Petroleum-Gas University of Ploiesti
The Centre for Studies and Legal and Socio-Administrative Research

JOURNAL OF LAW AND ADMINISTRATIVE SCIENCES

No.7/2017

ISSN 2392-8298
ISSN-L 2392-8298

The Journal is indexed in the international data bases

Petroleum and Gas University Publishing House of Ploieşti

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THE JUSTICE - CONSTITUTIONAL GUARANTEE. THE CONCEPT OF JUSTICE IN HEGEL'S PHILOSOPHY

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Abstract
To understand, in the positive sense, the concept and theory of achieving justice in Hegel's sense, it must first be noted that, for him, the State is seen as an ethical community, but without identifying with the civil society, therefore the State is into some relationship with the individual, the state is an objective spirit, while the individual possesses in his substance no objectivity or truth and ethical character, he, the individual, only pursuing his singular interest. To understand the practice of justice in a rule of law, Hegel started from the fact that, in relation to culture and development of thinking, the self of each is the singular in the form of universality, that beyond the singularity of one's existence, through physical and intellectual accidents, as by the individuality of the aims pursued at the level of one's subjective being by singularity, any self as a person belongs to the universal, that, essentially, all people are identical.
Keywords: *justice; rule of law; constitutional guarantee; power of law.*

1. Brief viewpoints on Hegel's philosophy

In the history of the Western Philosophy by Bertrand Russell, he is largely quite critical of Hegel's philosophy of the law and the State, especially as regards the doctrine on the State thereof stating that: Such is the Hegelian doctrine of the State - a doctrine which, if accepted, justifies any imaginable internal tyranny and external aggression [1].

Much more critical, basing his opinions on the texts collected in The Phenomenology of Spirit which was published by Hegel in 1841 but also on his reference book Principles of Philosophy of Law or Elements of Natural Law and Science of State which was published by some students of Hegel in 1854, is Karl Popper, who accuses Hegel of being a forerunner of modern totalitarianism [2], whereas he claims that the Prussian State and its entire German spirit is the spirit of the new world that aims to achieve absolute truth as infinite self determination of freedom, therefore an apology for the Prussian State.

Considering that Hegel has exercised the greatest influence upon all, another author points out that Hegel's philosophy, by stressing the ascendancy of the State over the individual, as well as by the role given to the police or the administration in regulating the relationship between the citizen and the State, directly and strongly inspired the fascist ideas regarding the corporation and the totalitarian State and that it distorts the concept of rational to cover assessments likely to justify autocracy [3].

Just as Friedrich C.J. also criticizes the Hegelian philosophy of law, as Hegel believes, on the one hand, that the police and the corporations should have an important role in ensuring the legal order, the one contemporary with the time of his Prussia - according to his famous thesis that what is real is also rational, therefore the political order of the Prussian State is the highest level where the Spirit, the absolute Idea becomes substantial in its achievement as universality and, on the other hand, as the Prussian State, representing the universality made by the Spirit, is the ethical achievement of the absolute Idea [4].

An idea nuanced in value judgments regarding Hegel's overall philosophy, also valid, by consequences, in terms of philosophy of law, was introduced, it in the early 80s, Heinrich Heine, poet, and Engels, Marx's comrade in ideas, noticed that the very pedant, cumbersome, boring Prussian State philosophy of Hegel can hide behind it the revolution, what Hegel then wrote in the Preface to his Principles of Philosophy of Law... What is rational is real and what is real is rational [5], it is not only a deeply conservative thesis, but it contains its opposite, able to reveal afterward: everything that exists deserves to perish.

2. Short connotations of the concept of State and the concept of rule of law

To understand, in the positive sense, the concept and theory of achieving justice in Hegel's sense, it must first be noted that, for him, the State is seen as an ethical community, but without identifying with the civil society, therefore the State is into some relationship with the individual, the state is an objective spirit [6], while the individual possesses in his substance no objectivity or truth and ethical character, he, the individual, only pursuing his singular interest.

On the one hand, the State as a whole ethical and achievement of freedom, is the universal, as the universal is the whole, is a power of what is right and ethical [7], while the individual, i.e. as an expression of singular, subjective, non-ethical and untruth, as the truth is the whole - another Hegel's thesis [8].

The State, according to Hegel, also enjoys a predicate, which also is essential in understanding justice: the State, ethical reality, is an interweaving of substantial and particular [9], it can not be regarded as a mechanical sum of individual singularities, with individual purposes, therefore subjective, but it represents an organicity universal in character that integrates individuals and their private and selfish purposes. Therefore the State must be considered the spirit of a people, another interesting thesis in understanding of Hegel's theory of justice applicable and applied in a rule of law.

The concept of State and especially the one of rule of law had many doctrinal approaches. The rule of law is defined by a certain type of State that developed in the historical conditions of the modern era, in response to a large part of the requirements, needs and demands of real life, having a socio-economic and ethical-cultural nature. [10] The same author considers that the legal State is an expression of that nation-state that is specific to the French school and is characterized by parliamentary sovereignty and law, in a formal sense, as a superior, general and unconditional act.

In Ion Deleanu's value judgments, the rule of law is not a simple combination of words, but it expresses a condition on power, and also gives birth to a new conception on law, regarding its functions and role. [11]

The rule of law is defined as "the type of political regime in which State power is framed and limited by law"[12].

The State identifies with the law because it is nothing but a legal system, a system of human behaviour and an order of social constraint [13]. The State can act only under legal rules, defining it as such. [14] Trying to legitimize a State as a rule of law is actually perfectly inappropriate, for the simple reason that any State should be a rule of law.

Richard Abel - American sociologist - referring to the definition of the rule of law warns that the law should guarantee equal access of all citizens to legal means of correcting injustices. [15]

The name of the rule of law theory is meant to suggest the idea that the State is not absolutely independent in its activity, but is limited by the authority of law. [16]

3. General considerations on the concept of justice in Hegel's philosophy

To understand the practice of justice in a rule of law, Hegel started from the fact that, in relation to culture and development of thinking, the self of each is the singular in the form of universality, that beyond the singularity of one's existence, through physical and intellectual accidents, as by the individuality of the aims pursued at the level of one's subjective being by singularity, any self as a person belongs to the universal, that, essentially, all people are identical. As, Hegel says in thesis particularly valuable and more than contemporary for our time, Man has value because he is man, not because he is a Jew, Catholic, Protestant, German, Italian etc. [17].

As such, says Hegel, the law should become and it is an external necessity, to be able to consider this universality where the man is possessed as a man, not as a lonely self, as a private individual with singular, particular interests, opposing to the interests of others.

Therefore, the law is objective when addressing the man as identical to others through universality, i.e. when it is known as a positive law in general, thus acquiring the form of universality, as an entitlement for all, which means, however, knowing the content of such law by all stakeholders, thus achieving equality before the law.

This is why Hegel believes that justice begins its achievement under the universal form from the very moment of being legislated. Namely, the enactment is not only limited to the fact that by the law, somethis is declared as a rule of conduct applicable to all; but the internal essential moment is the knowledge of the content in its determined universality.

For Hegel, the only law of interest in achieving justice is the written law, especially in terms of coding the written law. Assuming that the law would be restrict to common law, even if common law collections would be drafted, we are not in the presence of an objective law, as the common law is for itself, undetermined. The common law or even the common law written collections reach undetermination, because it stands on accidental cases, with no elevation to the level of thought, of general and abstract

principles [18] reached by the written law. A common law legal civilization promotes and supports the lack of real justice, as they are known in a subjective way and by accident, on the one hand, and on the other hand, their knowledge, of the common laws, remains generally as a random property of just a few [19].

But the code of laws - and Hegel stands as a proponent of a codification of the French type, especially in the private law field - provides access to overcome the accidental, the non-determined and the subjective, as the code has the property of systematization, so of gripping the universal on the way of thinking, therefore grasping the principles of law in their universality.

Therefore, under the positive law what is under the law is the source of knowledge of what is the law [20], that is what is appropriate to justice. Being put into form, the law is put as a law, it captures the universality and can be applied to the particular, by the very logic of its internal systematization, and it also captures the singularity of causes raised by litigants before the judge. As such, the judge executes and achieves justice in that the law is an universal determination to be applied to the singular case.

Citizens, in all cases - enrolling each of them, taken as a singularity, within the logic of the universality of the concept of citizen, have an obligation to obey the law, or, for this, the need is that laws be brought to general knowledge. As, Hegel highlights, it is injustice that the citizen can not know the law because it is not published or is ordered only in collection of common laws and jurisprudence (the case of the common law system, so criticized by Hegel), also taking into account the fact that professional jurists, organized into guild or caste, consider the knowledge of law as a professional monopoly, preventing who is not a qualified jurist to express opinion on the law [21].

4. Characters and theory of justice in Hegel's philosophy

So, the concept of justice and the theory of justice in Hegel show up to this point of the recital, the following features:

a) justice means overcoming, in the Hegelian sense of the term [22], the single subjectivity of the person, in that the axiological recognition of the equality of all human beings enables and ensures raising to the level of universality, achieving legal equality before the law;

b) justice is not a state of grace, a natural condition, but it is the result of an activity carried out by a court, therefore by the State, which is a structure, an organic entity by which single individuals, as the civil society, are recognized as an organic whole, as the embodiment of ethic, prevailing not their singular and contradictory interests, but the freedom and the ethical sense of the State;

c) justice that arises from the practice of justice [23] involves the objectification of the law as a positive law, i.e. as a law, under the requirement that the State law to be written and encoded to be able to capture such universality, overall determination of what is right;

d) justice, in one of its important elements, is only carried out and in consideration that once coded, the positive law ceases to be a monopoly of the professionals' caste, the knowledge of the content of the encoded law by members of the State, in their quality as citizens, also guaranteeing their equality, in terms of knowledge of the law to be presented as something familiar in its general determinations;

e) justice achieves the next step in that the assembly of encoded laws once known by the citizens of the State, the law, raises the man, in considering the universality of his being, in the sphere of freedom; the law, once coded, captures the general determinations of the community-State under the form of obligations and the man, knowing them, becomes free. But a freedom paid with the price of the loss, the melt of individuality, its singularity in the supra-individual ethic of the State as a reality of the moral idea [24].

Conclusions

Continuing the analysis of how the law self-exceeds, Hegel observes that the law can only be a formal law, as transgressing subjectivity and manifesting as a free and rational will, it must acquire stability and validity as a recognition from the part of the other/others in the legal form of acts that ensure recognition of the acquired right and in ensuring the demonstrable nature of such a right recognized by law.

So and only so Hegel believes that, through the practice of justice, the civil society, the social status where the Idea is lost in distinctiveness and de-composed in a triple duality, namely: the indoor-outdoor duality, the subjectivity-objectivity duality, the freedom-non-freedom duality returns to the unity of the universal.

Noting that it is rather about a justice that is achieved in the ethical level of the State, regardless of the particular and individual aims of the individual, by self-exceeding it and them, the State ensures justice as constituting an indifferent ethical community, generally, in relation to the individual, in relation to the general welfare as the sum of the individual welfare.

This paper is written during the susteinability stage of the project entitled "Horizon 2020 - Doctoral and Postdoctoral Studies: Promoting the National Interest through Excellence, Competitiveness and Responsibility in the Field of Romanian Fundamental and Applied Scientific Research", contract number POSDRU/159/1.5/S/140106. This project is co-financed by European Social Fund through Sectoral Operational Programme for Human Resources Development 2007-2013. Investing in people!

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ASPECTS REGARDING THE PRELIMINARY PROCEDURE IN THE CONTENTIOUS ADMINISTRATIVE LITIGATION

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Abstract
The functioning of any legal system (and not only) goes through blocking stages, when regulations seem to be outdated, and the legal procedure for settling litigations is unnaturally long, which leads to the citizens' dissatisfaction; they feel wronged by an administration that should protect them.
As an amicable solution to the violation of citizens' rights through administrative acts, the institution of the preliminary procedure aims at providing to the administration, a "time of reflection" within which it may, after its own analysis, correct the cases of illegality or inappropriateness and revoke, in whole or in part, the harmful administrative act, all this with minimum spending on both sides.
The present paper aims at analyzing the institution of the preliminary procedure throughout regulations in the Romanian legal system.
Keywords: *administrative litigation, preliminary procedure, voluntary appeal, administrative appeal*

Introduction

In a specific litigation with two degrees of jurisdiction - the merits of the case and the appeal - the preliminary procedure was considered by the legislator as a way that could give the prejudiced person the opportunity to obtain faster, the settlement of the dispute by recognizing the prejudiced right or the legitimate interest without the court intervention.

The reason for setting up a separate procedure than the one of bringing an action before the court has always been understood as an attempt to avoid, as much as possible, a litigation, in other words, a chance to settle a complaint in a more operative manner, in a shorter term and with minimum spending.

The evolution of the regulation

Even since 1925, the first special law on administrative litigation specified, by resuming the French model, that if the individual filed a petition to the administration, the claim was brought in Court after a period of 30 days since its registration by the

administrative authority or from its notification through bailiffs and within 30 days from that date. In other words, the law laid down different deadlines for bringing contentious matters in administrative courts, after an action against an act of authority or against the silence (or absence) of the administration to settle a claim concerning a right [1].

Later, Law 1/1967 generalized the 30-day period left at the administration disposal to repair the prejudice caused.

Although the regulation was criticized in the doctrine of the time, Law 29/1990 of the contentious administrative maintained that solution, and even came with the request for a preliminary action, even in the case of an unjustified refusal of the authority to solve a petition, considered by some authors to do nothing else than to prolong the abuse of the administrative authority [2]

Thus, according to Article 5 of paragraph 1 of Law 29/1990: before requesting the court to annul the act or to order the release of the act, the person who considers himself/herself prejudiced could claim the defence of his / her right within 30 days from the notification of the act or at the end of that period, to the issuing authority that is required to settle the claim within 30 days from that date [3].

It is also worth noting that the arguments in favour of preserving this “reflection term” for the public authority, period in which it can enter into legality without initiating proceedings before the specialized court is based on the idea of protecting the right of the citizen perfectly framed in the definition of the right to a good administration. It is always preferable for the authority to settle the conflict resulting from the entry into force of its acts in a non-contentious procedure, which would give value of efficiency to the administrative work.

The current regulation

The new law on administrative litigation, Law 554/2004, stipulates in Article 2, paragraph 1 letter j, that the preliminary procedure is the claim requesting the issuing or hierarchically superior authority, as the case may be, the re-examination of an administrative act of individual or normative character, in the sense of its revocation or modification.

The headquarters of the regulation is Article 7, entitled “preliminary procedure”. The text provides: "before appealing to the competent administrative court, a person who considers himself/herself prejudiced in his/her right or a legitimate interest, by an individual administrative act must request the issuing public authority or the hierarchically superior authority, if it exists, within 30 days from the date of communication of the act, the revocation in whole or in part thereof ".

The provisions of paragraph 1 are also applied in the case where the special law provides a jurisdictional administrative procedure and the party does not opt for it. Moreover, also entitled to file a preliminary complaint is the person prejudiced in his/her own right or legitimate interest, by means of an administrative act of individual nature, addressed to another subject of law, from the time he was notified by any means, of its existence, within the 6-month period provided in paragraph 7, and if the matter of the case is the administrative contract, the meaning of the preliminary complaint is similar to that of conciliation in the case of disputes between professionals, the provisions of the Civil Procedural Code being applied properly [4].

Scouring the preliminary procedure

The contentious matter can be brought before the administrative courts, according to legal provisions, by the following categories of persons, who consequently have to go through the preliminary procedure:

- the natural person who considers himself / herself harmed in his/her own right or legitimate interest by an administrative act issued by a public authority and addressed to it or to another subject of law, or the group of natural persons, without legal personality, holder of subjective rights or legitimate private interests;
- the private legal entities, in a subjective contentious action only if it involves the protection of their subjective rights or legitimate private interests because the legal persons are subjects with rights, obligations and patrimonies distinct from those of their members [5];
- other legal entities of public law than those mentioned in Article 7 may bring actions in contentious administrative after having gone through the voluntary appeal in advance. In the category of subjects of law to which the law recognizes the procedural active

legitimacy is the mayor, as local autonomous public authority, the local council or the county council as deliberative authority, but also the communes, the cities, the municipalities and the counties. All these while implementing the regulations of the European Charter of Local Self-Government [6], which stipulates that the local public administration authorities must have the right to appeal to the courts in order to ensure the free exercise of their competences and the compliance with the principles of local autonomy provided by the Constitution or by national law.

The preliminary procedure is mandatory, according to Article 2, paragraph 2 of the Law also in the case of administrative acts which may be subject to special administrative jurisdiction. They may be appealed to the administrative litigation court if the party understands not to exercise the administrative-judicial procedure.

The discussion is still around the phrase "special administrative jurisdiction". Several concrete situations of this case refer to the character of the procedure for settling the appeals against fiscal administrative acts, governed by the Code of Fiscal Procedure.

On several occasions, the Constitutional Court consistently expressed its position that the Code of Fiscal Procedure did not establish special administrative jurisdictions within the meaning of Article 21 of the Constitution, context in which the contentious administrative department of the High Court of Cassation and Justice adopted the principle solution according to which the procedure for settling tax appeals governed by the Code of Fiscal Procedure was a preliminary administrative procedure and not a special administrative jurisdiction (DCC nr. 563/2006).

Another problem appeared in practice is the assimilation of the preliminary procedure to the contestation, as an administrative remedy for some administrative acts, the regulation of which is made by special norms. In this context, a decision of the HCJC [7] establishes: "the appeal as administrative remedy is synonymous with the preliminary complaint regulated by Article 7 of Law 554/2004. The Supreme Court asserts that the decision adopted in the resolution of the appeal is an administrative act which is pronounced within an administrative appeal, and not a judicial act, since the appeal procedure is not circumscribed to the notion of administrative jurisdiction. In order to clearly distinguish the notions, it is stated that the administrative jurisdiction is a legal activity of settlement, by a state body independent of the parties to the dispute of some

legal conflicts which have been given in their competence by law, which ends by a judicial act against which remedies are provided. The jurisdictional administrative act is issued by an independent administrative authority, entrusted with administrative jurisdiction. In the settlement of appeals, the procedure is attributed to the body which issued the act, or to the hierarchically superior body, characteristic of a preliminary administrative procedure.

In the same register but in the opposite direction, the High Cassation and Justice Court has stated that the decisions of the National Council for Combating Discrimination are judicial administrative acts that are challenged under the special law, are not subject to Article 7 of Law 554/200, and therefore it is not necessary to carry out the preliminary proceeding. The difference between jurisdictional administrative acts and individual or normative administrative acts within the meaning of Article 7 of Law 554/2004 is the legal nature of the act. Thus, the individual or normative administrative acts are issued by public authorities under a regime of public power in order to organize the enforcement of the law, and by the administrative jurisdictional law, the enforcement of the law is not organized, but a decision is pronounced in the settlement of a legal conflict stipulated by the law in the competence of an independent administrative authority, following a procedure based on the principle of contradiction, of ensuring the right of defence [8].

Terms for bringing the action to court

The term stipulated by the law for the preliminary procedure, as mentioned above, is of 30 days from the date of communication of the act, being qualified in the doctrine as a term of recommendation and as a prescription term [9].

In some cases, the preliminary complaint may also be introduced beyond the 30-day time limit, but not later than 6 months, and only for good reasons, in the case of an individual unilateral administrative act; in the case of the administrative normative act, the preliminary complaint may be formulated at any time.

The phrase "good reasons" must be interpreted - as to the reason of being of the administrative contentious, detached from the letter and spirit of the Constitution - in a broader sense. The person concerned may invoke various subjective situations (special

family events, activities that could not be postponed) or objective situations (the administration fault) [10].

The current regulation provides the possibility of filing the prior complaint also by the prejudiced person in his/her right or legitimate interest by means of an administrative act of individual nature addressed to another subject of law from the moment he was notified, by any means, of its existence within a maximum of 6 months.

This change came after noticing several situations emerged in practice, in which the administrative act subjected to the censorship of the court did not harm the beneficiary, but a third party to whom a date of notification could not be imposed.

By Decision 797/2007, the Constitutional Court upheld the objection of unconstitutionality of the provisions of Article 7, paragraph 7, finding that the text of law was unconstitutional inasmuch as the 6-month period from the date of issue of the act applied to the preliminary complaint made by the party prejudiced in his/her right or legitimate interest, by an individual administrative act addressed to another subject of law. The Court found that the provisions of Article 7, paragraph 7 of the law did not make any distinction between the qualities of the person prejudiced by an individual administrative act, as it is the very addressee of the act or a third party to it. For third parties, the 6-month period begins to run from the date they were informed, by any means, of the existence of the act.

The individual administrative act is communicated to the addressee, and the third persons do not find themselves in the real possibility of knowing about its existence; under these conditions, the access of these categories of persons to the court is blocked [11].

Procedural aspects

According to the New Code of Civil Procedure, the failure to go through the preliminary procedure may be invoked only by the defendant's defence, under the penalty of forfeiture, which entails "a change in the legal status of the plea of inadmissibility of the action in administrative litigation for lack of prior complaint, from a formal, peremptory and absolute exception, in a peremptory and relative exception of substance.

In the case of actions concerning administrative contracts, the preliminary complaint is to be exercised according to the model of unilateral acts, until the legislator

expressly regulates this issue. It should be noted at this point that the regulation of Article 7 paragraph 6 refers to a similar procedure of conciliation in commercial matters, with the appropriate application of provisions of the Code of Civil Procedure, within a period of 6 months which begins to run:

- from the date of the conclusion of the contract, in the case of disputes related to its conclusion;
- from the date of the change of the contract or, as the case may be, from the date of refusal of the request for amendment made by one of the parties in the case of litigation related to the changing of the contract;
- from the date of breaching the contractual obligations, in the case of disputes relating to the execution of the contract;
- from the date of expiry of the term of the contract or, as the case may be, from the date of the occurrence of any other cause giving rise to the termination of contractual obligations, in the case of litigations concerning the termination of the contract;
- from the date on which a contractual clause might be interpreted, in the case of litigation relating to the interpretation of the contracts.

After the entry into force of the New Civil Code, the new text incidental to the matter refers to "dispute settlement between professionals" and provides the following: "In the money-valuing and contract-based lawsuits and demands between professionals, prior to the filing of the petition, the plaintiff will try to settle the dispute either by mediation or by conciliation with the other party".

In the case of actions brought by the Prefect, the People's Advocate, the Public Ministry, the National Civil Servants' Agency or those concerning the claims of those injured in their rights by ordinances or provisions of ordinances declared unconstitutional, as well as in the case of unjustified refusal to settle a petition referring to a legitimate right or to a legitimate interest, or to the failure to settle a request within the legal time [12], but also in the case of actions which have as object the plea of illegality, the preliminary procedure is not mandatory.

Also, in the case of actions brought by the body which issued the administrative act, the preliminary procedure is not necessary.

The non-fulfilment of the preliminary procedure draws the inadmissibility of the action according to the provisions of Article 193 paragraph 2 of the Code of Civil Procedure, in which, if the law provides expressly, the notification of the court can be made only after the completion of a preliminary procedure, under the conditions established by that law.

The proof of going through the preliminary procedure shall be attached to the request for a summons.

The failure to do so can be invoked only by the defendant, by way of a grievance, under the penalty of forfeiture.

As a necessary requirement for initiating judicial proceedings, the exception to the lack of preliminary procedure is a substantive exception, which is added to the other conditions of admissibility of an action in contentious administrative.

Compared to the effect it produces, the exception to the absence of the preliminary procedure is a peremptory exception, because it tends to reject the action. If the action is brought before the settlement of the preliminary complaint, it can be dismissed as premature, because the right to action has not been born yet. If, however, the issuing authority has not been notified, there is no condition for the exercise of the action and then the solution that is imposed is the rejection and that makes the action inadmissible.

Conclusions

The legislator has given the preliminary procedure a special importance, based on the imperative nature of the legal rule: "the person... must claim....", but also from the interest protected by the rule of law, namely to avoid burdening the courts with claims which can be settled in a non-contentious way. The solution has also been reinforced by the Constitutional Court, which has on several occasions stated the mandatory nature of the preliminary procedure, considering that there is no constitutional provision prohibiting the establishment of a preliminary administrative procedure without jurisdiction for the purpose of settling violations of the rights of persons by administrative acts, through a quick and exempt from stamp duty procedure.

Often criticized or regarded as a dying legal institution, the preliminary procedure still finds its place in the Romanian legal system, being maintained in every regulation of the law of administrative contentious.

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Journal of Law and Administrative Sciences
No.7/2017

THE INFRINGEMENT PROCEDURE AND ITS IMPLICATIONS IN PRACTICE

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Abstract:
The paper addresses the issue of the infringement procedure, i.e. the procedure initiated as a result of a violation by a member state of the European Union legislation, having as a legal basis Articles 258-260 of the Treaty on the Functioning of the European Union TFEU (former Article 226-228 of the Treaty establishing the European Community TEC). The application of these provisions is closely related to the provisions of Article 17 paragraph (1)[1] of the Treaty on European Union (TEU), according to which the European Commission, in order to promote the general interest of the Union, aims to ensure the application of the Treaties by the states that have ratified them and the measures adopted by the institutions for that purpose, and also supervises the application of EU law under the control of the Court of Justice of the European Union. Through this procedure, the European Commission fulfills one of its fundamental tasks: supervising the application/implementation of European legislation.
Keywords: *infringement of EU law, letter of notification, non-compliance, admissible complaint, pecuniary sanctions*

Preamble

The concrete application of European Union law is essential to the achievement of the objectives set out in the Treaties and to the increase in the credibility of the institutions among citizens.[1] In this respect, the member states have responsibilities for transposing the directives within the deadlines established and as precisely as possible, as well as for the correct application and enforcement of the Union law as a whole[2] , and for the Commission to monitor the application of Union law and the compliance of the legislation of the member states with the EU law.

Where the Commission identifies a possible failure to fulfill obligations, it shall initiate a bilateral dialogue with the respective member state, which shall resolve the

[1] Article 17 (1) TEU: "The Commission promotes the general interest of the Union and takes appropriate initiatives to that end. This ensures the application of the treaties, as well as of the measures adopted by institutions pursuant thereto. The Commission supervises the application of the Union law under the control of the Court of Justice of the European Union (...)".
[2] Article 291 paragraph (1) of the TFEU.

matter as expeditiously and effectively as possible in accordance with the Union law. If the problem-solving efforts are not successful, the Commission may initiate infringement proceedings for non-fulfillment of obligations[3] , in accordance with Article 258 of the Treaty on the Functioning of the European Union (TFEU). If a member state fails to comply with the Commission's opinion, the Commission may refer the matter to the Court of Justice under Article 258 TFEU if the conditions set out in Article 260 paragraphs (2) or (3) are fulfilled, even requiring pecuniary penalties.[2]

The use of the expression "infringement procedure" is not unitary: it is sometimes used to describe only the pre-contentious stage (the informal phase), sometimes it is used to refer to the contentious stage before the European Court of Justice (the formal phase).

In practice, three types of infringement of EU law have been identified that trigger the Commission to initiate the infringement proceedings [3], namely:

a) omission of notification of the national normative acts transposing and implementing the directives, the member states being obliged to notify both the transposing and the implementing legislation;

b) non-compliance of the national legislation with the requirements of the European norms, the member states being the ones that have to ensure full compliance of the national legislation with the EU requirements;

c) inappropriate application of the Union's normative acts, the member states being responsible for the full implementation of the European transposition provisions.

The European Commission is the one to find that certain provisions of the legislation of a member state are in breach of the Union law. There has been highlighted the existence of several ways of identifying the cases of breach of the EU law by the member states that may lead to the opening of the infringement procedure. [4]

Such is the automatic notification of omissions of national transposition legislation, the European Commission receiving an informational system that allows for such referral and the automatic triggering of the procedure for such cases [5].

[3] The procedures establishing the failure to fulfill the obligations may be initiated, as well, based on other provisions of the EU law, for example Article 106 of the TFEU, corroborated with Articles 101 and 102 of TFEU.

A second way is the complaint lodged with the European Commission by any natural or legal person having as object any measure (legislative, regulatory or administrative) or practice of a member state which is considered to be incompatible with the EU norms.

The complaint shall be any written notification to the Commission denouncing measures or practices contrary to Union legislation in the member states. The definition of a reclamation/complaint is also extremely varied and involves any means of transmission (by mail or e-mail) that has to be treated properly.

For an easier processing of the complaints, starting with December 2014, the Commission will provide the applicants with a standard form published in the Official Journal of the European Union or on the European Commission's website[4] . The complaints must be submitted in writing, by letter, fax or email. In formulating the complaint, the complainant must not demonstrate that they have the status to act or the fact that they are directly and principally affected by the infringement they denounce.

The filing of an application is not automatic, it involves an internal procedure that does not allow the complaint to be registered in the main complaints register if: it is anonymous; it does not refer, implicitly or explicitly, to a member state; it denounces actions or omissions by a private person or private group; it does not contain a complaint [6]. It may also be the case for the Commission services to decide not to register correspondence as complaint, with the obligation for them to inform the applicant by means of an administrative letter, stating the reasons for the rejection, as mentioned in the Code of Good Administrative Behavior [7]. In order to further simplify the management of complaints and provide for better quality services to citizens and businesses, in 2014, the Commission has connected the SOLVIT[5] problem solving service with the CHAP Complaints Internal Complaint Tool[6] .

[4] The Form is accessible on the portal Europe Rights and opportunities, offering connections between different services of solving problems and treating complaints at national and EU level.
[5] SOLVIT is an informal problem-solving tool provided by national administrations, set up in 2002 by the Commission and the Member States to help citizens reach swift solutions to cross-border issues in cases, where national authorities have not complied with EU law.
[6] CHAP (Complaint handling/Accueil des plaignants) is the informational tool of the Commission for the Registration and Management of Complaints and Requests for Information on the Application of EU Law by Member States.

Once the complaint has been received, the Commission has the discretionary power to decide on it. Within one year, the Commission must either close the case or move to the next stage. The complainant is informed, through the General Directorate dealing with the respective domain, over the actions taken by the Commission in response to their complaint, over the decision to initiate the infringement procedure against a state, and over any legal action.

In the third category of ways to identify cases of breach of EU law [8] by member states that may lead to the opening of the infringement procedure, there are the Commission's own investigations, regarding: the member state reports on how Union acts have been implemented in each member state; the questions addressed by the European Parliament as a result of which the Commission may self-incriminate and initiate infringement proceedings; the petitions received by the European Parliament and forwarded to the Settlement Committee. From their analysis, the Commission can conclude that a member state has not complied with EU law.

The relevance of the informal phase of the infringement procedure

In general, when identifying the infringement case, non-conformity is taken into account - failure to comply with EU law by incorrect transposition of a European act or the incorrect application of the provisions of a European act or non-communication – lack of notification (communication) of the national execution measures.

The informal (pre-contentious) phase aims at bringing the member states to the optimal level of harmonization of the Union law, giving them the opportunity to address the identified problem before it comes before the EU Court of Justice, and also to voluntarily solve the problems.

This phase is not covered by the treaty. As a matter of principle, the European Commission sends a letter requesting clarifications on the issues with which it has been informed or it has discovered following its own investigations [9]: incomplete documentation; non-compliance with deadlines; the lack of public access to the information underlying the decision; violation of the public's right to participate in decision-making; lack of motivation for the decision by right and in fact.

The pre-contentious phase of the infringement procedure comprises several stages [10]:

1. The letter of formal notice is the document stating what the infringements of Union legislation are. In fact, this letter represents the formal opening of the infringement procedure and the Commission has the role of investigative authority. The purpose of this letter is to provide the notified member state with the opportunity to present its observations/explanations regarding the issue set out in the letter.

The letter of notification is of a legal nature and, usually, presents only one case of infringement, but there may be situations where there is an annex to the letter in which other infringement situations are presented. The period of reply to this letter is normally of 2 months and the holiday period can not be invoked as a reason for extending. The member state can write as an answer the arguments regarding the identified problem. It is recommended that the member state contact the Commission immediately after having received the notification letter in order to resolve the identified problem as quickly as possible.

2. The observations of the member state, based on Article 258 of TFEU, are made in response to the formal letter received from the European Commission. This procedural step is, in fact, the right of the state to defend itself, thus guaranteeing the protection of its interests. However, the member state can not rely, in its favor, on the provisions, practices or circumstances existing in its national law to justify the non-compliance with the obligations imposed by Union law, even if they are of a constitutional nature.

3. The reasoned opinion is adopted by the Commission and transmitted to the State if it has not replied to it or considers the reply to be unsatisfactory (Article 258 of TFEU) after examining the comments received from the state concerned. As a rule, the reasoned opinion is considered a final “alarm signal” and contains the Commission’s requirement that the member state take the necessary measures to eliminate the breach of European law.

4. The response of the member state to the reasoned opinion shall include the measures taken by the State to comply with the Commission’s opinion. The deadline for compliance is set by the latter, and if the State does not make the necessary changes, the Commission shall refer the case to the CJEU in order to start the contentious procedure.

5. The Commission's decision to refer CJEU ("Saisine") is the last step of the pre-litigation procedure, intervening within a maximum period of 18 months from the date of initiation of the infringement procedure. If the member state does not comply with the provisions of the reasoned opinion within the prescribed time limit, the Commission may refer the matter to the Court of Justice of the European Union (CJEU) under Article 258 of TFEU.

There must be no more than 18 months between the decision to initiate the infringement procedure (formal letter of notice) and the submission of the action to the CJEU. During this time, the Commission may at any time take the decision to refer the case to the CJEU. The Commission's decision to refer the case to CJEU seeks to confirm the Commission's legal position in the reasoned opinion. This decision represents the start of the litigation procedure.

Even if a member state recognizes a breach of EU law, but can not solve the problem because of the structure of its national administrative system, established in accordance with constitutional rules, this can not be invoked to justify the non-compliance.[11] As a consequence, the member state concerned is obliged to modify its national system in order to ensure the uniform application of the Union law. The Commission is obliged to take into account all the replies and arguments of the member state and can not rely on internal coordination issues to justify that a particular document submitted by the member state has not been considered.

Aspects of the infringement procedure before the Court of Justice of the European Union (the contentious phase)

The contentious phase of the infringing procedure takes place in the following 7 stages:

1. The first step is to refer to the Court. The Legal Service of the European Commission prepares a written document together with the General Directorate responsible for the respective field. The action must be brought at the latest within one month of the date on which the Commission decided to refer the case to the CJEU (from "saisine"). Practically, the referral to the Court of Justice opens the litigation procedure.

A decision to submit is implicitly revoked if the Commission subsequently decides to send a supplementary letter of formal notice or a reasoned opinion. Therefore, if the progress in that case so requires, the Commission must take a new decision to forward [12].

2. The resolution of the case by the CJEU is the second stage. By its judgment, the CJEU determines whether or not the subject of the dispute is or is not a violation of European norms. If the CJEU finds that a member state has breached any of its obligations under the Treaties, this state is required to take the necessary measures to comply with the ruling of the Court (Article 260 of TFEU). It follows that the CJEU only establishes whether or not the subject matter of the dispute is a violation of EU rules but does not have the competence to specify the concrete measures that need to be taken in that member state; the concrete measures to remedy the situation are the responsibility of that member state.

3. The implementation of the CJEU decision. One month after the final decision of the CJEU, the Commission sends a letter to the State concerned reminding it of the obligation to take the necessary steps to ensure compliance with the breached European legislation and to report to the Commission within three months on the measures taken or expected to be taken. The final decisions of the CJEU are binding on the member states and there is no appeal procedure. One observation to be mentioned is that the European Ombudsman can not be referred to regarding these decisions.

4. The member state's observations refer to the possibility for the State concerned to send a reply to the Commission on the steps it has taken to comply with the CJEU decision. This possibility is the right of that State to defend itself and demonstrate how it considers necessary to respect the decision of the CJEU.

5. The letter of delay is sent by the Commission if it considers that the member state has not taken the necessary measures to comply with the CJEU decision (Article 260 of the TFEU), specifying which provisions of the CJEU decision have not been met and the deadline for taking these measures. The TFEU has introduced, however, on the basis of Article 260, the possibility of suppressing this stage of the procedure.

The procedures related to Article 260 [13] will be enunciated in this form considering the existing similarities with the steps already presented in the pre-contentious procedure: a second letter of formal notice; a new motivated opinion; the referral to the CJEU regarding

the conviction of the member state concerned to pay certain fines and/or commencing sums (late payments).

6. The referral to the Court of Justice for failure to comply with its decision by the European Commission, if that state has not complied with the decision of the CJEU within the prescribed time-limit, seeking to oblige that State to pay a global amount or penalties until the date on which it complies with the first decision of the CJEU (Article 260 of TFEU). The Commission shall indicate the amount of the lump sum or penalty payment that the member state is required to pay and which it considers appropriate to the situation (Article 260 of TFEU).

As early as 12 July 2005, the European Court of Justice ruled[7] that the Community judicature has the option of imposing both a global sum (fines) and a penalty. Thus, the CJEU has established the possibility for judges to impose in the future a global fine, taking into account the already accumulated delays, and not only a non-retroactive daily payment. The final decision on the type and amount of pecuniary sanctions applied belongs to the CJEU, which may not closely follow the Commission's proposal.

7. The CJEU decision – if, following the examination of the complaint made by the Commission, the Court finds that the member state has not complied with its ruling, it may impose a lump sum or a periodic penalty payment (Article 260 of TFEU) until the fulfillment of the obligations specified in the first judgment. The European Commission proposes to the CJEU the financial penalties, indicating their amount.

TFEU provides for the possibility for the CJEU to impose financial penalties as soon as it identifies a breach of European legislation as a result of failure to transpose the European normative acts, without the need for a second request from the Commission, under Article 260 paragraph 3.

In determining the amount of pecuniary sanctions, the Commission considers three fundamental criteria [14]: the gravity of the infringement, the duration of the infringement (the period of time when the failure to comply with the European provisions persists, from the date of the first decision issued) and the national factor ("n") settled for each member

[7] Decision of the Court of Justice of 12 July 2005, Commission/France, has confirmed that the two types of pecuniary sanctions (penalties with commodity title and lump sum) may cumulate for the same violation and has applied this principle for the first time.

state[8] (representing the ability of that State to pay and taking account of its economic and political importance). In 2012, the Commission adopted a Communication [15] on the implementation of Article 260 of TFEU updating the data used to calculate the lump sum and penalties to be proposed by the Commission to the CJEU in the infringement proceedings.

It has been shown in the literature that the possibility of applying financial sanctions to a state which has not complied with a finding of infringement has been introduced by the Maastricht Treaty. The European Commission wanted to develop a unitary and consistent system for the attribution of sanctions by issuing a communication on the sanctioning regime that was published in 1997. Thus, in order to ensure transparency, the Commission published the criteria it applied to indicate to the Court of Justice the value of the financial sanctions they estimate appropriate to the circumstances of each case. The Commission's estimation was based on three fundamental criteria: the gravity of the infringement; the duration of the infringement; the need to ensure that the deterrent effect of the sanction can avoid recurrence.

Since 2005, the Commission has included in its applications before the Court of Justice on the basis of Article 260 of TFEU, the following indications: the payment of a penalty on each day of delay after a pronounced ruling; the payment of a lump sum as a sanction for the continuation of the violation between the first decision for non-execution and the decision pronounced according to Article 260. The Commission used special situations only in respect to a lump sum payment, for example in cases of repeated infringements. The most appropriate penalty for determining the member state to comply as quickly as possible was the Commission's sanctioning periodic penalty payments. The Commission does not waive the possibility of requesting a lump sum payment; however, its practice under Article 260 was the imposition of periodic penalty payments [16].

It has become imperative to amend the sanctioning method in order to rectify as soon as possible the violations of the member states and thus to reduce the number of complaints of the Court according to the provisions of Article 260.

[8] For Romania, the Commission settled the minimum lump sum at 1.740.000 Euro and the value of the national factor "n" at 3.28 (penalties can be comprised between 2.000 – 124.000 euro/day of delay).

With regard to the severity coefficient of the infringement, the Commission considers two parameters closely related to the underlying violation: the importance of the breached European norms and the impact of the breach on the general and particular interests. When assessing the significance of the breached European provisions, the Commission will rather consider their nature and extent than their rank in the hierarchy of norms. For example, a violation of the principle of non-discrimination should always be considered very serious, regardless of whether the violation results from violation of a principle established by the treaty itself, or by a directive or regulation. The violations of fundamental rights and the four fundamental freedoms (movement of persons, goods, capital and payments, services) enshrined in the treaty must be regarded as serious. The clarity or ambiguity of the violated European norm is an important factor, as well as the lack of cooperation within the procedure provided for in Article 260.

The effects of the breach on general or particular interests concern aspects such as: loss of own resources for the Union; serious or irreparable damage to human health or the environment; economic or non-economic damage suffered by individuals and economic operators; the volume of the population affected by the violation.

Conclusions

The effective enforcement of the EU law has continued to face major challenges in 2016 and in the first half of 2017. The member states have stepped up their efforts to complete the transposition before the judgments of the Court of Justice. However, in conjunction with the other cases under Article 258 and Article 260 paragraph (3) of the TFEU, which were initiated in the previous years, there have been several pending cases, which propose daily penalty payments.

We believe that only by a correct and timely transposition of EU law into national legislation, as well as a clear legislative framework could the violations of EU law be considerably reduced and, hence, the number of complaints, to the benefit of all individuals, natural or legal persons.[17]

The European Commission must ensure, as the guardian of the Treaties, the strengthening of cooperation with the member states in order to prevent the occurrence of breaches of the Union law and to speed up the process of rectifying violations of EU law where necessary.

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THE TRUST ACCORDING TO PRESENT CIVIL REGULATION

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Abstract
Originally, the fiduciary deed is a legal operation inspired from the Anglo-Saxon Institution of Trust. For the first time in the Romanian legal system, the trust is regulated under the Title IV of the Third Book "Regarding the Goods" of the New Civil Code. The Article 773 defines fiduciary deed as the legal transaction by which one or more settlors transfer real rights, securities or other property rights, or a set of such rights, present or future, to one or more trustees that exercise them with a defined purpose, for the benefit of one or more beneficiaries. These rights form an autonomous property fund distinct from the other rights and obligations in the assets of the trustees. Thus, the trust is a real application of a patrimony divisibility.
Keywords: *trust, divisibility, property fund, law, contract.*

For the first time in the Romanian legal system, the trust is regulated under the Title IV of the Third Book "Regarding the Goods" of the New Civil Code (NCC).

