women. However, he noticed that the majority of the Czech Ombudsman's 2005 recommendations, when he investigated this problem, have not been implemented yet. The Commissary finds especially unjust the fact that the women affected by this practice have no possibility of obtaining an effective remedy currently, compensations, situation that needs to be urgently addressed according to the international legal standards.

In October 2010, UN Committee for the Elimination of all Forms of Discrimination Against Women (CEDAW) asked the Czech government to compensate Roma women who were subject to forced sterilization and adopt proper measures to prevent forced sterilization in the future. As for Slovakia, on March 25th 2010, UN Committee for Elimination of Racial Discrimination (CERD)

summoned the Slovakian authorities to: *„establish clear directory lines concerning the necessity of the informed consent and to make sure that these are well known by the probationers and the public, especially amongst Roma women*." The Committee also recommends that all reports concerning sterilization without an informed consent to be acknowledged and the victims to be provided with appropriate remedies, including apologies, compensations and restitution if possible. UN Committee Against Torture (CAT) made similar recommendations to the Slovakian authorities in December 2009.

A number of cases concerning forced sterilization are currently waiting at Strasbourg Court against Czech Republic and Slovakia and some were declared acceptable. The Court accepted to examine the cases in the light of article 3 (forbidding the torture), article 8 (right to private and family life), article12 (right to marriage), article 13 (right to effective remedy) and article 14 (forbidding discrimination) of the European Convention of Human Rights. The Court already considered that Slovakia violated the Convention in a case regarding access to personal medical files of the Roma women sterilized by the Slovakian doctors. On August 29th 2006, CEDAW sentenced that Hungary violated the Convention in case A.S. against Hungary, a Roma woman sterilized during emergency obstetrical procedure without her informed consent. In 2009 Hungary paid compensation based on the facts found by the Committee [3].

Czechoslovakia and its successor states and Hungary are not the only countries confronting these problems. The increase of Eugenics on a state program level in Nazi Germany turned forced sterilization a key element of the Nazi program, especially before Second World War and then on a large scale program of killing all Jews, "Gipsy" and others found "unworthy to live". Sweden and Switzerland apologized publicly in 1980s and 1990s for sterilization programs and connected practice performed starting the 1920s till beginning of the 1970s. Sweden approved a compensation mechanism but debates on national level developed starting with the premise that the practice did not aim especially Roma, while reality proved this being frequently the truth.

Compensation mechanism ex gratia established by Sweden in 1999 allowed victim compensation even if sterilizations were considered legally when performed and a long time has passed since that moment. In Norway, in 2003, a working group reporting about Roma compensation and nomads forced to sterilization during a historical similar time concluded that Norwegian authorities should implement compensation, including resources for extended legal assistance during requisitions.

As a result of these cases reported worldwide, International Federation of Gynecology and Obstetrics (FIGO) adopted new directory lines concerning contraceptive sterilization in 2011. These state that sterilization should be considered as an irreversible procedure and that patients must be informed; that sterilization for preventing future pregnancies can't be ethnically justified based on medical emergencies; that the consent for sterilization should never be a condition to access medical services or other benefits such as medical insurance or social assistance.

The Commissary believes that member states should be publicly informed that these serious violations of human rights happened, express their regret and take responsibility.

When legal compensation requests are a subject, time limits should consider the obstacles such as destroying medical records and the fact that women don't always immediately realize the procedures they were subjected to or the restitution possibilities. It is also possible for them to need to overcome the shame and file a complaint. Any time limit should start with the moment the victims became aware of the sterilization. Victims should be assisted in accessing their own medical files.

Authorities must also consider establishing the compensation procedure ex gratia for the victims of the forced sterilizations whose restitutions expired/prescribed. It is also important to adopt legislative changes regarding sterilization, including a reflection time for the patient, in order to prevent the recurrence of forced sterilization. Judicial and administrative sanctions must be

determined for the persons responsible for women sterilization without their complete and informed consent.

Removing Roma children from the care of their biological parents

Roma children represent a big percentage of the children placed outside their own families, including institutions and foster families. An important factor in determining this situation is the fact that these kids are removed from their families only based on the fact that the economical situation of their parents and social conditions are inappropriate, as a result of an analysis undertaken by social workers who can discriminate for racial reasons. In some of these cases, raised levels of institutionalizing Roma children stem from the policy inheritance from the communist era when the state was considered superior to the parents in raising children, especially when children came from poor, vulnerable environments or they had a form of a handicap. Children not enrolling in school or failing to attend classes were important factors influencing institutionalization of Roma children in Bulgaria, Czech Republic, Hungary, Italy, Romania and Slovakia. In all the above mentioned countries there's a lack of "preventive measures from the protection authorities for the children in report to the needs of the Roma families risking separation."

Thus, in its report about Bulgaria in 2008, ECRI reported that rehabilitation institutions host a huge disproportioned number of poor Roma children. Roma children represent approximately 50% of the children in the state centers and about 33% of the children in the state centers for children with mental handicaps, according to the official data [4]. According to a report published in 2011 by ERRC, 63% of the children in the 15 institutions in question were Roma. In the Czech Republic, about 40% of the children in the 17 institutions from 5 regions of the country were Roma. In 2009 ECRI showed that a highly disproportionate number of Roma children continue to be placed in institutions in this country.