Originally, the fiduciary deed is a legal operation inspired from the Anglo-Saxon Institution of Trust.

Spread from the UK and the US to many countries of common law tradition in the twentieth century and after it was rooted in several Latin American countries, the trust was the subject, in 1985, of a private international law convention signed in Hague, which provided for the recognition of the trusts formed under the law that authorized them. Unilaterally, what it is prohibited in the international conventions, a common law institution could therefor penetrate into the civil law countries. The Convention evoked the possibility for citizens of a country of civil law system to form "home" or "intern" trusts subject to foreign laws. However, few continental law states ratified it (Italy in 1990, the Netherlands in 1995, Luxembourg in 2004, Switzerland in 2007), but it instigated the takeover of the legal institution in the new laws [1].

The first step was made within the Canadian state of Quebec legal system. It knew fiduciary by will, by donation, or by the title of guarantee from the nineteenth century[2].

The trust institution is rooted in the subsystem of the equity law, which includes a set of rules emerging in the Anglo-Saxon law from the need to lessen the rigidity of the common-law system. Thus, by trust, the so-called settlor, who is the owner of a good/an asset, transmits the property over that good to one or more persons called trustee(s), with the intention that the asset be held in trust for the benefit of another person, named the beneficiary. It is not necessary for the settlor, trustee and beneficiary to be different persons. The Settlor can validly establish a trust in which to declare a trustee for the benefit of one or more beneficiaries, as he may himself be one of the beneficiaries. Following the transmission of the right, the trustee is recognized by the common law as the owner of the property right, and by the equity law as the holder of the so-called “legal title”, which confers a specific and strictly regulated role on the fiduciary duties, which are required to be managed only for the benefit of the beneficiaries. The Beneficiaries are the holders of the so-called “fair title”, which entitles them to benefit from property’s management by trustees for their benefit[3].

With reference to our legislation again, the Article 31 par. 3 of the NCC provides that the special-purpose assets is the fiduciary property, constituted according to the provisions of Title IV of the Book III, those affected to the exercise of an authorized profession, as well as other patrimony determined by law [4].

The Article 773 defines fiduciary deed as the legal transaction by which one or more constitutors transfer real rights, securities or other property rights, or a set of such rights, present or future, to one or more trustees that exercise them with a defined purpose, for the benefit of one or more beneficiaries. These rights form an autonomous patrimonial fund distinct from the other rights and obligations in the assets of the trustees.

The trust is thus a real application of an assets’ divisibility[5].

In the process of division or assignment, the assets’ holder will is essential. Thus, special-purpose assets cannot arise in the absence of the holder’s will expression. The division of the assets into patrimonial funds is achieved through their affiliation to a certain purpose. In other words, each property fund can be regarded as a miniature sum of assets that is affected by a specific purpose, which imparts to it a special legal regime. The purpose therefor becomes the central element of all goods and assets that constitute themselves into a universality. It must be strong enough to attract around it the positive

and negative values that contribute to its achievement. Since special-purpose assets exist only to the extent of their legal recognition, the aim pursued by its holder must be a legally acceptable one, capable of giving rise to such a fund of assets. The legislator's intention is not sufficient for the formation of the special-purpose assets, but it must be joined by the purpose stated by its owner[6].

The persons engaged in the legal transaction of trust are the constituent, i.e. the holder of the fiduciary rights, who acquires and exercises the rights and the beneficiary is the one in whose favor the rights are exercised by the fiduciary. There may be more constituents, more fiduciaries or more beneficiaries.

The object of the fiduciary is the transfer of real rights, claims, guarantees, any other patrimonial rights or an ensemble of such rights. The rights to be transferred may be present or future.

The object of the fiduciary is the transfer of real rights, account receivable, guarantees, any other patrimonial rights or an ensemble of such rights. The rights to be transferred may be either present or future.

Although the legal provision in Article 773 NCC only refers to the transfer of real rights and entitlements, it is obvious that when it comes to the transfer of rights, consideration must also be given to the transfer of the assets that these rights bear[7].
With regard to the main real rights, may be the object of the fiduciary the following: the right of ownership, the land surface right, the usufruct, the servitude, but in the case of the latter only with the dominant tenement. The right of use and of legal housing cannot be transferred through the fiduciary operation, because they cannot be ceded, regulations in this sense being included in the Article 752 Civil Code [8].

The fiduciary has the attributes of a property owner, possession, use and disposition, and he is free to dispose of his possessions, his right being limited to the purpose of the fiduciary and the duration of the trust, which cannot exceed 33 years from the date of the contract conclusion. In exercising these attributes, the fiduciary must be worthy of the confidence the settlor has given him, so that he will have to give the right to property a use consistent with the purpose for which he has received the property. In other words, the trust consists in making out of ownership a simple tool to achieve a goal.

So that the doctrine considered two practical consequences, namely the trust management and the fiduciary warranty[9].

In the case of the first form, the fiduciary may entrust a third party that he or she trust in, his or her enterprise, securities portfolio, etc., in order to be managed by the trustee and with the burden on the latter to restitute the fruits and to remit the property, upon completion of a term, either to the fiduciary himself or to a beneficiary designated by him. The fiduciary thus having become the owner would have the most extensive management powers. In the second variant, the fiduciary allows the debtor to remit to the creditor a good or an ensemble of goods with the task of transferring it to the former, in case of repayment of the debt. The creditor who becomes immediately the owner will also have the right to make a claim. However, if he can perform certain acts, he will not be able to do it for his own satisfaction [10].

As it is shown in the text of the Article 773 NCC, securities form the object of the trust, such as surety, mortgage, and pledge.

However, according to the Article 775 NCC, irrespective to its object, the trust cannot be the means by which an indirect liberty is made for the benefit of the beneficiary; otherwise the fiduciary contract is void, absolute nullity being applied.

As regards the purpose of the fiduciary, the exercise of the fiduciary's rights is performed only for the benefit of the beneficiary, even when he or she is the settlor. The rights thus transferred to the fiduciary retain their distinct, autonomous character from the rest of their patrimonial rights and obligations.

The Trust's Sources [11]

According to the Article 774, the fiduciary deed is established by law or contract concluded in an authentic form. It follows from that provision that the trust cannot arise from the will or judicial decision.

Also in the text pf the 1 par. of this article, it is stated that the trust must also be expressive.

If the trust is constituted by a contract, it presents several legal features, namely:[12]

- It is a solemn contract, concluded in an authentic form (ad valitatem), the sanction of non-compliance being absolute nullity;

- It is an intuituu personae contract, as its conclusion is based on the professional qualities or training of the fiduciary;
- It is a synallagmatic contract;
- It is a contract on a purely basis free or expensive;
- It is a commutative contract but it is also admitted that in certain cases the fiduciary contract can become arbitrary when the duration of the contract, which cannot exceed 33 years, depends on a future and uncertain event, such as the lifetime of the beneficiary;
- It is a rights' transfer contract.

According to par. 2 of the Article 774 NCC, the fiduciary provisions of the new Civil Code represent the common applicable law in the matter, and those legal provisions supplement the law under which the fiduciary is established, unless otherwise provided.

The Parties of the Fiduciary Contract

According to the Article 776 NCC, the parties to the trust agreement are the settlor and the fiduciary. The paragraph 1 of this Article provides that any natural or legal person may be a settlor of the trust agreement.

The paragraph 2 of the Article 776 NCC provides that only credit institutions, investment and investment management companies, financial investment services companies, legally established insurance and reinsurance companies can act as trustees, and according to paragraph 3, may have the status of fiduciaries public notaries and attorneys-at-law, irrespective of the form of exercise of the profession.

The Article 777 of the NCC provides that the beneficiary of the trust may be the settlor, the fiduciary or a third person. If the beneficiary is a third party, it is not a party to the trust agreement, and in this case, the legal provisions on the stipulation for the other shall apply.

The settlor and the fiduciary must have full exercise capacity. In the case of a juvenile or a court injunction, the fiduciary contract may be terminated by the guardian, only with the approval of the family council and the authorization of the guardianship court, subject to the sanction of the annulment of the act. However, according to the Article 144, paragraph 4 NCC, the guardian may, without the approval of the family council and without the authorization of the guardianship court, alienate the goods subject to

degradation, spoilage, alteration or depreciation as well as those rendered useless to the minor.

According to the Article 778 NCC, unless the contrary is stated, the settlor may at any time designate a third party to represent his or her interests in the performance of the contract and to exercise the rights arising from the fiduciary contract.

As regards the identity of the beneficiary, if it is not identified at the beginning of the trust agreement, according to the Article 779 letter E) NCC there must be rules in the contract for its subsequent identification. If the beneficiary is a settlor or a fiduciary in the same contract, of course it is known from the beginning.

As in the case of the settlor and the fiduciary, the beneficiary must have full exercise capacity, given that, according to the Article 788 paragraph 1 NCC if the fiduciary fails to fulfill his or her obligations or endangers the interests entrusted to him or her, the beneficiary may request the replacement of the fiduciary in court, and according to the Article 789 paragraph 2 of the NCC, upon acceptance by the beneficiary, the contract cannot be modified or revoked by the parties or unilaterally denounced by the settlor only with the agreement of the beneficiary or, in its absence, with the authorization of the court.

The right exercised in the beneficiary's benefit is affected by a suspensive condition consisting in accepting the fiduciary by the third party. Thus, according to paragraph 1 of the Article 789 NCC, for as long as it has not been accepted by the beneficiary, the fiduciary contract may be denounced unilaterally by the settlor.

The Content of the Fiduciary Contract

The Article 779 NCC contains the provision that the fiduciary contract must state, under the sanction of absolute nullity:

A) The real rights, securities, guarantees and any other transferred property rights;

B) The duration of the transfer, which may not exceed 33 years from the date of its conclusion;

C) The identity of the settlor or settlors;

D) The identity of the trustee or trustees;

E) The identity of the beneficiary/ beneficiaries or at least the rules enabling them to be determined;

F) The purpose of the fiduciary and the extent of the administration and disposal of the fiduciary or the trustees.

The Fiduciary's Obligations

The Fiduciary, in addition to other obligations that may be relied upon under the fiduciary act, has two express obligations under the new Civil Code, namely the obligation to register the fiduciary tax (the Article 780 NCC) and the obligation to be held accountable (the Article 783 NCC).

Thus, according to the Article 780 NCC, under the sanction of absolute nullity, the fiduciary contract and its amendments must be registered at the request of the fiduciary, within one month from the date of their conclusion, to the fiscal body competent to administer the amounts owed by the fiduciary to the general consolidated budget of the state. Where the property fund includes real estate rights, they are registered according to the legal provisions, under the same conditions, in the specialized department of the local public administration authority competent to administer the amounts owed to the local budgets of the administrative-territorial units within which the property is located, the land book provisions remaining applicable.

If the case where the beneficiary designation is later, it must be done under the same sanction by a written document registered under the same conditions.

If certain special forms requirements are demanded for the transfer of certain rights, a separate act will be concluded in compliance with the legal requirements. In these cases, the lack of tax registration implies the application of the administrative sanctions provided by the law.

Regarding the obligation of the fiduciary to be held accountable, according to the Article 783 NCC, the fiduciary agreement must include the conditions under which the fiduciary is held accountable by the settlor for the fulfillment of his or her obligations. The fiduciary also has to report, at specified intervals in the trust agreement, to the beneficiary and to the representative of the settlor at their request.

As mentioned above, if the fiduciary fails to perform his duties or jeopardizes the interests entrusted to him/her, the settlor, his or her representative or the beneficiary may file an action for the replacement of the fiduciary.

The Liability and the Replacement of the Fiduciary

According to the Article 787 NCC, for damages caused by acts of preservation or management of the fiduciary property, the fiduciary is liable only with the other rights contained in his or her patrimonial assets. In other words, the fiduciary answers with his own property only for damages caused by acts of conservation or administration.

Regarding the fiduciary's management acts, the Article 795 provides that the person entitled to the simple administration is required to carry out all the acts necessary for the preservation of the goods, as well as the acts that are useful for them to be used in their ordinary purpose, and the Article 800 stipulates that the person empowered with full administration is required to preserve and exploit the goods, in a profitable way, to increase the property fund or to affect the patrimonial assets, insofar as represents the interest of the beneficiary.

In respect to the damages caused by disposition acts, the provisions of the Article 786 of the NCC shall apply, so that the fiduciary property may be prosecuted, under the law, by the holders of accounts receivable arising in connection with such property or by those creditors of the settlor who have a real surety upon his or her assets, and whose opposition is acquired, according to the law, prior to the establishment of the trust. The right to pursue may also be exercised by the other creditors of the settlor, but only by virtue of the final judgment of admission of the action whereby the fiduciary contract has been terminated or rendered inoperative in any way with retroactive effect.

The paragraph 2 of the Article 786 NCC states that the holders of receivables arising in connection with the assets in the fiduciary property may only pursue those goods unless, by virtue of the fiduciary agreement, the trustee and / or the settlor is required to answer for a part or for the whole fiduciary's passive. In this case, the assets of the fiduciary property will be pursued first and then, if necessary, the assets of the fiduciary and / or the settlor, within the limit and in the order provided by the fiduciary contract.

As we have mentioned above, if the fiduciary fails to perform his or her duties or jeopardizes the interests entrusted to him or her, the settlor, his or her representative or the beneficiary may sue the replacement of the fiduciary.

Pending the settlement of the replacement request, the settlor, his or her representative or, in their absence, the beneficiary shall appoint a provisional administrator of the fiduciary property. If the settlor, his or her representative or the beneficiary designates a provisional administrator at the same time, the designation made by the settlor or by his/her legal representative shall prevail.

The temporary trustee's mandate shall cease upon the replacement of the trustee or the final rejection of the replacement claim.

The solution of the replacement of the fiduciary is solved urgently and above all. The appointment of the new fiduciary and the provisional administrator may be ordered by the court only with their consent.

If the court has appointed a new fiduciary, he or she shall have all the rights and obligations set out in the fiduciary agreement.

The settlor, his or her representative, the new fiduciary or the provisional administrator may register this change of the fiduciary status by applying the provisions of the Article 780 (tax registration) and 781 (fiduciary opposition). Replacement of the fiduciary occurs only after this registration.

The Termination of the Fiduciary Contract

According to the Article 790 NCC, the fiduciary contract terminates:

- When the term is completed;
- When the pursued goal is achieved, if it occurs before the deadline;
- If all the beneficiaries give up the fiduciary, and the contract did not specify how the fiduciary relationships will continue in such a situation. Disclaimers are subject to the same registration formalities as the trust agreement. Termination occurs at the date of completion of the registration formalities for the last waiver declaration;
- At the time when opening the insolvency proceedings against the fiduciary or at the time when the legal entity's reorganization takes place, according to the law.

According to the Atricle 789 NCC, for as long as the beneficiary has not accepted it, the settlor may denounce the fiduciary contract unilaterally.

The fiduciary contract may also cease by the death or termination of the fiduciary's existence, as the fiduciary contract is a contract of intuituu personae.

The loss of the status of a lawyer, a public notary, or the suspension of their profession when they act as fiduciary leads to the termination of the fiduciary contract [13].

Regarding the effects of the trust, the Article 791 NCC contains provisions according to which, when the trust contract ceases, the existing fiduciary assets at that time are transferred to the beneficiary and, in the absence thereof, to the settlor. However, the confluence of the fiduciary patrimonial fund in the property of the beneficiary or the settlor will occur only after the payment of the fiduciary debts.

The Trust with Foreign Element

The new Civil Code also contains specific regulations applicable to the fiduciary with a foreign element in the Book VII – "Provisions of Private International Law," Title IV – "Fiducia" (articles 2659-2662), which contains provisions regarding:

• The determination of the applicable law to the trust, based on the settlor's will;
• The determining of the applicable law to the trust, based on objective localization criteria;
• The scope of the applicable law to the trust;
• The applicable law in special situations.

By regulating legal relations with a foreign element, the Law no. 71/2011 implementing the new Civil Code partially repeals the Law no. 105/1992 on the legal relations of private international law, the Civil Code adopting certain provisions of the old regulation but adapted to the new socio-economic requirements imposed by Romania's accession to the European Union [14].

The Choice of the Applicable Law

According to the Article 2659, the trust is subject to the law chosen by the settlor, and the provisions of the Article 2.637 on matters of a general nature concerning the determination of the law applicable to the substantive requirements of the legal act are applicable.

The Objective Determination of the Applicable Law

According to the Article 2660, in the absence of the applicable law choice, and if the chosen law does not know the institution of the trust, the law of the State with which the trust has the closest links applies. To this end, one shall take into account:

A) The place of administration of the fiduciary property, designated by the settlor;

B) The place where the fiduciary goods are situated;

C) The place where the trustee has his or her habitual residence or, where appropriate, the place where is the registered office;

D) The purpose of trust and the place where it is to be performed.

From the analysis of the provisions of the Article 2660 the following can be seen:

- The determination of the applicable law to the trust on the basis of the objective location criteria is subsidiary to the application of the law chosen by the settlor;
- The objective determination of the fiduciary operations also applies if the settlor has chosen an applicable law, but it does not recognize the institution of the trust;
- The objective localization criterion is the notion of the “closest links.”
- The legal qualification of the “closest links” is represented by the 4 alternative situations envisaged at the letters a) – d) [15] from the above mentioned Article.

The Area of Applicability

As to the scope, the Article 2661 NCC states that the determined law, according to the Article 2659 and the Article 2660 is applicable to the conditions of validity, interpretation and effects of the trust, as well as its administration. This law determines in particular:

A) The appointment, the renunciation and the replacement of the fiduciary, the special conditions that a person must fulfill to be appointed as a trustee, and the transmission of the powers of the fiduciary;

B) The rights and obligations of the trustees;

C) The right of the fiduciary to delegate in whole or in part the performance of his or her duties or the exercise of his or her powers;

D) The powers of the fiduciary to administer and dispose of the assets of the fiduciary patrimonial fund, to constitute securities and acquire other assets;

E) The fiduciary’s powers to make investments and placements;

F) The restrictions upon the duration of the trust as well as upon the powers of the fiduciary to constitute reserves from the asset management's income;

G) The relationship between the fiduciary and the beneficiary, including the personal liability of the fiduciary towards the beneficiary;

H) The modification or termination of the trust;

I) The distribution of the assets that make up the fiduciary patrimonial fund;

J) The obligation of the settlor to report the way the fiduciary patrimonial fund was administered [16].

The Law Applicable in special situations

The Article 2662 states that a fiduciary element susceptible to be isolated, in particular its administration, may be subject to a separate law.

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A NEW POINT OF VIEW WITH REGARD TO THE LEGAL NATURE OF A NOTICE ISSUED BY AN INSTITUTION OR PUBLIC AUTHORITY

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Abstract:
Paradoxically, by making reference to all the classical theories related to the administrative activities known so far, the courts of law started to regard as genuine administrative documents some notices and memoranda issued by various public authorities, a fact which means that they accept such documents to be appealed against in contentious administrative matters.
Our study will attempt to highlight some of the various positions on this matters expressed by the administrative contentious courts from around the country and to emphasize why, to our point of view, such appeals should not be admitted nor given a solution by the above-mentioned courts of law.
Keywords : *contentious, notice, appeal, inadmissibility, exception.*

Section I . The direct means of action used by administration

"In any society, be it classical or modern, public administration is essentially an instrument of the state, indispensable in achieving goals, certain major objectives determined by it, to reach the political values determined through various internal regulations, in order to meet the general interest, by the action of the political power". [1]

"The means of action used by public administration are the concrete forms through which public administration fulfils its mission to organize the application and to actually apply law as well as to provide, namely to organise the provision of public services". [2]

These legal means are more than often classified as being direct and indirect, the nucleus of the direct means being represented by the administrative documents, otherwise the main form of activity of the public administration authorities.

In one of the attempts to define it, the administrative act was characterised as being "the unilateral act, the expression of will manifested by a single subject of the legal relation, namely that endowed with public power, issued by public authorities in order to

carry out or organize law, being essentially a legal act which initiates, modifies or terminates legal relations".[3], apud [4].

For instance, "a simple correspondence between a common citizen and the administration whose scope is to interpret legal matters, cannot be characterised as an administrative act" [5]. Therefore, the hypothesis according to which an answer issued by any compartment of the public authorities "with exclusively consultative attributions (i.e. public relations, assisting the tax-payers etc.) leads us to the conclusion that we are looking at a manifestation of will devoid of any legal effects." [6]

Nevertheless, a mere memorandum issued to confirm or infirm a situation resulted from the data stored by any public authority is not an administrative act because it does not produce any legal effects by itself. Such a memorandum is regarded as a means of evidence used in trial where it could have been appealed in line with art. 167-171 Code of Civil Procedure. The means of evidence are analysed by the court outside which they are examined and they cannot be appealed separately [7], apud. [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 [8], apud. [9].

Irrespective of the divergences published in the doctrine, one fact is certain: the role of the administrative procedures is not to produce legal effects by themselves alone, but to prepare the adoption/ issuance of an administrative act meant to produce legal effects.

Although they seem insignificant when compared to the relevance of the administrative act itself, the preparatory acts (prior operations) have the main role of guaranteeing the correctness of the procedure used to adopt the document, as well as it legality, as "the normative act produces effects for a certain period of time, named " the

application scope" that spans from the moment it entries into force to that when its legal effects cease".[10]

Section II. The legal nature of a notice issued by an authority of the central public administrations. Points of view and debates

With regard to the procedure used to draft administrative acts, such a procedure knows many forms, from the simplest to the most complex ones. Sometimes, it is "reduced to a minimum of terms", otherwise, it comprises "a complex of formalities".[11]

Nevertheless, in time, some authors considered that certain procedural forms produce legal effects by themselves while others gave a negative answer to this question. [12].

In one of the works dedicated to preparatory administrative acts, debating upon the possibility of controlling such acts in contentious administrative matters, the author includes prior procedures in this category: "the sub-category of administrative material and legal facts (that do not require typing), the sub-category of administrative forms (that are issued after having been typed) which include, because of their importance, the permits and prior agreements". [13], [11].

So far, various preparatory acts have been issued in the laborious process of issuing acts that were subjected to the analysis of the courts of administrative contentious matters. Moreover, the tendency of the different people who consider themselves injured in their rights or legitimate interests of appealing in administrative contentious courts various unfavourable permits that they receive from legal departments or from the other departments of the institutions or public authorities.

The same debatable circumstances also occur in case of actions formulated in administrative contentious against various reports, accounts, notes and even notices issued in similar conditions by competent public authorities. However, we need to point out the fact that their role is not that of producing any legal effects, but of making sure that the act which is about to come into force is both legal and correct.

Our paper intents to analyse from a theoretical as well as jurisprudential perspective one of the latest solutions practised by the Romanian courts that have repeatedly argued that a part of the notices issued by various public authorities may

produce legal effect and may therefore be annulled by the courts of contentious matters on grounds that the public authority had not issued the document sanctioning a certain individual who considered herself injured, except that particular notice, so that it was the only one that might be subsequently appealed and, therefore, annulled.

Therefore, following a petition registered on the dockets of The Court of Appeal from Galaţi, the petitioner requested in contradiction with the Ministry of Transports, to annul a notice issued by the Medical Service subordinated by the above-mentioned central authority which was apprise, after an assessment performed by the latter, of the fact that the petitioned was withdrawn the right to carry out psychological examinations for the office holders who would compete for a position in transportation safety although, paradoxically, in the past, she had obtained the agreement certificate which extended the right to carry out such expertise for another 3 years.

The sanction was applied to the petitioner by means of a unilateral minutes drafted by someone authorised by The Ministry of Transport which was never communicated and that included no “Remarks” regarding to the measures adopted in the document, so that the petitioned signed the minutes that played the main part in the notification annulled by the court, merely because at that particular moment, there weren’t identified any deficiencies regarding his activity. [14]

The injured part was announced of the sanction thus applied not by means of a photocopy from the minutes drafted before her, as she should have been, but through a notice sent (communicated) by mail.

The defence was mainly based on the fact that such a notice was the only one to injure the activity of the petitioner, who was thus violated in her legitimate, personal, interest, a fact that lead to the conclusion that such a document to be regarded as an individual administrative document, especially in the context in which the procedure of withdrawing the authorisation from petitioner was not done though a prior or even subsequent legal act. [15].

What is more, in its analysis, the court labelled the notice mentioned above as being an administrative act and decided to annul it because “the absence of a working procedure (ascertained by assessing the annual authorisation files or the agreement files) and not communicating the control minutes to the petitioner, with the possibility of

remedying any deficiencies or presenting documents ascertaining the reality of the situation, before the proposal to apply the sanctioned, lead to the conclusion that the litigated administrative act is not legal and may therefore be annulled". [16]

Such solutions are not isolated and are more and more frequently adopted by the Romanian courts mainly because the legislation is inadequate, deficient or due to the fact that there are inadvertences in the statutory documents issued by various public authorities or in the methodological norms used to apply such regulations that do not specifically provide procedures for such situations, nor do they specifically mention which is the specific legal document that may be used in order to apply a series of sanctions (or measures).

With regard to the situation detailed above, we believe that the only document that should have been considered as having the legal character of an administrative act and that could have been annulled was the minutes that was not legally drafted and whose second copy was not handed in to the petitioner, although, paradoxically, laid at the basis of the appealed noticed which had annulled the right to carry out expertise.

The notice itself represents nothing else than a mere procedure subsequent to the drafting of the minutes concluded after having verified the correspondence and that should not have produced any legal effects, but should have been considered nothing else but a communication issued by the authority which had already mentioned its opinion in the foregoing minutes.

According to article 4 paragraph (4) of The Order to approve the Norms regarding the procedure to agree medical and/or psychological units in order to examine transportation personnel with responsibilities in transportation safety as well as for the approval of the Norms regarding to the procedure to control the medical and/or psychological units agreed to perform the examination of the personnel with responsibilities in transportation safety as well as those nominated to perform the examination «the assessment of the unit is followed by the drafting of a minutes for ascertaining the conformity of the unit, whose model is provided in appendix no. 1b. of the Order» [17] .

According to the provisions of article 1 paragraph (5) of the same statutory document "The Ministry of Transport controls the units provided in paragraph (1) with

regard to the compliance with the criteria and agreement requirements, applying the annual visa or prompting the issuance of a warning notice, suspending the agreement certificate for a period of 90 days or to withdrawing the agreement certificate".

This particular legal text, although open to more than one interpretation, will lead us to the conclusion that any notice may only be used to announce the concerned party of the type of sanction since article 8 paragraph (1) of the Order clearly states that the visa may only be awarded or rejected by minutes "Following the assessment carried out, by means of a minutes, the specialty directorate suggest the Ministry of Transport to award/reject the visa or to sanction the unit according to legal provisions".

Therefore, to our point of view, only the minutes could have been appealed and annulled since it is obvious that by interpreting the text of the law mentioned above, due to the fact that the unit may only be sanctioned on its grounds, it is only an individual administrative act and may produce legal effect and by no means a notification.

Section III. Jurisprudence opinions regarding the acts preparing the issuance or the adoption of an administrative act

As mentioned earlier in our paper, it is not infrequent that the documents appealed in contentious administrative courts fall into the category of various memoranda, notices, reports, accounts, permits issued by the public authorities, in the context in which the text of the Law no. 554/2004 stipulates in article 1 paragraph (1) that only the persons "who considers themselves injured in one their rights or legitimate interest, by one of the public authority, through an administrative act or not giving a solution to a petition within the legal deadline" may introduce the action in contentious administrative courts.

At the same time, with regard to the assimilated administrative acts, also subjected to the control of the contentious administrative courts, we may bring into discussion the silence of the administration (which cannot be debated upon in the cases that have already been pointed out, since the authority communicates with the injured party through notices or memoranda) or about the administrative contracts (a theory which cannot be accepted since the notices are only unilateral manifestations of the authority).

The legal nature of the assimilated administrative acts is expressly mentioned in article 2 paragraph (2) of Law no. 554/2004, according to which these hypotheses are

assimilated to unilateral administrative acts, similarly to administrative contracts that are assimilated to the administrative act according to article 2 paragraph (1) point c) second thesis of the law. The legal text also allows this qualification to other categories of contracts that are subjected to the law of contentious administrative. Moreover, in the case of administrative contracts « we note that a new legal framework referring to an important typology (public procurement contracts, sectorial contracts, concession contract, services contracts) was adopted in 2016 ». [18].

Hence, we agree with the defences formulated by the respondent in one of its defence statements according to which « The notice is not an administrative act, its defining elements relate to acknowledgement and default. The notice cannot be assimilated to the administrative act as indicated by to the provisions stipulated in article 2 paragraph I, point c of Law no. 554/2004, as is this case, the notice only represents the manifestation of will regarding the termination of a concession contract". [19]

Furthermore, a very old case, debated in 1932, of The Court of Cassation and Justice, states, after having thoroughly analysed the administrative operations, the fact that only "The administrative act alone that is issued by an authority and is capable of producing legal effects independently, by lifting or modifying rights guaranteed by the law, may be attacked in contentious administrative courts, and not the other preparatory acts, such as accounts, reports and ministerial resolutions which are nothing more than preparatory and non-compulsory acts issued in order to deliver the decreed authority administrative act". [20].

The acts issued by the public authorities must be susceptible of creating, modifying or terminating legal relations, so they need to be able to produce direct legal effects by themselves. Therefore, such is the case of the reports drafted by the respondent the Ministry of Education that could not be annulled in the court of law because they were justly considered "documents that do not have the quality of administrative acts in the sense provided by the law, but mere administrative procedures foregoing the drafting of the administrative act, whereas, whenever they are considered separately, they are not capable of creating, modifying or terminating legal relations". [21]

On the other hand, the specialty literature has recently pointed out opinions in the favour of analysing a findings report issued by National Environmental Guard as a

genuine administrative act. Thus, the court argued that such a note fulfil all the requirements in order to be considered an administrative act with an individual character as "it is issued by a public authority, in a system of public ruling; is issued in order to enforce the law; has created legal relations." [22], [4].

Section IV. Conclusions

As a way of conclusion, we need to point out that there are divergent points of view with regard to the matter under discussion both in the theory, as well as in the practice of the specialized courts of law that treat the matter of the legal nature of such a notice differently.

Irrespective of the opinions recorded herein which were nevertheless selected in order to demonstrate the array of divergences on this matter, we do insist to include these notices in the category of preparatory documents (or procedural operations) that cannot create legal relations, but have the sheer role of informing the interested party of the future legal effects of such an administrative act issued with regard to a legal relations whose purpose it serves.

Despite being activities specific to the public administration authorities, under no circumstance would they constitute "the central nuclei" of such activities. They would be nothing else but mere points of view issued by the former in order to subsequently apply or put into practice the legal provisions by means of administrative acts. .

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Journal of Law and Administrative Sciences
No.7/2017

THEORETICAL PERSPECTIVES ON TRIGGERING DEVIANT BEHAVIOR. CASE STUDY – DRUG USE

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Abstract
In the scientific field, a multitude of theories, the result of research and clinical experience, demonstrate the lack of a substantive agreement and of the essence of a comprehensive explanatory model on deviant behaviors.
In this article, our attention is directed towards the causes of drug use. This fact is of overwhelming importance in addressing this type of behavior, as the better we know why and how consumption occurs, the easier it will be for us to intervene through either prevention programs or treatment programs for drug consumers. But to understand the cause of a phenomenon, such as drug use, we need a theory. A theory is simply an explanation for a general category of phenomena, which is any set of events or conditions.
Keywords: *deviant behavior, theory, drug use.*

I. Introduction

There are two absolutely necessary conditions for initiating drug use: the individual predisposition or the reason for doing this and the availability of one or more psychoactive substances. Each of these two preconditions is necessary, but not sufficient, to explain the use of drugs. If there is no possibility of purchasing the drug, even if there is an individual predisposition, consumption will not take place. Similarly, the existence of the psychoactive substance and the lack of individual predisposition exclude the possibility of committing the act of consuming drugs. “If I had dust now, here, on the table, as a dash... I do not know if I shot... It’s not the atmosphere; it’s not the friends... I do not know how it would be” [1]. Hence, there is a need for the coexistence of the two conditions; one without the other would have no results.

For millennia, people have been wondering about the underlying causes of a wide variety of abnormal, unconventional or deviant behaviors. Since ancient times, the Greeks tried to seek explanations about the factors or forces that led some people on the wrong way. But, until several hundreds of years ago, for most of the philosophers, the dominant

theory of misconduct was a religious one, the forces of evil being those who urge people to commit abnormal acts.

Unfortunately, demonology has not disappeared completely from the mind of the general public. Thus, towards the end of a course of criminology that took place in a biblical college in the United States of America in the late 1970s, the teacher asked the students to think about which of the biological, psychological or social explanations discussed could fully explain the cause of criminal acts. The overwhelming majority of students did not choose any of the three explanatory frameworks; instead, the most valid theory was the religious one, according to which the 'devil' would have encouraged people to commit crimes [2]. Similarly, people with alcohol or drug abuse problems were regarded as sinners or criminals, and any help could only be received through church or judges [3].

In contrast, almost all intellectuals and experts in human behavior incline the balance to the materialist explanation, an ingrained explanation in the world of social, psychological or biological sciences. Sociologists, for example, link entourage, urban decay and poverty to the concept of society to explain why people do things the way they do it. However, once we agree that the biological, psychological and social aspects of the material world can give the best explanations about drug use and dependence rather than demons or other evil spirits, it still remains a grueling wide range of theories.

II. Theories on triggering drug use

Dozens of explanations on drug use and addiction have been proposed. In the early 1980s, the US National Drug Abuse Institute (NIDA) published a volume of more than 40 theories on drug use, abuse and addiction. The number of theories proposed today by experts is even higher. As we have previously said, 'theory' is the systematic explanation for a general class of phenomena. Thus, for most people, a theory of drug use is an explanation of the behavior of individuals who consume drugs.

But not all the theories that have been proposed relate to the cause of drug use. Many of the theories focus on the use of forbidden substances, often referred to as abuse or alcoholism. Some theories refer only to addiction, others focus on the individual or society or the relationship between the individual and the society to which he belongs.

While some theories explain the reasons for initiating drug use, others focus on factors that support addiction.

Almost all of these theories can only be considered as partial explanations because they select one or more potential factors that trigger drug use or addiction. Most theorists admit that their theories cannot fully explain the emergence of drug use, and a single factor cannot be per se the motivation for the onset of the use of psychoactive substances.

Moreover, one factor cannot become a theory; most theories put several factors together to form a coherent explanation, an argument with several different pieces, articulated one to the other. The multitude of theories and factors that are taken into account in triggering an abusive use of substances does not mean that there is competition or contradiction between them, but rather they are complementary as they cover different aspects of the same phenomenon.

Becona proposed a comprehensive and sequential model of drug use phases, with each phase corresponding to a range of bio-psycho-social factors. According to the author, drug use consists of five phases: the predisposition phase, the knowledge phase, the phase of experimentation and initiation of consumption, the consolidation phase (abuse and dependence) and the phase of abandonment or maintenance and / or relapse [4].

1. In the preliminary or predisposition phase, the following factors are considered important:

- biological – the studies have shown that there is a certain genetic vulnerability for alcohol and for the rest of the drugs;
- psychological – the authors consider important: personality, intelligence and learning;
- socio-cultural – refer at expectations, behavior, historic evolution, specific cultural values etc.

2. The knowledge phase. In this phase, the important factors are both of social and psychological nature:

- the environment
- the learning process

- the socializing process
- expectations

3. The phase of experimentation and start the consumption. The decisive factors are those known as the risk and protection factors in drug use.

4. The consolidation phase: from use to abuse and to dependence. During this phase what fundamentally determines going on with the consumption of a substance are the positive or negative consequences produced by the use of that substance. These will be in a direct relationship with the entourage, family and self.

5. The abandonment or maintenance phase. Any behavior occurs in a time-consuming continuum where the individual can maintain this behavior or not, if the consequences are more negative than positive. Thus, among consumers of different types of drugs some will cease to consume them after one or more attempts, others after a longer or shorter period of time, and others will continue to consume continuously for many years or the whole life. The latter are those who are in the maintenance phase. The motivation for abandonment may have extrinsic causes (family's pressure, friends' pressure, society's pressure, etc.) or intrinsic causes (problems due to consume, physical problems, affective problems, family problems, etc.). The treatment here plays the role or the basis for obtaining abstinence and maintaining it in the long run.

6. The relapse phase. Drug dependence can be considered a learned, strengthened, and difficult to move behavior. That is why treatment can be considered as a process with many recurring relapses. Thus the individual abandons the consumption, relapses, abandons it again and relapses again until this process is maintained over time or there is a moment when abstinence occurs. This is about the classical phases of treatment.

As with the crime theories, there are three major types of explanations for drug use:

(1) biological theories,

(2) psychological theories

(3) sociological theories.

Each focuses on a diverse range of factors considered crucial in identifying the explanation for which people use and abuse psychoactive substances. Even within the

major explanatory frameworks of substance use there are specific theories that analyze only one factor or a small cumulative inter-related factors.

Thus, all biological theories and almost all psychological theories, take into account the differences between and among people. They can be called 'individual and personal' theories: X is different from Y (or had experiences different from the person Y) and, therefore, the person X is more prone to use drugs than Y [5].

In contrast, most sociological theories tend to focus either on the differences between social groups (people belonging to the X group are different from those belonging to the Y group) or on the structural differences (the larger structures or the contexts in which people evolve are different).

Because most of these theories explain only a small part of the 'whole', most of them are complementary rather than contradictory. However, some theoretical explanations contradict others: if one is true, others cannot be true.

III. Social reinsertion of drug consumers

Social reinsertion is a not so well outlined way of responding to the problem of drug use than treatment and therefore the monitoring and reporting activities in this area are more inconsistent. Some countries report qualitative assessments of their social reinsertion efforts; however, no state reports a good coverage in this respect. All the reporting countries (Estonia, Ireland, Malta, the Netherlands, Romania, Sweden and Norway) highlighted the deficiencies of their social reintegration services and / or programs. Greece is the exception to the rule, with a relatively rich range of social reinsertion programs and reliable data on the number of clients involved.

Significant evidence of social exclusion and social disadvantages has been identified as important factors that tend to outweigh the problem of drug use. Following several studies, it is possible to identify some common antecedents in terms of social exclusion related to drug use and crime. For most drug users, social exclusion and social disadvantages were important issues that contributed to the onset of drug use. Most drug users suffered from an important social 'break', which favored the onset. As a feature, a large number of consumers have been expelled from school, have not completed their studies or have no training. Based on different studies, it is very clear that among the drug

users, it is more likely that they had difficulties in childhood, were in care, went to school formally, did not complete their studies, did not have a job, and so the consumption of substances and the committing of antisocial facts was favored. The following factors can also be added to the above-mentioned ones: physical and psychological abuse, poverty, unemployment, psychological problems or family history of the drug. In the same vein, "school abandonment, unstable workplaces, lack of professional qualifications and a history of detention or criminal record as a result of criminal offenses are the indicators of social exclusion that characterize the lives of many drug users" [6].

The correlation between drug use and social exclusion does not indicate a single cause of relationship between the structural disadvantages and drug use, but clear connections exist, so while working with a group of drug users such a factor has to be taken into account and can be part of the evaluation and intervention strategies.

When talking about the treatment and social reinsertion of a drug user, we must be aware that most of their problems are due to limited life choices, limited personal resources (trust, social and life skills) and limited life experiences on which to rely or to consider.

In fact, the groups of substance users need social integration, not social reintegration, they need a house, not a re-adaptation in the house; all these things make us realize that a drug-free life for them becomes a very difficult option. According to Necşulescu, "the increase in the number of drug addicts who have committed criminal offenses to social rehabilitation and reintegration programs with a view to their reintegration into the labor market can be achieved through a new approach to criminal policy taking into account that drug addicts constitute a vulnerable group with increased chances of social exclusion due to both their disease and their criminal record as a result of the offense committed" [7]. Thus, according to Necşulecu, therapeutic justice is a "model that can contribute to the rehabilitation of the accused through his orientation towards mental and social normalization through treatment, ensuring better living conditions, securing the job, etc." [8]

Excessive drug use in adolescence was a way to get rid of when apparently there was no solution, to access those which for us, the others, were available. In this sense, social exclusion led to the problematic drug use.

The problematic drug consumption leads to social exclusion itself, as consumers are presented as different from the majority of the society (which prefers legalizing recreational drugs such as alcohol and tobacco). Although mistakenly compared to illicit drugs, alcohol and tobacco are far more dangerous substances and some of the worst risks of illegal drugs are caused by their own illegality. Being the object of hostility on the part of the others, it has repercussions on the way they see themselves, their relationship with the family and the wider community. It has been suggested that the repercussions it suffers as a result of this exclusion may be a greater threat than consumption itself. Most government strategies are based on the substance users' punishment, control and exclusion rather than on their care, rehabilitation or social inclusion. The constant experience of social exclusion has led the consumers of substances to internalize their own problems and to consider themselves guilty of their condition. This loss of self-esteem becomes an unsettling factor, and the more misfit they feel, the more isolated and excluded from society they feel.

IV. Conclusion

"The model of steps in reintegration has been adapted after the Prochaska and Di Clemente (1992) Model of Change and promotes the importance of social reintegration and underlines the struggle of drug users to break the "wall" of exclusion. This struggle is in fact a struggle to secure a new identity, the difficulty of being accepted in the community of non-consumers, the challenge of developing new habits, and the setting of new goals. These are the characteristics of the reorientation phase. The final phase is the beginning of a social reintegration in the wider community. This involves finding a home, a job, restarting studying, and setting up a daily routine such as taking children from school, cooking, going to the cinema" [9].

Focusing on individuals' motivation and on the psychological strategies for change are important and helpful components, but the discrimination, isolation and poverty that most drug addicts face is to be understood and included in a social model of the substance users issue.