Comparing with the non Roma children, motivating the removal of the Roma children from their families include more subjective interpretation of the social workers and not effective proof of the negligence. In Italy, about 10% of the children in the institutions visited by ERRC were Roma and this figure reached 45% in a centre in Rome where the Roma population is estimated at only 0,23% of the whole country's population. Public and religion authorities justify institutionalizing Roma children in institutions or with by references to "unhygienic life conditions", "exploiting under-aged" and "abandon", criteria often not used when it comes to non Roma families. The majority of the institutionalized children in Romania, up to 80,9% in some regions are Roma [5].

This practice might restrain some of the rights settled by international legislation for human rights, including the Convention on the Rights of the Child and article 8 (right to private and family life) of the European Convention for Human Rights. In case Wallova and Walla versus Czech Republic, Strasbourg Court found that the Czech Republic violated article 8 by institutionalizing children based just on the fact that families were numerous and it was not possible to find appropriate accommodation. Protection authorities for children were found to have offered no form of assistance except institutionalizing children to help families overcome difficulties.

The Commissary is mainly worried for the discriminatory practices of removing Roma children from their parents and their disproportionate representation among the institutionalized children according to the Strasbourg Court cases, member states should make sure that no child is placed in an institution based just on reasons related to poverty or unsatisfying accommodation. Exploring the solutions for helping out families with special needs should be a priority and member states should offer prevention services, in cooperation with NGO. Institutional placing of a child should remain an exception and the primary goal should be the child's interest. Adoption, placing within foster families or institutionalizing must comply with clear procedures according to international standards in force and it should not be a subject for

discrimination based on sex, race, color, social or ethnical status, expressed opinions, language, poverty, religion, handicap, birth or any other status of a child and/or of his parents. When circumstances allow it, the selected placement must be as close as possible to the child's environment and organized in such a way that the contact between the child and the parents is regularly maintained. Social workers and judges must be ready to stop these illegal practices.

There are solutions for all these problems, such as: cooperation within projects on a national scale, with common purposes, interaction, becoming familiar by means of different kinds of actions, campaigns for the majority population to become aware of different aspects, of public relations, and so on. The lack of dialogue that must be overcome in the relationship minorities-majorities requires patience because Roma are expected to react quickly by fulfilling the requests of the majority population, forgetting the fact that these people were wronged many centuries living in the shadow of the society, being sidelined. More attention is needed, many times these people being omitted willingly or unwillingly.

Roma population must be helped continuously in the effort to become part of a modern competitive economy, emphasizing the preoccupations of professional training, qualification and motivation for school and work.

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The role of the notice as a procedural operation prior to issuing an administrative act

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Abstract:
This paper addresses the issue of the notice, defined as an official written announcement. In matters of administrative documents, the issuance of a notice constitutes a procedural operation prior to issuing an administrative act or it is included in the category of preliminary documents. According to their legal nature, there are three types of notices: facultative, consultative and compliance. Of these, only the consultative notice has a constitutional determination. Control over the previous procedural operations is done only in the subsidiary, under the court control exercised over the administrative act under appeal and solely in connection with it. Notices do not produce legal effects; they do not change, by themselves, the existing juridical reality.
Keywords: *decisional system, prior procedural operations, notice, competence, legal effects*

Introduction

Etymologically, in Romanian, the word “aviz” (notice) comes from the French (“avis”) and the meanings attributed so far are: communication, indication, instruction, prescription, recommendation, assessment, allowance, even consent, agreement or permission.

In plain language, the notice represents the document that communicates an *announcement of official character* and is the result of an administrative operation, the endorsement.

In the Explanatory Dictionary of the Romanian language, the notice is defined as an official written (public) notification. Amongst administrative acts, the notice represents an ***opinion***, *a competent* ***assessment*** *issued by someone*

from the outside, an external authority, over an issue under debate or in the decisional process, or it is regarded as a ***resolution*** *of a competent authority.*

In the literature, notices are also analyzed as *preparatory acts* [1], which fall into the heterogeneous legal category of advisory formalities. In the procedure of drafting administrative acts, the notice is the opinion which is required by an administrative body from another one in a particular area of issues, in order to decide in full awareness [2].

In another opinion, notices are the *prior procedural operations* [3] necessary in the procedure of drafting administrative acts, and are requested as fair solutions to problems needing useful specialized knowledge, referred to in the literature as “recommendations”.

The notice should not be confused with the “prior notice”, which relates to the prior notification of the measure concerning the unilateral dissolution of the labor contract within a certain period inside its entry into force, a period in which the legal work relation remains.

The notice – a procedural operation prior to issuing an administrative act. The typology of the notice

The internal legal order governs, by means of public law, the organization of public powers and their relation to individuals, and, through private law, the relations between individuals [4].

In concrete forms, through which the public administration activity is performed, administrative acts hold the central place. Among the *procedural operations previous to the issuance of the administrative act* – expert surveys, essays, studies, statistics, referral, initiative, proposals, investigations, records, account, public debate, reports etc. – a particular issue is raised by notices and the prior consent. The legal nature of other prior procedural forms – reports, proposals, complaints – places them in the category of technical-administrative operations, which triggers the administrative decisional system, therefore they are part of the strict process of drafting administrative acts [3].

From the very definition of administrative acts as legal acts results a differentiation from previous procedural operations. While administrative acts directly produce legal effects on those they address (effects which are envisaged by the body issuing of the document), previous procedural operations produce no legal effects contemplated by the one committing them, but those produced by the law.

These procedural forms are distinguished through a number of *common features*: they represent prior forms of legal acts; they are issued only at the request of certain bodies; they may be issued by decisional or consultative bodies, by decision-making officials or the ones deprived of this right; following the issuance of the notice, the body is not obliged to issue the legal act for which it requested the notice; the subsequent withdrawal of the notice does not affect the validity of issued administrative act (except where the issuing body of the legal act no longer complies with the conditions initially stipulated in the assent); the legal effects are produced as a result of issuing the legal act, and not as a result of its notice.

The typology of notices

The doctrine in Romania has, almost unanimously, the same classification, according to the manner of compliance of the body requested against the opinion expressed, the three types of notices - *facultative*, *consultative* and *compliance* - without distinguishing the compliance ones in terms of their legal nature, although only the first two categories are considered “genuine consultative formalities” [5].

Notices are *facultative* when the issuing body has the right (faculty) to decide if they request the opinion of another body, and if they do so, it has the faculty to take or not to take this opinion into account. The adoption or issuing of the act without this notice has no consequence for its validity [6]. In other words, for the facultative notice, the issuing body is not obliged to seek the notice or to respect it if requested and obtained.

Notices are *consultative* when the issuing authority is obliged to request the opinions of another body, but it is not obliged to comply with them. Failure to request and failure to obtain the notice result in the nullity of the administrative act, since it does not meet a requirement set by law. Therefore, consultative notices represent the opinions for which the law stipulates the compulsoriness to be obtained and the faculty to be respected or not [6].

Notices are of *compliance* when the body issuing the administrative act has both the obligation to request them, as well as the obligation to comply with those opinions [7]. In this case, the issued administrative act can not be contrary to the content of the notice; however, the body competent to issue the act, if in disagreement with the content of the notice, may give up its right to issue the administrative act in question. Compliance notices are characterized by their obligatory trait, in terms of both request and compliance [8]. It is thus inferred that the administrative body is compelled to ask, to wait for this notice to be issued, to achieve all that is required for its issue, and after obtaining it, to comply with its content.

Another common criterion of classification is according to the subjects from where the notices are requested. According to this criterion, notices are of two types: *internal notices*, coming from the issuing body of the legal act or an internal structure thereof, and *external notices*, emanating from a body different than the one who is to issue the legal act.

Among the categories of notices structured in accordance with their legal nature, only the *consultative notice has a constitutional determination* [8]. As an example, we can mention Article 90 of the Romanian Constitution, devoted to the institution of the referendum, which provides this administrative operation: “The Romanian President, after consultation with the Parliament, may ask the people to express, by referendum, its will on matters of national interest”. Article 95 of the fundamental law, which provides the suspension of the President of Romania, stipulates the consultation of the Constitutional Court. Also, Article 146 letter h of the Constitution expressly provides the consultative notice given by the

Constitutional Court for procedure of suspension from office of the President of Romania.

Both notices and administrative acts are issued by different categories of authorities [8]. The request of a notice may be made at any public administration body, regardless of its material competence – general or special, except for the body superior to the issuer [3]. There are opinions [6] according to which only facultative or consultative notices may not result from a superior authority as its point of view can not be facultative or only consultative for the subordinate body which is obliged to conform to this view. These opinions suggest the idea of the overall control of the activity, which leads to the administrative subordination report, as the specificity of hierarchical relations enforce the superior opinion. As such, notices, including those of compliance, should be regarded as "content elements of the administrative cooperation relations" [3].

The role and importance of notices

Notices represent, in essence, "unilateral manifestations of will that condition, or, according to case, fundament the unilateral manifestation of will of the administrative body"[6].

Seen as previous procedural operations, notices are forms of activity are the opinions of the public administration which do not produce legal effects; they do not change, by themselves, the existing legal reality.

The role of notices consists in contributing to the lawfulness of the administrative act or to the reinforcement of its legitimacy [8]. It has been pointed out that both notices and administrative acts represent *manifestations of will with unilateral character*. Unlike the case of the administrative act where the materialized manifestation of will has the purpose to initiate, modify or abrogate rights and obligations, therefore to produce juridical effects, notices have no such purpose, nor such consequences. Regardless of the category, *notices themselves do not produce legal effects*, although, without the assent, the administrative act is invalid. If the issuance of an administrative act is conditioned

by the existence of a notice, the legality of the respective administrative act is also determined depending on the content of the opinion [3]. One opinion [9] stated that consultative opinions and compliance notices represent a condition of the legality of the act to be issued, and the non-fulfillment of this condition can attract the absolute nullity of the act.

Opinions have no direct effect on the legal relationship in question, they only concern the relations between the one granting notices and the issuant of the act [11], without any direct link to the one it addresses, producing legal effects without requiring the consent of the applicant.