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Journal of Law and Administrative Sciences
No.7/2017

BRIEF PRESENTATION OF THE NATIONAL LEGAL REGIME OF THE GENETICALLY MODIFIED ORGANISMS

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Abstract
The current study starts from the fact that, in general, the modified genetic organisms has represented and still represents a very controversial subject from the ethical, moral, economic, financial and legal perspective. The GMOs are non-traditional organisms, whose spread can generate a modification of the ecosystems, which has determined certain researchers to speak about the so-called "genetic environmental pollution". In this context, an important role belongs to the law, which must face these new challenges and to answer by drafting norms adequate to the questions raised by the use of the modern bio-technologies.
Keywords: *genetic modified organisms, technology, general legal regime for the GMOs, special legal regime for the GMOs.*

INTRODUCTION

In current times, in the context of the unprecedented scientific development, the artificial manipulation of the genetic material represents a reality, being without any doubt that the "genetics has become the main actor of the modern science, fascinating area, allowing the intervention of man in life processes" [1]. Thus, modern biotechnologies having as object for study the genetic modification, namely the genetic modified organisms, find their practicality in areas such as medicine, pharmaceutical industry, and frequently in agriculture and food industry.

According to the World Health Organization (WHO), the genetic modified organisms (GMOs) are organisms whose genetic material (DNA) has been modified by a procedure in which it does not emerge naturally, through "modern technologies", the so-called "genes' technology", also known as the "technology of the recombined DNA" or "genetic engineering" [2].

Even if the economic benefits obtained by these genetic engineering technologies are obvious, the possible negative consequences upon the environment and human

health cannot be neglected. Among the negative effects of the GMOs against the environment, mentioned in specialized studies, we refer to, as example: “the spread of the altered genes in the environment, to wild vegetation and to conventional cultures; the destruction or severe reduction of biodiversity; insufficient knowledge of the long-term effects of cultivating and using the GMOs in human and animal food [3], as well as “the negative effects upon the genetic dynamics and diversity of the species from that particular environment; the diminution of the resistance to pathogens; compromising the prophylactic treatment or the plant, veterinary or human treatment etc.” [4]. To all these, are usually added the ethical, moral or religious reasons.

For the purpose of minimizing the possible negative consequences of the modern biotechnology, simultaneously it had been developed the biosecurity, represented by the ensemble of the policies for biosecurity, the legal regulations, the scientific measures and the techniques necessary for the establishment of a balance in this area, especially emphasizing the precaution.

Regarding the supporters of the modern biotechnology, the main arguments brought are: the production is higher than the traditional culture, the storage and resistance to pests, the higher capacity of the culture to develop in limited environmental conditions, but also the possibility to harvest crops rich in proteins, gluten free, of plants without allergenic proteins (kiwi allergenic protein free), tomatoes with baking during transport, soybeans with an increased amount of lecithin etc. [5].

But, the increment and diversity of the sources of information of consumers with more and more “requirements” regarding the quality and safety of the products to be consumed makes the balance of pros and cons against the GMOs to lean against the GMOs.

If until 2007 Romania held one of the largest surfaces with GMOs in Europe, especially with genetic modified soybeans, after the adhesion to the European Union, our country has aligned with the European norms on GMOs. Thus, the communitarian block allows the cultivation of just two GMOs – MON810 corn, resistant to pests and Amflora potato with an increased level of starch, and in Romania the single GMO allowed being the corn.

LEGAL REGIME OF THE GMOs

The legal regime of the GMOs is presented by Chapter 6 of the G.E.O No 195/2005 on environmental protection [6]. Thus, Art 39 Para 1 of the normative act establishes that the activities referring to GMOs resulted using the modern biotechnology shall be subjected to special rules of regulation, authorization and administration.

In accordance with Art 39 Para 2 of the G.E.O No 195/2005, the category of activities referring to GMOs resulted using the modern biotechnology shall include:

a) The use in contained conditions of the GMOs;

b) The deliberate introduction in the environment and on the market of the vivid GMOs;

c) The import of the GMOs.

These activities may be performed only by legal persons based on the documents of regulation, issued by the competent authority and within the conditions of insuring the environment protection and the health of humans and animals.

In this meaning, Art 44 of the G.E.O No 195/2005 establishes a series of obligations in the burden of the legal persons exercising activities referring to GMOs, namely:

a) The obligation to request and receive the agreement for import for GMOs and/or the authorizations regarding the activities with the GMOs;

b) The obligation to comply with the agreements for import for GMOs and/or the authorizations for the activities with GMOs;

c) The obligation to cease the activity or switch the conditions for development, at the request of the competent authority, if new information is received regarding the environmental risks and for the human/animal health;

d) The obligation to be held responsible, according to the legislation in this area, for the damages caused by these activities;

e) The obligation to pay for the necessary measures for the prevention and/or the reduction of the consequences of the adverse effects generated by these activities;

f) The obligation apply the measures for the elimination of the waste resulted from activities regarding GMOs.

Also, for legal persons, owners of the agreements for import of the GMOs and of the authorizations for activities with GMOs have the obligation to comply with the legal exigencies regarding the insurance of the traceability, labeling, monitoring and reporting to the central public authority for environmental protection and to other authorities, of the results of the activity.

The competence for issuing the authorizations and agreements for import for activities regarding the GMOs belongs to the central public authority for environmental protection.

The authorization for activities related to GMOs is “the administrative act issued by the competent authority for environmental protection, according to the legal provision in force, which states the conditions for a deliberate introduction in the environment and/or on the market of the GMOs and for the use in contained conditions of the GMOs” [7].

For the deliberate introduction in the environment or on the market of the GMOs, as well as in the case of the import of the GMOs, the central public authority for environmental protection shall request the approvals of the central public authorities for agriculture, health, food safety, consumer’s protection as well as from other public institutions involved. Also, it shall consult the Commission for Biologic Security and shall insure the information and participation of the public.

Regarding the use in contained conditions of the GMOs, the central public authority for environmental protection shall apply the procedure established by the specific legislation in this area.

THE SPECIAL LEGAL REGIME GOVERNING THE GMOs

The rules governing the activities related to GMOs are stated by the G.E.O No 43/2007 on integration in environment of genetically modified organisms [8] and the G.E.O No 44/2007 on the contained use of the genetically modified microorganisms [9].

The objective of the G.E.O No 43/2007 on integration in environment of genetically modified organisms is represented by the insurance of the necessary legal and institutional framework, harmonized with the communitarian one, so that the activities with GMOs to be developed in compliance with the principle of precaution for the insurance of human health and environmental quality.

The object of regulation of the G.E.O No 43/2007 is represented by the following types of activities: a) the introduction in environment of the GMOs, for other purposes than the introduction on the market; b) the introduction on the market of the GMOs as such, or as part of other products; c) cross-border movement of the GMOs.

After defining the terms, the normative act enlists a series of general obligations in this area for the application of the general principle of the environment law. Therefore, Art 3-4 state the following interdictions:

- The prohibition of inserting in the environment of an GMO for the research development purposes or for other purposes than the introduction on the market, without an authorization issued by the competent authority or without complying with the conditions imposed by the authorization;
- The prohibition of inserting on the market of an GMO, as such or as part of another product, without authorization issued by the competent authority;
- The prohibition of using a product non-compliant with the conditions from the authorization;
- The prohibition of inserting on the market of an GMO as such or as part of another product, if the labeling or packaging is not compliant with the conditions of the authorization;
- The prohibition of performing any cross-border movement of GMOs as such or as part of another product, if this is non-complaint with the conditions mentioned by the normative acts in force;
- The prohibition of inserting on the market of a product resulted from an GMO deliberately inserted in the environment, without the compliance of the legal provisions.

Guaranteeing the compliance and application of the legal provisions in this area is achieved by the participation and collaboration of several public authorities/institutions, namely: the central public authority for the environment protection; the National Agency for Environment Protection; the Commission for Biological Safety; Office of Environmental Police & Assistance, as well as other authorities involved, for instance: the central public authority for agriculture, the central sanitary veterinary and food safety authority, central authority for health etc. all of them contributing to the establishment of the national framework for bio-security.

Regarding the introduction in the environment of an GMO or of a combination of such organisms, the legal provisions state that any legal person, before submitting a notification to the competent authority for the authorization shall, first of all, asses the risks on human health and environment describing the methods used and references to standard methods or internationally recognized ones, as well as bibliographical references.

It is necessary that the assessment to be fair and to take into consideration the possible side effects on human health and environment, directly or indirectly resulted from the transfer of genes from the GMOs to other organisms; it shall be performed for each particular case, before the introduction and shall take into consideration the nature of the organism introduced and the recipient environment, as well as the long-term cumulated possible effects, associated to the interaction with other GMOs and the environment [10].

The notification file, drafted according to Art 13 or Art 29 of the G.E.O No 43/2007, shall be submitted to the competent authority for examination, which shall establish if it can be accepted or not. During the decisional process, the competent authority shall request the approval of the Commission for biologic security and the authorities involved.

Also, the competent authority has the obligation to inform and consult the public. It shall receive the information from the Commission for biological security and the authorities involved and shall insure the transfer of information and of the decisions taken to the authorities involved, to the Commission for biological security and to the public. The transfer of information to the European Commission and the other EU Member States shall be made with the approval of the central public authority for environmental protection.

According to Art 9 of the G.E.O No 43/2007, any operator – legal person using GMOs or performing activities of introducing on the environment and/or on the market, import, export, transit, manipulation, transportation of such an organism or of a combination of GMOs, has a series of obligations among which we mention:

- The obligation to take measures for the activities performed to not generate side effects on human health, animals and environment;
- The obligation to bear the costs for the bio-security measures necessary for the safe development of the activities, as well as the costs for the bio-security measures

necessary for the reduction, repair or prevention of the consequences of the side effects generated by the use of the GMOs;

- The obligation to appoint a responsible for matters of bio-security or to insure the collaboration with an external consultant, trained in the area of bio-security, and to insure the training of the personnel and direct collaborators on the specific legislation regarding the GMOs, the legislation in force regarding the environmental protection and the legislation for labor security;
- The obligation to allow the access of the authorities for control, to collaborate with them and to present the documents proving the nature of the products being used, under the aspect of the genetic modification, for the verification of the compliance with the provisions of the agreement/authorization issued by the competent authority or for the ascertainment of the legality of the activity and of the means of compliance with the requirements regarding the traceability;
- The obligation to archive the documents regarding the activities developed, for 10 years since the conclusion of the introduction in the environment and/or on the market;
- The obligation to draft the emergency plans and to submit them to the authorities with responsibility for emergency situations and to all possible concerned parties etc.

Also, the G.E.O No 43/2007 details the rules applicable for the procedure of authorization of the activity of introducing the GMOs in the environment, for other purposes than the introduction on the market, the rules applicable for the activity of introducing the GMOs on the market, as such or as part of other products, namely the rules applicable in the area of the cross-border movement of GMOs.

G.E.O No 44/2007 on the contained use of the genetically modified microorganisms has as purpose the establishment of the proper measures of bio-security, necessary to be applied, for the use under contained conditions of GMOs, complying with the principle of precaution, for the protection of the human health and environment.

Its area of application is represented by the activities under contained conditions of the GMOs, given the fact that the genetic modification results at least from the use of the techniques stated by the annex of the normative act (Annex No 1, Part A).

Art 2 Pct 16-17 of the G.E.O defines the microorganism as being “every microbiological, cellular or non-cellular entity, able to replicate or to transfer material

genetic", and the genetically modified organism as being "a microorganism whose genetic material has been modified differently than the natural one, other than by cross-breeding or natural recombination".

Similarly to the G.E.O No 43/2007, the G.E.O No 44/2007 states a series of general obligations for each user, such as: the prohibition of using under contained conditions of the GMOs without authorization or non-complying with its provisions, the obligation to notify, the obligation to insure an internal system of bio-security, the obligation to alert the competent authority in case of accident etc.

The institutional framework for the use under contained conditions of the GMOs shall be guaranteed by the: central public authority for environmental protection, the National Agency for Environmental Protection, the central public authority for education and research, the central public authority for health, the central public authority for labor and social protection, the central public authority for agriculture, the Commission for biological security, the Office of Environmental Police & Assistance, as body of control under the public central authority for environmental protection, the National Sanitary Veterinary And Food Safety Authority, the National Customs Authority.

The G.E.O details the rules applicable for the complex process of using the containment conditions for the GMOs, starting with risk assessment, bio-security measures, the Register of the activities for contained usage of the GMOs, the notification procedure, the authorization procedure, import and export of the GMOs, labeling and packaging, the emergency plan and the accident management, reporting to the European Commission and concluding with the sanctions for non-complying with different provisions.

CONCLUSIONS

The legal regime applicable to GMOs stated by the G.E.O No 195/2005 on the environmental protection, the G.E.O No 43/2007 on the introduction of GMOs in the environment and the G.E.O No 44/2007 on the contained use of the genetically modified microorganisms, shall be completed by the Cartagena Protocol on bio-safety, by the Regulation (EC) No 1946/2003 of the European Parliament and of the Council of 15 July 2003 on trans-boundary movements of genetically modified organisms, as well as by the

provisions of the legislation regarding the products for protection of the plants and by those regarding the registration of the varieties and hybrids of genetically modified plants, the coexistence of the cultures of superior genetically modified plants with the ecological and conventional ones, the authorization of the cultivators of genetically modified plants.

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Journal of Law and Administrative Sciences
No.7/2017

STATE POWER AND THE RESTRICTION OF THE EXERCISE OF CERTAIN RIGHTS OR FREEDOMS

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Abstract
An essential dimension of the lawful state is represented by the consecration and guaranteeing of the fundamental rights and liberties, the ensuring of the optimum conditions for their exercising. The state has the negative obligation to restrain from any arbitrary or excessive requirement that may restrict or condition the exercise of the constitutional right. In order to be legitimate and constitutional, any restriction of the exercise of the fundamental rights and liberties through the measures prescribed by the state's authorities, needs to have the character of exemption, not to affect the substance of the law and to fulfil all conditions stipulated by item 53 of the constitution. In relation to these premises we analyze in this study the constitutional institution of restraining some rights' exercising and the relevant aspects of jurisprudence. The observance of the principle of proportionality is one of the constitutional requirements in order that such a restrictive measure is legitimate. The main particularities of the principle of proportionality applied in the matter of restraining the exercise of certain rights are analyzed with reference to the jurisprudence of the Constitutional Court and the European Court of Human Rights.
Keywords: *state of law, fundamental rights and freedoms, restriction of the exercise of the fundamental rights, principle of proportionality, constitutional requirements.*

1. LIMITATIONS, RESTRICTIONS AND DEROGATIONS REGARDING THE EXERCISE OF RIGHTS AND FUNDAMENTAL FREEDOMS

A Romanian author underlined the fact that freedom has meaning only under the conditions of the limit's existence, because in order to manifest itself it must depend on something, to be circumscribed to certain coordinates. "Freedom shall be interpreted between boundaries which are the very condition of its exercise" [1].

Stating and guaranteeing the human rights by national and international regulations does not exclude the possibility of their limitation. Also, the existence of certain unconditioned rights theoretically cannot be accepted in a democratic constitutional system. The absence of the limitations and the conditions for the exercise stated by the laws, constitutions or international legal instruments may lead to arbitrary or abuse of right, because it would not allow the differentiation of the legal behaviour from

the illegal one. This idea is being expressed by Art 4 of the French Declaration of the Rights of Man and Citizen: "…the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights". Also, the legal doctrine has mentioned that within the relations between the owners of rights "one man's freedom ends where another's starts, because the condition inherent for the person is the relation with others" [2].

The order and social stability refer to mutual tolerance and respect between the subjects involved in social relations. The performance of the rights and fundamental freedoms must be contradictory to the order already existing in the social life: the coexistence of the freedoms and the social protection are the two commandments founding the limitations edited by the positive law [3]. The difficulty consists in finding the most appropriate solutions which will harmonize the individual interests with the public interest also guaranteeing the rights and fundamental freedoms in the cases in which their exercise could be limited or restrained.

In the relation between the rights and freedoms on one side, and the society on the other side, two extreme attitudes have been shaped: the scarification of the rights and freedoms for the interest of the social order, or the pre-eminence of the rights and freedoms, even if are sacrificed the social order and interests [4]. None of these solutions is justified by the imperatives of a true democracy and the requirement of achieving the social balance and harmony. The constitutional regulations, in order to be efficient, must achieve a balance between the citizens and the public authorities, then between the public authorities and of course, the citizens. It must also insure protection for the individual against the arbitrary interferences of the state in performing his rights and freedoms [5]. This is why the limits imposed for the rights and fundamental freedoms must be adequate to a legitimate purpose, which may be: the protection of society, of the social, economic and political order, of the rule of law or for the protection of the other individuals' rights. The limitations must not empty of content the rights itself, but must guarantee their performance under such situations.

The existence of limits for the performance of certain fundamental rights is justified by the constitutional protection or by the protection offered by certain international legal instruments to specified human or state values. Nevertheless, it is not admissible that in

the name of such values the state authorities to be discretionary and abusive in limiting the performance of the rights who are guaranteed by the Constitution. In this case, the destruction of democracy under the pretext of its defence could be achieved.

The principle of proportionality, seen as relation appropriate between the measures limiting the exercise of the human rights and freedoms, the current situation and the legitimate purpose aimed represent a criterion for the determination of these limits, the avoidance of the excessive power, but also a guarantee of the constitutional guaranteed rights [6].

In doctrine, the legal instruments and the jurisprudence, the limits of the rights and fundamental freedoms have been differentiated according to several criteria. A first differentiation is that between the limit and the limitation of the fundamental rights [7]. Thus, the limit is an element of content of the right and is necessary for its performance. Unlike it, the limitation (restriction) restricts the exercise of a right by measures ordered by the competent state authorities for a legitimate purpose. Another author [8] considers that the limits are imposed to the rights and fundamental freedoms in order to ease their performance and, on the other hand, the limits have as purpose “the protection of the society, of its socio-economic and political order, as well as of the rule of law” [9]. The limits deriving from such a purpose may be absolute, imposed by the exigencies of the social life, in all cases for the protection of the essential values of the state and society, and on the other hand relative, namely those who are not applied in a general and permanent manner, but either to certain of the rights and freedoms, or in a certain period of time or determined situation, or to certain subjects [10].

In our opinion we can distinguish: a) conditions for performance of the rights and freedoms found in their very legal content and constitutional definition; b) restrictions, derogations, suspensions, the loss of the right, which have an exception and temporary, being measures ordered by the state authorities for the protection or achievement of a legitimate purpose. The interference of the state in the performance of certain rights and fundamental freedoms could be achieved mainly by the restriction and suspension of the exercise of certain rights or by derogations. These means are also stated by the constitutions and international legal instruments. The avoidance of any abuse of the state authorities and the guarantee of the rights and fundamental freedoms in such cases

impose the constitutional statement, also in international legal instruments of the conditions justifying the application of such measures.

There are constitutions stating the institution of the limitation of the exercise of certain rights in certain cases [11], the possibility for suspending certain rights or freedoms [12] or the cases in which because of the abusive exercise of a right its performance shall be lost [13]. The Romanian Constitution states conditions on the exercise of certain rights or freedoms. Thus, the freedom of movement shall be exercised under the conditions established by the law (Art 25, Para 1). Any natural person has the right to freely dispose of himself unless by this he infringes on the rights and freedoms of others, on public order or morals (Art 26 Para 2); the right to information shall not be prejudicial to the measures of protection of young people or national security (Art 31 Para 3); the law shall regulate the conditions and limits governing the exercise of this right, as well as the guarantees necessary to ensure the essential services for the society (Art 43 Para 2); the right of property, as well as the debts incurring on the State are guaranteed. The content and limitations of these rights shall be established by law (Art 44 Para 1); freedom of expression shall not be prejudicial to the dignity, honour, privacy of a person, and to the right to one's own image (Art 30 Para 6); public meetings, processions, demonstrations or any other assembly shall be free and may be organized and held only peacefully, without arms of any kind whatsoever (Art 39).

The limitation of the exercise of certain rights or freedom is stated by Art 53 of the Constitution. These are provisions of principle, which refer to the measures ordered by the law or government ordinances, representing interferences in the performance of the rights guaranteed by constitution. In order to not endanger the substance of the right, these measures shall be temporary and, also may be constitutional, having to cumulatively compel with the conditions stated by Art 53. Also, there are constitutional provisions limiting certain rights, these limitations having a permanent feature. The restrictions usually are specific to the legal content of the right constitutionally stated. Thus, the exercise of the individual freedom could be limited by search, detainment, or arrest (Art 23). The domicile and the residence are inviolable, with limitations stated by Art 27 Para 2. Art 36 Para 2 prohibits certain categories of persons from voting. Art 40 Para 3 prohibits certain professional categories from joining political parties.

There are differences between limitations, and on the other hand derogations aiming the performance of the rights and fundamental freedoms. The limitations are measures considered necessary in a democratic society, applied for the purpose of achieving a public interest or to protect the rights and freedoms of other individuals. In this meaning, Art 18 of the Convention states that: “the restrictions … shall not be applied for any purpose other than those for which they have been prescribed”.

With all the particular aspects, resulted from the Constitution or from international legal instruments, common conditions can be identified for the legitimacy of the restrictions: to be stated by the law, to be necessary in a democratic society, to not be discriminatory, to be appropriate for at least one of the purposes expressly stated by the law, as well as to the situation justifying them. These conditions must be cumulatively fulfilled. Thus, the fundamental rights are being guaranteed and it is removed the arbitrary interference of the state’s authority in their performance.

The derogations are more complex limitations of the rights and fundamental freedoms and may be ordered by the states in exceptional cases. The limitations may aim, mainly, any fundamental right, unlike the derogative measures whose object shall refer only to certain human rights, guaranteed by international legal instruments. From the international legal instruments in this area it results that the derogations, in order to stop being arbitrary, must fulfil the following conditions: to be applied only for exceptional cases, to be strictly adequate to the situation, to be compatible with the other obligations that the state parties have according to the international public law, to not be discriminatory, the states using the right to derogation shall notify the international competent forums.

There are also rights guaranteed absolutely (absolute rights) in the meaning that no limitations or derogations shall be accepted. Obviously we refer to the right to life, the right to not be subjected to torture, to any form of punishment or inhuman treatment. The principle of proportionality represents a guarantee for all situations in which the performance of a right or fundamental freedom is subjected to a condition, limitation, suspension or derogation. The principle of proportionality, applied in this matter, considers the achievement of a fair balance between the individual interests and the

public interest or between different private interests corresponding to certain fundamental subjective rights, stated and guaranteed by the Constitution.

2. THE DELIMITATION OF THE DISCRETIONARY POWER FROM THE EXCESS OF POWER IN THE ACTIVITY OF THE PUBLIC ADMINISTRATION

The essential issue remains the one stated in the beginning of this section, namely to identify criteria which shall establish the limits of the discretionary power of the state authorities and its differentiation from the excess of power, which shall be sanctioned. Of course, there is the problem of the use of these criteria in the practice of the courts or of the constitutional contentious courts.

Regarding these aspects, in literature was expressed the opinion according to which “the purpose of the law shall be the legal limit of appreciation (of opportunity). For the discretionary power is not freedom outside the law, but allowed by the law” [14]. Of course, “the purpose of the law” represents a condition for legality or, where appropriate, for the constitutionality of the legal acts of the state organs and this can be considered as a criterion for delimiting the discretionary power from the excess of power.

As resulted from the jurisprudence of international and domestic courts, in relation with our subject of research, the purpose of the law cannot be the sole criterion for the delimitation of the discretionary power (synonymous with the margin of appreciation, term used by the ECHR), because a legal act of the state can represent excess of power only if the measures adopted do not aim a legitimate purpose, but also if the measures ordered are not adequate to the purpose of the law and are not necessary in relation to the real situation and the legitimate purpose aimed. The appropriateness of the measures ordered by the state authorities to the legitimate aims pursued is a particular aspect of the principle of proportionality. Of significance is the opinion of Antonie Iorgovan, who considers that the limits of the discretionary power are established “by the written positive rules, the general principles of law, the principle of equality, the principle of non-retroactivity of the administrative acts, the right to defence and the principle of contradictory, the principle of proportionality” (s.n) [15]. Therefore, the principle of proportionality is an essential criterion allowing the delimitation of the discretionary power from the excess of power in the activity of the state authorities.

This principle is expressly or implicitly stated by international legal instruments [16] or by most of the democratic states' constitutions [17]. The Romanian Constitution expressly states this principle in Art 53, but there are other constitutional provisions implying it. In the constitutional law, the principle of proportionality is applied especially in the area of the protection of the human rights and fundamental freedoms. It is considered as an efficient criterion of appreciation of the legitimacy of the intervention of the state authorities in the case of limiting the exercise of certain rights. Moreover, even if the principle of proportionality is not expressly stated by a constitution, the doctrine and jurisprudence shall consider it as part of the notion of state of law [18].

The principle of proportionality is applied in different areas of law. Thus, in the administrative law it is a limit of the discretionary power of the public authorities and represents a criterion for the exercise of the jurisdictional control of the discretionary administrative acts [19]. There are other applications of the principle of proportionality in the criminal or civil law. The principle of proportionality can also be found in the community law, in the meaning that the legality of the communitarian rules is subjected to the condition that the means used be in accordance with the aimed objective and must not overcome what is necessary for the achievement of that objective.

The jurisprudence has an important role in the analysis of the principle of proportionality, applied to specific cases. Thus, in the jurisprudence of the ECHR, the proportionality is seen as a fair and balanced relation, between the issue in fact, the means for restricting the exercise of certain rights and the legitimate purpose aimed or as a fair relation between the individual interest and the public one. The proportionality is a criterion determining the legitimacy of the interference of the contracting states in the exercise of the rights protected by the Convention. In the same meaning, the Romanian Constitutional Court, though several decisions, has established that the proportionality is a constitutional principle [20]. Our constitutional court has stated the need of establishing objective criteria, using the law, for the principle of proportionality: "it is necessary for the legislator to state objective criteria reflecting the exigencies of the principle of proportionality" [21]. Therefore, the principle of proportionality imposes itself more and more as a universal principle, stated by most contemporary legal systems, explicitly or

implicitly found in constitutional norms and recognized by the national and international jurisdictions [22].

The proportionality is not only a matter of fact, but represents a principle of the law, including of the constitutional law, and the courts of common law, of administrative contentious or the Constitutional Court may invoke to sanction the excess of power. Our constitutional court may explicitly invoke the criterion of proportionality, only under the conditions stated by Art 53 Para 2 of the Constitution. Therefore, there is no possibility to sanction the excess of power of the legislator, using the criterion of the proportionality, especially for the cases in which, though the measures used the legislator overcomes what is necessary for the achievement of a legitimate purpose.

Regarding the jurisprudence in this area of some courts from other states it is important to mention the French Council of State has established since 1950 that the appeal for excess of power should be considered as being the appeal submitted even in the absence of a legal text, by invoking the general principles of law, including the principle of proportionality [23]. Starting from the ascertainment that the proportionality is a general principle of law, the courts may invoke it, even if it is not explicitly stated by a legal text because “the violation of the principle of proportionality is nothing else than the overcoming of the freedom of action left at the disposal of the authority and finally, the excess of power” [24].

The literature has identified three levels of jurisdictional control for the administrative acts: “a) the minimum control of the rule of procedure (form); b) the normal control of the legal appreciation of the actions; c) the maximal control, when the judge rules upon the necessity and proportionality of the administrative measures” [25]. The maximal control, to which the quoted author refers to, represents the correlation between legality and opportunity, in other words, between the exigencies of the principle of legality and of the right of appreciation of the public authorities, the proportionality not being considered as a criterion of super-legality, but as a principle of law whose main purpose being the discretionary power and the excess of power in the activity of the public authorities.

We have previously shown that the principle of proportionality can be implicitly identified in different provisions of the Romanian Constitution. We are wondering if our

court for constitutional control could invoke the proportionality, for the cases in which this principle results from the constitutional provisions, as general principle of the law. We consider that the answer is affirmative, though the attempts in this area are still shy, probably because of the absence of a modern theory of the principle of proportionality in law, but we need to note that there are situations in which the Constitutional Court has used a "proportionality reasoning" as instrument of interpretation of the correlation between the appealed legal provisions and the constitutional provisions, and for the cases in which the proportionality, as principle, is not expressly stated by the constitutional texts. There are two aspects in this respect: the invoking in the jurisprudence of the Constitutional Court of the ECHR jurisprudence which, in the area of limiting the exercise of certain rights analyses the condition for proportionality and the second aspect, the use of this principle in the cases in which it is raised the issue of complying with the principle of equality.

Paradoxically, the use of the criterion of proportionality could represent an excess of power, in the absence of certain procedural elements of determination. The main danger in this case is the correct dimension of the principle. Though, using the procedural criteria with the meaning resulted from the jurisprudence of the international courts, the Romanian judge, including the constitutional one, may offer an objective dimension of the proportionality and a reasoning when he is using this principle. Nevertheless, in the jurisprudence of our constitutional court, there is a small number of decisions analysing the proportionality as principle, even when Art 53 Para 2 of the Constitution is being invoked.

The current law of administrative contentious, which expressly states the sanctioning of the excess of power, shall allow without any doubt the specialized courts to apply the principle of proportionality thus contributing to its explaining and understanding.

To be noticed is that in the jurisprudence of the Constitutional Court, though is not analysed the concept of excess of power, there are situations in which the principle of proportionality is applied (or a reasoning of proportionality), precisely to ascertain if the provisions stated by the laws or governmental ordinances, limiting the exercise of certain rights, are appropriate with the legitimate purpose and the issue in fact. The ruling as

unconstitutional of a normative provision on the reason of non-complying with the principle of proportionality, applied in this matter, signifies the sanctioning of the excess of power manifested in the activity of the Parliament or the Government. Also, excess of power, sanctioned by the Constitutional Court, using the criterion of proportionality, are the situations in which the principle of equality and non-discrimination is violated, if by the law or the governmental ordinance is applied a different treatment for identical cases, without any reasonable justification or if there is a disproportion between the purpose aimed by unequal treatment and the means used.

Two are the most important purposes of the constitutional principle of proportionality: the control and the limitation of the discretionary power of the public authorities and the guaranteeing of the rights and fundamental freedoms in cases in which their exercise could be conditioned or restricted. The proportionality is a constitutional principle, but in most cases there is no express normative stipulation, the principle being deducted through different means of interpretation of the legal texts. This situation creates difficulties in the application of the principle of proportionality. Also, it must be underlined the importance of this principle as criterion for legitimacy for the exercise of the state power, within the limits of the margin of appreciation, according to the legal and constitutional competences.

In relation to these considerations we propose, in the perspective of a new constitutional revision, that Art 1 which has the marginal title “Romanian State”, to receive a new paragraph stating that: “The exercise of the state power must be proportionate and non-discriminatory”.

In this way, several requirements shall receive an answer:

a) The proportionality is expressly stated as general constitutional principle and only with limited application for the limitation of the exercise of the rights and fundamental freedoms, as it would be considered nowadays, given the Art 53 of the Constitution;

b) This new constitutional provision corresponds to similar regulations stated by the “Treaty establishing the European Economic Community” or in the draft project of the “Treaty establishing a Constitution for Europe”, which is important from the perspective of the Romanian adhesion to the European Union;

c) This new regulation would represent a true constitutional obligation, for all state authorities to perform their attributions so that the measures adopted by within the limits of the discretionary power recognized by the law and to not represent an excess of power;

d) It is created the possibility for the Constitutional Court to sanction, using the control for constitutionality of the laws and ordinances, the excess of power in the activity of the Parliament and Government, using as criterion the principle of proportionality;

e) The correlation between the principle of proportionality and the principle of equality is better achieved.

3. ASPECTS OF JURISPRUDENCE REGARDING THE APPLICATION OF ART 53 OF THE CONSTITUTION

Regarding the Romanian constitutional provisions on the limitation of the exercise of the rights and fundamental freedoms, the literature has made the distinction between the common circumstances for the limitation of the exercise of certain rights representing the object of Art 53 of the Constitution, and on the other hand the special circumstances, specific to certain rights and freedoms. The common circumstances for limitation have a temporary feature and are fortuitous, while the special circumstances have a permanent feature [26]. The quoted author underlines that these circumstances must be expressly stated “not being the product of conventionality” [27].

Though these circumstances are common, they may justify the limitation considering the nature of the right or freedom. Thus, no circumstance can justify the limitation of the right to life or of the right to not be subjected to torture.

The Romanian Constitution uses a simple and effective procedure for the regulation of the limitation of certain rights and freedoms (common circumstances), through the provisions of a single article. Art 53 allows the limitation of certain rights and fundamental freedoms, but only under certain conditions [28]. The issuing of interpreting and applying Art 53 has a special complexity because the limitations may aim the exercise of any right or fundamental freedom stated and guaranteed by the Constitution, except those considered as absolute. The complexity is due to the diversity of the specific situations justifying the limitation of certain rights.

The rules established by the Art 53 have the value of a constitutional principle, because are applicable to all human rights and fundamental freedoms. In the wording previous the constitutional revision, Art 49 stated that the limitations may be imposed only by the law, if necessary, considering the following purposes: “protecting the national security, order, health or public morals, of the citizens’ rights and freedoms, the performance of the criminal instruction, preventing the consequences of a natural disaster or of a particularly serious sinister”. In the same time, the limitation must not affect the existence of the right or freedom and be proportionate with the situation which determined it.

For a comparative analysis between the Romanian constitutional provisions and the ones stated by international legal instruments, stating the conditions for the limitation of the exercise of certain rights and freedoms, certain differences may be identified. Of interest for our study is the fact that Art 53 Para 2 of the Constitution expressly states the proportionality as a condition which must be fulfilled in case of the limitation of certain rights, while in most international legal instruments this condition results from the content of the regulations and is deduced, through interpretation, by the jurisprudence of the international courts.

In order to identify the particularities of the principle of proportionality, applied in this matter, some doctrinal and jurisprudential aspects on the interpretation and application of Art 53 of the Constitution must be emphasized.

The doctrine has mentioned the fact that, for the case in which the legislator limits the exercise of certain rights, without expressly indicating the constitutional grounds, it “shall not remove the obligation of verifying during the procedure for the control of the constitutional legitimacy of the law, if the measure thus established represents a limitation of a right” [29]. From the Decision No 4/1992 of the Constitutional Court results from the hypothesis in which the legal provision subjected to control represents a limitation of a constitutional right, being legitimate only for the cases corresponding to the limitative situations expressly stated by Art 53 of the Constitution.

The Constitutional Court has stated that Art 53 considers the rights and fundamental freedoms enlisted by Chapter II, Title I of the Constitution and no other rights [31]. Our constitutional court, by interpreting Art 53 in relation to Art 5 of the European

Convention on human rights and fundamental freedoms has made the distinction between the loss and limitation of a right. The final situation is taken into consideration by Art 53. “The Court ascertained that the invoking of Art 5 of the ECHR does not have incidence in this case, because these provisions are applied strictly to the deprivation of freedom, and not to its limitation” [32].

Also, our constitutional court has decided that the limitation of the exercise of a right must be temporary, being ordered only for a period in which the causes generating it shall action and which are limitedly stated by Art 53 Para 1 of the Constitution [33].

For the situation in which the limitation of a right is ordered for the protection of certain rights of the citizens, the restrictive measures shall be legitimate only in considering a certain right, because without this limitation the concerned right would be affected [34]. The limitations brought to the exercise of the right must not endanger the substance of this right. Thus, the Constitutional Court has established that the law may order certain limitations for the right to property, but they shall not harm the substance of this right. These limitations may be established regarding the object of the right or certain attributes of the right, for the protection of other human rights or general social and economic interests [35].

The jurisprudence of the Constitutional Court differentiates the limitation of the exercise of some rights from the circumstances in which the legislator conditions the exercise of a right. In this meaning has been decided that the requirements for seniority established by Art 19 of the Law No 51/1995 [36] for the organization and practice of the lawyer’s profession, aim to insure the exercise of the right to defence under conditions of competence, professional liability and experience, related to the hierarchy of the courts and the complexity of the case files, thus it is natural for them to involve certain conditions, which cannot be seen as a limitation of the right to work, but as a protection both of the interests of the justice seeker, as well as of the lawyer’s [37]. Also, the exemption by law of certain categories of citizens from the benefit of rights granted to other persons, who are found in different situations, does not represent a limitation of the exercise of these rights. Therefore, shall not be applicable the provisions of Art 53 of the Constitution [38].

The proportionality is a condition for constitutionality of the measures ordered by the law or by ordinances, which limit the exercise of certain rights and fundamental

freedoms, condition expressly stated by Art 53 Para 2 of the Constitution. The analysis of the particularities of this principle must be systematic performed, in the context of Art 53. The express statement of this particular aspect of the principle of proportionality, by Art 53 Para 2 transforms the proportionality from a moral or an opportunistic rule in a condition for constitutionality of the law, and the constitutional court has the competence to verify the compliance with this principle.

The limitation of the exercise of certain rights or fundamental freedoms, by the law, represents a requirement of the state in the performance of these rights and freedoms, justified by the fulfilment of a legitimate purpose. In order to avoid the arbitrary or the excess of power from the state authorities which adopt such measures, it is necessary to have guarantees insured by the state, appropriate to the constitutional finality aimed, namely the protection of the rights and fundamental freedoms, for the specific situations in which they could be harmed. The principle of proportionality is such a constitutional guarantee allowing the sanctioning by the constitutional court of the arbitrary interferences of the Parliament or Government in the exercise of these rights [39].

Therefore, the measures adopted by the state which limit the exercise of certain rights or fundamental freedoms, in order to not be abusive must not only be legal, namely stated by the law, or by a normative act equivalent as legal force with the law, but also legitimate (fair), namely necessary in a democratic state, non-discriminatory, proportional with the situation determining it and shall not affect the substance of the right. The proportionality and necessity in a democratic society are criteria of appreciation, both for the legislator, as well as for the judge, of the legitimacy of the limitation of the exercise of certain rights and fundamental freedoms.

The doctrine has emphasized that each time the legislator orders a limitation for the exercise of a right or freedom, shall expressly state, in the content of that provision, the constitutional ground of Art 53 [40]. This mention aims the compliance with the principle of proportionality and corresponds with the principle of the supremacy of the Constitution: “The law is an act of application, in the meaning that the will of the legislator founds its limits in the supremacy of the Constitution, as fundamental law of the state and society” [41]. In such cases, the appreciation made by the legislator or the constitutional judge, is based on a reasoning of proportionality. The limitation of the exercise of certain

rights is justified by the existence of different interests, for some cases even contradictory ones. On the other hand, the subjective interest of the owners of the fundamental rights, and on the other hand the public interest or the need to guarantee the fundamental rights belonging to other persons. In such conditions, one of the interests grounds its constitutional legitimacy on a provision and the other one on another constitutional provision. The reasoning of proportionality refers to the comparison of interests, in such way that the limitation of the exercise of a right or fundamental freedom shall not overcome what is necessary for the satisfaction of a public interest or the defence of the other persons' rights.

The principle of proportionality, applied in the area of the limitation of the exercise of certain rights, is specifically determined by the significance of the elements which are compared, depending on which can be established if the measure is appropriate or not with the aimed situation and purpose. The proportionality of the restrictive measures shall be considered in relation to a well determined legitimate purpose, whose meaning is given by the doctrine, law or jurisprudence. The restrictive measure shall not comply with the condition for proportionality, if the purpose for which it has been ordered is general, and a certain right or fundamental freedom is not mentioned as legitimate purpose [42].

The purposes justifying the limitation of the exercise of certain rights and in relation to which is appreciated the principle of proportionality are expressly and limitedly stated by Art 53 Para 1 of the Constitution. Their meaning is important in order to determine the proportionality of the restrictive measures. Thus, the "national security", term inserted as effect of the constitutional revision, which replaces the term of "national safety", refers to "a state of social, economic and political legality, equilibrium and stability that is necessary to the existence and development of the Romanian national state - a sovereign, unitary, independent and indivisible state, to the maintenance of legal order as well as of the climate for the unhampered exercise of the fundamental rights, freedoms and duties of the citizens, in accordance with the democratic principles and rules provided by the Constitution" [43]. "Public order" is the ensemble of the rules insuring the safety of society, the public welfare, social harmony and respect for the law and for the legitimate decisions of the public authorities. "Public morals" represents the ensemble of the perceptions of conduct, dependent on the individual's conscience and the values of his group.

Guaranteeing the compliance with the “rights and freedoms” of the citizens is a requirement imposed by the fact that the person belongs to a social collectivity, which refers also to the fact that the rights and freedoms of the others require the same protection as his own rights and freedoms. The “criminal instruction” is a component of the state of law and signifies the succession of the acts and facts forming the criminal trial in all its phases [44].

Depending on the legitimate purpose aimed it shall be determined the “margin of appreciation” that the public authorities have in order to impose the limits of the exercise of the rights and fundamental freedoms, according to Art 53 of the Constitution. The limits of the margin of appreciation of the competent state authorities and also the compliance with the principle of proportionality shall be established in the jurisprudence of our constitutional court, including by relation to the ECHR jurisprudence. Thus, the proportionality of the state authorities’ interferences is analysed by the international court in relation to the requirements of a democratic society, concept found in the jurisprudence of the Constitutional Court.

Our constitutional court also has invoked other aspects from the ECHR’s jurisprudence: the restrictive measures are proportionate with the legitimate purpose aimed if the national legislative and institutional system offers appropriate and sufficient guarantees against abuses [45]. There are differences between actions and judgements. If the materiality of the first can be proven, the judgements cannot be proven under the aspect of their accuracy [46]. Therefore, the compliance with the condition of proportionality of the restrictive measures applied to the freedom of expression is differently seen depending on the nature of the statements. The proportionality can be seen as a strict fit of the restrictive measure when the legitimate purpose aimed is the public morals, for instance [47]. These are just a few aspects of the ECHR jurisprudence, invoked by the Romanian Constitutional Court’s jurisprudence, for the situation of analyzing the restrictive measures ordered by the Parliament or the Government, on the exercise of certain rights or fundamental freedoms.