The control over the previous procedural operations is done only in the subsidiary, under the court control exercised over the appealed administrative act and only in connection with it. Thus, if based on a notice, the application for a permit is rejected (for construction, for example), the person dissatisfied can not make a complaint against the notice, which is an administrative procedure, but against the act of dismissing the application. The notices based on which the authorization was issued, have no direct effect on the person who requested the authorization (for construction), the authorization being the one with legal effect upon it. Granting notices does not mean the emergence of a new subject in the relation between the body issuing the authorization and the applicant thereof. The issuer of the notice and the issuer of the authorization appear in this relation as a single subject of law, they are a single manifestation of will in the legal relationship with the authorization applicant.

The High Court of Cassation and Justice ruled on this issue through Decision no. 1923 of 6 April 2012, delivered on appeal by the Administrative and Fiscal Department of the High Court of Cassation and Justice, with the purpose of resolving the objection of illegality of notices issued by the National Chamber of Commerce and the Ministry for Small and Medium Enterprises, Commerce, Tourism and Liberal Professions. Thus, the High Court held that the notice, whether it is consultative, facultative or compliance, is only a procedural operation prior to issuing the administrative act, and not an administrative act,

since it has no legal effects on its own, but only helps to strengthen the legal character of the administrative act. In this regard, the High Court stated that the distinction between an administrative act and a notice (administrative operation) has a practical importance especially in the case of administrative disputes because the court can exercise control only over the administrative acts under appeal, but it can not control, under direct action, distinct from the administrative act, the administrative operations on which that act was issued.

In certain cases, the law provides for the adoption or issuance of the administrative act the *agreement* (prior, simultaneous or subsequent) of another body. This agreement comes as a manifestation of will of the body established by law in which it consents to adopt or issue the document, the issuing body can not act without this consent. Thus, there arises the distinction between the *prior agreement* and *facultative and consultative notices*, in the sense that, for notices, the issuing body may establish measures contrary to the content of the notice, while in the case of the prior agreement such measures can not be established. In terms of content and effects, the prior agreement resembles the assent, but is not to be confused with it since this notice, although preceding the issue of the act, produces no effects. The prior agreement itself produces legal effects, if, by its content, corresponds to the manifestation of will of the body issuing the administrative act [6]. In principle, it requires the prior consent of a body superior to that adopting or issuing the act or of a body with a rank at least similar with the body that will adopt or issue the document.

Conclusions

In our legal system, the doctrine simply states: ***the assent*** is characterized by the fact that it *must be requested*, and *subsequently it must be respected*. As such, it goes without saying that once requested, the assent ought to be *effectively obtained*. In reality, although considered by some authors as a mere feature which consists of a degree of determination that it imprints in the exercise of the competence [10], this form of notice is more than just a simple

consultative procedure. According to what is stated in the French doctrine, in the case of the assent, there would take place the subordination of the jurisdiction of the administrative body to issue the act of the agreement of the notice holder. This implies the fragmentation of the competence of this body in two parts: one that is transmitted by law to the body issuing the notice (the power to assess facts, afterward settling the contents of the document); another kept by the body issuing the actual act (the power to confer a binding force to this content). Thus, the issuer of the notice becomes the co-author of the act to be issued, being able to oppose the issuance of the act. By this, *the assent is more than a rule of procedure, it becomes a rule of competence* [5].

Given that an assent is essentially the content of a future administrative act, it should not be a dull one, purely positive or negative, of the manner “it shall be endorsed favorable/unfavorable the issuance of the act...”, because, contrary to the terminology used, we would find ourselves in the presence of an agreement [5]. The notice, which is a specialized reasoned opinion, must describe the conditions under which an administrative act may be issued.

Starting from its defining characteristics, the ***facultative notice*** can be regarded as a preliminary formality which the author of an administrative act can perform, but with no legal obligation to do so [12]. Considering this, it would seem that a facultative notice can not influence the validity of an administrative act, and the freedom of action of the issuer would be total, and these aspects lead to the idea that this notice would be useless [5]. In reality, however, this notice may affect the validity of an administrative act issued under it, if, on the one hand, has not been issued regularly, and, on the other hand, it can be proved that it has decisively influenced the will of the administration to issue the act concerned.

Regarding the ***consultative notice***, we should take into account its two basic features: on the one hand it must necessarily be requested, on the other, it should not be respected. This could lead to the conclusion that the *consultative notice should not be compulsorily obtained*. Also, it is obvious that there can be no consultative notice without being required by law.

The jurisprudence and the French doctrine have established two rules of interpretation for the legal provisions that require an opinion, rules that would preferably be applied in Romania as well: regrading the obligation to request the notice, when the text of the law is unclear, it must be interpreted in the sense that we are in the presence of a simple faculty, and not an obligation; regarding the obligation to comply with the notice received, the vague text must be interpreted as leaving the administrative agent a maximum of freedom in exercising its jurisdiction.

Another conclusion to be drawn is that, in principle, the administration must exercise their competence unhindered, while the notice, regardless its nature, sometimes represents a hindrance in exercising this competence. It would, therefore, be preferable for legal texts which stipulate the issuance of a notice to be interpreted in the sense that they would hinder as little as possible the exercise of this competence [5], based on the principle of least interference.

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The National Agency for Employment, Institution Having Attributions in the Workforce Domain

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Abstract:
This material presents in its first part historical aspects regarding the evolution of the attributions of the National Agency for Employment which has transformed from an institution that paid the monetary rights of the unemployed into a provider of services for people who are looking for a job, services that include: professional counseling, professional training classes, services of labor mediation, services of consultancy for initiating a business and others.
The second part of this material is dedicated to the presentation of the organisation and functioning method, attributions and object of activity that this agency has.
Keywords: *organisation and functioning of the agency, attributions, subordinated units, the object of activity, workforce mobility.*

General considerations

After the First World War, because of work and social insurances issues, the state must found an institution to regulate work-related issues and to take care of the employee's interests, in the new social and economic conditions.

At the proposal of the president of the Ministers Council, the marshall Alexandru Averescu, the Ministry of Labor and Social Protection is founded, having the main purpose to protect and organize labor. Over time, the attributions of this ministry have broadened, including no the drying and application of labor law, organization of the placement, immigrants and unemployed issues, work education. The name of this institution has changed many times: The Ministry of Labor, Public health and Social Protection, the Ministry of Labor, Cooperation and Social Ensurances, the State Committee for Issues of Labor and Salary.

In 1921, a legislative framework for this domain begins to take shape along with the Law of organizing placement, followed by the Law for professional training and exercise of labor, issued in 1936, the Law for establishing the

minimum salaries within private, commercial and transport companies, in 1939 and by the Labor Code, in 1950. The issue of the labor force has been treated within special directions ever since the beginning.

When the Ministry of Labor and Social Protection was founded, there also existed the Department of Labor and the Department of the Work Education Crafts. After the ministry's reorganization and the issue of the Law for organizing placement in 1921, in 122, the Offices for Placement were founded.

In 1943, within the Ministry of Labor, Health and Social Protection, the State Undersecretary of Labor was founded, institution which included The Department of professional training of the labor education and homes for apprentices, The Department of placement records and guidance of workers as well as disabled and war widows, and as exterior service, Professional courses for apprentices and Guidance offices.

In 1944 the Ministry of Labor, Health and Social Protection is divided into three ministries: The Department of labor and immigrants regulation, The Department of professional training of the labor education and homes for apprentices, The Department of placement records and labor guidance, Office of documentary and guidance studies.

Between 1960-1967, the labor domain issues were undertaken by the State Committee for Labor and Salaries. Starting from 1968, the Ministry of Labor has been refunded, functioning until 1990, hen the Ministry of Labor and Social Protection was founded. From 2001, the name of the institution has modified to the Ministry of Labor and Social Solidarity.

In January 1991 Law no. 1/1991 was adopted regarding the social protection of the unemployed and their professional reinstatement, a normative act through which the existence of the unemployed was recognized in Romania, after more than 10 years.

This law was replaced on 1st of March, 2002, with a modern European one. Law no. 76/2002 emphasizes the active measures for raising the employment rate. These active measures stimulate both the employers to

employ people from the unemployed section and the unemployed to get hired before the period of the unemployment benefit ends.

Regardless of its functioning form, the Ministry of Labor has dealt with placement, professional training and guidance. But, because of the economic reform, society's requests and the important social and economic changes after 1990, the foundation of an institution to deal especially with placement, professional training and guidance and to make the payments for the beneficiary society was necessary.

Thus, by law no. 145/1998 the National Agency for Employment and Professional Training has been founded, an institution that has changed its name in 2000 to The National Agency for Employment.

From an institution that deals with the payment of the unemployment benefit, the Agency has transformed into a service provider for the unemployed who are looking for jobs, presently offering a vast domain of services, such as : professional counseling, professional training courses, outplacement services, labor mediation, consultants for the initiation of a business, subvention of the workplaces for people from the disadvantaged categories of the population, granting favorable credits for creating new jobs etc.

The year when Romania was integrated into the European Union, 2007, is the year when the unemployment rate of our country was at its lowest percentage, 4%. In this situation, the efforts of the Agency head to raising the quality of the performed services, to limit the employment shortage from certain economic domains, to implement active measures of continuous professional training, to a most efficient informing and counseling of those looking for a job and to the actual support of the employers.

Through the quality of its services, through the modern and flexible approach to the unemployment issue, the National Agency for Employment has imposed as a leader of the social services market of Romania. The institution has also focused on employing the disadvantaged categories on the labor market, from the poorly qualified youth to the disabled or elder people, the perspectives

of their employment being strictly determined by their access to training and by acquiring competencies to allow them to get a stable job [1].

1 The organization and functioning of the National Agency for Employment

1.1 The Attributions of the National Agency

The National Agency for Employment, named further the National Agency, public institution with judicial personality, under the authority of the Ministry of Labor, Social Solidarity and Family, is organized and functions according to the provisions of Law no. 202/2006 regarding the organization and fucntioning of the National Agency for Employment.