The jurisprudence of the Romanian Constitutional Court has contributed to the identification of the particularities of the principle of proportionality applied in the area of guaranteeing the rights and fundamental freedoms, including for the cases in which the

competent state authorities order restrictive measures which must fulfil the conditions stated by Art 53.

In this area, the jurisprudence of the Constitutional Court reveals definitive features for the constitutional principle of proportionality, which refers to the necessary adequacy of the constitutional guarantees offered for the rights and fundamental freedoms with the aimed purpose, namely the protection of the exercise of the rights for the specific situations in which they could be limited. The application of the principle of proportionality has a double importance: the state guarantees on human rights become effective in specific situations; it is removed the arbitrary interference of the public authorities in the exercise of these rights or the application of certain restrictive measures in their exercise, measures representing excess of power.

The proportionality represents a guarantee of the exercise of the fundamental right, subjected to a limitation or condition. The existence of certain limitations or conditions for the performance of certain fundamental rights is justified by the idea of the constitutional protection of important human or state values. In the meaning of the above mentioned, the Constitutional Court has stated that: “the legislation, doctrine and jurisprudence have rejected and constantly reject the existence of absolute rights and freedoms” [48]. Given this premise, the court identifies the Romanian constitutional provisions establishing limits, conditions or restrictions for the exercise of certain rights [49].

Though it does not expressly refer to the principle of proportionality, the Decision No 13/1999 is important because it reveals certain particularities of this principle applied in the area of the protection of the rights and fundamental freedoms. The need of a fair balance expresses the general principle of proportionality. Also, the conditions, limitations and restrictions applied to certain fundamental rights must be appropriate to the purpose aimed by the legislator, namely to protect the fundamental right in case it could be conditioned or limited.

Through several decisions the Constitutional Court established that it has the competence to verify the compliance with the condition of proportionality for the limitation of certain rights. The Constitutional Court shall assume this competence only if the proportionality is a condition of constitutionality of the law which established the restriction of the right. “Undoubtedly the verification of proportionality falls under the competence of

the Court, for as long as the proportionality of the restriction with the situation generating it represents a condition for constitutionality of the law which ordered the restriction of the right" [50].

This ascertainment of the Constitutional Court is important for different aspects: the proportionality is considered as a condition for constitutionality that the law, which ordered the restriction of the right, must comply with. In this way, the principle of proportionality is not just a state of facts, close to opportunity, but also a rule of law that falls under the competence of the Court. Also, the Court performs a distinction between the general principle of proportionality, the proportionality applied in different areas of the law and the constitutional principle of proportionality applied in the area of limiting the exercise of certain rights. The competence of the Constitutional Court refers only to the constitutional principle of proportionality, stated by Art 53 Para 2. We also note the interpretation of our constitutional court regarding the content of the principle of proportionality applied in this area: the adequacy of the restriction with the situation generating it.

The Constitutional Court has underlined that the proportionality must be analyzed and understood also depending on the aimed legitimate purpose for which the restriction is applied. This purpose must be one of the limitedly stated ones by Art 53 Para 1. Moreover, the law which ordered the restriction of the exercise of a right must comply with the principle of proportionality, the reference to a legitimate purpose must not be generic, but it is necessary for it to be determined. Analyzing the restriction of the right to free movement through the Government Ordinance No 50/1994m, the Court has mentioned that the limitation of a constitutional right is possible according to Art 53 of the Constitution "only referring to a certain right, as a necessary measure, because without this limitation, that particular right would be affected, and according to the principle of proportionality, only within the necessary limits, for that right to not be partially compromised...or, in the absence of the statement of the right for whose use the exercise is limited, from the simple mention to the right of social protection (Art 1 of the Ordinance) or to the rights of social existence (Art 7 of the Ordinance), does not result that this restriction is imposed – as Art 53 of the Constitution – nor that is proportional with the situation generating it – as Para 2 of the same article states" [51].

The reasoning of proportionality, which in the area of limiting the exercise of certain rights assumes the adequacy of the restrictive measure to the specific situation, but also to the aimed legitimate purpose, is used by the jurisprudence of the Constitutional Court. Analyzing the compliance with the principle of proportionality for certain exceptions of unconstitutionality regarding Art 148 Para 1 Let h) of the Code of Criminal Procedure, our constitutional court has decided that the principle of proportionality is respected, given both Art 18 and Art 53 Para 2 of the Constitution. It has been ascertained that the measure of the remand is necessary for the performance of the criminal instruction and proportionate to the situation generating it [52].

In the jurisprudence of the constitutional court, the reasoning for proportionality is revealed as the analysis of the fair balance which must exist between two rights with constitutional protection, balance determining the limits of their exercise [53].

The Constitutional Court has emphasized that the compliance with the principle of proportionality, according to Art 53 Para 2 of the Constitution, has as object only the rights and fundamental freedoms [54]. In this meaning, the constitutional court has stated that the relation between the criminal offence committed and the penalty, which must be fair, exceeds the area of Art 53 Para 2 of the Constitution. “It is incontestable that the verification of the proportionality belongs to the competence of control of the Court, for as long as the object of the restriction is the exercise of certain rights or other fundamental freedoms [55].

The jurisprudence of the Constitutional Court contributes to the understanding and explaining of the principle of proportionality for the situations in which it has ascertained its interference with the principle of equality. It must be noted that the jurisprudence of our national constitutional court, in the area of interpreting and applying the principle of equality, has evolved, starting from accepting that the different situations must have different treatments, to the recognition of new constitutional rights, namely the “right to difference”.

The uniformity has been constantly rejected by the jurisprudence of the Constitutional Court, in relation to the interpretation and application of the principle of equality. For the situations which by their nature are different, different treatments shall be applied. The principle of proportionality refers, in this case, to the necessary adequacy

of the legal statement with the objective situation taken into consideration. Also, the proportionality imposes the existence of a motivation "objective and reasonable" for a differentiated legal treatment applied to identical situations. These rules are stated by the jurisprudence of the Constitutional Court: "the principle of equality in front of the law refers to the establishment of an equal treatment for situations which, depending on the aimed purpose, are not different. Therefore, a different treatment cannot be just the expression of the exclusive appreciation of the judge, but must be reasonably justified, in accordance with the principle of equality of the citizens in front of the law and of the public authorities" [56].

By applying the reasoning of proportionality, the Constitutional Court reached the recognition of a fundamental right: "the right to difference". "Generally, it is considered that the violation of the principle of equality and non-discrimination exists when a differentiated treatment is applied for equal cases, without an objective and reasonable motivation or if there is a disproportion between the purpose aimed by the unequal treatment and the means used. In other words, the principle of equality does not forbid the specific rules. This is why the principle of equality leads to the underlining of the existence of a fundamental right, the right to difference, and to the extent to which the equality is not natural, to impose it would mean the establishment of a discrimination [57].

The jurisprudence above mentioned leads to the conclusion that the understanding and application of the principle of proportionality by the Constitutional Court is in accordance with the meanings of this principle, applied in the area of the guarantees offered by the ECHR for the human rights.

Though, the jurisprudence of our national constitutional court is not generous nor edifying in the application and interpretation of the principle of proportionality in the area of guaranteeing the rights and fundamental freedoms, which proves that the proportionality, as principle of law in general, and of the constitutional law, in particular, does not represent a major object of preoccupation for the jurisprudence.

In most cases, the Constitutional Court refers to the criterion of proportionality in a generic form, invoking Art 53 of the Constitution. There is relatively a small number of decisions of the Constitutional Court comprising elements of analysis of the proportionality. It is true that the interpretation and understanding of the principle of proportionality, considered as

one of the guarantees of the rights and fundamental freedoms for the situations in which is possible the limitation or restriction of their exercise, presents serious difficulties, given the diversity of the specific situations, the margin of appreciation recognized for the legislator, the nature of the right protected and not least the interpretative reasoning of the Constitutional Court which must maintain a high level of abstraction, establishing the constitutionality of a norm by relation to the provisions of the Constitution.

CONCLUSIONS

The jurisprudence of the constitutional court is not generous nor edifying in the application and interpretation of the principle of proportionality in the area of guaranteeing the rights and fundamental freedoms, which proves that the proportionality, as principle of the general law and of the constitutional law, in particular, does not represent a major preoccupation of the jurisprudence.

Most of the time, the Constitutional Court refers to the criterion of proportionality in a generic way, invoking the provisions of Art 53 of the Constitution. There are a relatively small number of decisions of our constitutional court comprising the elements of analysis of proportionality. It is true that the interpretation and understanding of the principle of proportionality, seen as one of the guarantees of the rights and fundamental freedoms in the situations in which it is possible the limitation or restriction of their exercise, has encountered serious difficulties, given the diversity of the specific situations, the margin of appreciation of the legislator, the nature of the right and the interpretative reasoning of the constitutional court which must maintain a higher level of abstraction, establishing the constitutionality of a norm by relating to the Constitution.

The proportionality also has a moral dimension through the ideas of equity, harmony, justice that it entails, but cannot be seen as a super-normative principle to which the constitutional judge shall relate by ignoring the norms enlisted in the Constitution. As legal principle, the proportionality must be understood and applied within the limits of the normative framework, as our constitutional court does.

The proportionality is not only a principle of the constitutional law, but also a principle of the general law. Therefore, it is obvious that the constitutional norms stating and guaranteeing rights and fundamental freedoms must involve the general principle of

the law. The principle of proportionality, applied in the area of the protection of the rights and fundamental freedoms, expresses the appropriate relation between the restrictive measures ordered by the competent authorities, the specific situation and the aimed purpose, but also the balance between the two rights protected by the constitutional norms or categories of oppose interests.

The jurisprudence of the Constitutional Court, in certain decisions, refers to the principle of proportionality not only in the meaning stated by Art 53 of the Constitution, but also as general principle of the law, which assumes the comparison of different situations, the analysis of the guarantees offered by the legislator and the balance existing between two rights or divergent interests, equally under constitutional protection.

In the area of the protection of the rights and fundamental freedoms, the principle of proportionality is explicitly or implicitly invoked by the Constitutional Court in the following forms:

a) The necessary adequacy of the constitutional and legal guarantees offered to the rights and fundamental freedoms, to the finality aimed, namely the protection of the exercise of the rights in the specific situations in which it could be restricted;

b) An appropriate relation between the restrictive measures ordered by the law, the specific situation and the legitimate purpose, according to Art 53 of the Constitution;

c) The “reasoning of proportionality”, as means of interpretation used by the constitutional court in order to establish the existence of a fair and equitable relation between categories and of rights and constitutionally protected interests.

For certain situations, the proportionality is invoked by the jurisprudence of the constitutional court using terms expressing the content of this principle: fair and equitable relation, reasonableness, social balance or justice.

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Journal of Law and Administrative Sciences
No.7/2017

THE RIGHT TO LIFE FROM THE PERSPECTIVE OF SOCIAL, LEGAL AND MEDICAL APPROACHES

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Abstract
The legal-social-medical issues addressed in this article contain a series of approaches in the field of the supreme law – the right to life of the human being. In this bipolar world, the individual as a biological being lives in the dimension of two existential plans, namely a real world and a virtual new world, created as a consequence of technological progress. There still remains a series of controversies for which the doctrines of law will find the legal-regulatory formulas of the modernity current that mankind lives in today.
Keywords: *Criminal law, right to life, society, fetus, euthanasia, end of life.*

1. INTRODUCTION

Criminal law is called upon to provide the appropriate legal framework for the defense of fundamental social values within any rule of law.

Being a significant component of the system of law, criminal law "encompasses the fundamental requirements for the behavior of citizens and for the social values to be protected by applying the legal constraint in its most serious forms (punishment)" [1].

Moreover, being about a real progress of the society that "in its pluralism and diversity creates not only factors that respect and protect the fundamental values of society, but also negative factors that challenge these values", the criminal law has the task of organizing a legislative framework that does not have gaps so those who seek to penetrate this criminal realm cannot do it and, at the same time, it has the task to take action against those who hinder the social life of other individuals. However, this need for a continuous reform of the criminal legislative framework must be based on two important factors, namely: on the one hand, "the need to respect the fundamental rights of both the victim and the aggressor", and, on the other hand, "the need to avoid the abuse of those in charge with combating criminal behavior, so that the society's riposte to combine efficiency with the legality and impartiality of the organs that exercise it, the only ways in which modern society conceives the fight against crime" [2].

Considering the primary objective of the criminal reforms that has as a starting point the observance of human rights, we consider that it is up to the member states of the Council of Europe in the process of their own reforms to adapt, in the first place, their criminal legislation to the requirements of the European Convention, "the provisions of the Convention also becoming European standards for national legislation" [3].

Among the social principles and values protected by the criminal procedural law, ensuring the protection of the human beings and their rights has a special place. This protection can only be achieved by establishing a well-defined, legally reinforced legal framework, on the basis of which the unlawful acts infringing the rights or interests of the human being are severely penalized.

As a result of shaping a legal framework that protects the rights and interests of the human being, we notice that in the contemporary society, are incriminated both the facts that are directed against life, body integrity and health, freedom, sexual inviolability and dignity of an individual, and other types of facts which may affect an individual's interests.

2. Principles

We believe that the right to life can be seen and analyzed as the most important sacred right of the human being. It is appreciated by the Romanian doctrine, not only as an absolute right, opposing erga omnes, the entire social body being compelled to respect it and also to refrain from any action or inaction that would, whether willingly or not, harm or even jeopardize this supreme social value. As we know, this fundamental right, looked upon at the rank of a fundamental principle, has been protected since former times and in all laws.

The right to life is a fundamental principle, because it is the very condition of exercising the other guaranteed rights. However, it should be made clear that this fundamental right has a double limitation, namely: the first, stipulated in art. 2 of the European Convention and the second, in art. 15 of the same document.

The Universal Declaration of Human Rights provided in Art. 3 that "every human being has the right to their own life, liberty and security" and the International Covenant on Civil and Political Rights provided in Part III Art. 6 point 1 that "every human being has

the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".

3. The content of the right to life. The beginning of life

A problem that we face today, from a practical and doctrinal point of view, is highlighted by the moment when the right to life begins and the one when it ends. The specialized literature stated that, "The moment when life begins and ends, other than in the natural way, as a subject of criminal protection, has for some time been the subject of controversy in the criminal doctrine. Paradoxically, the right to life (...) does not enjoy the stability of well-defined borders" [4].

In the doctrine there were concerns for a conceptual delimitation of the beginning of the life of the human being, which according to some authors begins from birth, while others have also taken into account the period of conception.

With the exception of the United States Convention on Human Rights (adopted on 22nd November 1969 in San Jose), which states in art. 4 that the right to life must be protected "generally at the moment of conception", the most part of the international texts refer to a right that protects the living being and not the being to be born. [5]

A thorough analysis of the initial moment of life was carried out by international bodies highlighted in the international context in the case law on abortion and the rights of the unborn child.

In Case X against the United Kingdom [6], the European Commission considered that art. 2 of the European Convention did not give the fetus an absolute right to life. The life of the fetus is intimately linked to the life of the woman wearing it, and it cannot be considered separately. If it were considered that art. 2 also applied to the fetus and that the protection afforded by this article should, in the absence of certain express limitations, be regarded as absolute, it should be deduced from this that abortion is forbidden, even when the pregnancy would endanger the mother's life. This would mean that the life of the fetus would be considered more precious than the pregnant mother's life.

Surprisingly, in our country, the problem of the human embryo is not addressed in any legal way, so it is extremely difficult for the competent bodies confronted with limit

situations to determine the moment of human being's onset of the right to life and implicitly if one can speak about a possible violation of the norms of the criminal law.

Criminal jurisprudence and doctrine in Romania, due to the legislative vacuum, could not make decisions in a unitary sense, for example, the criminalization of the murder deed occasioned the expression of several points of view. The majority opinion considers that the moment of appearance of a person protected by the criminalization of the act of murder is that of the complete detachment of the fetus from the mother's umbilical cord, that is, when the product of conception is no longer a fetus but a newborn, having a life independent of that of its mother. [7] Thus, we appreciate that, through such a perspective, the fetus is not seen as a human being, not having the right to be subject to the law on the protection of the right to life.

However, we know that the Romanian legislator offers a degree of protection to the fetus by criminalizing the crime of qualified murder on a pregnant woman. Thus, we believe that protection is granted to the fetus under art. 2 of the European Convention because, although the active subject of the crime of qualified murder on a pregnant woman is about killing a pregnant woman, it is inevitable that the fetus's life is inevitably affected by the material element.

From a doctrinal point of view [8], Stănoiu appreciated that, "the increase in the worsening for this circumstance is justified by the fact that the killing of the pregnant woman also involves killing the fruit of the conception (the fetus), which, although it is not the equivalent of a plurality of victims, it nevertheless means a double touch to human life". Last but not least, it was rightly assumed that this form of extraordinary homicide recognizes additional criminal protection for the still unborn being, similar to the murder committed on two or more individuals" [9].

4. The end of life. Euthanasia

Concerning the end of life, it is questionable whether the right of the same person to die correlates with the right to life enjoyed by any human being, referring here to the active or passive euthanasia [10] or even to assisted medical suicide.

By active euthanasia we understand the action of a person to end a patient's life, with or without their consent (for example, the action of the doctor administering the patient in the terminal phase of the disease a lethal injection). On the other hand, through passive (indirect) euthanasia, we understand causing the death of a sick person through the passivity of the one obliged to ensure that an act is accomplished or even through the interruption of an act thereby causing the willful death of a person.

This distinction between the two denominations has provoked a series of controversies in doctrine, being harshly criticized [11], asserting that the notion of passive euthanasia is nonsense, as it is in fact the absence of a therapeutic intervention. It is thus appreciated that the term passive is not the most appropriate and correctly used because the discontinuation of treatment often involves an act and therefore presupposes an active attitude and not a passive one as it was defined.

In the case of Pretty v. The United Kingdom [12], the European Court found that art. 2 is drafted in other terms than, for example, art. 11 of the European Convention, which regulates not only the right to free association, but also its negative aspect – the right not to be forced to associate. Article 2 has nothing to do with the quality of life or with what a person chooses to do with his or her life. These aspects are recognized as fundamental to the human condition, so they require protection from state interference, which can be found in other articles of the European Convention or other international instruments. Article 2 cannot, without risking a distortion of language, be interpreted as conferring a right diametrically opposed to the right to life, namely the right to die; it cannot create a right to self-determination, according to which an individual could choose death, rather than life. The European Court has held that it cannot be deduced from art. 2 of the European Convention the right to die, either with the help of a third party or with the help of a public authority.

According to the Romanian criminal doctrine [13], life, as a biological attribute of an individual, is the synthetic and fundamental attribute without which none of the other attributes of the individual could exist. It is thus appreciated that life from a biological value becomes a social and legal value. The criminal doctrine states that the endpoint of life coincides with cerebral death by reference to the vital functions of the body (respiratory, cardio-circulatory and cerebral) [14].

From a legal point of view, the final moment of life is of particular importance in determining the legal framing of the act by which a bodily injury occurs to a person who, due to the injuries he has, is in a vegetative state for a long time without, however, taking into account a possible brain death, and in respect of which the medical opinions clearly indicate the lack of a chance to survive. Taking into account the advances of medicine in conjunction with the state of the technology used in this field, we note that it is possible to keep a person in a vegetative state alive for an even longer period of time, as long as there is no definitive diagnosis of brain death. Current criminal doctrine and jurisprudence is of the opinion that, until the time of brain death, criminal prosecution or trial can only involve an attempt of those offenses that inherently affect the right to life, even if the medical opinions would indicate the certainty of death in the near future.

5. Short conclusions

We believe that, in the future, the issue of the time of death should be more compulsive taking into consideration the particular development of medical technology in the world. In this respect, those in charged with enforcing certain normative acts must take into account the changes that occur globally at all levels of the social and technological sphere in order to avoid certain legal situations caused by a possible legislative vacuum which could only lead to controversy and to the lack of some truly practical solutions for the points of beginning and end of the most important right attributed to the human being, namely the right to life.

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Journal of Law and Administrative Sciences
No.7/2017

CONSIDERATIONS ON THE FORMAL SOURCES OF INTERNATIONAL LAW

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Abstract
"Law sources" designate at the same time the substantial / material law sources and the formal law sources [1]. By law sources are also designated "ways of formation of juridical norms, namely procedures and acts by which these norms come into "juridical existence", become part of the positive law and acquire validity [2]. Thus, this paper is about the formal sources of law, whose "small number makes them present in all the juridical orders and subject to systematization" [3]. It is only these formal sources that we are going to deal with in this paper. Although the importance and the authority of each of them varies depending on juridical systems, epochs and countries, we can point out, among these sources: law, custom, jurisprudence and doctrine. In general, the specialists oppose written sources, such as legislation, to unwritten ones, such as custom, or direct sources, like law and custom, to indirect ones, like doctrine and jurisprudence, which would actually be, for instance, according to some eminent French law authors, nothing but authorities but not also French law sources [4], or official sources that generate formal rules, which are legislation and jurisprudence and unofficial sources, yielding only non formal (non official) rules, such as custom and doctrine [5]. The recognition of the formal law sources and of the obligatory character of the rules coming out of the formal law supposes a "Rule of law" [6].
Keywords: *formal sources, international law, States, juridical systems, Rule of law, juridical norms*

1. The notion of formal source of international law

In the framework of law sources, an extremely important role is held at present, by the international law sources.

By international law sources we understand international law norms that apply to all the States or at least to a number of two States and which can regulate all inter-State domains or at least one of them.

Being the result of a complex and dynamic process, the international law norms rely on the will of the international law subjects and are the result of the volitional agreement among the States.

When we consider the international law sources, it is practical to think less about the factors determining the creation of the juridical norms (material sources), and rather about the formal sources, as ways of expressing these norms [7].

The features specific of the international law sources are:

- common will of two or more States that decide on a juridical norm meant to govern the relations among them;
- substantiation of the will agreement into a juridical norm, custom, treaty etc.;
- presence of a juridical norm assuring the good development of the relations among States / role to assure the good development of the relations among States;
- while the internal law sources mainly come from the legislative power of a State, the international law norms rely on the agreement of wills between two or among more than two States.

Professor Raluca Miga-Beşteliu considers that the formal international law sources are juridical means by which the norms of this law are expressed [8].

In another opinion it is shown that by the international law source one understands the means of expressing the norms resulting from the States' agreement of will [9].

An important landmark for the management of the international law sources can be found in article 38 of the Status of the International Court of Justice, annexed to the 1945 UN Charter, resuming actually article 38 of the Status of the Permanent Court of International Justice of the year 1921.

Thus, the article we have referred to stipulates:

1. The Court whose mission is to solve according to the international law the cases referred to it shall apply:

a. The international conventions, either general or special, establishing rules recognized explicitly by the States in litigation;

b. The international custom as proof of a general practice accepted as law;

c. The general principles of law recognized by the civilized nations;

d. Under the reserve of the stipulations of article 59, the judicial decisions and the doctrine of the specialists best qualified in the public law of different nations as auxiliary means of determination of the rules of law.

2. The present regulation will not impinge on the Court's right to solve a case ex aequo et bono if the parties agree to it.

The value of this article is indicative, mentioning the main law sources used in solving international litigations. The article first enumerates the acts in which the States' consent is explicit and then passes on to those law sources in which the consent is tacit

(international custom and general principles of law), the enumeration ending with the auxiliary sources of law (jurisprudence and doctrine of the most competent specialists). Finally, the article does not exclude the Court's possibility to solve a case ex aequo et bono, if the parties agree to it.

As the author Raluca Miga-Beşteliu mentions, article 38 is criticized by the contemporary doctrine at least for two reasons: it is not exhaustive and a part of its formulations have been made obsolete by the evolutions in the area of international law and international relations [10].

The text evoked actually aims to indicate the law norms that have to be applied by the Court. Evidently, at present, the text is imperfect, being adopted 95 years ago. Its content is not adapted to our times. Yet, we shall note that this high jurisdictional forum is obliged to judge according to the international law, therefore according to precise norms, according to dedicated rules respected by the about 200 States signatories of the UN Charter, the Status of the International Court of Justice being part and parcel of it [11].

2. Categories of international law sources

The formal sources of the international law would be, according to the Status of the International Court of Justice (Art. 38): 1) treaty; 2) international custom; 3) general principles of law and 4) international jurisprudence and doctrine (made up of the opinions of the best specialists of various countries) [12].

2.1. The Relation and Interaction between Treaty and Custom

Although the essence of the international law is customary, it is just as true that an important role in the formation of the international law goes to the treaties. Thus, a treaty can become, in its turn, customary norm, according to Article 38 of the Vienna Convention of the year 1969 on treaty law, which foresees: "None of the provisions on treaties and third countries shall precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such".

To create a custom, starting from conventional norm, the jurisprudence of the International Court of Justice decided on three conditions:

- the practice of the States, regarding the norms invoked, must be uniform and frequent;

- the participation to the convention must be very large and representative;
- the conventional norm must have a normative character and be able to constitute the basis of a general norm of law [13].

The interaction treaty-custom functions as follows, from a normative perspective:

1. from the treaty to the custom, in the sense that there are treaties creating new rules that can be accepted as custom;
2. from the custom to the treaty, in the sense that there are treaties that codify or reflect the custom in their regulations [14].

The customary norms of the international law become binding at the same time for all the signatory States (including for those that opposed the customary norm incorporated) and also for the States adhering later on to this Convention.

The specialized literatura [15] also mentions that one can talk about the ceasing of the effects produced by some treaties, by virtue of the international customary law. This can happen in one of the following situations: non-application of the treaty by the formation of a derogatory, contrary custom, denouncing of the treaty, when one of the parties violated the provisions of the treaty; disappearance of one of the signatory / contracting parties; application of the clause rebus sic stantibus; appearance of clauses of revision and the effect of wars on treaties or the effect of a war on treaties.

One can note that, on the international level, the greatest importance at present goes to the treaties codifying the international public law [16].

The international customary law constituted the object of certain codifications. The diplomatic usage (for example, the rules of diplomatic courtesy) are not considered a source of international law, since they do not have a binding character.

Nowadays, we are witnessing the delineation of an international legislation, in the sense that the international regulations acquire more and more a legislative character and are gradually losing their contractual character, a tendency manifested, especially, regarding regional integration. The international organizations usually address to the States recommendations, in quality of consultative organisms. The respective recommendations constitute a negotiation framework for the conventions of voluntary adhesion of different States. Yet, some international organizations have the permission

to adopt decisions that are binding for the member States and emit binding international decisions [17].

2.2. International Organizations and International Custom

International organizations play an important role in the international life contributing to the elaboration of international norms, to the development of the customary practice and the consolidation of the customary norms (European Union trading relations, participation of the UN to different military missions contributes to the formation of law norms in different domains) [18].

Professor Gh. Moca underlines about the custom that it continues to have a great significance in the emergence and formation of the juridical norms of the international organizations. Some rules and institutions with a general character have taken shape or are about to take shape, via the custom, in the practice of the States and of different organizations, especially of those with a universal character. Such examples are the permanent missions of the States at international organizations, the status of the States' or organizations' observers, of the international clerks, the treaties concluded by organizations and others [19].

2.3. International Law Principles

The Status of the International Court of Justice affirms, in article 38 point 1 letter c), the following: "The Court, whose mission is to solve according to the international law the disputes submitted to it will apply: ... the principles of law recognized by the civilized nations".

This formulation indicates the fact that among the law sources applied by the International Court of Justice one can find the general principles of law recognized by the civilized nations.

Various authors [20] highlight the ambiguity of these formulations or even a certain preferential perspective underlining the civilizing role of the colonial powers.

The general principles of the international law represent auxiliary/ subsidiary sources of the international law, according to the French doctrine, along with equity and the unilateral acts. According to the same doctrine, the general principles of international law are principles that are common to the juridical systems of different civilized States [21].

Regarding the juridical force of the general principles of international law, two positions have emerged so far:

I. The Romanian juridical literature presents opinions according to which, the general principles of law, defined as principles of internal law are not applicable in the international law [22]. Yet, if we have in view the common principles of the internal law systems, they will be found as elements of the customary process. If, however, we have in view the general principles of the international law, one can consider that they are norms of international law formed in the shade of the treaty or of the custom.

II. Some western doctrine specialists, such as L. Oppenheim-Lauterpacht and A. McNair (as the authors Ion Diaconu and Raluca Miga-Beşteliu mention), starting from the provisions of Art. 38 Letter c and seeing that the decisions of the International Court of Justice rely on general principles of law, consider that they can be seen, along with the treaty and the custom, as sources of international law [23].

The academician Paul Cosmovici characterized the fundamental principles of international law as norms with a high generality degree, formed and recognized in the framework of a certain normative order, meant to determine a certain behavior among the international law subjects by referring to a dynamic system of values, with an unanimous or generally accepted character [24].

Regarding the issues related to the general principle of law, Professor Paul Guggenheim [25] admitted that, beyond the principles taken over from the internal order of the States, the international law equally knows general autonomous principles, called principles of international law. Yet, the same professor appreciated that it is not necessary for them to be considered particular sources, but the reference to these principles must, first of all, be interpreted in the sense that the validity of the international customary law cannot be limited by the individual will of the States [26].

2.4. International Doctrine and Jurisprudence

The Status of the International Court of Justice (Article 38 Letter d) defines the judge's decisions and the doctrine of the best specialists of the different States, as auxiliary means for establishing the norms of law.

The form of the international law is also influenced by means that, without determining the creation or development of juridical norms, nevertheless contributes to

noticing their existence, to interpreting and highlighting juridical values or determining, unilaterally, the State conduct, in the international norm creation process.

Doctrine (according to Art. 38 of the Status of the ICJ) comprises the opinions, the perspectives of the most competent international law specialists, very good at analyzing and interpreting the juridical norms of international law.

To the creation of the international law also contribute auxiliary factors such as the doctrine, with an important role in the development of the international law and of the new texts of law, expressed both by natural persons and by scientific associations such as I.L.A. (International Law Association) and I.L.I. (International Law Institute).

An important role in this domain goes to the International Law Commission of the UN, along with the opinions, individual or separate, expressed by the judges of the International Court of Justice. The procedure of the International Court of Justice foresees the right of the judges to present in writing also other arguments than the ones included in the decision, or the right of the judge who voted against the decision to present in writing his separate opinion and the corresponding arguments (opinion dissidente).

At the same time, the international jurisprudence has a creative role in the normative process, helping with the interpretation of the international law.

Jurisprudence includes the decisions of the judicial and arbitration instances of the International Court of Justice, of the Court of Justice of the European Union from Luxemburg and of the International Arbitration Courts.

According to another opinion, international judicial decisions are acts interpreting the treaties or the custom, in order to apply the law norms in a determined case. The importance for the international law of the decisions adopted by the international judicial or arbitration instances is given by the character of the function of the international judge, who is called to apply the law, not to create it [27].

Thus, the international judge is not called to create the law, but to apply it, and its decisions must note the existence or absence of the law norms invoked by the parties and explain the sense of the existing juridical norms.

The fact that jurisprudence does not constitute but an auxiliary source of the international law is reinforced by Article 59 of the Status of the International Court of

Justice which underlines that the decisions of the Court “have no binding force except among the parties in litigation and only for the cause they solve”.

To conclude, one can keep in mind the very great importance of the doctrine in the development of the international law and its quality of essential source of inspiration for new texts of law that are to emerge. At the same time, judicial decisions, despite their important contribution to the development of the international law, do not constitute sources of it, but auxiliary, complementary means of individualization and interpretation of the juridical norm [28].

Conclusions:

A careful analysis allows one to note that among the formal sources of the internal and international law, and generally among all the law sources, there is a close connection. At the same time, the evolution of their importance and their permanent evolution in time, to get adapted to the social needs, denotes the evolutionary character of the law sources but also their capacity of adaptation from one law system to the next and from one State to the next. Essential remains, however, the fact that during any epoch and in any law system, law sources have been absolutely necessary to elaborate and realize law [29].

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Journal of Law and Administrative Sciences
No.7/2017

ACTIONS UNDERTAKEN BY THE EU IN THE FIELD OF ENVIRONMENTAL PROTECTION

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Abstract
Over the last decades, the EU has tried and is still trying to advance environmental standards around the world by implementing a wide range of environmental legislation.
Through the care the European Union is giving to the environment, the aim is to make the economy greener and to protect nature, health and the quality of life of all people living on the territory of the Union.
Multiannual action programs for the environment are the ones that set the framework for future actions in the field of environmental protection. The implementation of these programs is fundamental.
Keywords: *greening, environmental law, sustainable development, pollution.*

The relationship between man and nature has started from the state of symbiosis, and with the evolution of man and the ever-growing desires for development it has degenerated into a conflict relationship. The evolution of the relationship is shaped in the form of three phases: symbiosis relationship, neutrality relationship, conflict relationship. [1]

Socio-economic development has led to the development of models of perception and interpretation of the environment, of the relations between man and the environment. At both national, European and international level, it is desirable to make environmental protection more effective.

The world became aware of the pollution phenomenon only in the mid-20th century, when the consequences began to look increasingly alarming: urban smog, acid rain, increased greenhouse effect, the thinning of the ozone layer, serious deterioration of water and soil quality, All of which dramatically affect life. People who have become victims of their own actions have begun to assume responsibility towards the environment in which they live [2].

Looking at European legislation, we see a unification of the environmental provisions, whether we are talking about Environmental Codes, such as France and

Sweden, whether we are talking about introducing environmental crime into the criminal code, as is the case with Spain, Latvia and Canada [3].

The European Union, in order to help people affected by pollution, introduced measures meant to:

- Ensure the provision of clean drinking and bathing water;
- Improve air quality and reduce noise;
- To reduce or eliminate the harmful effects of chemicals.

Multiannual action programs for the environment are the ones that set the framework for future actions in the field of environmental protection. Their implementation is fundamental.

Environmental competences are found in Art. 11 and art. 191-193 of the Treaty on the Functioning of the EU (TFEU). Here are provisions on air, water, waste management and climate change.

The subsidiarity principle limits the scope of competence to matters such as fiscal matters, landscaping, land use, water resource management, choosing the energy sources and the structure of the energy supply.

The main principles on which European environmental policy is based are: the precautionary principle, the prevention, the correction of pollution at source, and „the polluter pays" principles.

The precautionary principle [4] may be invoked when there is scientific uncertainty about a possible risk to human health or the environment from a particular action.

For example, when there are doubts about the possible dangerous effects of a product, when uncertainty persists after an objective scientific assessment, the distribution of the product may be forbidden, and even a withdrawal from the market could be issued, in order to avoid health damage.

As a rule of general application, the precautionary obligation is used in any field of human activity that may harm the environment and is of importance in determining the culpability of the person who is to respond to the deeds that caused the damage. [5]

Thus, it was shown that a person is liable when in a situation of uncertainty or doubt about a risk with grave consequences on the community they not take a precautionary attitude. [6]

The "polluter pays" principle is implemented through the Environmental Liability Directive (ELD) aimed at preventing or remedying environmental damage (protected natural species, habitats, water and soil). When we say the natural environment [7], we say demography, fauna, flora, geographic environment, etc. All these factors configure and influence all the components of the law.

Human life and health depend on the entire atmosphere, the hydrosphere, the lithosphere and the biosphere, as well as on the actions of the society, which include the civilization of technology, economy, culture, art, etc.

The scope of the Directive has been extended three times to include the management of extractive waste, the operation of geological storage sites, and the safety of oil activities respectively.

In April 2016, the European Commission adopted a Report on the experience gained by Member States in the application of the Directive, and an Action Plan was drawn up on the basis of the Directive.

Environmental action programs

Environmental Action Programs have been created by the European Community Treaty to ensure the sustainability of environmental protection measures.

Since the Maastricht Treaty, environmental protection has become a priority for the EU.

Since 1973, the Commission has launched multiannual environmental action programs (EAP), which set forth future legislative proposals and future objectives for the European Union's environmental policy.

In 1986 the Single European Act was adopted, which came into force in 1987 and added a new chapter on environmental protection in the founding Treaty of the European Community.

In 1990, the European Environment Agency and the European Environment Information and Observation Network were created. [8]

In 1992, the EU signed the Maastricht Treaty (TEU) [9], which entered into force in 1993. This Treaty gives the Parliament of Europe a more important role by introducing the co-decision procedure.

In 1997, the Treaty of Amsterdam (entered into force in 1999) was signed to make the concept of sustainable development an important principle of the Community. [10]

In 2001, the Gothenburg Conference takes place, where sustainable development becomes a long-term European strategy. The European Union Strategy for Sustainable Development (EUSSD), which is committed to adopting environmental and social economic policies, is adopted. The EUSSD was revised in 2006. [11].

The Kyoto Protocol enters into force in 2005, and in 2009 the Lisbon Treaty [12] was signed to tackle climate change.

2010 presents two important moments, namely the Europe 2020 Strategy and the UN Summit in Cancun.

The Europe 2020 Strategy [13] focuses on sustainable growth based on environmental protection and biodiversity protection.

Some of the points set out in the Cancun Summit in Mexico are: maintaining global warming below 2 degrees Celsius, reducing greenhouse gas emissions, implementing the "Green Climate" Fund to support developing countries.

In 2013, the Council and the European Parliament adopted the 7th EAP for the period until 2020 entitled "Better living within our planet."

Current Politics of the United States In the field of the environment is based on this 7th Environmental Action Program.

This program is intended to prolong environmental actions up to 2050.

"In 2050, we will live well within the ecological limits of the planet. Our prosperity and the healthy environment come from an innovative, circular economy where nothing is wasted and where natural resources are managed sustainably and biodiversity is protected, assessed and restored. "

This program identifies three main objectives:

- Protecting, preserving and enhancing the EU's natural capital;
- Transforming the Union into an efficient, ecological and economic resource
- Protecting EU citizens against environmental pressures.

This program is the responsibility of both the EU institutions and the national governments.

Horizontal strategies

In 2001, the EU introduced its Sustainable Development Strategy (SDS) to complement the Lisbon Strategy previously adopted to promote the growth of jobs with an environmental dimension.

The Sustainable Development Strategy was renewed in 2006 to combine the internal dimension of sustainable development with the international one.

The European 2020 Strategy for Growth aims at 'smart, sustainable and inclusive growth'.

In 2011, the EU committed itself to tackling the decline of biodiversity and the degradation of ecosystem services by 2020. (EU biodiversity strategy).

Environmental impact assessment and public participation

Some projects with an environmental impact, such as the construction of highways or an airport, are subject to an environmental assessment. (EIM).

Plans on land use, transport, energy, waste, are also the subject of a similar process called Strategic Environmental Assessment (SEA).

Public consultation on such plans is essential. Public consultation is due to the Aarthus Convention, a multilateral environmental agreement under the aegis of UNECE (The United Nations Economic COMMISSION for Europe), which entered into force in 2001 and to which the EU and all its Member States are parties.

This Convention is the basis for democratizing the process of environmental protection, enhancing transparency and public participation in environmental decision-making. [14]

International cooperation on the environment

The European Union is a party to numerous global, regional or sub-regional environmental agreements that aim at nature protection and biodiversity, climate change and cross-border air or water pollution.

At the 10th Conference of Parties to the Convention on Biological Diversity held in Japan in 2010, the EU helped to reach an agreement on a comprehensive strategy to halting the loss of biodiversity by 2020.

The European Union also participated in the decision on the elaboration of global sustainable development targets for all states, which was adopted following the „Rio + 20" Conference on Sustainable Development, held in 2012.

The European Union also participated and set standards for international climate negotiations under the United Nations Framework Convention on Climate Change (UNFCCC).

The EU has also adhered to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Conclusions

We can note that, against the background of climate change and globalization, the EU has adopted a number of normative acts necessary in order to protect the environment and quality of life and sustainable development.

A clean environment, based on a rational use of resources, is needed to ensure the health and well-being of the population.

The national actions of deliberative and executive structures supplemented with judicial powers in the field of the environment of the judiciary were also inspired by the international models of institutionalization.

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Journal of Law and Administrative Sciences
No.7/2017

THE SPECIFIC FEATURES OF THE ATTEMPT IN THE CASE OF THE COMPLEX OFFENCE

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Abstract
The complex offence is a creation of a legislator who decides to include in the content of an offence, one or more actions or inactions that are distinctly incriminated. In the absence of such a specific intervention of the legislator to set up the complex offence, the provisions concerning the set of offences would have been applicable when the content of two or more offences had been established. In order to differentiate this form of legal unity of the offence from the set of offences, the Romanian legislator decided to explicitly regulate the concept of complex offence in the chapter on the plurality of offences. The attempt in the case of any offence can only be analyzed in the light of provisions of Articles 32 and 33 of the Criminal Code, this fact being valid also for the attempted complex offence. Besides these general features, the attempt of the complex offence has some specific features that we will try to analyze.
Keywords: *attempt, consummation, accomplishment of the result, guilt.*

The complex offence created by bringing together other offences or involving at least two offences has been referred to in the literature as a complex offence in its own right.

In the doctrine, two opinions about the attempt of this complex type of offence are outlined. In a first opinion, it is shown that the complex offence is consumed when the main legal object is prejudiced (the taking of the good took place). If only an action or inaction (violence or threat) took place, it is achieved only the attempt at robbery and not the simple offence of violence or threat in a consumed form [1]. In the second opinion, it is argued that there is an attempt of the complex offence when the execution of each of the component actions begins. So, for "an attempt of a complex offence to exist, it is necessary to initiate the execution of both component actions, the beginning of execution or the execution of a single one having the effect of dissociating the other, facing thus, an attempted or consumed offence and not an attempted complex offence"[2].

This type of complex offence created by bringing together two other offences, in terms of its objective side, consists of two actions. Of these, one has the character of

main action or of action purpose, and the other has the character of middle or adjacent action. In order not to make confusion with the real set of offences and for the fair settlement of the problem of the attempt, it is necessary to analyze the relationship between the two actions. Naturally, the (main) action or the action purpose has the greatest meaning. If it is consumed, the complex offence appears to be consumed even if the adjacent action is only in the execution phase.