For accomplishing its objectives, the National Agency has the following attributions:

- implements professional training strategies;
- monitors the professional training activity of people looking for a job, in relation to the performance indicators established on a national or territorial level;
- establishes partnership relations with other judicial persons of the public prívate right involved in the employment and professional training activity;
- verifies the respecting of the obligations of the physical or judicial persons regarding the system of the unemployment benefit and employment stimulation;
- verrifies the accreditation of the specialized services suppliers for employment stimulation;
- verifies the respecting of the obligation provided by conventions or agreements;
- ensures on a regional level the implementation of the irredeemable financing schemes, a component of the Human resources development within the Subprogramme PHARE 2003 – Economical and social cohesion;

- has implementing authority attributions for the irredeemable financing schemes, a component of Human resources development, within the Subprogramme PHARE 2003 – Economical and social cohesion;
- has attributions delegated by the Management Authority for the Sectorial Operational Programme for the Development of Human Resources for the prioritized axes that can be implemented on a regional level, respectively The growth of the workforce and companies adaptability, Promotion of the active measures of employment and Promotion of social inclusión;
- has attributions delegated by the Management Authority for the Sectorial Operational Programme for the Development of Human Resources for the prioritized axis The modernisation of the public employment service;
- manages through the territorial agencies the Fund for guaranteeing the payment of salary debts;
- Ensures the implementation, maintaining and improvement of the quality management system.

The attributions provided by law are fulfilled by the National Agency through the central device and through the institutions subordinated to it, which are:

Institutions with legal personality:

- the county employment agencies and the ones of Bucharest, also named territorial agencies that organize, coordinate and performs on a county level the employment activity, the professional training and the social protection of the unemployed; elaborate studies and analysis regarding employment and professional training, makes improvement proposals for the legislation concerned and acts to aid the workforce mobility and the functional flexibility of the labor market;

- The regional centers for adults' professional training, also named regional centers who organize, coordinate and perform on a regional level both the professional training of adults, based on the professional training plan annually approved by the National Agency for Employment and the evaluation of professional competencies of adults.

  The regional centers offer professional training services that are performed by a social partnership that is functional and active with employers, physical or legal people, unions, agencies as well as other organisms of the counties ordinated to the regional centers, interested in the professional training of adults domain.
- The National Professional Training Center of the Personal Staff.

Institutions without legal personality that have the role to implement the programs for the development of the human resources financed from the European Union funds, organized on a regional level, also named institution for programme implementation.

Institutions for programme implementation are made of two distinct structures: The institution for implementing the PHARE Programme and the regional intermediate Organism for the operational sectorial program for the development of human resources [2].

1.2 The Management of the National Agency

The National Agency for Employment is founded, organized and functions based on the organization and functioning regulations as well as on the organizational structures approved by the National Agency for Employment.

For solving the issues regarding the activity of the County agency for Employment the CEO is supported by a consultant council made of 15 members who represent local public authorities, unions and employers' organizations. The consultant council performs their activity based on the provisions of Law no. 202/2006, the Status of the National Agency for Employment approved by

Government Decision 1610/2006 and on their own organization and functioning regulations [3].

1.3 The chairman of the National Agency for Employment

The chairman of the National Agency for Employment is a State Secretary within the Ministry of Labor and Social Solidarity and the Chairman of the Administration Council of the National Agency for Employment.

The main attributions of the chairman are:

- manages the activity of the National Agency for Employment while keeping the legal provisions and the decisions of the Administration Council;
- issues decisions regarding the exercise of his attributions and for making the decisions of the Administration Council;
- engages the National Agency for Employment into making the programes of employment;
- represents the agency in relations with third parties and ensures the promotion of the agency's image;
- is responsible for fulfilling the decisions made by the Administration Council;
- annually proposes for approval the status of the agency's functions to the Administration Council;
- Has control over the activities of the National Agency for Employment [4].

1.4 The Administration Council

The National Agency for Employment is managed by an Administration Council with a tripartite competence, made of 15 members, thusly:

- 5 members, Government representatives, designated by the Ministry of Labor and Social Solidarity, out of which one member is the State Secretary of the Ministry of Labor and Social Solidarity

and is also the president of the National Agency for Employment designated by the prime minister;

- 5 members, elected by the consent of the union confederations representative on a national level;
- 5 members elected by the consent of the employers' organizations representative on a national level.

The Administration Council meets monthly or whenever it needs, at the request of the chairman or of a third of its number of members, the decisions being adopted by the vote of at least 2/3 of the number of the present members,providing the fact that every part is represented.

The main attributions of the Administration Council are:

- ensures the coordination of the activity of the National Agency for Employment and makes proposals regarding the activity of the agency for the following year;
- analyses and approves the programmes of employment and professional training;
- approves the deduction of the budget of unemployment insurances for the county agencies of employment, regarding the specific territorial programmes;
- approves the internal and external agreements of the agency and makes decisions regarding the development of the agreements with international financing;
- Approves the financial account and the annual report of activity of the National Agency for Employment [5].

1.5 The General Secretary

The executive management of the activity of the National Agency of Employment is exercised by a general secretary who is part of the high public clerks category and is appointed according to law. He has the following attributions:

— ensures the execution of the orders issued by the chairman of the National Agency;
— approves the regulations of organization and functioning of the subordinated institutions and subjects them to the approval of the chairman of the National Agency;
— coordinates the development of the methods of unitary applications of the legislation of the activity domain;
— coordinates the development of studies, forecasts and programmes regarding the specific domain of activity;
— Ensures the implementation, maintenance and improvement of the quality management system [6].

1.6 The Institutions subordinated to the National Agency

1.6.1 Territorial Agencies

Territorial agencies are the decentralized public services constituted on a county level and in Bucharest.

The territorial agencies ensure, according to law, the implementation of the unemployment preve

ntion measures, of the employment stimulation measures, social protection of the unemployed, organizes and develops the employment and professional training activity. The territorial agencies mainly develop the following activities:

— professional information and council;
— labor mediation;
— professional training;
— assistance and consultancy for founding an independent activity or for initiating a business;
— complementing the salaries of people who have the right to the unemployment allowance and who get employed for a normal working time, according to the legal provisions in force;

- the stimulation of the mobility of the workforce;
- stimulating the employers to employ the unemployed;
- stimulation of employers who employ people based on an apprenticeship agreement at the workplace;
- accreditation of the specialized services suppliers for the stimulation of employment;
- Paying the right to social protection out of the unemployment insurances budget;

The following sub-units without legal personality are subordinated to the territorial agencies:

- the local agencies for employment;
- Personal centers for professional training. On the level of every sector of Bucharest there is a local agency, according to the needs of executing the duties provided by law, subordinated to the territorial agencies other sub-units can also be founded with the approval of the administration council of the National Agency.

The local agencies are founded in order to execute, on the level of county residence, of the main towns of every county, as well as of the sectors of Bucharest, the activities previously stated.

Within the territorial-administrative institutions where there is registered a high unemployment rate, subordinated to the local agencies work points can be founded.

Local agencies and work points subordinated to them can be dissolved with the approval of the administration council.

The organizational structure and the organisation and functioning regulation of the territorial agencies are approved by the administration council of the National Agency.

The organisation and functioning regulations of the territorial agencies, developed based on the organisation and functioning frame-regulation, is approved by the chairman of the National Agency.

With the approval of the administration council, by the order of the chairman of the National Agency, within the organizational structures of territorial agencies, regarding the needs imposed in order for the attributions provided by law to be executed, services, bureaus and compartments can be organized, keeping the conditions provided by law. The attributions of the services, bureaus and compartments are established by the organization and functioning regulations of territorial agencies and the attributions of their personnel are provided in the job description.

The territorial agencies are run by CEOs and their deputies.

The occupation of the CEO and deputy CEO posts of the territorial agencies as well as of the local agencies made on the levels of the sectors of Bucharest is made based on competition or exam organized according to legal provisions.

CEOs and their deputies have public clerk status and are designated by the chairman of the National Agency, according to law.

While exercising their attributions the CEOs of the territorial agencies issue normative decisions [7].

1.6.2 Regional centers

The regional centers have expenses caused by the programes of professional training, with the exception of the expenses for medical consultations and tests, needed for participating to the professional training programmes, which are paid by the territorial agencies for people that benefit for free from professional training services, when the professional training services are organized in counties where there are regional centers [8].

They are institutions with legal personality, founded on a regional level, which organizes and executes the professional training of the unemployed as

well as of other people who can participate in professional training programs according to Government Decision no. 129/2000.

Regional centers mainly supply the following services:

— professional information and counseling;

— evaluation and monitoring of professional training;

— certificating professional training.

Regional centers can be authorized as centers for evaluation and certification of professional competencies gained through formal and informal ways. These can also develop professional training activities and evaluate the professional competencies of people from other countries, at the request of territorial agencies, employers, as well as other interested parties.

The frame organizational structure and the frame regulation of organization and functioning of the regional centers are approved by the administration council of the National Agency and the organization and functioning regulations of the regional centers elaborated based on the frame regulation of organization and functioning is approved by the chairman of the National Agency.

With the approval of the administration council, by the order of the chairman of the National Agency, within the organisational structures of regional centers, according to the needs for executing the attributions provided by law, there can be organised services, bureaus and compartments, keeping the provisions of the law, as in the case of territorial agencies.

The attributions of the services, bureaus and compartments are established by the organization and functioning regulations of the regional centers, and the attributions of the personnel of the regional centers are provided in the job description.

The regional centers are managed by managers. The management of the financial accounting and administrative activities of the regional centers is made by deputies.

The management of the professional training activities developed by the regional centers is ensured by the people responsible for professional training, subordinated to the managers of the regional centers.

The occupation of the manager and deputy posts of the regional centers is made based on a competition.

The managers and deputies of regional centers are designated by the chairman of the National Agency.

The personnel of the regional centers is employed based on an individual labor agreement and is paid according to the legal provisions applicable to the contractual personnel of the budgetary sector.

The people responsible for professional training are designated by the managers of the regional centers.

While exercising their attributions the managers of the regional centers issue normative decisions.

In order for the regional centers to fulfill the requests for their authorisation as suppliers of professional training and as competence evaluation centers, the management of the regional centers adopts technical and organizational measures.

The technical measures have the purpose of ensuring the requests for equipment and logistics necessary for theoretical and practical training according to the standards based on which the didactic material and the training methods are elaborated and adopted.

While executing their attributions the managers of the regional centers are supported by tripartite consultant councils which are founded and function according to law.