In the legal literature, it is argued that even an attempt that the law does not punish can be integrated as an act of the adjacent action in the content of the complex offence. It was also argued that some complex offences would have a bivalent structure, presenting themselves under alternative form: simple offence - complex offence. It was argued by that fact that some of the terms used by the legislator do not always have criminal significance, and it was given as an example, the term "violence" used to criminalize some complex offences. In a first hypothesis, it may mean the offence provided by Article 193 of the Criminal Code; however, in another hypothesis, it may also consist in acts of violence that do not cause physical suffering, and thus do not amount to the offence listed in Article 193 of the Criminal Code. In this second hypothesis, violence would have the character of a super ordered element found in the structure of the complex offence [3]. However, this opinion is hard to take into account because it ignores the very definition of the complex offence given by the legislator in Article 35 paragraph (2) of the Criminal Code.

An attempt at the complex offence will also exist when the adjacent action has been committed in its entirety, but there are no enforcement actions specific to the main proceeding. Attempt at the complex offence will also exist even if the main action has been interrupted or the effect has not occurred, its specific execution acts being followed by the full execution of the adjacent action. In this respect, it has been established in practice that the act of the defendant who enters a yard in order to appropriate a good and is surprised before the good was appropriated, exerting violence on the injured person in order to secure his escape, constitutes an attempt at the robbery offence [4]. Regarding the subjective position of the perpetrator, it was said that "subjectively there is usually a single resolution but with a richer content than in the case of other offences,

because the perpetrator envisages that he affects a main legal object, as well as a secondary one and wishes or accepts this consequence" [5].

The complex offence can only be analyzed from the point of view of all the elements and the relationships between them, so the emphasis of only one element or another can lead to erroneous conclusions.

In the case of a complex offence involving one action in the objective side, the consummation takes place when the result of the action / inaction occurred, under the special conditions of the super ordered elements to be filled in.

A special case of attempt is the offence of assault that jeopardizes the state security. The offence is consumed when the act of killing or injuring the bodily integrity or the victim's health begins, regardless of whether this action has been terminated or interrupted. According to the Criminal Code, the attempt consists in producing or procuring means or instruments, as well as taking measures to commit this act.

The existence of the complex offence is conditioned by the existence of the component offences in the same phase of execution, since the idea of judicial dissociation of the legal unity in the case where the components are in different phases is accepted. From here it is proposed to introduce new ways of the attempt as follows: if no person dies, there will be an absolute attempt, and when only one of the victims dies, there will be a relative attempt. The consumed deed will exist when at least two victims die.

The premeditation (the overcome intent) as a form of guilt results from overlapping the guilt without prediction over the direct intent. In this case, there is a greater result than that envisaged and pursued by the perpetrator. The result thus produced is specific to a more serious offence or to an aggravated variant of the same offence.

In the doctrine, there is a unitary view in the sense that premeditated crimes cannot be committed in the form of an attempt, precisely because of the presence of guilt [6].

The Romanian Criminal Code knows many such complex premeditated offences: rape, robbery, sexual perversion, etc. In this category, we do not include those offences that result in the victim's suicide, which are not complex offences. Thus, we take into account the following aspects: the specific consequences of the intended basic offence did not occur (the sexual intercourse was not consumed, the good was not stolen, the

abortion did not occur, etc.), and the second aspect - the specific consequences of the premeditated crime occurred (the victim died or suffered serious bodily injury).

Therefore, if the deliberate offence remains in the attempted phase, but it does not produce the premeditated consequences, we will have an attempt at an intentional complex offence.

a). A first opinion presented in the doctrine argues the impossibility of the attempt in the case of a premeditated offence, in general, and of a complex premeditated offence, in particular [7]. As a form of guilt, the premeditated intent (overcome intent) results from overlapping the guilt (with or without prediction) over the intent (direct or indirect). In this case, there is a wider result than the one pursued by the agent, specific to a more serious offence, or to an aggravated variant of the same offence. It is shown that the premeditated offence cannot have attempt because there can be no decision to produce a worse result, which is the consequence of the delinquency.

Thus, whenever the worse result occurs, the complex premeditated offence is considered consumed even if the result of the intentional crime has not occurred.

Also, the difference in concrete social danger when the basic offence was consumed and the one in which it was only attempted can be highlighted in the case of judicial personalization of punishment, without the abstract social danger reflected in the legal punishment to change. A deliberate offence can have as basic offence, a simple offence, as well as a qualified form of offence. In conclusion, both the production of the result and the subjective position of the delinquency exclude the idea that the premeditated offence in its entirety could remain in the attempt phase.

In the same sense, it was decided that "if the law punishes the deed more severely in relation to the worse outcome of the offence, and this result has occurred, it means that the offence is consumed, that the attempt phase has been overcome" [8].

b). The opposite thesis, that of the admissibility of the attempt at the premeditated complex crime, was also widely supported. One of the arguments was that the legislator sanctioned the attempt at complex crimes (rape, robbery, abortion, deprivation of freedom of the victim), without distinguishing between basic forms and aggravated forms, which were premeditated. On the other hand, it has been argued that the rule according to which the attempt to carry out the criminal offence is not possible, is valid only in the case of a

premeditated simple, not complex offence, where the act of violence becomes an act of execution of the entire offence [9]. It has also been said that one cannot speak of the offence being consumed as long as the basic consequence has not occurred, because the complex offence is consumed when the main legal object has been violated [10].

It was proposed to use the notion of "relative attempt" in this case, because the attempt is relative only to the intended element of the structure of the premeditated offence, not to the premeditated crime as a whole. Therefore, the attempt cannot be conceived as an attempt of the entire crime, because the overcome result, produced by fault, excludes the idea of attempt, it can present as an attempt at the basic offence, when, although characterized by an incomplete execution, has nevertheless produced the pre-determined result prescribed by law [11].

Also, keeping in mind the attempt, some circumstances, such as stopping or preventing the outcome become effective. For example, if after the violence, the author lapses from sexual intercourse with the victim, and he/she dies after the aggression, the agent will respond for the attempted rape that resulted in the victim's death. In this case, even admitting the attempt at these offences, we appreciate that the agent's liability will be committed to the offence of injuries or death-causing injuries, because by stopping, he will not respond for the attempted offence that he initially intended to commit, but for the offence actually committed, according to Article 34 paragraph (2) of the Criminal Code. As a result, by desisting, the agent will be punished by a more serious punishment (5-15 years) than if he had committed a punitive attempt.

The identical sanction of the attempted offence and of the consumed offence would encourage the agent to consume the intentional offence, an idea with which we disagree, because the agent does not want to produce the worse result, this being in fact the premeditated intent. In this point a separate discussion can be made on the silent of the author [12].

Once an attempt is admitted, a number of issues will be raised by its sanctioning. This is because the perpetrator of a deadly deed could be punished more easily when this act is a component of a complex offence than when it is committed independently. For example, if we mention an attempted rape that resulted in the death of the victim, we would apply a penalty within half reduced limits of 7.6 years to 12.6 years, that is, less

than that prescribed for the offence of bodily injuries or death-causing injuries, which is of 5 to 15 years. This inequity could be remedied by legislative means, by amending the punishment limits. Legislative errors cannot however eliminate the reality, that of the existence of a premeditated crime.

Often in practice, it was decided that there was an attempt, but only in the form of the basic offence, and therefore the punishment for the offence consumed will be applied, solution too hybrid to be accepted.

c). One last proposed solution would be to break the legal unity of the offence and to retain an ideal set of offences [13]. It is admitted that theoretically there is an attempt, but that its retention would have unfair consequences from a sanctioning point of view. For example, the perpetrator of only violent acts as a result of which the victim dies, may claim to have committed the aggression only in order to acquire goods from the victim, with the purpose to benefit from an easier punishment.

The offences that resulted in the death of the victim are aggravated forms of intentional offences, not distinct, premeditated criminal offences; they keep their legal nature of intentional offences.

Breaking the criminal unity is imposed only where the principle is breached after which the absorbing offence cannot have a lower degree of social danger than that of the offence absorbed. For example, an abortion attempt that resulted in the victim's death would be punished with a lesser penalty than that of the offence taken by murders and death-causing injuries. In other cases where there is no such mismatch, it will simply be retained the attempt at the complex premeditated offence, with the risk of incoherence.

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Journal of Law and Administrative Sciences
No.7/2017

EXCLUSIVE OR ALTERNATIVE COMPETENCE OF PREFECT INSTITUTION AND OF LOCAL/COUNTY COUNCIL TO DETERMINATE LOCAL/COUNTY COUNCILOR'S MANDATE CESSATION, BEFORE THE EXPIRE OF ITS NORMAL TERM, WHEN THE MEMBERSHIP OF POLITICAL PARTY ON WHOSE LIST HE WAS ELECTED WAS LOST

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Abstract:
In order to determine whether there is an exclusive competence of prefect institution to ascertain local / county councilor's mandate cessation before the expiry of his normal term, in the event of membership loss related to political party or national minorities organization on whose list one was elected, under provisions of art. 12 par. 3 of the Law no. 393/2004 on the Statute of local elected representatives, or alternatively with those of Local / County Council under the conditions stipulated by art. 9 par. 3 and 4 of Law no. 393/2004, the interpretation ofafore-mentioned law provisions rose to divergent opinions.
Keywords: *local elected, local council, prefect, mandate cessation, political party member, exclusive competence.*

On February, 10th, 2016 under Administrative Litigation summons, the applicant C.G. in contradiction with the defendant - Arad County Prefect Institution requested the annulment of Order no. 64 /February, 2nd, 2016 issued by Arad County Prefect, as unlawful. The application subject concerns the fact that the demandant has the legal right to continue performing as local councilor in the Local Council, respectively, deputy mayor with indemnity payment.

In his statement of reasons, the applicant asserted that he had served as local councilor and deputy mayor of Arad Social Democratic Party.

Order no. 64/February, 2nd, 2016 which stated ope legis cessation, before the expiry of counsel mandate normal term, is based on notificationno… February, 17th, 2016 issued by Arad county organization of the Social Democratic Party, without specifying Prefect address content.

The applicant states that he has not been excluded from the PSD and there is no ruling of exclusion from local organization he is part of, therefore theissued order is unlawful.

The complainant also pointed out that there is no report issued by the mayor and the secretary of the commune, accompanied by justificative documents, according to art. 12 par. 2 of Law no. 393/2004.

The defendant pointed out that through Address no. 17 /February, 2nd, 2016 of Arad County Organization of the Social Democratic Party, registered under no. 987 / February, 2nd, 2016, was informed about the complaintant exclusion from Social Democratic Party, because of repeated inobservances. In this respect, the defendant issued Order no. 64 / February, 2nd, 2016, on the legal cessation of the councilor mandate.

Regarding the complainant's allegations on the necessity of finding reportissuing, a report signed by mayor and secretary, the defendant considered that it confuses the situation with the termination of the mayor's term before the expiry of his normal term.

He also considered that the contested order was issued in compliance with the legal provisions.

On February, 2nd, 2016 through Address no. 17 (f.17) issued by Social Democratic Party and sent to defendant, the institution of Arad CountyPrefect was informed that to Mr. Costut Gligor - the complainant in question- was applied the sanction of exclusion from party for repeated inobservances of the PSD Statute. It was also stated that, according toprovisions of art. 9 par. 2 letter h1 of Law no. 393/2004, the counsel warrant held by the plaintiff ceases ex lege before the normal expiry of the mandate.Consequently, Arad County Prefect was requested to take legal steps to vacate the position of counselorheld by Mr. Costut Gligor by issuing an order, according to provisions of art. 12 par. 3 of Law no. 393/2004.

By Order no. 64 from February, 2nd 2016 issued by Arad County Prefect Institution (f.6), it was ascertained,ex lege cessation of councilor mandate before the expiry of normal term, regarding Mr. Costut Gligor from Cărand Local Council. Therefore, his placewas declared vacant.

At the basis of issuing of this order, the provisions of art. 9 par. 2 letter H1; art. 12 par. 3 of Law no. 393/2004 and art. 26 par. 1 of Law no. 340/2004 were invoked.

According to legal provisions applicable in this case and regulated by art. 9 par. 2 letter. h1 of Law no. 393/2004: "The quality of a local councilor or a county councilor ceases, before the expiry of normal term, in the following cases: ... h ^ 1) loss of membership of political party or of national minority organization on whose list he was elected;"

In the present case, address no. 17 / February, 2nd, 2016 issued by PSD mentions that the applicant was excluded from this party, in which case his mandate of councilor ceases.

However, the cessation of local councilor status is established by local council where the concerned person was employee. In present case, the finding falls within the competence of the Cărand County Council - where the applicant held the position of local councilor from the PSD and, not within Competence of Arad County Prefect Institution.

In this regard, Tribunal Instance summons legal provisions of art. 9 par. 3 - Law no. 393/2004 according to which*: "The legal completion of counsel mandate shall be determined by decision issued by local council, respectively, by county council, at mayor proposal or, as the case may be, of president of the county council proposal or of any counselor proposal.*

(4) In the cases provided for in paragraph (2) lit. C) - e) and h ^ 1), the council decision may be appealed by the counselor to the administrative litigation court within 10 days from the communication. The court will rule within no more than 30 days. In such a case, the prior procedure is no longer accomplished and the first instance decision is final and irrevocable. "

Otherwise, in present case there is no decision issued by Local Council which ascertain that Mr Costut Gligor's mandate has ceased.

Contrary to the above mentioned legal provisions, the defendant - Arad County Institution of the Prefect issued Order no. 64 / February, 2nd, 2016, in violation of these legal provisions.

The Tribunal also invokes the provisions of art. 30 related to provisions of art. 31 par. 5 of the Law no. 215/2001, according to which validation and invalidation of the local councilor mandates is done by the local councils.

In addition to the above, in present case file, Tribunal notes that no decision of expellingthe plaintiff from PSD party was issued.

At the hearing of the case, thedefendant representative asserted that, apart from the notification / address no. 17 / Febraury, 2nd, 2016, there is no other act on whose basisArad County Prefect Order no. 64 / February, 2nd, 2016 was issued, respectively, no party exclusion decision was given and communicated.

By court order No. 607 of March 23th, 2016, Arad Tribunal ordered the admissibility of the fiscal administrative summons filed by applicant- Costuţ Gligor against defendant -Arad County Institution of Prefect, headquartered in Arad, Bdul Revoluţiei no. 75, Arad County, with the consequence of the annulment of Order no. 64 / February, 2nd, 2016 issued by Arad County Prefect.

By action filed, on April, 12th, 2016, the applicant, P. G.C. sued the defendant Prefect Institution - Arad County, requesting the annulment of order no. 296 / 06.04.2016 on ex legelocal councilor mandate cessation, before normal termexpiry.

The applicant also requested applicability of the above-mentioned order suspension, until the final and irrevocable settlement of the case, and his reinstatement in all rights conferred by local councilorship, in Zărand Commune's Local Council, respectively, Deputy Mayor of Zărand Commune, until legal mandate expiration, with retroactive payment of all unpaid salary rights, until effective reinstatement. The applicant showed that, in essence, his exclusion from party was unlawful and non-statutory, since March, 3rd, 2016, session was not legally convened, the decision of exclusion was not communicated to him, and Zărand City Hall address submitted was not motivated, signed and stamped.

At the same time, the applicant asserts that he did not commit any inobservances, which, according to Statute provisions, impose the sanction of exclusion from party, and the appeal has not yet been resolved by the end of the mandate. Therewith, the activity of local public administration authority, right before local elections, in absence of mayor and a deputy mayor (the executive authority) may be seriously disturbed.

The applicant considers contested order to be unlawful, since the status of local councilor ceases, in accordance to law provisions, before expiry of the mandate, only in the case of political party membership loss.

The applicant states that he has not lost his membership of U.N.P.R Party, either by resignation or by exclusion, neither byanother party enrollment, as stipulated in the U.N.P.R. Statute. He also affirms that he has not been excluded from U.N.P.R and there is no ruling on exclusion from the local organization on his behalf.

Moreover, the cessation of the council's mandate is established by Local Council, as result of the mayor or any counselor motion. The council's decision may be appealed,by the counselor, in front of court,within 10 days of its communication.

In the present case, no decision onlocal councilor's mandate ceassion issued by Cărand Local Council has been communicated to applicant. Furthermore, the applicant considers that Perfect order is unlawful for not being competent to declare local councilor mandate cessation.

The plaintiff mentions that Arad County Prefect, also, issued Order no. 64 / February, 2nd, 2016, which equally concluded ex lege cessation of local council mandate,before expiry of the normal period. The plaintiff appealeded this order in front of court. Thus, Civil Adjudgement no. 607 / March, 23 nd, 2016 issued by Arad Court, in file no. 575/108/2016, stated the annulment of unlawful order.

The complainant considers that there should be a decision issued by Cărand Local Council, after mayor proposal, which establishes both ex lege cessation of local councilor mandate and invalidation oflocal councilor mandate.

The defendant's injunction -Arad County Prefect's Institution - requested the action dismissal, indicating, on one hand, that regarding the request to suspend order execution it was not motivated from the perspective of the well-justified case and of imminent damage, according to art. 14 par. 1) Law no. 554/2004.On the other hand, as regards case substance, the defendant pointed out that he only had noticed a state of affairs, sanctioned by power of the law, in the circumstances in which the applicant lost his membership of the political party on whose list he was elected.

The notice of Arad County National Union for Romania Progress, regarding the exclusion of the applicant from the members of this political party was addressed to Arad

Prefect Institution.In this respect, on April, 6th,2016, Arad County Prefect issued Order no. 296/2016, regarding ex lege mandatecessation, before expiry of the normal term mandate, as local councilor in the Zărand Local Council. By summons formulated in contradiction with Arad County Prefect, the applicant requested the court to abate Order no. 296, issued by the Prefect of Arad County on April, 6th, 2016.

At the same time, the applicant requested the court to suspend applicability of this order, until final settlement of the case, and to be reinstated in all right, which he benefits as local councilor and Zărand commune Deputy Mayor, retroactive payment of all salary rights.

Regarding present case under discussion, the jurisprudential exam reveals the two diverging opinions, which is why we believe that the following aspects should be mentioned.

First of all, it should be noted, regarding summons on suspension of the contested order that the application for suspension of any administrative act, art. 15 of Law no. 554/2004, is admissible to the extent that requirements of art. 14 on Law on Administrative Litigation are fulfilled.

This is also the solution for judicial practice unification, adopted in the plenum, by the judges of the High Court of Cassation and Justice, the High Court of Cassation and Justice, related to which Supreme Court has invariabely issued case decisions (for example Decision No. 2367 Of June, 21th, 2006, published in case-law 2006 II, pp. 227-229).

However, in present case, no claim was made, no support was given and much less, it was proved that there was a well-founded case, justifying the fact of taking this measure.The assertion with a high degree of generality, that implementation of contested administrative act will create an imminent damage, both to applicant and to institution where he belongs, namely City Hall Zărand, is not capable of requirements fulfillment, those imposed by legislator, as long as above mentioned requirements must be met cumulatively and not alternatively.

In any case, the notion of imminent damage is defined by art. 2 par. 1) letter ș) of Law no. 554/2004 and represents the future and foreseeable material damage or, as the case may be, the foreseeable disturbance of public authority or of public service

functioning; in this case, it can not be a seriousdisturbance ofZărand Local Council activity, since deputy mayor of Zărand commune is delegated. Therefore,this petition will be dismissed.

On the other hand, it is mentioned that according to art. 9 par. 2) letter h1 of Law no. 393/2004 on the statute of local elected representatives, as subsequently amended and supplemented, the status of local councilor or county councilor lawfully ceases, before expiry of normal term, in case of political party or of national minority organization membership loss, when comes to afore-mentioned organisation lists, on which the councilor was elected.

According to par. 4) of the same law, in cases provided for in paragraph 2), letters c) - e) and h1), the council decision may be appealed by counselor to administrative court, within 10 days from its communication. The court shall pronounce within maximum 30 days, in this case, the preliminary procedure being no longer carried out, and the decision of first instance is final and irrevocable.

Last but not least, according to art. 12 par. 3) of the same law, in case provided by art. 9 par. 2) letter h1), within 30 days from notification sent to political party or to organization of citizens belonging to national minorities, on whose list local councilor or county councilor was elected, the prefect decides, by order, mandate cessation of local or county councilor, before the expiration of its normal duration, and declares vacant the place of local or county councilor.

That being so, it is unequivocally clear, that the court can be invested only within the limits envisaged by the legislor, that is, to verify lawfulness of the order which declared ex lege mandate cessation, before the expiry of normal period of office, held by the so-called PG - local councilor of Zărand Local Council.

Having said threse, we consider that in situation of issuing the order to cease the mandate of local elected, the law was applied by Arad County Prefect, in a pure and simple manner, taking into consideration and adequately valorizingArad County Organization of the National Union for the Progress of Romania no. 1/2016 notification, registered at Arad County Prefect Institution, under no. 2503 / March, 14th, 2016, along with the provisions of art. 9 par. 2 letter h1) and par. 4, respectively art. 12 par. 3 of Law

no. 383/2004, on Statute of local elected representatives, with subsequent amendments and completions, 2503 / March, 15th, 2016 of Legal and Administrative Litigation Service.

In other words, in particular, mandate cessation intervenes by law virtue, the Prefect merely ascertaining a state of affairs which concerns the applicant, findings being done on the basis of notification issued by political party on whose list the applicant was elected, i.e Notification to Arad County Organization of the National Union for the Progress of Romania no. 1/2016, registered at Arad County Prefect Institution under no. 2503 / March, 14th, 2016.

We fully appreciate the fact that provisions of art. 9 par. 4 of the Law no. 393/2004, regarding term of filing the complaint and term in which the court takes a final decision, must be taken into account, even if reference is made to decision of the local council, since, following the amendment of this normative act by Law no. 115/2015, the legislator proceeded to correlate art. 9 par. 4 with art. 12 par. 3 newly introduced legal provisions which expressly set forth:

Except the situation provided in art. 9 paragraph (2) ..letter h index 1, in cases of mandate termination, before the expiry of the normal term, the local council or the county council, as the case may be, adopts in the first extraordinary session, at mayor proposal, or, respectively of president of the county council proposal, a decision to take note of the situation and declare vacant the place of counselor, in discution.

Therefore, the regard on prefect's lack of competence in issuing of the order for the termination of the mandate is unfounded, having regard clear and unequivocal provisions of art. 12 paragraph 3 of the Law no.393 / 2004. stating that, in case provided by art. 9 par. (2) letter h ^ 1), within 30 days from notification date sent to political party or organization of the citizens belonging to the national minorities on whose list the local councilor or the county councilor was elected, the Prefect finds by local or county councilor order mandate termination, before expiry of his normal duration and declare vacant the place of the local or county councilor.

Regarding the issue of local councilor actual exclusion from the party, we consider that examination of its legality entirely exceeds the limitations of investing the court seised with finding legal cessation mandate of local councilor,before the expiry of its normal duration,

In our opinion, neither the decision to withdraw political support nor the sanction of exclusion from political party, where local councilor hold membership, are not an administrative act, according to Law no. 554/2004 on the Administrative Litigation provisions.

Statutory procedureslegalityverification rests with the competence of bodies with jurisdictional powers within the political party, in so much as, exclusion contestation ruling rests with the domestic judicial structure competent to solve dispute over the political decision to exclude the party.

Last but not least, in support of arguments put forward, the case-law invoked with reference to Decisions no. 1167 / December, 11th, 2007, no. 915 / October, 18th, 2007, nr. 461 / November, 8th, 2011 and no. 273 / February, 2nd, 2009unequivocally pronounced by Constitutional Court of Romania, proves to be relevant.Thus, introduction of local councilor mandate terminationdue to loss of party membership on whose list one was elected, is a consequence of Constitution provisions -art. 8 par. 2- of the, according to which political parties contribute to defining and expressing the political will of citizens.

It is the electorate who grants his vote to a person, in order to carry out a public office, at local government level, in consideration of party's political program of which one belongs at election time. The same political program the elected person is to promote during his office term at county /local level.If the local elected one is no longer a member of the party on whose lists he was elected, it means that he no longer fulfills the conditions of representativeness and legitimacy necessary for the accomplishment of political program for which voters opted.Therefore, it is no longer justified to keep one in public office.The legal provisions in the matter, referring to art. 9 par. 2 letter h1) of Law no. 393/2004, have the purpose of preventing the political migration of local elected representatives from one political party to another, ensuring stability within the local public administration, expressing the political configuration, as it results from the will of the electorate.

The local or county councilor's mandate cessation occurs with loss of party membership on whose lists one was elected, regardless of the reason that led to status loss.In the event that, as result of membership loss, the local political mandate would remain, the political composition of the local council would be altered by elected

representatives will, which is not allowed. If local or county councilor losses membership party status, irrespective of the cause, this entails the revocation of his mandate before legal expiry.Preserving the status of local or county councilor, in the hypothesis that one no longer belongs to party on whose list he was originally elected, would be equivalent to converting that mandate into an independent mandate or possibly belonging to another political party, in which the counselor was subsequently enrolled.

Or, under the current electoral system, which provides ballot for local and county councilors election, this hypothesis can not be accepted, as the current term of office no longer corresponds to initial will of the electorate, who gave his vote to a candidate in consideration of party that he represented at that time.

In this respect, the Constitutional Court has ruled that local or county councilor mandate cessationo, lawfully takes place with the party membership loss on whose lists one was elected, regardless of the reason that led to loss of this status.

The Court noted that accepting the fact that a local councilor who, during the exercise of his mandate, leaves the party on whose list he has been elected and uphold his status as local elected, would change the political configuration of the local council, configuration establish just as result of citizens' vote.

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Journal of Law and Administrative Sciences
No.7/2017

CONSIDERATIONS OF A RENOWNED REPRESENTATIVE OF THE ROMANIAN LAW: ANDREI RĂDULESCU

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Abstract:
Andrei Rădulescu is a renowned representative of the Romanian law. In our paper we present the conference Us in the Year 1900 that he held at "St. Peter and Paul" High School in Ploieşti, at the turn of the 20th century. We consider this moment suggestive both for the chronological moment in question and for the very age of the author, as he was still a high school student, and this represented the moment that drew the main lines of Andrei Rădulescu's future personality. The introduction highlights several biographical details, the middle section focuses on the most important ideas of the conference, and the final part contains the conclusions of our analysis. The session given by Andrei Rădulescu (structured in three parts, namely 1. Who we were, 2. What we are, 3. What we will be) was part of the process to support the idea of fulfilling the national ideal by joining the provinces that were under foreign domination with Romania.
Keywords: *Andrei Rădulescu, conference, the fulfilment of the Romanian national ideal*

1. Biographical details

Andrei Rădulescu was born in 1880 in the village of Chiojdeanca, Prahova County, in a family of local peasants. After attending the primary school courses in his native town, and "St. Peter and Paul" High School in Ploieşti, he graduated from the Faculty of Law in Bucharest, being a scholar of Carol I University Foundation. Meanwhile, he attended the lectures of the Faculty of Letters and Philosophy, sections Classical History and Philology. In 1905 he became a Bachelor of Law, and in the following year he obtained the one of Letters, History section with maximum ratings. In 1912 he received the doctorate in Law, in Liège, Belgium, with the mention "avec grande distinction". He was a lawyer in Ploieşti, a judge in Piteşti and, starting with 1910, in Bucharest. In 1913 he began an outstanding academic activity (Civil Law, Public International Law, Commercial Law and Constitutional Law, History of the Romanian Law). In 1919 he became a correspondent member of the Romanian Academy, and from next year - a full member of the same institution. During 1946-1948 he was the President of this scientific forum. Rădulescu also held the position of President of the High Court of Cassation and Justice (1938-1940) and was the author of over 200 scientific papers. Considered to be the founder of the History of the Romanian

Law, “his theses decisively influenced the Romanian historiography, [and] the research in the field of law”. Here are some of his works, worth mentioning: Civil Law Studies (2 volumes), Romanian Legal Culture over the Last Century, Belgian Influence on the Romanian law, French Influence on the Romanian Law until 1864-1946, Originality of the Romanian Law, Romance of Our Law etc. [1]. Andrei Rădulescu ceased to live in 1959. In recognition of his entire activity, the Institute of Legal Research of the Romanian Academy was named, in 2006, „Acad. Andrei Rădulescu” [2].

Andrei Rădulescu was one of the most active advocates of the administrative unification of the Romanian society after the 1918 Great Union [3]. He admirably aggrieved that the Romanian state must have the same laws on its entire territory, so that “it should not leave for a long time the impression that it has no definitive form”, as this could create the impression that Romania was “a state that can be loosened at any time without much effort”[4]. Out of appreciation and local pride, Andrei Rădulescu became an honorary member of the Prahova Legal Circle in 1929 [5].

2. Us in the Year 1900

Andrei Rădulescu was an eminent student. In the oral tradition of “St. Peter and Paul” High School (that was to become “Mihai Viteazul” High School, currently “Mihai Viteazul” National College from Ploieşti, which continues the tradition of the famous high school), it is assumed that Andrei Rădulescu was the first student to graduate from this high school with the average 10. Therefore, his name was inscribed on the marble plaque of honorable prizes, still placed in the high school lobby [6].

This explains why Andrei Rădulescu, while still an undergraduate, on 10th May 1900, at the turn of the centuries, was assigned to hold a conference in the Amphitheater of “St. Peter and Paul” High School in Ploieşti, i.e. Us in the Year 1900. It was a moment that did not pass unnoticed, attracting even the attention of the Romanian Royal House. Following this event, on 12th July 1900, King Carol I received the young student at Peleş Palace in Sinaia. The moment was recorded in the pages of the prestigious newspaper “Universul” under the title Successes of a High School Student [7]. Andrei Rădulescu’s discourse was published in the same year at “Max Braunstein” Lux Printing House in Ploieşti.

On that occasion, the young author thanked both his teachers for the ideas and feelings that influenced him and led to that remarkable conference, and his colleagues - that had urged him to materialize the speech in a brochure, even by supporting him financially in the process [8].

40 years later, on 10th May 1940, when Andrei Rădulescu was the Prime President of the High Court of Cassation and Justice, a well-known professor and a member of the Romanian Academy, there was published the second edition. On that occasion, the author stated that the conference was held “with all the enthusiasm of the age of 19”, and specified that in the second edition he “did not change anything from the content, but some spelling issues”. He summed that the conference of 1900 “shows what a high school student thought and felt on the threshold of the 20th century”[9].

The conference, presented on the occasion of the Royal Day in Romania, was dedicated to “His Royal Highness, Prince Carol”. As a token of appreciation and argument of the value of his teachers, the conference had as a motto a fragment from his high school teacher’s History course. The essence of this motto was the urge addressed to the young generation “to achieve the national ideal of all Romanians” and to respect the courage of their ancestors. In the beginning of his discourse, the author detailed the triple significance of the 10th-May feast: the establishment of the monarchy in Romania in 1866, the adoption of the Declaration of Independence in 1877 and the proclamation of the Kingdom in 1881, sufficient arguments to generate and explain the state of the moment and of the epoch: “all Romanians rejoice, feel proud and cheerful” [10].

Very methodically, Andrei Rădulescu structured his speech in three parts, i.e. 1. Who we were; 2. What we are; 3. What we will be. In the first part, the orator recalled the historical trajectory of the Romanian people from Decebal and Traian moment up to modern Romania. He pinpointed the valences of the Roman civilization brought on these territories, the reasons for the withdrawal of the Roman army and administration from Dacia, the resistance and continuity of the Romanians in the age of migrations “in the valleys where the gods of their ancestors once lived”. In the valleys, in the mountains or in the forests by “singing from the leaf or their voice [the Romanian people – our note] created those sublime pearls of the Romanian language, called doine” [11]; they founded

states and institutions. Medieval princes would resist with dignity and wisdom both time and neighboring empires.

Several centuries afterwards, at the dawn of the modern age, “the cry for liberty, equality and fraternity of the old France” found fertile ground in the Romanian space. The call of Tudor Vladimirescu for his countrymen to fight for their national freedom in 1821, the revolution of 1848 and the founding of modern Romania, through the “Holy Union” of Moldovia and Wallachia in 1859, were moments that demonstrated the vitality of our nation. With an admirable power of judgment for his age, Andrei Rădulescu appreciated, in an extremely plastic, yet grounded, discourse that “the union for us was the boat that escaped us from the anger of waves, it was the bridge to civilization and the foundation of modern Romania” [12].

The maturity, and we could even say Andrei Rădulescu’s personality and philosophy, as well as this young’s man ability to understand the events throughout centuries, the plastic form of his expression, as well as the allure of a “true specialist” are proved by the following passage in his argumentation: “Whenever I think of what our people have endured in the past, when I remember how much blood was poured into this earth, which is ours, when, by means of imagination, I go back in history and see how much power of life was in our people, when I see their great role in Christianity and civility, I cannot help but not be stunned and exclaim, as Mr. Hasdeu did: Romanians are great!. And fair were these words...” [13].

The second part of the conference comprised and praised the achievements of the monarchy, established in Romania in 1866. The actions of Carol I of Hohenzollern merged with the interests of the Romanian people, thus demonstrating to everyone that the Prince “had been born for our country”. The work of Alexandru Ioan Cuza was also appreciated as he was the one to understand the needs of the Romanian peasants and their role in the nation, giving them the right to ownership in 1864. Such a decision made the peasants “love their country even more and give their blood for it” [14].

The major moment represented by the War of Independence was still alive in everyone’s memory, and the monument erected in the honour of Prahova heroes, in the city of Ploieşti, proved “that nothing is sweeter and more beautiful than to die for your country” [15]. It was regrettable, though, that, at the end of the war, the Russians we

helped on the battlefield “rewarded us by taking away the rest of Bessarabia”. As that was a war of the whole nation, the young orator noticed the moral support of women’s societies and committees, including the queen’s, whom he called “the good mother of the wounded,” and rhetorically asked: “How much honour and delight must have felt the poor men when they saw, in the horror of their pain, besides them whom? The Lady of the country” [16].

The fact that patriotism was a natural feeling for the teenage orator was also proved by the gesture of his high school colleagues, who, during the War of Independence, decided to donate money part of their small economies to the benefit of the Romanian army, entitling the school headmaster to become the mandate of their request and financial offer [17]. “So all the people and the Sovereign himself fought with all their love for independence and earned it”. The consequences of such gestures were significant and notable: “The wealth of the country has increased. In external relations we are now playing a leading role in the East” [18] and Romania has become a strategic barrier between the unceasing conflicts between the Russians and the Turks.

The situation the Kingdom of Romania was in 1900 gave Andrei Rădulescu some comfort and enabled him to say that “we ... are relatively good”. What annoyed the young orator was the situation of the brothers from Bessarabia, Bukovina and Transylvania, “who are under the yoke of strangers” [19]. Meditative and hopeful, he wondered, “How can we stand still when we know that they are brothers, that we love them, that we all have the same dream. [...] For how long, oh, God, do we have to suffer all this injustice and sorrows?” [20]. However, the young orator was convinced that “undoubtedly, there will come a happy time when we will be able to gather our brothers together, when we will all form the same state, resurrecting Old Dacia.” (highlighted in the original text) [21]. This moment seemed quite close to the author and, in his opinion, its fulfillment depended entirely on what the Romanian society will do as a whole.

In the third part of the lecture, Andrei Rădulescu seriously and deliberately assumed the role of a real analyst. Although he affirmed that neither him nor anyone could be a prophet and accurately prefigure the future of the nation, a careful analysis of the past, as well as deciphering the meaning of the present could outline the lines of the Romanian nation’s further evolution. The Kingdom of Romania had, at that time, a new

status on the map of Europe, the Turks no longer represented a danger, the Ottoman Empire was in decline, and "if it still existed, this was only due to the fear of the European powers to 'conquer', one or the other, the city of Constantinople" [22]. The Polish expansive medieval power and tendencies "vanished", the virulent threats of the Tatars in the past were history as well, as they had been are "swallowed by the insatiable Russia." The Austrian and Hungarian dangers did not seem so big anymore, as these powers "had to face our brethren's demands for their rights or those of other nationalities they ruled, in spite of justice and of historical truth..." [23].

Furthermore, Andrei Rădulescu noticed in his mature analysis that "we still have a nation that surrounded us" and that "even if at start we did not know, now we have learned of their true intentions". Then he directly called this anonymous threat: "The Russians represent a perpetual danger for us" [24]. When Andrei Rădulescu referred to such intentions of our Eastern neighbour, he obviously considered the annexation of the southern part of Bessarabia after the Russian-Romanian-Turkish war of 1877-1878. In that war, the Romanians had been the Russian allies, whom they had decisively helped to win, and their 'reward' had been the kidnapping of that territory [25]. The threats coming from this part of Europe seemed very serious to the orator, and, as a result, he asked for maximum vigilance in order to prevent Russia from "swallowing us, as they had done with other peoples" [26]. The policy of that power was, in Rădulescu's opinion, based on "divide et impera" principle. As starting with Tsar Peter the Great, Russia's dream had been to rule Constantinople, Romanians were not to forget "that we are in their way" [27].

In its survey of all neighbouring countries, Andrei Rădulescu noted that we "have Bulgarians in the south, whom we have helped, sometimes with the price of our own blood, to escape from the chains of slavery, and who, in response, treat us weirdly as a thank you." This statement referred to the fact that during the Oriental crisis, which had begun in 1875, the Romanian space generously sheltered the Bulgarian revolutionaries, and after the defeat of the Turks by the Russians and Romanians in 1877-1878, Bulgaria had gained its autonomy [29]. With sufficient discernment, the young orator noticed that, in spite of this support, the Bulgarians did not show thankful, on the contrary, which was not extremely dangerous, but, in the same time should not be neglected. The solution Rădulescu suggested was the founding of a "Balkan Confederation under the leadership

of Romania" (highlighted in the original text). Given the role that Romania played in the Peace Treaty in Bucharest of 1913, after the Balkan wars, one can state that the young high school student had enough flair to decipher the meaning of the geostrategic future of Romania and of the region. He proved to be right with his warning about Bulgaria as well, if one considers their attitude and actions towards Romania during the military operations of the First World War [30], and even afterwards.

The existing geo-political context had to be well known, analyzed and taken into consideration in order to draw the correct strategy for the future. We were not to "discourage", since "we have much confidence in the future of our nation" (highlighted in the original text). And this future had to bring the full union of all Romanians: "How many people do not want to see a great country and our brethren from Hungary, Bukovina, or Bessarabia liberated and united to the truncated trunk of their homeland" [31]. The author also considered the destiny of the Macedonian Balkan Vlachs and of those from the Istrian region, whom the young orator would have wanted "liberated and forming autonomous states".

Obviously, these were "beautiful dreams", as the very author acknowledged, but nobody could prevent either him or the Romanian nation, from dreaming, hoping or making plans for the realization of their national unity, from drawing closer or more distant targets for a common future. As a matter of fact, this goal was shared by other Central and Eastern European countries and peoples pursuing the same ideals. As far as the Romanians were concerned, one should never forget that their ideals were based on justice, and therefore entitled. "These lands are ours, inherited from our ancestors, and therefore we have the right to own them" [32].

Moving from enthusiasm to lucidity, the author wondered: "Well! We are right, but can we get back the invaded lands [...]?" [33] and responded that only the future was to bring the confirmation of these dreams. He reviewed the following strengths of the Romanian nation: the youth of the people, the vitality and patriotism of the peasants who always constituted "the country's foot, the very basis of the nation", and the role played by the elites, as a catalyst of their nation's fight. Aware of the fact that the major component of the army was represented by the peasantry, Andrei Rădulescu praised this social category as the preserver of "the flesh, the bravery and even [of] the Roman

physiognomy", in his opinion the Romanian peasants preserving the spirit of the old Roman Empire legionary [34].

Since the prerequisites for realizing the national ideal existed, then what else should there be? The will "to want", answered the young man. He manifested his revolt against the potential carelessness of some who might ask: "What do I care about Transylvania or Macedonia?" The attitude of young Rădulescu, faced to such possible manifestations, was a prompt one and materialized in the following expressive, true and profound reply: "They do not realize that the lands inhabited by our brethren are the branches, and we are the trunk. If the branches dry up, so does the trunk". [35] (our highlight). Such logic and its expressivity can be easily integrated into the expressions with anthological valences.

Furthermore, Rădulescu considered that by fulfilling our national ideal "we ask only what is ours", and "we want peace". However, in order to deal with the possible hidden threats, the Romanian society had to be "always ready and prepared to fight". He urged for deeds, "honor and disinterested work", true patriotism, for sacrificing "ourselves in a disinterested way for the interests of the nation". The young orator suggested to educate, "to descend to ordinary people in order to instill there true patriotic feelings" and to develop the economy of the country [36]. When addressing the economic issue, it is worth noting the author's nationalist conception, that was consolidating at that time in the economic field in general and in the oil industry in particular. The nationalist doctrine "by ourselves" is reflected in the following quotation: "As long as the industry and trade will not be in our hands and the agriculture will not develop, we will not be able to reach our goal and we will be wandering ..." [37].

Taking the patriotism of the 1848 generation as a hallmark, Andrei Rădulescu launched, in the end of his speech, the call to the realization of the national ideal, which he once again named: "the unification of all the Romanians." (highlighted in the original text) The fulfillment of this ideal would bring "Romania back to its natural borders". The orator also expressed his deep feelings of attachment to the Kingdom, and the hope that in the 20th century the "golden dream" of the Romanian nation would be realized. This hope concluded and summarized the public discourse the 19-year-old Andrei Rădulescu gave on 10th May 1900 [38].

3. Conclusions

The conference Andrei Rădulescu held in 1900 is worth mentioning and analyzing due to several aspects. It is the work of a young high school student that surprises not only his personal thoughts, feelings and ideals, but also those of all Romanians at the 'crossroads' of centuries.

This discourse reflects the very education provided in the epoch, aiming at and serving the realization of the national ideal, both among younger generations and in the Romanian society, as a whole. It is also noteworthy that Aurelin Moșoiu, a teacher at "St. Peter and Paul" High School of Ploieşti, founded in 1908 Students Reading Society (Societatea de lectură a elevilor), which activated for decades, edited a famous magazine of the students and set as main objectives of their activity, the education of the young people "in the spirit of love for their homeland" and the restoration of "Michael the Brave's Romania" [39, 40].

The text of the conference highlights the correct representation young Andrei Rădulescu had on the evolution of our national history, in accordance with the valuable, documented Romanian historiography of his time and the one afterwards. The author took his role seriously and, as a true orator, made use of the 1st person only, giving thus "authority" to the appreciations he made. In his demonstration, Rădulescu evoked the ancestral valences of the Dacian forefathers, the bravery of the Romans, the role of the peasantry as a fundamental social class in the national history, as well as their inherent patriotism, and the role played by the national elites. Everything was subordinated to the realization of the national ideal, namely of the Great Union of all Romanians.

With respect to the style of the conference, this was clear, yet plastic, sprinkled with comparisons, saying and proverbs, with lyrics and Latin idioms, with graphic marking of the most important ideas. One is to notice the maturity of Andrei Rădulescu's appreciations. In the same time, one cannot neglect the real feeling of patriotism existing in the epoch, as well as the willingness of many to make the supreme sacrifice for the ideals of their homeland. At the same time, this speech proves the solidity of the studies and of the sentiments put in the consciousness of the early 20th century young generations.

We transfer the message of Andrei Rădulescu's conference as a pious homage to the celebration of the 100th anniversary of the Great Union in 1918 and, in the same time, we consider that We in the Year 1900 pinpoints the premises of his author further evolution, as a prominent personality of the Romanian law and of the Romanian spirituality as a whole.

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Journal of Law and Administrative Sciences
No.7/2017

EUROPEAN UNION LAW BETWEEN DOXOLOGY AND CRITICAL ANALYSIS

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Abstract
From the point of view of the principles of the Romanian Constitution (art. 1 para. (5), 11, 16, 20, and 148) are two ways to compel people: consent and the law. What seems to me severely for my conscience Romanian and man of law, is that this political body called the European Union was not founded in law Romanian nor the consent Romanians but under the policy makers and foreign adherents our - delegation of legislative power which contradicts the principle of art. 1 para. 1 and art. 2 para. 1 items foundation of the entire Constitution. But above all, considerations of legal and constitutional - even if ardent followers European responsibilities the great advantage of creating the EU by means of the law as an argument irrefutable - reopening the pages for a plebiscite among nations and the Union for a divorce amicably as if brexit community.
Keywords: *European Union law, constitution, identity and national sovereignty liability*

1. Argumentum

This article appeared under the auspices of the journal "Journal of Law and Administrative Sciences", in Romania presents some considerations about the existential crisis of the current Romanian constitutional right under EU law hammer and anvil Romania's constitutional tradition. This is why the historical investigation of any state constitutional development must dovetail with the legal research and analysis of policy documents and generally historical sources. All the documents submitted is designed as an appeal to the political history of the Romanian state, which is beyond the value of historiography, a treasure of the current generations of politicians can extract the essence of Romanian political thought traditional to revive the values of parliamentarianism, boldness and generations of revolutionary sacrifice and unflagging effort to remove and overcome obstacles to modern development of the country ".

According to Wikipedia, the free encyclopedia, constitutional law establishes the fundamental principles of the structure of social-economic and the organization of state power, governing relations between different parts of the state and between the state and citizens relationships embodied in the fundamental rights and duties thereof. Constitutional law regulating social relations fundamental to the process of introducing,

maintaining and exercising power, is the main branch in the legal system. This requires that all other legal rules of other branches of law to conform to constitutional provisions that objective is achieved basically by controlling the constitutionality of laws, which in Romania is ensured by the Constitutional Court. On the work of the Constitutional Court and its role in the formulas will return conclusive.

Constitutional law is the branch of law which is made up of legal rules governing fundamental social relations that occur in the establishment, maintenance and exercise of state power. The notion of constitutional law should not be confused with that constitution. This is the most important component of constitutional law, but not the whole; more in some States constitutional law even where there is no constitution. In our country we have the Constitution, the 1991 Constitution as amended and supplemented by the Law amending the Constitution of Romania no.429 / 2003. For these reasons, but also in other developed during this research endeavor, I will not make a speech in praise of the EU, as we expounds definition of doxology but a critical approach to the EU law.

2. European Union law: identity and existential themes

2.1. Preliminary issues

The law is for man, not against man. The law must be public and accessible to all. So, and EU law should be in support of Union citizens, including Romanians ours. Only, it seems not too European responsibilities makers have learned from history, and we speak here, even more distant or recent history of Europe. What I want to say? European Union Member States and citizens celebrate this year the 60th anniversary of the Treaty of Rome. Coincidentally or not, this anniversary coincides with the celebration of 500 years of existence of another "treaty". It is Niccolo Machiavelli's Prince which was celebrated in Italy and worldwide through conferences, studies and seminars. Renowned researchers and historians have written about the importance and significance of this work, an opportunity to reflect on the character alive and present of one of the best known and most translated works of Italian literature from five centuries after its appearance but also on other reflections. More specifically, what are the different principles of governance in the EU today than during the see the light "Il Principe"? Anything, and so I think that today the doctrine of Machiavelli is more alive than five hundred years ago; because if

the external forms of our existence have changed very much, no changes were profound spirit of men and peoples. Even a sentence of Chapter XXV of the famous "Il Principe" (1513), which we consider characteristic of politicians today in Bucharest and Brussels, sounds like this, "a prince who relies solely on fate collapses as soon as it it changes. Who knows happy to give after unhappy at times and that's not good." “It is much safer to be feared than loved to you".

Name diplomat, philosopher, politician and writer Niccolo Machiavelli Florentine is known to most of us in terms of a proverb, a proverb: "The end justifies the means." Also meaning of the term "Machiavellian" refers, perhaps too much and wrongly as it concerns the author only witticism mentioned, meaning: duplicitous, false, hypocritical, self-righteous, hypocritical, lying, traitorous, treacherous, sly, cunning. Perhaps the most translated work of authorship known Italian Prince is the latest book by Machiavelli and remained known as bedside book, though Florentine has other work in addition to her work. Machiavelli in his treatise describes methods by which a prince can acquire and maintain political power. Some have viewed the book as a support tyranny and despotism of the rulers as Cesare Borgia. But the work is based on Machiavelli's belief that a sovereign is not bound by traditional ethical norms "This raises the question whether it is better to be loved than feared, or vice versa. The answer is that you should be and one and another; but since it is difficult to reconcile these two things, say that when one of the two must be absent, it is much safer to be feared than loved you to." In his view, a prince should be concerned only about power and be subject only to rules that lead to success in political actions. Machiavelli believed that these rules could be discovered by deduction from the political practices of the time, as previous periods. It's great and famous reasoning expressed in the famous chapter XVIII of The Prince, where Machiavelli, making a comparison between the characteristics of complementary who are endowed fox and the lion, illustrates that essentially prince must know how to use both cunning and strength, without being necessarily loyal if this loyalty threatens to destroy it. The goal, according to his words that have become proverbial, is to win and maintain power and the means of pursuing that goal will, however, be honorable. Over time, this reasoning has been interpreted and reinterpreted beyond the original meaning, simplifying the phrase "the end justifies the means." But there is another quote from Machiavelli (Chapter

XXV of the Treaty) which enjoys maybe even more topical: one in which advises the Prince to adapt the action to things unpredictable which may arise ("hostility of fate"/"malignant di fortuna").

According to Machiavelli, the holding power can act "carefully"/"con rispetto" (prudent and cautious) or "heady"/"con impeto" but if "times and circumstances change/e tempi e le cose and mutano "is intended to change the line of action the risk of failure. As you know those of diplomacy, politics - except the principle of pacta sunt servanda - cannot rely on approaches dogmatic and immovable, but should be flexible, adherent to reality and know how to use, when necessary, mediation: an invitation to anchor us in reality abandoning default patterns. A lesson that comes from the Renaissance period unprejudiced, but which, at a distance of five centuries, seems to have lost all validity.

Filoso be the policy of Machiavelli is based on a radically pessimistic conception of history, largely due to political instability in Italy of the sixteenth century. Machiavelli does not recognize the succession of empires, the birth and falling beneficent hand of God; rather he sees the inevitable failure of any human enterprise and difficulty of access to what people naturally aspire to peace and security. History is not the work of Providence, but blind fate and indifferent to people. Own domain policy is established by building and maintaining a secure and peaceful social order. This order must be really torn, "destiny; she would come to be defined is the fate of always having the last word. Pessimism history extends in a pessimistic anthropological: citizens that Prince has the duty to govern them are not human ideal (as beings rational), but being concrete, half-animal, half-human, driven by passions and ambitions, sensitive rather meekness and fear than coercion more than to reason. The traditional "mirror of princes" addresses the legitimate heir to the crown. On the contrary, Prince seemed less concerned about how acquiring legality of the principality, which generally distinguish republic of tyranny. What interests him particularly Machiavelli is the art to remain in power while preserving the social order: but this art is not highlighted really only principalities conquered, where the order should be instituted as a whole and where Prince must to prove exceptional talent to succeed where others have failed. In order to obtain legitimate political regimes first through consensus and the sovereign needs talent to keep it.

Immorality policy Machiavelli has a proper sense of politics: it involves the ability to maintain a stable social order. Given human nature, duplicity, violence and even cruelty will be required to acquire a. Machiavelli condemns iniquity that is due to hold its deficiencies in politics: to make order reign, Prince should know how to gain the trust of citizens. For this he will have even simulate justice, generosity, gentleness and kindness. Political art knows to combine generosity with stinginess, honesty with duplicity, cruelty gentleness. Prince becomes at the same time, lion (use of force) and Fox (the ability to keep "good" reputation). It can be said that Machiavelli is a true champion of political immorality? In politics, morality has a place where order is already in place, not when missing the essential conditions that ensure: that security and stability (in Italy of the sixteenth century, for example). Justice is required perfection city, not its foundation: given human nature and fate hostility, establishing a political order cannot be done without violence. Grand Principe able to use this violence to the most "economical", that is effective enough to not be forced to resort to her constantly.

What is really surprising is that this work was written in the time condottiere, while Neagoe, ruler of Romanian between 1512 and 1521 wrote "The Teachings of Neagoe Basarab to his son Theodosius" one of the earliest masterpieces of literature old. Even more surprising, in another corner of Europe, François Rabelais has published two novels - Pantagruel (the original title completely Les horribles et épouvantables faits et prouesses du très renommé Pantagruel Roi des Dipsodes, fils du Grand Géant Gargantua) and Gargantua (La vie du très grand Gargantua horrifique, père of Pantagruel) - in 1532, respectively, in 1534, under the pseudonym anagram Alcofribas Nasier. It's been nearly 500 years since they were written, Gargantua and Pantagruel, Rabelais's novels retain their liveliness and flavor as the work of an alchemist as literature. Writing is, of course, the product of fantasies inexhaustible, expressing itself in a language richness fabulous tailored to the main characters, very bright, very convincing, very real: Gargantua - man Revival begins - wise, prudent, with a particular above all ethics, justice, reason and virtue, sincerity soul; Pantagruel - fully Renaissance man, as he dreamed Rabelais - intelligent, honest, straight, eager for knowledge, his friends pretending to be informed, educated and wise. Doctor with a reputation for great healer and writer who, along with Cervantes, has laid the foundation stone of the art novel and enriched like no

other before, and as few others after him French, died, apparently in 1553, Paris and assigned last words were "I'm looking for a big maybe!"

These findings - the emergence of almost simultaneous three works in three different corners of Europe - demonstrating once again the strength of facts that we Romanians have not been outside Europe of civilization and our culture, the legal case, not nothing is beneath the West. By pen his Neagoe the "teachings" of his to his son Theodosius, writes down not only the principles of political governance of the state, moral education of youth, but also governing principles of the soul, offering those who will following the legacy of true values, spiritual. Neagoe complex personality has left posterity two monuments of exceptional value, one in architecture - the magnificent church of Curtea de Arges and another in literature - teachings to his son Theodosius. Neagoe was a man of his era permeated by religious feeling, he was one of the chief founders and supporters of the Church in our past. Knowledge of texts and religious issues, he sought to make the Church a strong support of the rule, policy similar to that taken by Stephen the Great shortly before. Knowing how religion exerts great influence at the time, he counsels his son dressed in a religious garb. Thus, advising his successor to be sober to drink, gives examples from the Old Testament, about the evils caused by wine (Noah, Lot, Samson). Then show the evils that may arise from friendship with the fornicators and compared the uprising against Mr. Country with rebellion against God, showing in detail how he lit the devil Saul against David and Absalom against his father David.

One of the basic ideas of the author of the Teachings is the divine right monarchy. This idea can be identified in a letter addressed to Neagoe 1520, the inhabitants of Brasov. In another document from 1512 states that the ruler should thank God for that "deigned to sit on the throne of mercy and forefathers by His divine power." Teachings contain many tips on how to be led country, Mr. relations with landowners: the appointment of governors, administration of justice, receiving the messengers, waging war, etc., all these tips forming a true manual governing the state. Royal council play an important role in the leadership of the state, alongside Sir, and the selection and appointment of governors constituted important issues for each prince. For this reason, Neagoe grant them due importance, he advised his successor to choose the most skilled collaborators who help him faithfully in running the state, even if some of them were of

noble birth. Particularly interesting are tips on how to be judgments made by the prince and his advice. Lord is advised to judge rightly, each according to his deed and listen and needy, just judgment contributes to maintaining a good reputation in the world. These tips find their confirmation in the judicial practice of Neagoe, which proves that he left the memory of posterity, was that of a gentleman law. Advice on foreign policy are linked and preceded by those relating to the maintenance of diplomatic relations, ie receiving and sending messengers area where Mr. Leave his successor counsel instructive, rightly regarded as the first lesson of medieval Romanian diplomacy. These tips find confirmation in intense diplomatic activity conducted by Neagoe, with a view to ensuring peace and freedom Romanian Land, to prevent its subjugation by the Ottoman Empire and to make the land he was leading an important factor in South East of Europe.

Lord admonishes his followers: "Do not love times of riot and skip to acts of arrogance", to keep peace with the surrounding nations. This desire for peace is reflected throughout the political Romanian Country kingly reign during which the country was quiet. A teaching provides advice on how to be defended from invasion by enemies. If Mr. failed to persuade its enemies through good words, he was obliged to keep their dignity and courage "to stand valiantly against the enemy because they started." Currently there is an abiding principle in the policy of our ancestors, who led wars of conquest, but were able to heroically defend their country against all those who threaten freedom. Lord advises his successor to take the fight even if invader was stronger. Dealing advice given in the Teachings of Neagoe policy and the realities of his time proves that the advice given by his successor Sir stem from his experience and his predecessors. All the elements of diplomacy, subtle tips reign, specific details of court life gives us an overall picture of Neagoe transmitted with reverence and godly wisdom as a treasure of his son and the entire Romanian policies. These philosophical thinking and wise teachings, expressing disturbing reflections permanent political and moral authority checks were made on history Haşdeu to appoint Neagoe "Marcus Aurelius of the Romanian Land", prince, artist and philosopher.

This brief excursus history was initiated by the need to put in front of the Romanian public aspects of history that conditioned even the emergence and development of the nation as constituted the majority, but also with the more than 20 ethnic minorities

established for this geographical and spiritual space. Especially since this horizon, this affiliation to the huge landscape of human civilizations has been forbidden to us now or we were not made explicitly aware. Origins, Phylum, changes over time, in a word during that allowed us to all of us to define ourselves as a nation and what we are today should finally come to us. Because memberships other cultures know about us things we do not know, as we do not know important things about other human civilizations with whom we are in contact, in a world of increasingly global.

What really means "far back" if "away" gave us even we, today, with our way of thinking? And what neighbors, globalization, identity, borders, strength, failure unless you know who you are and your own reactions as a whole is in a nebula? Projection that this study can provide on each aims, firstly, to open the barriers of the mind that you never knew existed. At least I think so, who crossed the incredible adventure of knowledge of the past and understand in time that there, in the pit of untouchables, hide all the fruits of which will be appeared orchards, forests, thickets, and lights human civilization today. So you, the readers and supreme my judges, attempt about who we are, who we are, what and who we can become and even become continuous, whether we like it or not, whether we know it or not, wants to offer you the correct option to know because it defines the very condition of our people, nation and our ability to react to any stimuli. It remains to judge themselves, each reading about the ways of the past, if the right is an option defense, crossing streams Time, that is, in fact, a way of existence and permanence of us all, a picture that we can give other nations, civilizations, world, especially our descendants tomorrow and after tomorrow. So right vanity is vanity of power or power?!

2.2. EU law: the vanity of power or strength vanity

First, I will present a short story, which among my documentary not just about legal sciences, but very pleasant to me. What it is? His classes, Sergiu Celibidache was teaching recent conductors that the first thing to do when conducting a piece of music to us is to look whole and try to find points of inflection, joints, at a turning point, for any flow has moments that changes from becoming something else, may very well evolve in another direction, without interrupting however. I think the same should be done and the

law. When we sight the whole context of its adoption at a turning point where his destiny may well take a different direction and the world would have been different. In those moments - "Sternstunden", astral hours, as they would say Stefan Zweig - it sees clear and precise hand of God. This applies to, including EU law.

EU law only seems to be exhausted destiny. It's sad, especially if we remember that glorious destiny had. I do not know if anyone had the curiosity to appreciate just what percentage of EU law is found in Romanian legislation, but I know that the result of such research we would amaze you. How many directives, regulations, opinions and recommendations, not to mention the Court of Justice of the European Union are implemented today in Romania and studied avidly! It avidly feels different from reader to reader, of course. For me for instance, I love reading about Roman law and Romanian because I would not be obliged to justify myself too much. Politeness mandatory to know the law according to the principle "nemo censetur ignore legem" seems a chore not address me and which, moreover, it is written by someone already dead. There is pleasure emancipation from any obligation. I like Romanian law. Sure, for some stupid is starting to national identity - but what starts are smart? Unlike ardent Unionists, me just motivates me the desire to be first of all Romanian and EU citizen then. Anyway Romanian law otherwise seen in Bucharest than in Brussels. Some say that the two are complementary, entrenched the idea that EU law is an organic part of Romanian law. Not true, it is only a constitutional obligation (Article 148 para. (2) of the Constitution. It is like an organ transplant, keep you alive but not yours and often graft does not work, the body rejects foreign bodies.

Today, the complete edition of writings in any doctrinal union rights include mandatory and the results of interdisciplinary research on Europe, European identity, place and role of EU law are key terms of scientific interaction between culture and politics European Union law. In the eyes of posterity, especially of posterity academic doctrine it is as important as the law itself. But many were not made by doctrine? To think only that a third of the New Testament - the foundation of Christianity - has epistolary form. As he wrote his doctrine (epistles), Paul lived in a world of confusion; disaster repeated low, a world threatened an uncertain world. However, in this world, faith in Jesus Christ, son of God could appoint the most stable foundation civilization known to history, rooted in the

world could the great hope, which, since then, never died. And this opera great, incomparable to anything else was done in epistolary form. The Gospels and Epistles were the vehicle that led the Christian faith all over the world. Likewise law generally led to the development of trade and international credit. Right today is an intrinsic element of our civilization. Everywhere they went people on this planet have gone and the law immediately. People felt that the issuance of a rule tantamount to sending their hearts. Without the body to move. What happiness enormous: you can send to your heart wherever you want without moving the body! Let's think about: a heart vine (ie exactly what is right) much like immortality or at least with youth without old age. Renunciation of quota intended from the outset that something unalterably damage to the man and then sent to another world, that you miss, is exactly what makes writing a law. The right perfume should have immortality.

Beyond legislation, by law, people have played with their own immortality, not just metaphorically but directly, physically. The probability that any legal rule issued and adopted during one's life physically survive author is very high. The legal standard is social par excellence, often exhausted and circumstantial insignificant details, but it is a document with immense endurance. Will speak about the immediacy of the ordinary laws of a society, but endures clear that speech over the centuries - far beyond what the body can endure. Law, dura lex, she has engineered the most powerful vehicle for time travel. Perhaps therein lies the splendor just right: it may be relatively insignificant and until fad, but has enormous potential of restoring the past now. Reading a text of law is not just a hole on the history of mankind, but a consolation that there are tools available that provide, however immortality. Sure that most laws are written for some unknown recipients, more than ever, but most rules are words written directly for eye/heart of a recipient precisely known - human society. EU law achieved these goals? I fear that the answer is negative as European identity, place and role of law and policy in the European Union are the key terms of the interaction between the scientific culture of European law, between law and politics as we analyze.

2.3. Culture EU law

Legal norm, kind of social norm, comes to regulate human conduct, provide the general legal framework in which it may take place, if necessary, being able to call the

coercive force of the state with the aim of ensuring law and order. Natural law as a source of moral and legal judgment, has been a steady increase in the Western tradition since the Renaissance period. It has spread widely throughout the period of the Enlightenment and came to prominence during the nineteenth and twentieth century's, when several sources of law, based personalization or state authority, becoming more challenged. The concept of rights guaranteed every person is rooted in natural law.

The right has often been viewed with some contempt by the followers of a particular legal cultural fundamentalism. Our legal culture, for instance, I was reproached too traditionalist. In this reproach easily detect a synonym: the right is somehow same morals and religion. And lawyer and moralist know something and improvise with talent, but messy, non-rigorous, especially in regard to the right. Big shots are given with treated System with specialists or other plan, with jurisprudence and doctrines of law as such. Accusation may be unfair and synonymy suggested above would seem invalid. However, right, sort of stiletto in the entire arsenal of catapults, spears and swords of democracy and the rule of law is not only useful, but also the power to reach the truth quickly and convincingly. Precisely because it is the most subjective way of expressing social interest can quickly jump right to objectivity, for, as the matter is exhausted light, objectivity is subjectivity faint. However, the right does just that: all the energy out of their own subjectivity and teaches, emptied of self, of the world. And that's objectivity! To the extent that truth is objective, which is not at all certain. It is equally true that the social norm par excellence, the right is a temptation. As can be the right quick to arrive at the truth, it may be an error. I've seen too many laws, euphemistically speaking, rambling lest I realize that they hide, always a trap. Specific politician drunk with freedom, and the lack of accountability (in the background is selected and is an attempt, nothing more), the legislature can easily skid, especially when it comes to union rights typology.

2.4. Typology of EU law

In the current European context, the EU legislation, treaties and union procedures, and understanding fully the European Convention on Human Rights, is an asset for law professionals. By title section we intend to bring to your attention to the complex issue of legal doctrine emergence of new legal types: type of European Union law. Our approach thus aims to answer the question: is the European Union law a new type of law, with

specific qualitative determinations? Argued for a thorough response is needed multidisciplinary study that combines elements of general theory of law, elements of comparative law and European Union law. To conceive a study of this kind should your research vast views must be well grounded. You have to analyze almost all the works that appeared to give an informed point of view. Of course, originality in my view should prevail in any work. The author must have his personal views.

I expressed my opinions and sure some will obviously be likely - no one is infallible law - and the other opinions. I long wait to see other opinions. Unfortunately - not that everything I write as undisputed - but I do not see other opinions. And they are often forced me to change my views and not the recommendation of others. I change my opinions when I feel it is beneficial to science. Should not have an opinion on who to keep still when looking at the issue more complex, they get the idea to change my opinion. Opinions want to be so well grounded that I also may be convinced of what I write that what I have written has a rigorous scientific substantiation. Currently, we are seeing some fascinating challenges regarding the European Union - discusses integration in a legal order above state about connecting to the interests supranational reconfiguring sovereignty, about the intertwining of national values with the EU and the harmonization of legislation. But creating a united Europe raises a delicate problem - compatibility of national values and those of the European Union. Unfortunately, the twenty-eight national identities are threatened by this process so that we wonder, on the other hand, if the peoples of Europe are prepared to give up elements of specificity and embrace their "unity in diversity". Perhaps European Union law, which is characterized by multilingualism and too much dirigisme be considered a new type of law, appeared in view the laws of the world? We believe that, just as far as the European Union is based on a legal will self and the principles and values that are within the eternal law, both the rationale individual and national identity of the member states is possible "unity in diversity "and so the existence of a new family law. From this perspective, I felt it would be beneficial conclusive research and review and Court of Justice of the European Union in shaping law principles characteristic of this new legal order.

Identification and analysis of the general principles of EU law would be also an important and useful approach to the legal world, due to the overwhelming importance of

this source of law in the European legal order, but also in the internal legal order of the Member States. Being a pillar of the legality of the European Union, general principles of law are necessary European institutions, being on a higher place in the hierarchy of secondary European Union rules. It should be emphasized that these principles also apply to Member States, when and to the extent that they act in European law. We also note that in order to talk about a new typology legal first need there is an autonomous will that decision-making process of the EU legal order, will not a simple arithmetic sum of individual wills of the Member States; Such States undertake to submit a separate legal wills of their own. Outside the creations of an autonomous will that legal order, the new typology implies the existence of general principles essential to steering the construction and development of the European legal order. We therefore believe that the term "typology" must be discussed before entering the actual legal analysis.

To investigate the phenomenon of European legal fine is imposed under observation typologies important legal work corporatists of the largest law since without such an analysis, we cannot detach traits EU law that betrays the idea of a new legal types. We begin our research from the definition of "typology" and to differentiate it from the "classification", which often is confused. Summarizing what was said in this regard, the classification is used when distinguishing between elements can be achieved by a single criterion, while categorization occurs when using multiple criteria, typologies being a particular form of systematization. Regarding the typologies, it is interesting that they have in common that they fail to include all the various types. We cannot meet "pure type" in any typological system, especially the kind that the idea is abstract, it is a mental construction, which corresponds to our desire to order logic natural phenomena which, by their nature, are not "ordered". Thus, we will never find the perfect typologies. To achieve a genuine typology, it takes a lot of work summary.

Typology that process is elected by the legislature to "choose from the diversity of possible relationships certain current exclusion of all others, is a reflection of the typical character of the rule of law." Instead, the classification process is that process that subsumes the legislature "certain groups of situations which general categories to apply a different scheme." Classifications aim to simplify regulation, by attaching common principles and legal regimes, because without them, the legislature should regulate each

case, which would hinder the creation of law. To be useful and opportune classifications elements must have "common essential features." Typological or typological method classifiers used in ancient times the legal sciences: Roman law is the type property owner's pater familias etc. In general, legal typologies are made in law by considering the elements and relationships of real life legal order to know more precisely what mechanisms or structural relations were established in a range of legal issues. Currently, we are witnessing a rapprochement and mutual influence legal systems of all countries, this is obviously very existence of the European Union, which gave rise to a new type of law - EU law. No matter how you perceive typologies, we note that today they are widely used and very popular with the classifications, regardless of the science that we're moving out. Moreover, some authors believe that typologies are simplified. Such as modeling or theorizing, it is false by definition, calling the contradiction. As noted by A. E. Bottoms, the conclusion of a report presented to the Council of Europe, "we must recognize that classification, whatever it may be, will not necessarily contain all the wealth individuality of people and could easily create a distorted image of man as a whole and his life in the community. Our work classification required for improving our knowledge will result in failure if, in our effort to understand, lose sight of these truths."

Right "is born and also develop language, recorded continuous transformation in a slow evolutionary process." If you connect to the social environment, the right evolves with society today more than ever, in this globalized world, people coming into contact with each other. It requires an understanding of the rules governing legal systems. It requires a common understanding of the rights and obligations of men. This thirst for knowledge is watered by the science of comparative law, explaining institutions and legal concepts in the context in which it occurs, their dynamics, analyzing concrete social conditions arise. Comparative law should be broadened beyond observing similarities and differences between legal systems and should slide into abstraction, in order to analyze the causes genesis and evolution of legal phenomena and concepts crystallization. Moreover, as Twining note today "in a globalized world, cosmopolitan and general studies on the science of law and comparative law should become cosmopolitan, as a pre-condition for a revival of the general theory of law and reconsideration in full comparative law ".

By using the method typological classifying, analyzing legal history, and distinguished existence of overlapping systems of law, which raises the question typology of these systems. Interestingly, underlining Leontin Jean Constantinesco as typological classification characteristic beginnings "of a proposed classification author rejected the objections of another author, there is no scientific dialogue". All classifications presented show that the typology of legal systems is not entirely solved. The reasons? As pointed out Leontin Jean Constantinesco, "the first thing that hits you when you deal with this problem is dilettantism, superficial analysis or even the absence of any scientific examination of the matter. Corporatists who occupied it seem rather interested in demonstrating the flaws criteria proposed by other authors were eager to propose their own classification, which does not really worth more. "There are several reasons that you mention here: the lack of a serious examination of the problem of classification laws, considered fields to group were not the determining any part classification and ungrounded is necessarily false, spread of civil codes in the world cannot be the criterion classification, the heterogeneous nature of the proposed criteria. One of the most important reasons is the inability to provide micro comparison classification criteria, requiring macro comparison.

From this perspective, this paper attempts to join all the efforts for a fair interpretation of EU law on track for setting the correct assertion of national identity. Identifying the problems raised by various texts that compose the current legislation or union that could lift them is the most important. It is a reality. Any law is imperfect, to a lesser or greater. So, it is more important concern for an ingenious interpretation of a legal text interpretation made in the spirit of the regulation that approaches as much of an illusory perfection. Sure interpreter may sometimes reach the conclusion that only the intervention of the legislature can clarify really a problem, and then has the duty to say so bluntly. But legal mechanism should continue to operate, unable to stop to wait for the intervention of the legislature, intervention that will occur often late into the context in which the idea of identity, sovereignty and national unity seems to come out of the vocabulary of Romanian citizens

3. Right Romanian - reflection of identity, sovereignty and national unity

I started on this path stirred up being call academics Romanian by the Romanian people, To Romanian state institutions, initiated on 8 February 2017 academics Victor Voicu, Ioan-Aurel Pop, George Peacock and signed by a large number of members of the Romanian Academy, call expressing the position of the Romanian Academy, the institution fundamental identity, which a century and a half serving Romanian Nation. To avoid accusations of nationalism, restore him in integrum, as he formulated. "Concerned by developments in domestic and international in decades, characterized by a continuous and alarming attempt erosion of identity, sovereignty and national unity of Romania, with many shares placed under the sign of globalization leveling or an exaggerated" political correctness ", and many actions are directed against the State and the Romanian People (rewriting biased, incomplete or even mystifying history, denigrating national symbols, undermining the values and fundamental institutions, sabotaging the future, disinheritance generations who come after us by selling land, resources soil and subsoil, through massive deforestation, by disposing of or bankruptcy of economic units, by degradation of education and health system through excessive politicization of all subsystems state and society, which has the effect of de-professionalization, confusion of values, corruption, lack of efficiency, further social unrest) , concerned particularly by attempts recurring "regionalization" of Romania or creating enclaves autonomous ethnic, contrary to the Constitution of Romania and trends of European integration, totally unproductive in terms of economic, social, quality of life in these areas, express our firm against all these actions, we stand strongly in favor of identity, sovereignty and national unity, ask the competent institutions of the Romanian State, at all levels, to watch and act to prevent, to counter and when break the law to punish all diversions and aggressions against identity, sovereignty and national unity and stability of Romania rule of law.

Call to join us in this endeavor, the entire Romanian people, all the inhabitants of this land, we are addressing in particular intellectuals, inviting them to be an example of wisdom and patriotism, we are addressing politicians, inviting them to work responsibly and patriotism for the good of Romania, even more so as we are on the eve of the celebration of the centenary of the Great Union, the centennial of bringing together all the Romanian provinces event that the Romanian people waited for which he suffered, worked and fought so many centuries and that the sacrifices made by so many.

Let us honor the heroes, to be at their height, leaving future generations, all the inhabitants of Romania, a country united, sovereign love for the past and for its culture, with self-esteem, mistress on his land, educated and prosperous country United Europe, but with its own identity Romanian. So we judge the future!" So, more than 10 years after Romania's EU accession, our approach aims two goals (conclusions - proposals) offering creative solutions substantiated and valid from a practical standpoint as they thought of renowned specialists; creating a debate leading to the formation of a doctrine mature located at a scientifically satisfactory doctrine, along with the judicial practice to be able to fill gaps in law union under the mythology and legends have made us an idyllic image a world that could exist in the presence of the Gods among men it was not even extraordinary. It was a world where either they were called, whether they wanted to blame the gods were sometimes present among them, among the people.

World Law also has its gods. After 27 years, they have emerged, grew and matured in this world. Among plagiarized real or invented, their reputation is recognized and obeyed their verb. Detach. Create then beaten paths. Uncultivated land broken up and run never before. I work. They're serious. Their minds are taught to dig and continuous combat, approve or overturn. Some of them rarely admit their weakness previously held theories, acquiring other more robust. It's something to admit that the Romanian doctrine! 27 years of free legal doctrine or released but were held and a separation between the expectations of practitioners and authors' responses. Practitioners say they do not receive answers and departs doctrine. And a closer in major disputes by legal opinions that bases its allegations. Rarely doctrine that was used this year to practical situations. Right is a social science. About and for people. This gave was accepted as a utopia. The authors write more academic focus without necessarily real-world expectations. I had to appear in public law to release the payment, social impact, politically or financially huge, because the doctrine to roll up your hands and lean, very practical and focused on it. Rarely will we see the power of doctrine as we have it now. What would the world be so Romanian law focused only on laws and how as important? To show force, putting an entire doctrinal mechanism in the service of the just? A people? A their greatness?

“Law greatness" is a phrase used derogatory phrases and meanings. Without being in this situation, I saw the beauty and force of law in this world. I do not know if you

missed something. Perhaps the balance. From Latin and his immortal principles and legal consultants, to the latest findings and allegations, the debate made us realize why we credit them, venerate and invoke into folders and open discussions on our Gods. The gods on current legal world. I saw the waste of energy and arguments. I saw scaffolding and construction companies. I learned things I had no idea. We have mastered ways. I noticed how beautiful it is right. Why we love it and what is important in our lives. "The greatness of Law" is given the interpretation, by the time they are made by people who do! It is labor continues by trying to bring justice closer to the people especially now suffering because of these mutations law legislative extremely common, often uncontrolled, out of control. And what is living in the present historical evidence that such things are. Now that the lawyer must be a man of the city, a man who believes in destiny homeland of the rule of law, values of real democracy, of a constitutional democracy in the deepest sense of the word, especially in the destiny of this country a patriotic perspective, national and European alike. Law governing the institutions work for state institutions, rule of law genuine virtues, not only declared by the Constitution or laws and is addressed to people, society.

Like any other form of human organization, our society rests on a certain conception of man that gives human life meaning. From a legal point of view, we consider to be a subject endowed with reason and holder of inalienable rights and full religious. But from a scientific point of view, we consider it an object of knowledge, biology, economics, social sciences etc. allowing us to discover them and to explain behavioral laws. These two perspectives, subjective and objective, the human being are the two sides of the same coin. For we first need to relate to mind to consider the body as a thing. The notions of subject and object, person and work of spirit and matter are defined by mutual antagonism. None can not be conceived without the other, and without them, the positive science would not have seen the light of day. It has postulated that man is endowed with reason a topic for science to be possible. And this definition of human being does not follow a scientific demonstration, but a dogmatic assertion; Law is a product of history, not the history of science.

Current debates on bioethics would have more to gain by opening themselves to the history of our conception of human being, which is a part of the history of the Christian

West. This concept, whose heirs are, is the imago Dei, the image of God created man and called as such to require that the master of nature. Like him, man is a being one and indivisible; His also is a sovereign subject, verb endowed with power; like him, finally he is a person, a spirit incarnated. But, created in God's image, man is not God. Its unique greatness derives not from himself but from his Creator, and he shares it with everyone else. This is where the ambivalence of the three attributes of humanity that individuality, subjectivity and personality. As an individual, each person is unique, yet like all others; the topic is sovereign and tributary common law; as a person, he is not just a spirit but matter. This whole anthropological survived secularization of Western institutions and the three attributes of humanity to be found in their full ambivalence in law. The reference to deity disappeared from the right people, without the need logic disappear give every human being a guarantor Instance of his identity and to symbolize the ban to treat the man as a thing.

4. In place of conclusions: European Union law, a way of being…

One of the first truths I learned from the Faculty of Law was with the difference between legal truth and truth in reality, the need for clarification about the terms before starting a debate or write something. In some earlier writings, I used the words European Union law in the classic sense of the definition provided by different scholars in the field. EU law is not a term invented by me, but I tried to understand after reading much of what was written and published in this matter and especially, preparing my courses for students, my real judges, wanting to do Community law as accessible words and then EU law. That said in the clarification of terms, to halt niţeluşi the other options of the author, which conferred the fellowship of legal phenomenon. Moreover, those who meditate on the law, I am sure that they understand that if you do not put in what you do and warm your soul, your professional consciousness, your human consciousness; your work is sterile and draws less. Therefore, in my expression, whether it happens in the written word, the spoken word, I try to make a symbiosis between the two components, because you have to get not only the mind but also the conscience of those who read it, whose mentors - in the best sense, more beautiful and deeper - we want to be.

The legal basis of the European Union is represented by two treaties: the Treaty on European Union and the Treaty on European Union. Name more known, "Lisbon Treaty" is, in legal terms, a treaty amending legal instruments earlier, a compromise between the need for reform on the one hand, and the need to preserve the symbolism and the declarative ambitions to a level as low. In fact, what does EU law? Rather than a strict orderly regional architecture, it is a kind of broad regulatory DIY we are witnessing. Choosing to see the Europeanization and uniformity in terms of the legal norm, I tried unsuccessfully to evade the passion that approach would involve a too nationalistic. Best observation area is not so much deterritorialized sphere of trade, as the people themselves, their concerns, sharing their ideas. Moreover, we will not be surprised to see specialists in law dedicating themselves to such assemblies they who are constitutively split between the political pact, on which to watch and the demands of justice that must materialize between "creative forces" of law and states. At the same time public officials and independent lawyers, performers have a right état, but considering and on a union as transformers of private calls and defenders of public interests, ideologists play an interface within Europeanization and globalization.

This interpretation union legislation in terms of "DIY" moderates usual cosmopolitan interpretations. Otherwise it might be useful to distinguish between "cosmopolitanism high level" and "cosmopolitanism at the grassroots level." The first term could be 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" designed to resolve conflicts and avoid wars. As for the second, it does not pass through this unlikely setting. It means rather a present experience, awareness of interdependencies of increasingly powerful, inexorable, resulting in exchanges but also tensions and oppositions, and that we need to be given an ethical sense. This second kind of cosmopolitanism arises field and is distinguished by three characteristics of 'cosmopolitanism higher level. „First he goes from the particular and not the universal, being built entirely from individual cases that judges "are trying to settle in a way as rationally as possible. There is no point of view transcendent prevails, what prevails is the only confrontation of viewpoints.Especially judicial exchange, case-law and transfer it operational zed EU law by imposing Member States. What immense power is conferred to people, one elected by referendum, but only

called sometimes based on political or kinship or friendship with ephemeral makers have power to make law. The same can be said of the judges of the European Court of Human Rights. This new law not bases its authority on some prescriptions often saturated universal understanding globalization. He is the expression of the European Union. If it happens to attract national interest, he must pass through a sieve argument and obtain approval from others. This "cosmopolitanism at the grassroots level" is certainly not insensitive to antagonism which exists in every human society, and this is the second feature of his claims that he can overcome them 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 at the EU level, but on the other hand emphasizes the tensions between legal systems between legal cultures. Switching between judges really combines concern for coordination and the fight for influence. Perhaps Kant gives the following formula best suited to this apparent contradiction: to achieve a society cosmopolitan, he says, is driven by conflicts and confrontations, what Kant means by "unsociable sociability" of the people ". This cosmopolitanism must finally admit it important limitation: that the political will and exchanges between judges can not give direct answers to questions prirnordiale political scene: Who governs? Where lies the authority? Who makes the law become applicable? Therefore judiciary remains conditional exchange policy and is unable trigger this new order is dreaming Brussels union or the union law. If a "common world" appears indeed through these exchanges judiciary, in reality they do not provide any "community", and no "system".

Various judicial forums allow above all a rationalization of Europeanization. Sharing court therefore does not produce anything that can replace national systems or could establish an international order. Portrait of judges that we can change in the EU cannot rally teleological visions that would like to pursue a trade their unique purpose, making a union legal order and therefore a better union. However, "cosmopolitan ambition" characterizing these views on the operationalization of EU law can be maintained, provided proposing a more nuanced cosmopolitanism, which rely on a law adapted (cosmopolitanism lower level). It is a vision "liberal realist" of cosmopolitanism, if we can say so, which relies 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. It does not cover any order or unification, and leaves unanswered many political interrogations, which as we have seen, require different space than inside the judicial debate. In this sense, cosmopolitanism to which it leads may seem disappointing. Not only did he remove the power relations between states, but is incomplete, no doubt impossible to become full and about. But there: the judges are exchanged between them and create a society. And force these exchanges so keep this to take into account existing and scale of his character, and partly conflicting, representing their brand.

From another perspective, the European Union's accession to the European Convention on Human Rights requires interaction and integration of two fundamentally different legal systems. The legal order of the European Union was built on economic integration and gradually incorporated human rights protection. The Convention on the protection of fundamental rights and freedoms established by case law of the Strasbourg remarkable standards. EU accession to European Convention on Human Rights requires interaction and integration of two fundamentally different legal systems. European Union law is based on subsidiarity and dialogue between national courts and the Court of Justice of the European Union, while the Convention is central to individual action. After many years of debate and hesitation, EU accession to the Convention became a certainty after the entry into force of the Treaty of Lisbon. Primary EU law provides that accession will be subject to certain conditions, including individualized need to respect the autonomy of Union law and powers of institutions, transaction exceeds this study, an initiative that should examine all the legal issues raised by accession, starting the critical issues regarding the protection of human rights in the EU and acceptance Court of Justice of the European Union of an external control and deal with the concerns of the EU's accession agreement to the Convention. Who will arbitrate a legal conflict between the two European courts and how it will be settled on the assumption that both are independent of any interference?

It would be too complicated to answer! Therefore, in a circle to be a simple man, unsophisticated, generous but stubborn dignity. I worked tenaciously holding that nothing is more admirable than the bread's life that wins with sweat. The theme of thorns life is mysterious and fascinating. But since we started with a thought of Celibidache about how

to deal with a piece of music and I found this thought a little methodology to understand destinies, close with another thought of the great conductor: any piece of music, the end is the beginning in a kind of hidden latency. Maybe our lives are like a piece of music, maybe so, and with European Union law.