The consultant councils of the regional centers develop their activity only in the presence of at least 2/3 of the number of its members, provided that every part is represented.

The financing of the expenses regarding the organization and functioning of the regional centers is ensured from the following sources:

— personal income;

— Subventions granted from the budget of unemployment insurances;

In order to efficiently and durably constitute, develop, assign and use the financial and material resources for the professional training of adults, the regional centers establish partnership relations with:

— territorial agencies;

— employers;

— employers' organization, unions or professional organizations – education institutions;

— Other organizational structures, on a regional, county and local communities level.

The regional centers have expenses caused by the programmes of professional training, with the exception of the expenses for medical consultations and tests, needed for participating in the professional training programmes, which are paid by the territorial agencies for people that benefit for free from professional training services, when the professional training services are organized in countries where there are regional centers [8].

1.6.3 The National Professional Training Center of the Personal Staff

The National Professional Training Center for the Personal Staff is an institution with legal personality, having its headquarters in Rasnov town, in Brasov county.

The National Professional Training Center for the Personal Staff ensures, according to the annual strategies and programs of staff training, approved by the Administration Council of the National Agency, training and perfecting the National Agency staff as well as the staff from the subordinate institutions.

The main goals of the National Professional Training Center of the Personal Staff are the following:

- founding and developing abilities, knowledge and competence of the National Agency's personnel and of the subordinate units, through specialized courses;
- the development of the management capacities of the National Agency's personnel and of the subordinate institutions, through training and perfecting programs, organized in partnership with high education institutions, research institutions as well as with other institutions of the certain field;
- The specialization of the National Agency's personnel and of the subordinate institutions in the fields specific to employment and professional training, through courses organized in partnership with employment institutions from other countries.

The organizational structure of the National Professional Training Center of the Personal Staff is approved by the administration council of the National Agency.

The organization and functioning regulation of the National Professional Training Center of the Personal Staff are approved by the chairman of the National Agency.

With the approval of the administration council, by the order of the chairman of the National Agency, within the organizational structure of the National Professional Training Center of the Personal Staff there can be organized services, bureaus and compartments.

The attributions and duties of the services, bureaus and compartments are established by the organization and functioning regulation of the National Professional Training Center of the Personal Staff and the attributions and duties of the staff are provided in the job description. The National Professional Training Center for the Personal Staff is managed by a CEO. The management of the financial accounting activity of the National Professional Training Center of the Personal Staff is ensured by a deputy. The personnel of the National

Professional Training Center for the Personal Staff is made of public clerks and employees that were employed based on an individual labor agreement and it is paid according to the legal provisions applicable to public clerks and contractual personnel from the budgetary sector. The CEO and his deputy of the National Professional Training Center for the Personal Staff have the status of public clerks and are appointed by the chairman of the National Agency [9].

While exercising his attributions the CEO of the National Professional Training Center for the Personal Staff issues normative decisions.

1.7 The object of activity of the National Agency for Employment

Law no. 145/1998 regulates the foundation, organisation and functioning of the National Agency for Employment and Professional Training, public institution of national interest with legal personality.

The National Agency for Employment and Professional Training ensures, for free, employment and professional training services,to the interested judicial or physical people.

The main employment and professional training services supplied by the National Agency for Employment and Professional Training are:

1.7.1 Services for physical persons:

- orientation and counseling for unemployed people and other people in order for them to find a job;
- qualification and requalification of unemployed people;
- professional reconversion of the personnel of the economical agents subjected to restructuring, in order to prevent unemployment;
- Establishing and paying the rights to social protection of unemployed people and other socio-professional categories.

1.7.2 Services for legal persons:

- mediation between the supply and demand of the labor market;

— the selection of the candidates for employment;
— applying stimulation measures for creating jobs;
— Counciling for creating small and medium enterprises.

1.7.3 Advantages for the unemployed

— Completion of the employed' salary. People who receive unemployment allowance and get employed benefit, until the end of the period they were going to receive the unemployment allowance, from a monthly not taxable sum of 30% of the unemployment allowance eceived the month previous to employment.
— The graduates of the education institutions and the special schools, of age 16, registered at agencies for employment, if they get employed on a normal working time, for a period longer than 12 months, benefit, out of the unemployment ensurance bugdet, from a bonus equal to a basic minimal raw country salary guaranteed in payment, in force on the employment date.
— The graduates for whom the right to the unemployment allowance has been established which get employed during the period of receiving that allowance benefit, out of the unemployment ensurance budget, from a sum equal to the unemployment allowance he would have had the right to, until the end of the period of its granting if he would not have been employed [10].

1.7.4. The stimulation of the workforce mobility

— The person who during the period when he benefits from the unemployment allowance gets a job at a longer distance than 50 km of his home town, benefits from an employment not taxable bonus, granted from the unemployment ensurance budget, equal with the sum of two minimal raw country salaries in force on the date of the granting.

— People who during the period when they benefit from unemployment allowance get employed in another town and change their residence receive a lodging bonus equal to the sum of 7 minimal raw country salaries in force on the date of the employment.

1.7.5. The stimulation of the employeed for employment

The stimulation of the employed for the employment of the unemployed is made by:

— subventioning the work places;
— granting advantageous credits;
— granting finacial facilities [7].

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