Anticipating conclusion, I will write here and hold fully accountable: As shown in the EU died in the decade we are all Muslims because of our stupidity. EU and Europe live in a pagan and atheist, are laws that go against God. This moral and religious decadence favors Islam. We have a poor Christian faith. We need an authentic Christian life. In addition, they have children, and we have. We are in decline. We help without delay, those who come from outside and forget the many poor and elderly Europeans eating out of the trash. I am a protester, I would demonstrate market. What is the purpose of so many migrants, rather thank us for the food that we give them, throws and even organize riots? Giving money migrants is not only wrong but also morally harmful because they encourage behavior so they get used to it. Sometimes I think this contributes to networking beggars.

My dear readers, I can tell very well that is why I predict that by the end of 2030 European Union law will die. Now, however, nothing announces the death of this sui generis right - and then renamed union Community law. On the contrary I would say, ideologists, specialists supporters of Europeanism write increasingly more treaties, organizes conferences and symposia, EU law is taught in universities as a compulsory subject for study programs of undergraduate, masters or doctoral the Romanian Agency for Quality assurance in higher education (ARACIS) evaluates authorization / accreditation of higher education institutions and study programs or periodically to evaluate institutional domain and program.

Let me say it as in my childhood when in the same way they spoke and wrote about the history of the Communist Party of the Soviet Union or the eternal continuance of Communism under Ceausescu. Or metaphorically said, all that time there was a way to communicate - letter. People I among them, wrote their increasingly more letters, given that postal services become safer (although some of the letters to relatives overseas or intended new found them loose, not tired "our readers" to stick envelope or simply do not reach their destination!), faster and more comprehensive than ever before. Now it's easy

to know why the letters have died, speak in the past tense. About the legal order of the EU in its future bleak future in which I and many of my generation lived! But the letters are no longer used today?

Not because people no longer communicate, but because communication instruments changed. Viewing the world: today write emails, SMS, Facebook messages, talk on the phone amazingly easy with anyone, anywhere, anytime. Obviously, it changes the quality of communication instruments. Convey as writing a message, that hasty, short and informal. Some believe it is a direct link between the generalization of this type of communication and massive illiteracy society. But the strongest argument in support Allegations death of EU law is not only the message but also the communication quality thereof or of its intelligibility. By the way, how many law specialists fully understand the contents of the Lisbon Treaty!

Coolest saddens me my fate of Romanian, when they see that the Romanian Parliament, as perceived now passed a law that traders of food are obliged to categories meat, eggs, vegetables, fruit, honey bees, dairy and bakery to purchase these products by at least 51% of the cargo shelf, specific to each category of food from the food chain short, as defined in accordance with legislation. Therefore, the law obliging supermarkets to sell 51% of Romanian products should have come into force on 1 January 2017. According to the law, at least theoretically, farmers will have a place to sell their goods. And if not law-abiding, traders are likely to temporarily suspend work, plus and heavy fines from 100,000 to provided 150,000 leis. But this is unlikely to happen. Because meanwhile something happened that took the authorities by surprise.

If applicable law supermarkets, Romania risks opening of infringement procedures by the European Commission. More specifically, Romania received an official warning from the European Commission that Brussels could start infringement procedures in relation to the law adopted by the Romanian Parliament, which requires that 51% of goods sold in stores are produced in Romania since that law "violates the principles of free market and the Community Treaties". In other words, that law would do nothing but encourage unfair competition for Romanian producers. But things are not as clear as they seem at first glance. EC seems to forget that in July 2014, the European Commission adopted a Communication which encourages Member States "to identify ways to improve

the protection granted to small producers' agribusiness and retailers against unfair trading partners thereof, which are generally much stronger ".

There would be three solutions. First, a short and clear the law say that Romania Romanian products not only sell in supermarkets! Even if we enter the infringement, at least we know that we have only Romanian products and we finished the fair. Second, to properly regulate relations between producers, processors and supermarkets in the sense that, when speaking of Romanian products, to speak Dies product partnerships, as is done in the civilized world. And third, close to the first: according to union executive must eat badly, poisoned food on the EU market and to get ill quickly, we treated with medicines supplied all of them! The conclusion is clear to understand what concerns me: who uses EU law? Nine novels under any circumstances!

Like any scientific research and this paper has a number of inherent limitations, which we hope will not have a significant impact on the conclusions we have reached. We are talking here about the limits of theoretical research and the researcher bias. The purpose of this paper is not to try to resolve all issues raised by the theme, or the analyzed because this goal is not realistic. Of course finding answers to existing doctrine creates the appearance of other questions that need to be analyzed in the future so that there are new research directions. They remain in his mind the words of Francis Bacon who stressed that "there can be two ways to investigate and uncover the truth. One stands like a flight data from the senses and the particular facts to general propositions, and determines and reveals these principles considered as an unshakable truth, sentences medium. This is the way employed today. The other sentences out of your senses and particular facts, rising continuously and gradually to arrive finally at the most general propositions. This is the true way, but still untried ". We hope to have ventured on this path, "yet untried" and provide answers to many questions about EU law.

Although there have been discussions and work on this issue, we believe that these issues have not been used, leaving space for academic and scientific discussions. Furthermore, research Court of Justice of the European Union to analyze the fundamental principles of EU law is an innovative approach in addressing this issue. The innovation lies in how to analyze the topic and approach and explanation from a different perspective, the concept of "European Union law". We believe that the identification and analysis of

the general principles of EU law is an important and useful approach to the legal world, due to the overwhelming importance of this source of law in the European legal order, and the domestic legal order of the Member States. Being a pillar of the legality of the European Union, general principles of law are necessary European institutions, being on a higher place in the hierarchy of secondary European Union rules. It should be emphasized that these principles apply to the Member States, when and to the extent that they act in European law. As part of the EU legality it is clear that they must apply either national or European level, in any situation governed by EU law. It is true that the European Union legal order to keep the front page of national and European media, whether in print or in online. Union law concerns not only lawyers, but generally Romanian society these days and in this time we live. As for me, a contemporary of these times, I see as that vector spiritual and material capable polder annihilating a company which I consider drifting gangrenous massive disease immorality, creeping corruption and inertia, which could It gives rise to a new moral and spiritual regenerating. In an era of ideological polarization and purifying antique right it is to immediately denounce any attempt to cancel the fundamental rights and freedoms, to end the alleged chaos constitutional democracy.

There is a suicidal idea, on the contrary seems ideal solution, there have been examples in history and the reach of any apologist of European unionism. Thus, when German historian Hieronymus Wolf called in 1557, the passage of a century after the fall of Constantinople (1453) Eastern Roman Empire - Byzantium (previously, there was call in Greek even named - very interesting! Romania, (perhaps premonition for naming future Romanian state unified), great Romanian historian Nicolae Iorga published in 1935, along with other numerous studies and books on Romanian history and the world, the monumental work Byzance apres Byzance/Byzantium after Byzantium work reveals wire spiritual leader of various rulers of Byzantium and the Romanian countries. Title historical work, unique and skillful presents synthetically some truth, standing on historical developments in a historical epoch longer to be applicable metaphorically, in the current circumstances.

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Journal of Law and Administrative Sciences
No.7/2017

INTERPRETATION OF THE KAMPALA AMENDMENTS – ONE OF THE KEY ISSUES FOR ACTIVATING THE JURISDICTION OF THE ICC OVER THE CRIME OF AGGRESSION

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Abstract:
This study proposes an overview over one of the most contentious questions of interpretation linked to the Kampala Amendment on crime of aggression. The question concerns whether whether the ICC would have jurisdiction in case of an alleged act of aggression commited by a State Party to the Rome Statute which has not ratified/accepted the Kampala Amendment against the territory of a State Party which has ratified/accepted the Amendment. The study exposes the two opposite views and tries to identify the correct question. Moreover, a very brief assesment of the interpretative approach is provided.
Keywords*:* *International Criminal Court, crime of aggression, jurisdiction, State consent, Kampala Amendment*

Introduction

Seven years have passed since the Kampala Conference adopted, by consensus, the "package" on the crime of aggression[1] . The consensus was not easy to reach: the push for the final result, surrounded with emotions, was reached in the early morning of Saturday, 12 June 2017, at. 00:20 hours[2] . The main difficulty related to the crime of aggression was not necessarily its definition per se, but designing the jurisdictional mechanism of the ICC over it, for the following reason: unlike the other crimes within the jurisdiction of the ICC (genocide, war crimes, crimes against humanity), the crime of aggression is necessarily the "crime of a State". It cannot exist in the absence of State responsibility.

If one reads the definition of the crime of aggression as provided by article 8 bis of the Statute, as amended by the Kampala Amendment: "the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United

Nations" (emphasis added) – one could note the link between the crime and the act. Moreover, the act is characterized by a gravity test: a "manifest" violation[3] . As Claus Kress affirmed, the crime of aggression is: "the only crime under international law that requires the commission of certain internationally wrongful conduct by a state." [4]

Two main positions were shaped even before the Kampala conference: one envisaged full Security Council control over the determination of an act of aggression (the so-called "Option 1"), while the other envisaged that the Security Council would be given an opportunity to determine whether an act of aggression exists, while the final jurisdictional filter would be represented by the Pre-Trial Chamber of the ICC (the so-called "Option 2")[5] . The main difficulty arose from making the States supporting Option 1 (simply to imagine that the permanent members of the Security Council were included) accept that the Security Council would lose the exclusive control over determining the existence of an act of aggression. The final result balanced, in my opinion, towards Option 2 – reflected in the end in what is now article 15 bis of the Amendment. However, the difficulty in achieving consensus and the lack of transparency of the final negotiations led to a very complex text: for the sake of having the possibility of prosecuting the crime of aggression following State referrals or proprio motu referrals by the prosecutor, several elements were introduced: the "postponement clause" – a decision to be taken by the State Parties after 1 January 2017; the 30 ratifications condition (which is not a condition for the entry into force, but for activating the jurisdiction); the "opt out" clause; the non-application of article 12 (2) of the Statute, by virtue of article 15 bis (5) and the "chance" given to the Security Council, for a period of six months[6] .

2017 would be the year of a decision to be taken. However, a question of interpretation – over which few thought when the Amendment was adopted[7] – may affect the willingness of States to reach consensus. This article has the purpose to expose the matter and the two diverging views. It would be too ambitious at this point to suggest a solution – however, some thoughts would be useful on the interpretative approach that could be taken.

While presenting the question to be interpreted and the diverging views, I would not omit that the international law witnesses in most cases arguments that come in pairs[8] . All great questions of the international order witness "pros" and "cons" – this is

one of the examples. And this case also witnesses categories of arguments founded on values which are not by themselves prior to others – in the concept of Martti Koskenniemi, "pairs" of arguments based on "reversible" concepts[9] . This is why it is very difficult to overcome the interpretation dilemma.

I. Exposing the question

Let us remind that for the genocide, crimes against humanity and war crimes, the ICC is competent to hear a case, when the case is referred to the Prosecutor by a State or is started proprio motu, when the crime was committed by a national of a State Party to the Statute or on the territory of a State Party[10] . Thus, even if a person is not the national of a State Party, the Court will have jurisdiction on that person's conduct, if the alleged crime is committed on the territory of a State Party.

In the case of the crime of aggression, the above mentioned approach is completed by the following rule: in cases of State referral or proprio motu referral, according to article 15 bis (5) of the Kampala Amendment: "In respect of a State that is not a party to this Statute, the Court shall not exercise its jurisdiction over the crime of aggression when committed by that State's nationals or on its territory".

Thus, if a national of State A, which is not a party to the Statute, commits a crime of aggression on the territory of State B – meaning that, in practice, it would be required that State A would commit an act of aggression against State B, the Court will not have jurisdiction. The core question that appears is, nevertheless, the following: what happens if State A is a party to the Statute, but has not ratified/accepted the Amendment? Thus, the most debated question is whether the Court would have jurisdiction over a crime of aggression committed by a national of a State Party to the Statute, but that has not ratified/accepted the Amendment, on the territory of a State Party that ratified/accepted the Amendment.

The sensitivity of the questions derives from the fact that, as a preliminary issue, the Pre-Trial Chamber will have to decide on one of the "constitutive elements" of the crime: the existence of an act of aggression by a State, which represents a "manifest violation" of the Charter. In such case, the Court will seek to adjudicate not only on the

conduct of a person, but on the act of a State - merely on “a use of force by a state that has not given its consent to the adjudication by the Court on that question”[11] .

While article 15 bis (5) remains silent on the situation of a State that is not a party to the Amendment (it refers only to a State which is not a party to the Statute), the analysis has to bear in mind article 121 (5) of the Statute itself, which refers to amendments: “Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory” (emphasis added). Following debates in Kampala, it was agreed that the Amendment would be adopted in accordance with paragraph (5) of article 121, and not in accordance with paragraph (4)[9] .

The question whether the Court could assess an alleged act of aggression committed by a State Party which has not ratified/accepted the Amendment against the territory of a State which ratified/accepted the Amendment led to two fundamental diverging positions.

II. The argument in favour of establishing the Court’s jurisdiction

The argument in favour of establishing the Court’s jurisdiction in case of an act committed by a State Party who has not accepted/ratified the Amendment against the territory of a State that has accepted/ratified Amendment is put forward by Liechtenstein[12] and the writings of Stefan Barriga[13] . The argument is grounded on

[9] In operative paragraph 1 of resolution RC/Res.6, the Review Conference adopted, in accordance with article 5, paragraph 2, of the Rome Statute of the International Criminal Court, the amendments to the Statute contained in annex 1 to the resolution, “which are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5” - C.N.651.2010.TREATIES-8 (Depositary Notification), 29 November 2010; Sean D. Murphy, The Crime of Aggression at the ICC, in Marc Weller, (ed.), Oxford Handbook on the Use of Force, Oxford University Press, 2013, p. 15; Paragraph (4) provided for a different procedure for entry into force: „Except as provided in paragraph 5, an amendment shall enter into force for all States Parties one year after instruments of ratification or acceptance have been deposited with the Secretary-General of the United Nations by seven-eighths of them”.

mainly two elements: the negotiating history and the interpretation of articles 121 (5), 5 (2) and 12 (1) of the Statute.

Stefan Barriga argues that during the negotiations two group of States have been formed: a group arguing on a “consent” model (meaning that the consent of the aggressor State would be required, notwithstanding the form in which it is expressed), and a second group, advocating for a “protection model” (which was based on the concept that the consent of the aggressor State would not be required)[14] . In the early years of the Princeton Process, this divergence generated different views related to the article to be used for the entry into force of the Amendment: 121 (4) – an uniform solution for all - or 121 (5) – a consent based approach[15] . However, Stefan Barriga argues that between the “extremes” of the two models, two “milder” solutions could have been identified: i) establishing “automatic” jurisdiction only for State Parties to the Rome Statute, not for all States (as desired initially) – a solution regarded by Stefan Barriga as closer to the “protection” model and ii) establishing “automatic” jurisdiction only for State Parties to the Statute, plus creating the “opt-out” system – a solution which was closer to “consent model” (because the “opt-out” enabled States – mainly State Parties, to “withdraw the consent”)[16] .

During the last days of the Kampala Conference, in order to diminish the gap between the “consent” model and the “protection” model, proposals were made by Argentina, Brazil and Switzerland (ABS group – closer to “protection” model) and Canada (closer to “consent”). The argument of Stefan Barriga is that during negotiations, the ABS made an intermediary step forward, accepting the exclusion of non-Parties, while Canada made on its turn a concession, accepting the “opt-out” system, in order to give up “a pure consent based system”, which might have functioned simply, each state opting in through ratification[17] . Thus, if somebody would conceive that solution would be that a State should “opt in” though ratification or acceptance, and then have the possibility to “opt out”, as provided in article 15 bis (4) of the Amendment, in the words of Barriga, “it would mean that Camp Protection first came all the way over to Camp Consent, and then went even beyond!”[18]. Thus, accepting that the Court would not have jurisdiction over an act of aggression committed by a State Party to the Statute, but not to the Amendment, against

the territory of a State Party to the Statute and the Amendment would defy the logic of the negotiations.

The second argument is related to the interpretation of article 121(5) of the Statute, which reads in its second phrase “In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory”. As the literal meaning of this phase would lead to a clear opposite result, Stefan Barriga argues that article 121 (5) has to be interpreted in the context of other provisions – meaning article 5 and article 12 (1) of the Statue and in accordance with the object and purpose of the Statute[19] . Thus, it is argued that according to article 12 (1), all State Parties have accepted the jurisdiction of the Court with respect to all crimes in article 5, including the crime of aggression. This would lead to a direct contradiction with the text of article 121 (5), second phrase. According to Stefan Barriga, “The tension can be resolved if article 12(1) is seen as the lex specialis that prevails over the more general rule of article 121(5), second sentence, but only as far as amendments dealing with the crime of aggression are concerned”[20] . In his view, a supplementary argument is the “recalling” of article 12 (1) din the preamble of Resolution RC/Res. 6, that adopted the amendments. Article 121 (5) second phrase would apply for new crimes, such as terrorism, that may be introduced in the future, or in case of amendments to the definition of existing crimes – as it was the case for the “Belgian amendment” introduced in Kampala, in relation to war crimes[21] .

Another argument put forward by Stefan Barriga is that article 5 (2), which stated “The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations”, referred merely to “adoption” which involves all State Parties without any further formalities: article 5 (2) did not refer to other elements, “such as entry into force of amendments or the limitation to the Court’s jurisdiction under article 121(5), second sentence”[22] .

As a very short conclusion, the theory that the Kampala Amendment allows exercise of jurisdiction in case of aggression committed by a State Party that did not

accept/ratify the amendment against the territory of a State Party which accepted the amendment relies on: i) the negotiating history; ii) the non-application of the second phrase of article 121 (5) to the crime of aggression, based on the contextual interpretation and the relation of this text to articles 5 (2) and 12 (1), which are considered as lex specialis[23] .

III. The argument based on consent: against the establishing of jurisdiction

The argument according to which, absent the consent of the aggressor State, manifested though becoming a party to the amendment, is required for the Court to have jurisdiction, is put forward by US scholars Harold Koh and Todd Buchwald[24] (who previously acted as legal advisor and deputy legal advisor of the US Department of State), as well as by other scholars[25] .

The first argument put forward is that when the decision to adopt the Kampala Amendment on the basis of article 121 (5) was taken, the States "have accepted the principle that, absent action by the Security Council, the consent of the aggressor State should, in fact, be required in order for jurisdiction to exist over the crime of aggression"[26] . By this assumption, Koh and Buchwald are referring to the matter of principle: even the States or scholars that argue for the expansion of the scope of jurisdiction are assuming that State Parties to the Statute (but not to the Amendment) have accepted the jurisdiction over the crime of aggression[27] .

A second argument is related to the interpretation of article 121 (5) of the Rome Statute. Based on the negotiation history in Rome, it is demonstrated that, due to the fact that in the initial text the current articles 5, 6, 7 and 8 represented a single provision, "Article121(5) applies in the same way as it would have applied had the content of these four articles been retained as a single Article 5"[28] . Thus, it would apply in the same way when: a new crime is introduced or the definition of one of the existing crimes is changed – this is exactly what has been done with the crime of aggression. Therefore, it is argued that State Parties were expected to "opt in" with respect to any new crimes, by acceptance or ratification of the amendment, before jurisdiction would be exercised[29] .

With respect to the interpretation of article 121 (5), Harold Koh and Todd Buchwald refer to the two schools of thought, labelled "positive understanding" and "negative

understanding". The "negative understanding" represents the literal meaning of the second phrase: it means what it says[30] . The "positive understanding" is regarded by the two scholars as meaning "opposite" of what it actually says. Thus, this "positive" interpretation is rejected on the basis of the basic rule contained by article 31 of the Vienna Convention on the Law of Treaties. Moreover, Harold Koh and Todd Buchwald argue that recourse to supplementary means of interpretation should be made when the interpretation given according to the general rule "leaves the meaning ambiguous or obscure" or "leads to a result which is manifestly absurd or unreasonable"[31] . Nevertheless, the "pure positive understanding" has been abandoned and was replaced with what is now article 15 bis of the Kampala Amendment, described as "softened consent-based regime"[32] (according to which the operation of article 12 and 5 (2) would lead to the result that article 121 (5) does not apply only in the case of aggression). And it is argued that it would be illogic for States to have established an amendment process that strongly protected their interests only for other crimes than aggression (allowing those states to avoid jurisdiction by non-ratification), but allow this amendment process to leave States "vulnerable" in the case of aggression, whose link to the State conduct would have required mode "deference to State consent"[33] .

Harold Koh and Todd Buchwald reject the theory based on the combined interpretation of articles 5 (2), 12 (1) and 121 (5). They argue that if someone would accept that, according to article 5 (2) of the Statute, it would be enough to "adopt" the definition of aggression and the provision related to the conditions for exercising jurisdiction, "there would not, insofar as the Rome Statute is concerned, be any need for the aggression amendments to be ratified at all"[34] . Thus, if the "article 5 (2) theory" would be accepted, it would lead to the absurd result that the Parties in Rome accepted to agree to "whatever definition and whatever conditions for exercising jurisdiction a two thirds majority would agree". Such result would not stand before any legislature seeking for ratification of the Rome Statute[35] .

Finally, a general principle of international law is invoked, the Monetary Gold principle, according to which an international court is not able to adjudge upon the legality of a conduct of a State or upon its international responsibility, if that State does not agree[36] . Thus, the specificity of the crime of aggression would lead to the ICC

establishing, as a “prerequisite” for establishing the individual criminal responsibility, that a State is internationally responsible for an act of aggression[37] . Thus, it is argued that the requirement of the consent of the alleged aggressor State is a requirement deriving from international law[38] , not from the result of the negotiating history of the Kampala Amendment.

IV. Brief assessment

The issues of interpretation exposed above raise multiple questions. However, we would dare to propose two starting points: i) first, the text of the Statute and of the Kampala Amendment are subject to interpretation, but, in any case, the result of the interpretation could not lead to a conclusion that would be contrary to general principles of international law applicable to international jurisdiction; ii) second, the interpretation of the Statute and of the Kampala Amendment should be subject to all rules of interpretation provided by international law – meaning by articles 31 and 32 of the Vienna Convention on the Law of Treaties of 1969, which are considered as customary international law.

With respect to the first proposal, we give a lot of weight to the argument put forward by Dapo Akande, who suggest that the application of the Amendment should not lead to a breach of general rules of international law in relations to States who are not parties to that specific legal instrument. The general rule, postulated by the Monetary Gold and East Timor[39] cases is that a court could not adjudge when it would be called to rule upon rights and obligations or the responsibility of a third State, who does not agree to jurisdiction. The principle is transposed in the advisory proceeding before the ICJ by the means of the “decisive reasons”, as mentioned for the first time in the Eastern Carelia advisory opinion[40] - where the Court has been asked to rule on a dispute between Finland, a member to the League of Nations, and the USSR, a non-member. The ICJ reaffirmed the principle in an enlightening manner in the Western Sahara advisory opinion, emphasizing the following:

In certain circumstances, therefore, the lack of consent of an interested State may render the giving of an advisory opinion incompatible with the Court's judicial character. An instance of this would be when the circumstances disclose that to give a reply would have the effect of circumventing the principle that a State is not obliged to allow its

disputes to be submitted to judicial settlement without its consent. If such a situation should arise, the powers of the Court under the discretion given to it by Article 65, paragraph 1, of the Statute, would afford sufficient legal means to ensure respect for the fundamental principle of consent to jurisdiction[41] (emphasis added).

Thus, even if the negotiations in Kampala would have been divided between "camp consent" and "camp protection"[42] , the most important question is whether international law would allow that the "fundamental principle of consent to jurisdiction" would be overridden. In fact, from a conceptual basis, the so-called "softened consent-based regime"[43] does not put into question the issue of consent, but merely departs from the assumption that the State Parties to the Statute expressed their consent to be adjudged on the crime of aggression though ratifying the initial Statute.

Second, having in mind that the presumption is that "consent should not be overruled", the interpretation of the relevant articles of the Statute (121 (5), 12 (1), 5 (2)[44]) and of the Kampala Amendment (especially 15 bis paras (4) and (5)) should answer to the following question: the consent of a State Party for adjudication with respect to aggression, may it be "presumed" from the operation of articles 12 (1) and 5 (2) of the Statute or should it be explicitly given through ratification/acceptance of the Kampala Amendment? Thus it would be important to identify correctly the question: the question is not whether the consent is needed, but it is whether the consent can be "presumed" or should be "express".

In order to answer this question, all means of interpretation should be applied in the same time with equal weight, as international law does not foresee an absolute and rigid system of interpretation[45] . As outlined by the Special Rapporteur on the law of treaties, Humphrey Waldock, the rules of interpretation act as guidelines, as their application in a particular case depends upon the appreciation of the context and circumstances of the elements that have to be interpreted[46] .

Thus, on one hand, Harold Koh and Todd Buchwald argue that the text of article 121 (5) is clear[47] . This argument seems to be based on Emerich de Vattel positivist assumption „in claris non fit interpretatio" (there is no need to interpret what is clear). However, as put forward by Myres McDougal within the Vienna Conference on the Law

of Treaties of 1968, the question whether a specific text has to be interpret is itself a matter of interpretation[48] .

On the other hand, Stefan Barriga relies in a very large sense on the negotiating history of the Kampala Amendment. In our opinion, this argument is subject to two major elements of criticism: i) it is not merely the text of the Kampala Amendment itself that leads, according to Barriga, to the conclusion that the Court has jurisdiction (in fact, article 15 bis deals only with non-parties), but the combined effect of articles 12 (1) and 5 (2) of the Statute; indeed, it is consistent that the Kampala Amendment could not have effect on States that have not expressed their consent through ratification or acceptance[49] ; ii) it is a matter of reality that the compromise between the ABS group and Canada[50] , even if of crucial importance, was characterized by lack of transparency during the Kampala conference. I am daring to make this affirmation in my position of alternate delegate of Romania to the Kampala conference. Thus, during the last days of the conference, the delegations ”knew little” about what was going on ”on the corridors”. Moreover, even if the debate between ”camp consent” and „camp protection” was an important one, most of the delegations saw it as being translated in the choice between articles 121 (4) and 121 (5) as procedural means for entry into force. And the most important dillema was – as our delegation saw it – not the ”consent” issue, but the exclusive/non-exclusive competence of the Security Council for determining the existence of an act of aggression (the dillema between Option 1 and Option 2 presented in the introduction to this study)[51] . Therefore, I can testify that delegations were concerned, at the very last moment of the Conference, about the posibility of calling a vote and for the permanent members to vote against – being well known that they supported „Option 1”. Thus, we viewed the compromise as accepting full „consent” based jurisdiction (recourse to article 121 (5)), for the compromise of the permanent members to agree by consensus a non-exclusive role of the Security Council.

It is not the purpose of this study to provide a solution for the question for which interpretation is called upon. We will reserve this task for a future study. However, it would be important to point out that the question whether the consent to jurisdiction should be „presumed” or „express”, or whether it should be „flexibly read” or „strictly read” is not singular in international law. For example, this question appeared in investment

arbitrations related to the so-called „MFN based jurisdiction"[52] . It appeared when the ICJ was called upon to interpret special agreements or compromisory clauses by which States sought to establish jurisdiction[53] .

In the end, it appears that the two different values[10] would lead the two proposed solutions: on one hand, the „fundamental principle of consent to jurisdiction" may be considered to be a value per se, a cornerstone of the inter-State legal relations, while, on the other hand, another value is called upon to bring „flexibility" to the principle of State consent: in the case of Kampala Amendment, it is the general desire to disuade States from committing aggression (while in the case of the „MFN based jurisdiciton", it was the need to protect investment). Thus, the question is not only one of interpretation, but one of values within the international community: what is more important – to dissuade aggression on the „cost" of a flexible consent? or to secure the certainty of inter-State legal relations on the „cost" of a less ambitious disuasion of aggression?

Conclusion

The purpose of this study was to expose one of the most difficult issues of interpretation related to the Kampala Amendment to the Rome Statute of the International Criminal Court. Two opposite views have been presented related to the question whether the ICC would have jurisdiction in case of an alleged act of aggression commited by a State Party to the Rome Statute which has not ratified/accepted the Kampala Amendment against the territory of a State Party which has ratified/accepted the Amendment.

One of the most important issues is the correct identification of the question. Thus, the question is not whether the consent of the alleged aggressor State is „needed", but whether it is „presumed" by the operation of articles 12 (1) and 5 (2) of the Statute, against the express provision of article 121 (5), or whether consent should be explicitely given through ratification or acceptance of the Amendment. It appears, therefore, that the question of interpretation concerns merely the Rome Statute itself, and not necessarily the Kampala Amendment. It is logic to consider so, as the question concerns the consent given by States which are not parties to the Amendment, and thus the Amendment could

[10] The values may be linked to the object and purpose of a treaty, as a means of interpretation.

not have a legal effect upon them. The question is whether consent is presumed from the operation of the provisions of the Statute.

In order to answer this question, all the methods of interpretation should be used. In fact, the study argues that no single method of interpertation should be given priority: neither the textual approach, nor the travaux preparatoires, should be decisive. Moreover, the travaux preparatoires would be difficult to rely upon, having in mind the rather non-transparent behind the scene negotiations in the final days of the Kampala conference.

It was not the purpose of this study to analyse the question though all the means of interpretation offered by the Vienna Convention. Nevertheless, the starting point that we propose to be taken into consideration is the value-based approach. The question whether consent should be „presumed" or should be „expressly given" is one that puts in ballance the fundamental principle of state consent to jurisdiction with another value within the international community, which in this case is the desire to dissuade aggression in a more powerful way.

We think it is important to repeat the dillema: what is more important – to dissuade aggression on the „cost" of a flexible consent? or to secure the certainty of inter-State legal relations on the „cost" of a less ambitious disuasion of aggression?

And, as a last element of conclusion, let us remember that disuasion of aggression would be „something new", would be „a step forward" in the international legal community, while the principle of state concerned is a „well anchored" fundamental rule. Thus, we might reformulate the question in the following way: what is preferred: a solid, ambitious „step forward", with a shaky foundation or a less ambitious „step forward" (but still a step forward), with a solid foundation?

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Article 15 bis paras. 6-8 of the Kampala Amendment;
[6] Article 15 bis paras. 6-8 of the Kampala Amendment;
[7] Dapo Akande, What Exactly Was Agreed in Kampala on the Crime of Aggression, EJIL:TALK! (June 21, 2010), https://www.ejiltalk.org/what-exactly-was-agreed-in-kampalaon-the-crime-of-aggression/; Astrid Resinger Coracini, More Thoughts on "What Exactly was Agreed in Kampala on the Crime of Aggression", EJIL:TALK! (July 2, 2010), https://www.ejiltalk.org/more-thoughts-on-what-exactly-was-agreed-in-kampala-on-thecrime-of-aggression/; Dapo Akade, Antonios Tsakanopoulos, loc. cit., p. 36;
[8] Martti Koskenniemi, International Law in the World of Ideas, in J. Crawford, M. Koskenniemi (ed.), The Cambridge Companion to International Law, Cambridge University Press, 2011, p. 63;
[9] Martti Koskenniemi, From Apology to Utopia. The Structure of the International Legal Argument, Oxford University Press, 2005, p. 504;
[10] Rome Statute of the International Criminal Court, July 17, 1998, 2187 UNTS 90 (hereinafter „Rome Statute"), article 12 (2); Antonio Cassese, Paolo Gaeta, Cassese's International Criminal Law, Oxford University Press, 2013, p. 363-364; these conditions are not required when referral is made by the Security Council, according to Chapter VII of the Charter;
[11] Dapo Akande, Prosecuting Aggression: The Consent Problem and the Role of the Security Council, WORKING PAPER, OXFORD INSTITUTE FOR ETHICS, LAW AND ARMED CONFLICT (2010), available at http://www.elac.ox.ac.uk/downloads/dapo akande working paper may 2010.pdf (accessed 26 May 2017);
[12] Handbook on Ratification and Implementation of the Kampala Amendments to the Rome Statute of the ICC, published by the Liechenstein Institute of Self-Determination, Woodrow Wilson School of Public and International Affairs, November 2012, p. 9-10;
[13] Stefan Barriga, Leena Goover, A Historic Breakthrough on the Crime of Aggression, loc. cit., p. 530-533; Stefan Barriga, Introduction to Negotiation History, loc. cit., p. 46-56; for more details, Stefan Barriga, Exercise of Jurisdiction and Entry Into Force of the Amendments on the Crime of Aggression, Belgian Interministerial Commission for Humanitarian Law: Colloquium "From Rome to Kampala", Brussels, 5 June 2012, available at: http://www.regierung.li/media/medienarchiv/icc/2012-6-5_Stefan_Barriga_-_CoA_Exercise_of_Jurisdiction_and_EIF_-_Brussels_Colloquium_-_paginated_02.pdf?t=636294503019761306 (26 May 2017), p. 12-18;
[14] Stefan Barriga, Exercise of Jurisdiction and Entry Into Force…, loc. cit., p. 12; Stefan Barriga, Introduction to Negotiation History, loc. cit., p. 43;
[15] Stefan Barriga, Introduction to Negotiation History, loc. cit., p. 38; R.S. Clark, Ambiguities in articles 5 (2), 121 and 123 of the Rome Statute, Case Western Reserve Journal of International Law, vol 41 (2009), p. 413-427;
[16] Stefan Barriga, Exercise of Jurisdiction and Entry Into Force…, loc. cit., p. 12;
[17] Ibid., p. 13;
[18] Ibid, p. 17;
[19] Ibid., p. 14-15;
[20] Ibid, p. 15;
[21] Ibid.
[22] Ibid.
[23] For this argument, see also Claus Kress, Leonie von Holtzendorff, The Kampala Compromise on the Crime of Aggression, Journal of International Criminal Justice, vol. 8 (2010), p. 1179, 1197-98;
[24] Harold Koh, Todd Buchwald, The Crime of Aggression: The United States Prespective¸ loc. cit., p. 273-290;
[25] Dapo Akade, Antonios Tsakanopoulos, loc. cit., p. 36; Sean Murphy, loc. cit., p. 24-26;
[26] Harold Koh, Todd Buchwald, The Crime of Aggression: The United States Prespective¸ loc. cit., p. 273;
[27] Ibid.
[28] Ibid, p. 279;
[29] Ibid.
[30] Ibid., p. 283;
[31] Ibid.

[32] Shean Murphy, loc. cit., p.22;
[33] Ibid. p. 23.
[34] Harold Koh, Todd Buchwald, The Crime of Aggression: The United States Prespective¸ loc. cit., p. 285;
[35] Ibid., p. 286;
[36] Monetary Gold case (Italy v. France, United Kingdom & United States), (1954) ICJ Rep, p. 19; East Timor case (Portugal v. Australia), (1995) ICJ Rep p. 90; Dapo Akande, Prosecuting the Crime of Aggression, loc. cit., p. 13;
[37] Dapo Akande, Prosecuting the Crime of Aggression, loc. cit., p. 17; Phosphates in Nauru Case, (1990) ICJ Rep, p. 240, 261;
[38] Dapo Akade, Antonios Tsakanopoulos, loc. cit., p. 36;
[39] Supra, note 37;
[40] PCIJ, Ser. B, no. 5, 1923, p. 27;
[41] Western Sahara, Advisory Opinion, ICJ Reports, 1975, p. 25, para. 33;
[42] Stefan Barriga, Stefan Barriga, Exercise of Jurisdiction and Entry Into Force…, loc. cit., p. 19.
[43] Shean Murphy, loc. cit., p.22;
[44] One should note, however, that article 5 (2) was abrogated by the Kampala Amendment;
[45] Draft articles on the Law of Treaties, 1966, Yearbook of the International Law Commission, 1966, vol II, p. 219, para. 8; Affaire concernant l'apurement des comptes entre le Royaume des Pays-Bas et la Republique française en application du Protocole du 25 septembre 1991 additionel à la Convention relative à la protection du Rhin contre la pollution par les chlorures du 3 décembre 1976, Sentence Arbitrale du 12 mars 2004, Cour Permanente d'Arbitrage, para. 65; Lake Lanoux (Spain v. France), award of 16 November 1957, RIAA, vol. XII, p. 281; Ion Galea, Dreptul tratatelor, Ed. Ch Beck, 2015, p. 182;
[46] Sixth Report of tSpecial Rapporteur, 1966, doc. A/CN.4/186 and Add.1, 2/Rev.1, 3-7, Yearbook of the International Law Commission 1966, vol. VI, p. 94; Richard Gardiner, Treaty Interpretation, Oxford University Press, 2008, p. 38;
[47] Harold Koh, Todd Buchwald, loc. cit., p. 283;
[48] Official Records of the Vienna Conference on the Law of Treaties, 31st Meeting, 19 April 1968, p. 167, para. 41; Ion Gâlea, op. cit., p 41;
[49] Article 34 of the Vienna Convention on the Law of Treaties; Mark Villiger, Commentary to the 1969 Vienna Convention on the Law of Treaties, Martinus Nijhoff, 2009, p. 435;
[50] Stefan Barriga, Introduction to the Negotiating History , loc. cit., p. 50-51;
[51] This focus on the role of the Security Council is witnessed also by Harold Koh: "As described above, the United States' view had been that the ICC should be able to exercise jurisdiction only if the Security Council has made a prior determination that aggression had ,in fact, occurred. The United States was therefore less focused upon whether the consent of the "aggressor state" should be required for the Court to proceed than were many of the other states that attended the meetings in Kampala", Harold Koh, Todd Buchwald, loc. cit., p. 274;
[52] Julie A. Maupin, MFN-based jurisdiction in investor-state arbitration: is there a hope for consistent approach?, Journal of International Economic Law, vol. 14, Issue 1, p. 157-190, 159;
[53] For example: Oil Platforms, Preliminary Objections, ICJ Reports, 1996, p. 803; Land, Island and Maritime Frontier Dispute (El Salvador/Honduras, Nicaragua intervening), Preliminary Objections, ICJ Reports, 1992, p. 351.
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Journal of Law and Administrative Sciences
No.7/2017

THE RELATIONSHIP BETWEEN INTERNATIONAL LAW AND DOMESTIC LAW AS PERCEIVED BY CONSTITUTIONAL COURTS

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Abstract:
In a country's evolution, there are different political, legal and economic stages and transformations. Also Romania has been subject to such transformations, one of these stages being represented by the dawn of a new constitutional order after the Revolution in 1989, which was followed by the establishment of a new constitutional framework by adopting, first of all, for the transition period, an act having the force of a "fundamental law" and, then, by adopting, in 1991, based on a referendum, the Romanian Constitution, which established the principles of the functioning of a State governed by the rule of law and the mechanisms for its functioning. The review of constitutionality, as part of this mechanism, was entrusted to the Constitutional Court as the guarantor for the supremacy of the Constitution and the only authority of constitutional jurisdiction in Romania.
That was a first step, followed by a new challenge, i.e. the Europe-Atlantic Integration, that is to say Romania's accession to the North Atlantic Treaty and Romania's Accession to the European Union, which necessitated a revision of the Constitution in order to establish both the constitutional framework for the pre-accession stage and to determine in practice the relationship between national law and international order, namely the obligations of Romania stemming from such memberships.
In this paper, we shall discuss some aspects relating to the Romanian Constitutional Court's case-law developments on priority or differences between national legal rules and international rules, the identical or divergent interpretation on points of law, the mutual reliance upon the case-law of such courts (ECHR, CJEU, CCR), presupposing a "judicial dialogue", especially since, for example, in March 2016, the Venice Commission adopted a Rule of Law Checklist which gives an overview of the extended scope of the rule of law which is based, inter alia, on the principle of legality, a principle with a broader scope, which also includes the relationship between international law and national law.
In this context, we have in view the Constitutional Court's case-law developments with regard to the reliance upon the judgments of the European Court of Human Rights and, implicitly, upon the Convention for the Protection of Human Rights and Fundamental Freedoms, as a benchmark in the review of constitutionality, upon the case-law of the Court of Justice of the European Union and the effects and the priority of international treaties to which Romania is a party and which were concluded before the aforementioned constitutional transformations, regarded in terms of the case-law of the Constitutional Court of Romania.
Keywords: *relationship between international law and national law, judicial dialogue, extended scope of rule of law, Euro-Atlantic integration, Romania's accession to the North Atlantic Treaty, Romania's accession to the European Union, revision of the Constitution, the Treaty of accession of Romania and Bulgaria to the European Union, the Treaty on the Functioning of the European Union, constitutional identity*

I. Introduction

Romania, on the one hand, has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms by Law no.30/1994, and the additional protocols thereto, and, on the other hand, in 2007 it joined the European Union. The Constitution of Romania establishes also the order of precedence of international legal rules in relation the national rules; the provisions of Articles 11, 20 and 148 of the Constitution establish the principle of priority of international human rights treaties and of European Union law.

The principle of primacy/priority of international human rights treaties and of EU law is provided as such in the Constitution of Romania at Article 11 - International law and domestic law, Article 20 - International human rights treaties and Article 148 - Integration into the European Union. Pursuant to Article 11 of the Constitution, with the marginal title - International law and domestic law – „(1) The Romanian State pledges to fulfil as such and in good faith any obligations as may derive from the treaties to which it has become a party. (2) Once ratified by Parliament, subject to the law, treaties shall be part of domestic law. (3) Where a treaty to which Romania is to become party comprises provisions contrary to the Constitution, ratification shall only be possible after a constitutional revision". Furthermore, Article 20 of the Basic Law, with the marginal title - International human rights treaties - states that „(1) The constitutional provisions relative to the citizens' rights and freedoms shall be interpreted and applied in conformity with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is a party. (2) Where inconsistency exists between the covenants and treaties on fundamental human rights to which Romania is a party, and national law, the international regulations shall prevail except where the Constitution or domestic laws comprise more favourable provisions". Thus, as regards the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950[1] , this one was ratified by Romania by Law No.30/1994[2] , on which occasion other protocols were ratified, for example, the first additional Protocol to the Convention[3] ; Protocol No. 4 recognizing certain rights and freedoms, other than those already included in the Convention and in the first additional Protocol to the Convention[4] ; Protocol No.6 concerning the abolition of the death penalty[5] ; Protocol No.7[6] ; Protocol No. 9 (concluded at Rome, 6 November 1990); Protocol No.10[7] . It should be noted that

both before and after the ratification of the Convention, Romania has ratified a number of Protocols to the Convention, for example Protocol No.11 on the restructuring of the control mechanism established by the Convention[8] , Protocol No.12 on the general forbiddance of discrimination, Protocol No.13, Protocol No.14, Protocol No.15 etc.

The provisions of Article 148 of the Constitution, which were introduced in the Basic Law by the revision of the Constitution in 2003, revision which aimed to preparing the constitutional framework for Romania's accession to the Euro-Atlantic structures, also stipulate that: „(1) Romania's accession to the founding Treaties of the European Union, for purposes of transferring certain powers into the hands of community institutions, as well as for exercising in common with the other Member States the competencies stipulated in such Treaties, shall be under a law adopted in a joint session of the Chamber of Deputies and the Senate, by a majority of two-thirds of the number of Deputies and Senators. (2) Following accession, provisions in the founding Treaties of the European Union, as well as other binding regulations under community law shall prevail over any contrary provisions of domestic law, while observing provisions in the accession instrument. (3) Provisions of paragraphs (1) and (2) shall also apply accordingly for the accession to any instrument purporting a revision of the founding Treaties of the European Union. (4) The Parliament, the President of Romania, the Government, and the judicial authority shall guarantee that any obligations arising from the accession instrument and from provisions under paragraph (2) are put into effect. (5) The Government shall send the draft for any binding regulations to the Chambers of the Parliament prior to submitting such for approval to the European Union institutions."

For example, by Decision No. 148 of 16 April 2003 on the constitutionality of the legislative proposal for the revision of the Romanian Constitution[9] , the Court noted that "the accession to the European Union, once completed, entails a number of consequences which could not take place without an appropriate regulation, at constitutional level. The first of these consequences required for the Community acquis to be incorporated into national law and also for the relation between regulatory acts and national law to be determined. The solution proposed by the authors of the initiative of revision envisages the implementation of Community law into the national area and the establishment of the rule of prior application of the Community law priority to any

conflicting provisions of the national laws, in compliance with the act of accession. The consequence of accession is based on the fact that the Member States of the European Union agreed to put the Community acquis - the founding Treaties of the European Union and the regulations derived from them - in an intermediate position between the Constitution and the other laws, when it comes to binding European legislation". The Constitutional Court found that this provision does not affect the constitutional provisions on the limits of revision or other provisions of the Basic Law, „being a specific application of the provisions of Article 11 (2) of the Constitution, under which the treaties ratified by Parliament, according to the law, form part of national law".

Thus, constitutional provisions oblige the Romanian State to fulfil as such and in good faith its obligations from the Treaties to which it is a party, and the Treaties ratified by Parliament, according to the law, are part of national law[10] . The constitutional provisions on the citizens' rights and freedoms shall be interpreted and applied in compliance with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is a party. Where there are inconsistencies between the covenants and treaties on fundamental human rights to which Romania is a party and national laws, the international rules shall take precedence, unless the Constitution or the national laws comprise more favourable provisions[11] 48. Following Romania's accession to the constituent treaties of the European Union, with a view to transferring certain powers to Community institutions, and to exercise in common with the other Member States the powers laid down in the treaties, the provisions of the constituent treaties of the European Union, as well as the other binding Community regulations shall take precedence over any contrary provisions of the national laws, in compliance with the act of accession[12] .

II. Constitutional identity

Moreover, the Court, in its case-law, has held that Article 2 of the Act concerning the conditions of accession of the Republic of Bulgaria and Romania and the adjustments to the treaties on which the European Union is founded, part of the Treaty of Accession, ratified by Law No.157/2005[13] , provides that „From the date of accession, the provisions of the original Treaties and the acts adopted by the institutions and the

European Central Bank before accession shall be binding on Bulgaria and Romania and shall apply in those States under the conditions laid down in those Treaties and in this Act". Therefore, adhering to the legal order of the European Union, Romania has also accepted that, in those areas where exclusive jurisdiction is conferred on the European Union, regardless of international treaties which it has concluded, in implementing its obligations arising from them, it is subject to the rules of the European Union. Otherwise, this would lead to the undesirable situation that, through bi or multilateral international obligations, the Member State could seriously affect the Union's competence and, in practice, to replace it in its fields of competence. Therefore, in the application of Article 11 (1) and Article 148 (2) and (4) of the Constitution, Romania applies in good faith the obligations resulting from the accession act, not interfering with the exclusive competence of the European Union and, as established in its case-law, by virtue of the compliance clause contained in the text of Article 148 of the Constitution, Romania cannot adopt a regulatory act contrary to the obligations undertaken by the Member State. All those already highlighted know of course a constitutional limit, expressed in which the Court has classified as „constitutional identity"[14] .

III. Constitutional Court and the Court of Justice of the European Union

1. In what concerns the case-law of the Court of Justice of the European Union and the caselaw of the Constitutional Court, we would like to show, first, that, through Decision no.668 of 18 May 2011[15] , the Constitutional Court stated that "it is up to the Constitutional Court to apply, within the constitutional review, the judgments of the Court of Justice of the European Union or to address preliminary questions for establishing the content of the European norm. Such an attitude is a matter of cooperation between the national constitutional court and the European court, as well as of judicial dialogue between them, without referring to aspects related to the setting of a hierarchy between these courts".

Moreover, within the constitutional review, for example Decision no.887 of 15 December 2015[16] the Constitutional Court made a reference to the case-law of the Court of Justice of the European Union noting that „In what concerns the field of competition, this is one where the Romanian State, just like any other Member State, has

relinquished its powers, as this field falls under the category of the exclusive competences of the European Union, according to Article 3 (1) (b) of the Treaty on the Functioning of the European Union (the establishing of the competition rules necessary for the functioning of the internal market). Of course, the matter of State aids is subordinated to the field of competition. Therefore, the Court notes that the provisions of Article 2 (1) of the Treaty become applicable in this field, according to which, - When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts." Or, "ascertaining the compatibility of State aids is the exclusive competence of the European Commission, and the verification of the compliance of the Commission's act with the primary and secondary legislation of the European Union is carried out by the latter's courts (the General Court and the Court of Justice of the European Union). To this purpose, according to Article 108 (2) of the Treaty on the Functioning of the European Union, the Commission 'shall decide that the State concerned shall abolish or alter such aid'. Consequently, national courts do not have the competence to declare the compliance or non-compliance of a State aid with the European legislation[17] . In exchange, national courts have the competence to safeguard the rights of the persons impaired by an implementation, contrary to the fundamental treaties, of the State aid prior to the decision of the Commission and to enforce the decision of the Commission. Thus, in order to protect the interests of third parties, national courts have the competence to take ad interim measures and[18] , consequently, can transfer the amounts of the State aid to a blocked account."

2. Moreover, there have been matters of law upon which both the Constitutional Court and the Court of Justice of the European Union have ruled, for example, Article XV of Government Emergency Ordinance no. 8/2014 amending and supplementing certain legislative acts and other fiscal and budgetary measures[19] , stating, mainly, that "The payment of the sums determined by judicial decision relating to the restitution of the tax on pollution for motor vehicles and the tax on polluting emissions from motor vehicles, the interest calculated until the date of full payment and legal costs, and all other sums as may be determined by the court, which became enforceable by 31 December 2015, shall be paid over a period of five calendar years by means of an annual payment of 20% of

the amount payable". Thus, in relation to these legal provisions, through Decision no. 676 of 13 November 2014[20] , the Constitutional Court held that „the enforcement of a court ruling cannot be hindered, annulled or postponed for a long period of time. As concerns the modality of enforcement, the Court has stated that uno ictu enforcement is just another modality of enforcement, without this meaning that this is the one and only modality of enforcement possible that can be applied". Thus, the legislator can establish certain measures, i.e. „the payment in instalments of certain amounts included in writs of execution, as also referred to in the provisions of Article XV of Government Emergency Ordinance no. 8/2014, by which the delegated legislator has introduced a measure intended to strengthen the purpose of the judiciary proceedings, in the sense that it represents a first important step taken by the debtor for the payment of the debt". In this context, restating its reasoning in Decision no. 190 of 2 March 2010[21] , the Constitutional Court noted that „the mechanism of staggered payments, as a means of enforcement of a court ruling, can be deemed compliant to the principles enshrined by the caselaw of the Constitutional Court and of the European Court of Human Rights, if certain conditions are met: clearly determined intermediary payments, reasonable time for a full payment, compensation of a potential depreciation of the amount due". Or, the provisions of Article XV of Government Emergency Ordinance no. 8/2014 establishing the instalments, adjusts this five-year payment on the basis of the consumer price index, thus meeting the requirements established in the case-law of the Constitutional Court. Moreover, the Court noted that „the Government does not refuse to implement court rulings but, on the contrary, it acknowledges them and firmly undertakes to enforce them according to the reasonable and objective criteria established in the impugned legislative act. Therefore, it is found that the emergency ordinance is not a measure prohibiting, not even temporarily, the enforcement of a court ruling and, consequently, it does not represent an interference of the legislative power in the achievement of justice."

Also, the Constitutional Court has restated the fact that, as it „is not a positive legislator or a court of law competent to interpret and apply European law in disputes involving subjective rights of citizens, the use of a European norm within the constitutional review as a norm interposed with the norm of reference implies, under Article 148 (2) and (4) of the Romanian Constitution, aggregated conditions: on the one hand, that this norm

should be sufficiently clear, precise and unequivocal in itself or that its meaning should have been established in a clear, precise and unequivocal manner by the Court of Justice of the European Union and, on the other hand, that the norm must imply a certain level of constitutional relevance, so that its normative content should support the potential violation, by the national law, of the Constitution – the sole direct norm of reference for the constitutional review. In such a hypothesis, the approach of the Constitutional Court differs from the simple implementation and interpretation of the law, competence belonging to courts of law and administrative authorities, or from possible matters related to the legislative policy promoted by the Parliament or the Government, where appropriate". Or, in what concerns the tax on pollution for motor vehicles and the tax on polluting emissions from motor vehicles, and the interest calculated until the date of adoption of Government Emergency Ordinance no.8/2014, the Court of Justice of the European Union has stated as follows: In Case C-402/09 Ioan Tatu v. Statul român prin Ministerul Finanțelor și Economiei, Direcția Generală a Finanțelor Publice Sibiu, Administrația Finanțelor Publice Sibiu, Administrația Fondului pentru Mediu, Ministerul Mediului, following the reference for a preliminary ruling lodged by the Tribunalul Sibiu on 18 June 2009, the European court stated that „Article 110 TFEU must be interpreted as precluding a Member State from introducing a pollution tax levied on motor vehicles on their first registration in that Member State if that tax is arranged in such a way that it discourages the placing in circulation in that Member State of second-hand vehicles purchased in other Member States without discouraging the purchase of second-hand vehicles of the same age and condition on the domestic market"; In Case C-565/11 – Mariana Irimie v. Administrația Finanțelor Publice Sibiu, Administrația Fondului pentru Mediu[11] it was held that „European Union law must be interpreted in the sense that, if a Member State collects a tax incompatible with the European Union law, i.e. Article 110 TFEU, the respective State must reimburse the amount of the tax concerned and pay the interest on that sum from the date of payment of that tax".

Consequently, the Constitutional Court concluded that „in this case, although the meaning of the European norm has been clarified by the Court of Justice of the European

[11] Preliminary question lodged by the Tribunalul Sibiu – Romania.

Union, the requirements resulting from this judgment have no constitutional relevance, being rather related to the legislator's obligation to issue norms compliant with the judgments of the Court of Justice of the European Union; otherwise, Article 148 (2) of the Romanian Constitution might be applicable. Therefore, the legislator has observed the judgment of the Court of Justice of the European Union precisely by issuing the legislative act, which the Constitutional Court deems compliant with the provisions of the Constitution".

Ruling on the same matters, through the judgment issued in Case C-200/14[12] the Luxembourg Court of Justice stated that „The principle of sincere cooperation must be interpreted as meaning that it precludes a Member State from adopting provisions making repayment of a tax held to be contrary to EU law by a judgment of the Court, or whose incompatibility with EU law results from such a judgment, subject to conditions relating specifically to that tax which are less favourable than those that would have applied, in their absence, to such a repayment; it is for the referring court to determine whether that principle has been complied with in the present case". Also, concerning the principle of equivalence, it held that it "must be interpreted as precluding a Member State from providing procedural rules which are less favourable for applications for the repayment of a tax based on an infringement of EU law than those applicable to similar actions based on an infringement of domestic law. It is for the referring court to make the necessary checks to ensure compliance with that principle so far as concerns the legislation applicable to the dispute pending before it". It also considered that „the principle of effectiveness must be interpreted as precluding a system of repayment with interest of taxes levied in breach of EU law, the amount of which was established by enforceable judicial decisions, such as the system at issue in the main proceedings, which provides for the repayment of such taxes by instalments over five years and which makes the execution of such decisions contingent on the availability of funds received in respect of another tax, without the individual having the right to compel public authorities to fulfil their

[12] Reference for a preliminary ruling - Principle of sincere cooperation - Principles of equivalence and effectiveness - National legislation laying down the detailed rules for the repayment of taxes improperly levied with interest - Enforcement of judicial decisions relating to such rights to repayment stemming from the legal order of the Union - Refund payable over a period of five years - Repayment contingent on the existence of funds received from a tax - No possibility of enforcement.

obligations if they do not do so voluntarily. It is for the referring court to ascertain whether legislation such as that which would be applicable in the case at issue in the main proceedings in the absence of such a system of repayment meets the requirements of the principle of effectiveness."

IV. Constitutional Court and the European Court of Human Rights

1. In its case-law the Court held that[22] , „if, while Romania has not been a member of the Council of Europe and has not acceded to the European Convention on Human Rights, the interpretation of Article 8 of the Convention, through the decisions of the European Court of Human Rights in Strasbourg, did not have any relevance for the Romanian legislation and case-law, after the entry of Romania in the Council of Europe and after the accession to the European Convention on Human Rights[23] the situation changed fundamentally. This change is also required by the Constitution of Romania itself, which in Article 20 (1) specifies that its provisions, on the citizens' rights and freedoms, shall be interpreted and applied in compliance with the Universal Declaration of Human Rights, with the covenants and other treaties to which Romania is part, or the European Convention on Human Rights, as from 31 May 1994, became such a treaty".

2. As concerns the case-law of the European Court of Human Rights being invoked within the constitutional review, this matter has gradually evolved, as the constitutional court has started including more and more the case-law of the Court of Strasbourg in the rationale of its documents (decisions, rulings, opinions). Thus, for example, through Decision no.96 of 24 September 1996[24] , the Court held that, with regard to "the reason concerning the violation of the requirement referred to by Article 6 § 1 of the European Convention on Human Rights, to have a case settled within a reasonable time, it should be noted that both the European Commission and Court have constantly underlined in their practice that this requirement must not be examined in abstracto, but on a case-by-case basis, by taking into account the duration of the proceedings, the nature of the claims, the complexity of the trial, the behaviour of the authorities and parties, the difficulty of the debates, the caseload of the court, the legal remedies used etc.", without, however, invoking a concrete case-law of the European Court of Human Rights. Later on, the Constitutional Court has included concrete references to the case-law of the European

Court of Human Rights, for example through Decision no.81 of 15 July 1994[25] , partially upholding the exception of unconstitutionality raised before it.

Thus, the Court stated that “in many countries, there is currently the idea that same-sex relationships between adults having consented to this represent a dimension of individuals’ private life and, therefore, they cannot be criminally sanctioned. Intense research has led to this idea. Thus, the European Court of Human Rights itself, in 1976, has dismissed the idea of general European morals, as the concept of good morals must be understood from the perspective of national legislations. However, later on, the Court turned back to this viewpoint[26] , considering that private same-sex relationships between consenting adults are not contrary to good morals and, therefore, they are not likely to violate Article 8 of the European Convention on Human Rights, which states that: “1. Everyone has the right to respect for his private and family life, his home and his correspondence.

3. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”. Through these decisions, the European Court has suggested the amendment of the legislation of the Member States of the Council of Europe, in accordance with the new interpretation given to Article 8 of the Convention. The same idea can also be found in Amendment no. 8 of the Parliamentary Assembly of the Council of Europe to the Report on Romania’s Application for Membership of the Council of Europe, which states the hope that Romania would not take long to amend its legislation so that Article 200 of the Criminal Code should no longer consider as criminal offences same-sex relationships between consenting adults.

The Court held that „the expression good morals can acquire different meanings, depending on religions and ideologies. The law, as a social phenomenon, cannot ignore the trends in the evolution of the contemporary society, including of human relations, even if, at a certain point, the legislative and case-law solutions might seem contrary to the traditional moral precepts”. It has been noticed that there is such an inconsistency between Article 8 of the European Convention on Human Rights, as interpreted by the

European Court of Human Rights in Strasbourg and Article 200 (1) of the Romanian Criminal Code, which forces the Constitutional Court of Romania to issue the appropriate decision. Removing the conflict between the national criminal law and the text of the European Convention on Human Rights, as interpreted by the European Court of Human Rights leads to a partial upholding of the exception of unconstitutionality concerning Article 200 (1) of the Criminal Code. But, the upholding of the exception, in order to make the Romanian criminal law compliant with the international standard, is possible only by establishing a correlation between the interpretation of Article 8 of the European Convention on Human Rights and that of Article 26 of the Romanian Constitution, as, based on the principle of subsidiarity, the interpretation of the European court being binding for the national constitutional court as well. Based on these general guidelines, it must be accepted that the national constitutional court has not only the right, but also the obligation to interpret the Constitution, thus removing, through its solution, any inconsistency between the domestic text and the European one, so that the national law be applicable, by using legal terms as defined by the legislator.

It should also be noted that the interpretation of Article 8 of the European Convention on Human Rights given by the European Court of Human Rights in Strasbourg does not concern, tale quale, all same-sex relationships, just as stated in Amendment no. 8 of the Parliamentary Assembly of the Council of Europe as well, but only those relationships between adults that take place in private, not in public places, and therefore without causing public scandal and, obviously, if the respective persons have consented to such relationships. Per a contrario, all relationships with minors or between adults, but by force, or in public places or in private places but having led to public scandals, are no longer covered by Article 8 of the European Convention on Human Rights and, consequently by Article 26 of the Romanian Constitution either, as relations that should continue being subject to criminal sanctions. Consequently, the exception of unconstitutionality concerning Article 200 (1) of the Criminal Code has been partially upheld, only for the consented sexual relations between same-sex adults taking place in private, provided that they should not lead to a public scandal. Moreover, the current case-law of the Constitutional Court includes frequent references to the case-law of the European Court of Human Rights, for example, from the recently given decisions we

could mention Decision no.363 of 7 May 2015[27] , in which the Court held that, "according to the first sentence of Article 7 – No punishment without law – of the Convention for the Protection of Human Rights and Fundamental Freedoms, no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. To this effect, through its Judgment of 22 June 2000, delivered in the case of Coëme and Others v. Belgium (paragraph 145), restating its previous case-law, the European Court of Human Rights shows that Article 7 of the Convention enshrines, among others, the principle that only the law can define a crime and prescribe a punishment (nullum crimen, nulla poena sine lege) and, moreover, the principle that criminal law must not be interpreted extensively and impair the accused. Consequently, all crimes and relevant punishments must be clearly defined by law, requirement met only if an individual can understand, from the content of the legal provision, which are the acts or omissions entailing his/her criminal liability.

4. For example, through Decision no. 1414 of 4 November 2009[28] , the Constitutional Court found that the entire Chapter IV of Law no. 329/2009 was constitutional insofar as it did not apply to the persons for which the duration of the mandate was expressly set in the Constitution. Moreover, it stated that no constitutional provision prevented the legislator from discarding the combination of pensions with salaries, provided that such a measure be applied equally to all citizens, and that potential differences of treatment have a lawful reason.

Later on, through the Decision of 20 March 2012, rendered by the European Court of Human Rights in the Case of Ionel Panfile v. Romania, it was shown that such a measure was referred to by law, that it pursued a legitimate aim, it observed the fair balance between the general interests of the community and the protection of the fundamental rights of individuals, as well as the fact that, in social matters, the State enjoyed a wide margin of appreciation, which led to the conclusion that the impugned measure was not contrary to Article 1 of the Additional Protocol to the Convention (paragraphs 17-25).

Furthermore, the European Court of Human Rights, in paragraph 21, states that "In its assessment of the public interest of the impugned measures, the Court takes

account of the Constitutional Court's reasoning, which confirmed that the Romanian legislature had imposed new rules in the field of public-sector salaries for the purpose of rationalising public expenditure, as dictated by the exceptional context of a global crisis on a financial and economic level (see paragraph 11 above). Having also regard to the fact that this is a matter that falls to be decided by the national authorities, who have direct democratic legitimation and are better placed than an international court to evaluate local needs and conditions, the Court sees no reason to depart from the Constitutional Court's finding that the contested measures pursued a legitimate aim in the public interest". Next, the European Court of Human Rights considered that „the criticised legal instrument did institute a difference in treatment between retired persons who were still active in the private sector and those who worked in the public sector, like the applicant; however, the two categories of persons can hardly be regarded as being in an analogous or relevantly similar situation within the meaning of Article 14, since the essential distinction, relevant to the context in which the impugned measures were taken, is that they draw their incomes from different sources, namely a private budget and the State budget respectively". Or "concerning the difference in treatment based on the personal monthly income level, the Court considers, in line also with the Romanian Constitutional Court's decision, that the level referred to was foreseeable and reasonable, and was established in relation to objective factors by the legislature, which acted within its discretionary power in the field of budgetary decisions, without transgressing the principle of proportionality" (see paragraph 28 to this effect).

V. Conclusion

As outlined above, Romania, on the one hand, has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms by Law no.30/1994, and the additional protocols thereto, and, on the other hand, in 2007 it joined the European Union. The Constitution of Romania establishes also the order of precedence of international legal rules in relation the national rules; the provisions of Articles 11, 20 and 148 of the Constitution establish the principle of priority of international human rights treaties and of European Union law.

As regards the relationship between the Constitutional Court and other courts, for example, European courts, on points of law, in the light of the aforementioned constitutional provisions, it is established a „judicial dialogue". This dialogue takes place, firstly, through the case-law to which the Constitutional Court refers when a matter of national law is brought into question, and such falls under the ambit of international law. Secondly, the case-law of the Constitutional Court can be directly mentioned, for example, in the case-law of the European Court of Human Rights, or indirectly when the same points of law are interpreted in a different way by the Constitutional Court, the European Court of Human Rights or, as the case may be, by the Court of Justice of the European Union.

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Journal of Law and Administrative Sciences
No.7/2017

THE LEGAL LIABILITY OF LOCAL ELECTED OFFICIALS AND CIVIL SERVANTS IN THE VIEW OF LAW No. 140/2017. ASPECTS REGARDING THE CONTENT AND UNCONSTITUTIONALITY OF THE REGULATION

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Abstract:
Law no. 140/2017 introduces a new conception in the Romanian legal order regarding the liability of local elected officials and civil servants from the specialized body of the mayor or of the county council. Practically, the center of responsibility moves towards the servants from local public administration, the local elected officials being, in some cases, exonerated from liability. The newly enacted normative act will have multiple implications both on the rule of law and on the status of the civil servant and of the local elected officials. Through its legislative solutions, Law no. 140/2017 replaces joint and several liability with the exclusive liability of the subjects of law, in some cases removing the issuer of the administrative act from the liability equation. By the way it was adopted, and also by the legislative solutions it proposes, the law as a whole violates the constitutional provisions.
Keywords: *accountability, local elected, civil servants, contract staff, law*

Introduction

Law no. 140/2017 amended and supplemented the general norms regarding the legal liability of certain categories of local elected persons and of the staff from the specialized body of the mayor or of the county council, included in Article 128 of the Local Public Administration Law, as well as the norms stipulated in Article 55 of the Law on the Status of Local Elected Authorities.

From the analysis of the legislative path of the law, it follows that the initiators of the legislative proposal, which became Law no. 140/2017, sought to modify and complete only the Law on local public administration; the Chamber of Deputies adopted it tacitly in the form proposed by the initiators, but the Senate modified and supplemented this proposal, including amendments to Law No. 393/2004 on the Status of Local Elected Authorities.

Practically, the assumption that accountability pursues the decision-maker has been replaced by the exclusive responsibility of the signatory of the administrative act in the event of a damage caused by an unlawful administrative act. However, the signatory of the administrative act is not always the subject of law that has issued or adopted that administrative act.

The balance of responsibility from the local elected officials to the officers from the specialized body of the mayor or of the county council results in the replacement, in certain cases, of the joint responsibility with the exclusive responsibility of the signatories of the administrative act, a legislative solution that affects the status of the civil servant, a qualified civil servant, the doctrine[1] , as one of the most important institutions of public law and a fundamental element of the rule of law.

The activity of the institution itself depends on the activity of the public servant and, implicitly, on the satisfaction or non-fulfillment of a public interest, since a public institution, a public authority or a public service has the mission of serving the general public interest[2] . The doctrine, jurisprudence and regulation are the three pillars on which the legal institutions of the civil service and civil servant have been built [3].

Analysis of the content of the regulation

Law no. 140/2017, a normative act of organic character, has amended and completed Article 128 of Law no. 215/2001 on local public administration and supplemented Article 55 of Law no. 393/2004 on the Status of local elected officials. Both articles contain general norms on the institution of liability, except that in Article 128, we meet the liability of both local elected officials and the staff in the specialized body of the mayor and of the county council, and Article 55 concerns solely the liability of local elected officials.

In the form prior to its modification and completion by Law no. 140/2017, Article 128 of Law no. 215/2001 had the following content: “The local or county councilors, as the case may be, the mayors, the deputy mayors, the general mayor of Bucharest, the mayors and the deputy mayors of the administrative-territorial subdivisions, the presidents and vice presidents of the county councils, the secretaries of the administrative-territorial units and the staff from the specialized body of the mayor,

respectively of the county council, shall be responsible, as the case may be, for contraventions, administrative, civil or penal actions for the acts committed in the exercise of their attributions, according to the law".

By the law adopted by the Parliament, to Article 128 were added several paragraphs, and, at the same time, Article 55 of the Law on the Status of Local Elected was supplemented.

Thus, the content of Article 128 became paragraph 1 of that article and was only completed with the deputy mayors of Bucharest. In our opinion, the regulation is incomplete. We appreciate that it was necessary to complete the paragraph with the village delegate, and also with the public administrator because, according to Law no. 393/2004 the category of local elected officials also includes the village delegate, with a status similar to a local councilor, and the position of public administrator is a distinctly regulated function in the law on the local public administration, whose status also implies liability. Moreover, we consider it necessary to abolish the contraventional liability in the enumeration of forms of legal liability, since administrative liability is governed by this, and contraventional liability is a form of administrative accountability. Last but not least, we consider that the norms regarding the civil servants' liability should have been correlated with those contained in Law no. 188/1999 on the Status of Civil Servants.

According to paragraph 2 of Article 128 of the adopted law, "the mayor, the president of the county council, the chairperson of the meeting of the local council and of the Bucharest municipality, as well as the person empowered to perform this function, by signing, invest with authoritative formula the execution of the administrative acts issued or adopted in the exercise of their attributions according to the law".

Administrative acts are issued under the regime of public power and benefit from the presumption of legality, authenticity and veracity. The issuance of the administrative act under the regime of public authority distinguishes it from the acts of the administration issued under ordinary law or civil acts in general, and makes it obligatory, while its execution is done ex officio. Therefore, we appreciate the regulation in paragraph 2 to be devoid of foundation.

Paragraph 3 of Article 128 states that "the assessment of the necessity and the opportunity of adopting and issuing administrative acts belongs exclusively to the

deliberative and executive authorities and can not be controlled by other authorities", and "the drafting of the reports provided by the law, countersigning or approval for legality and signing the substantiation notes engage administrative, civil or criminal liability, where appropriate, of the signatories, in the event of a violation of the law, in relation to their specific duties".

Indeed, local public administration authorities[4] enjoy the power of appreciation, called discretionary power, based on the principles guiding their activity. The body issuing the act has the possibility to choose "from among several possible and equal solutions, to the same extent, the one that best corresponds to the public interest to be satisfied"[5] . As emphasized in the literature[6] , this ability to choose from several possible variants "reveals the quality of the administrative act to meet both the strict rigors of the law as well as a determined social need in a given time and place". But this freedom of appreciation must take into account the strict observance of the legal rigors and the satisfaction of the public interest, otherwise we will enter the sphere of excess power as defined by Law no. 554/2004 of the administrative litigation as representing the "exercise of the discretionary right of public authorities by violating the limits of the powers provided by the law or by violation of citizens' rights and freedoms"[7] . Therefore, the prohibition of the opportunity control for the acts of local authorities has the effect of imposing a penalty on the excess power of these public authorities. However, for an administrative act to serve social good, it must be legal and timely. Legality evokes that the administrative act corresponds to the letter of the law, and the opportunity represents its compliance with the spirit of the law[8] .

As regards the second sentence of paragraph 3 of Article 128 referring to the involvement of the legal liability of the signatories in the forms stipulated for "drafting the reports provided by the law, countersigning or endorsement for legality and signing the substantiation notes" in case of violation of the law, in relation to the specific attributions, it is necessary to emphasize something. This sentence can be considered as a preamble to the norms contained in the next paragraph, paragraph 4, which removes the decision-maker from the liability equation, i.e. the authority issuing the act in the case of an unlawful administrative act, and throws the burden of liability on the shoulders of the officials preparing the reports stipulated by the law, with the exception of the report drawn up by

the specialized committees of the local or county council, which approve or countersign for legality, such as the secretary of the administrative-territorial unit, or who sign the substantiation notes. The report of the specialized department is a technical and material operation which does not have legal effects, being of an advisory nature. It is necessary to exist, but the local authority is not involved in making the decision on this report. We must admit, nonetheless, the need for the intervention of the officials' accountability in the specialized department when, for example, local councilors adopt a decision that prejudices certain persons, an administrative act adopted in good faith, based on the opinion of the specialists.

Paragraph 4 of Article 128 states that "the acts of the local public administration authorities imply, under the law, administrative, civil or criminal liability of officials and contract staff, according to case, in the specialized body of the mayor, respectively of the county council which, in violation of the legal provisions, technically and legally issue or adopt them, or countersign or approve, as appropriate, for the legality of such acts".

In practice, the provisions of this paragraph exonerate from responsibility the local elected who issue or adopt an unlawful act, and the full responsibility will be limited only to civil servants and the persons with a contractual status in the specialized body of the mayor or of the county council, who have founded or approved the adoption or issuance of administrative acts. Nevertheless, the manifestation of will belongs to the issuing authority, and the administrative act is, as the literature suggests, a manifestation of express, unilateral will subjected to a regime of public power. The administrative act is the most important form in which the administration carries out its mission. This act is governed by the regime of public power.

The civil servant or the person in the specialized body does not initiate acts of the local public administration authorities and does not participate in the adoption or issuance of such acts. These persons do the procedural forms (advise, substantiate, document, ensure the communication and publication etc.) of the issuance or adoption of administrative acts, do not adopt or issue administrative acts. Therefore, the decision does not belong to these people. The person who has the decision is also responsible for breaching the legal rules. Of course, in turn, the staff from the mayor's specialized body or from the county council needs to be made accountable, but we do not think that this is

the best legislative solution. According to paragraph 5 of Article 128, “the acts of the local public administration authorities approved or issued without being substantiated, signed, countersigned or approved from a technical or legal point of view, shall produce full legal effects, and in case of harmful consequences, the legal liability of the signatories is exclusively committed”.

These provisions raise at least two issues. First of all, these legal provisions are inconsistent with those contained in Article 44 paragraph 1 of the law, which stipulates that “the draft decisions on the meeting agenda of the local council can not be debated unless they are accompanied by the report of the competent department within the specialized body of the mayor, which is elaborated within 30 days after the registration of the project, as well as the report of the specialized committee of the local council, except for the cases provided by Article 39 paragraphs 2 and 4”. As long as a draft decision can not be debated unless it is accompanied by the documents provided by the law, how can it become an administrative act and produce full legal effects? Secondly, if the act was likely to produce legal effects, why should the signatories and not the decision-maker answer legally? For example, according to Article 47 paragraph 1 of the Local Public Administration Law “the decisions of the local council shall be signed by the chairperson of the meeting, elected under the conditions provided by Article 35 and countersigned for legality by the secretary”. In this case, the signatories of the administrative act are the chairperson of the meeting of the local council and the secretary of the administrative-territorial unit. Therefore, in the case of harmful consequences, the responsibility does not belong to those who adopted the respective administrative act, but only to the signatories of the act, which is unnatural. Even more interesting is the fact that the chairman of the meeting did not vote in favor of that draft decision. How can that person take responsibility for something he did not agree with?!

According to paragraph 6 of Article 128 “the refusal of the public servants and the contract staff from the specialized body of the mayor, respectively of the county council, to sign, respectively to countersign or approve the administrative act, as well as any objections regarding the legality, shall be made in writing within 3 working days from the date of receipt of the document and shall be recorded in a special register for this purpose”, and paragraph 7 stipulates that “the persons referred to in paragraph 6 who refuse to sign,

respectively to countersign or to endorse or those who object to the legality, without legal basis, are liable to administrative, civil or criminal liability, as the case may be, under the law".

The administrative act shall be signed by the mayor, the president of the county council, the chairman of the meeting of the local council or its substitute and countersigned for legality by the secretary. For example, the mayor's order is signed and countersigned for legality by the secretary. An administrative act shall not be signed by any person other than those expressly provided for by law. Therefore, we do not understand what may be the refusal of other civil servants or persons with a contractual status. As for the secretary, the law already regulates in Article 48 paragraph 1 of their right to refuse to countersign an administrative act in the situation in which they consider it illegal. In such a situation, they are obliged to submit and expose to the deliberative local authority their reasoned opinion, which will be recorded in the minutes of the meeting. This legal regime is valid also for the decisions of the county council, the provisions of the mayor and of the president of the county council.

It is, therefore, unnatural for the same legal act to regulate the same legal situation differently. Moreover, if in the case of civil servants the legal liability appears in the forms mentioned in paragraph 7 of Article 128, in the event that their refusal would not have legal cover, for example, in the case of the chairperson of the local council meeting, who refuses to sign a local council decision, the law no longer provides for a means of coercion, stating in Article 47 paragraph 1 only that the decision will be signed by 3-5 local councilors. From this point of view also the regulation is deficient, as it is not normal for the local elected to benefit from a permissive regulation and the civil servant to be subject to a constraint legal regime.

The distinct, privileged legal status in terms of the right to refuse the signing of the administrative act contravenes the principle of equal rights of citizens, enshrined in Article 16 paragraph 1 of the Constitution of Romania, according to which "citizens are equal before the law and the public authorities, without privileges and without discrimination". The previous assertion is reinforced by the jurisdiction of the constitutional litigation court, which in Decisions no. 148/2001 and no. 685/2012 stated that "the violation of the principle of equality and non-discrimination exists when differential treatment is applied

to equal cases without objective and reasonable reasoning or if there is a disproportion between the aim pursued by the unequal treatment and the means employed".

Related to Article 55 of Law no. 393/2004[9] on the status of local elected representatives there has been added by Law no. 140/2017, in the end, the phrase "under the law", a phrase which had already existed regulated, at the beginning of the article, so that Article 55 has the following wording: "The local elected persons are answerable according to law, from an administrative, civil or criminal point of view, according to the case, for the deeds committed in the exercise of their duties, under the law."

Conclusions and proposals

The law, through the legislative solution contained, limits the legal liability of local elected officials or, even in certain circumstances, exonerates the local elected officials from liability and extends, unacceptably, the liability of civil servants and of the contract staff from the specialized body of the mayor or the county council.

Given that one of the basic principles of the functioning of local public administration is the principle of legality, the observance of which involves the protection at legislative level of the juridical responsibility for both local elected officials and civil servants and contractual staff, the legislative solution adopted may affect the guarantee to respect the principle of legality, an aspect underlined in the opinion of the Legislative Council as well.

By affecting the insurance to comply with the principle of legality, the legislative solution is unconstitutional. At the same time, the poor regulation, the legislative parallelism, the non-correlation of the newly introduced norms with the existing ones, affect the quality of the regulation, leading to the conclusion that the analyzed legal provisions "do not meet the requirements of clarity, precision and predictability", being thus incompatible with the fundamental principle regarding the observance of the Constitution, of its supremacy and that of the laws provided by Article 1 paragraph 5 of the Romanian Constitution. By Decision no. 447[10] of 29 October 2013, the Constitutional Court has raised predictability and clarity at the level of an "essential condition for the quality and constitutionality of the legal norm".

The law analyzed by the poor drafting procedure does not correspond to the requirements of legislative technique specific to the juridical norms. The law violates Article 61 paragraph 2 of the Law no. 24/2000[11] regarding the norms of legislative technique stipulating that "the provisions amended or supplementing the normative act must harmoniously integrate in the act subject to modification or completion, ensuring the unity of style and terminology, as well as the normal sequence of the articles". In the same respect, by Decision no. 838/2009[12] , the Constitutional Court has stated that the observance of the norms of legislative technique is an obligation opposable to the legislator, the mayor or the delegate.

Last but not least, the lack of correlation of the norms will create interpretation problems for the law, which may have consequences in the field of legal certainty, leading to lower confidence of the public servant in the legal security provided by the state, by the norms developed and adopted. The issues raised, plus the fact that the law was adopted in violation of the principle of bicameralism, make us believe that this normative act must be urgently submitted to the constitutional review exercised by the Constitutional Court.

It was desirable that the notification of the Constitutional Court be made before the promulgation of the law by the President of Romania, but if this has not been done, the constitutional litigation court may also be notified after the enactment of the law by raising an exception of unconstitutionality before the court[13], or directly to the Constitutional Court, by the People's Advocate based on Article 146 letter d of the Constitution.

According to its jurisprudence[14] , the Constitutional Court has established that the principle of bicameralism is reflected not only in the institutional dualism within the Parliament, which is made up of the Chamber of Deputies and the Senate, but also in the functional one. The Constitutional Court also held that the parliamentary debate of a draft law or of a legislative proposal can not ignore its assessment in the plenary of the two Chambers of Parliament. Therefore, the amendments and additions made by the Decision Chamber to the draft law or the legislative proposal adopted by the first notified Chamber must relate to the matter envisaged by the initiator and the form in which it was governed by the first Chamber. Otherwise, it comes to the situation that only one Chamber, namely the Chamber of decision makers, can legislate exclusively, which is contrary to the principle of bicameralism[15] .

From the analysis of the legal path of this normative act, it is found that the legislative proposal was adopted by the Senate as a decision-making chamber, in a completely different wording than the content of the initial legislative proposal, ignoring the form proposed by the initiator and tacitly adopted by the Chamber of Deputies, as well as the initiator's intention, highlighted by the explanatory statement that says the initiative is meant to "stop the intimidation and corruption actions of the decision-makers in local public administration".

We appreciate that the Constitutional Court, within the extrinsic constitutional control, will find the violation of the provisions of Article 61 corroborated with Article 75 of the Constitution, which enshrines the principle of bicameralism. This procedural deficiency affects the quality of the normative act, thus violating the imperative requirements of legislative technique. Having found the flaws of extrinsic unconstitutionality by the Constitutional Court calls for the declaration of unconstitutionality of the law as a whole.

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Journal of Law and Administrative Sciences
No.7/2017

LAW APPLICABLE TO DIVORCE WITH FOREIGN ELEMENT

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Abstract
Increasing citizens' mobility at an international level and, in particular, within the European Union has increased the number of families with an international dimension, ie families whose members have different citizenships or live in different states.
When families are separated, international cooperation is required to protect the major interests of children resulting from marriage, in order to provide them with a secure legal environment to maintain relationships with persons who have parental responsibility towards them. Law systems have adopted specific regulations that establish how to determine the law applicable to family relationships with a foreign element. Within the European Union, uniform regulations have been adopted on family relationships with a foreign element (divorce with a foreign element being one of the regulated areas).
Keywords*: divorce with foreign element; Determination of the applicable law; Enhanced cooperation; European Union Law; Recognition of foreign judgments.*

1. General legal framework for determining the law applicable to divorce with a foreign element

The general provisions on the settlement of foreign-born divorce are contained in Book VII of the Romanian Civil Code. The provisions of private international law are correlated with the provisions of substantive law (Article 373-404 C. civ.), Which regulates the reasons and the procedure of divorce; Divorce by agreement of the parties; Divorce due to one of the spouse's health and divorce.

In the matter of divorce, the solutions introduced in the Romanian Civil Code are new in both the points of connection and the possibility of the husbands to choose, within certain limits, the applicable law. Thus, the link points "common citizenship - common domicile" are reversed, the applicable law being mainly the law of common habitual residence, and, failing that, the law of the common citizenship of spouses. Also, the conditions under which the dissolution of marriage by unilateral repudiation / denunciation, unknown in Romanian law, can be recognized in Romania. In essence, it was considered that the solution to invoking public order was not justified when the

woman itself accepted this way of selling marriage, which is basically equivalent to a divorce agreement.[1]

The legislator of the Romanian Civil Code has agreed the national provisions of private international law with the European norms.[2] The proposed solutions are in line with the Green Paper on applicable law and divorce competence, launched by the European Commission on 14 March 2005, which proposed a unification of conflict rules at EU level, starting from the premise of the need to ensure greater security and Predictability with regard to the law applicable to divorce.[13]

1.1. Conceptual delimitations

The Romanian private international law qualifies divorce as the way to sell marriage with a foreign element during the spouses' life and in compliance with the conditions set forth in Book II of the Civil Code ("About Family").[3] The actual separation of the spouses is a reason for divorce, if the requirements laid down in Art. 373 lit.c C. civ.

Divorce divorce is a legal institution with distinct significance, different from the institutions "marriage termination", "abolition of marriage", "separation of body". By analyzing the significance of these notions, we find that not only the content of the notions is different, but also the laws applicable in private international law are different (with the exception of the separation from the body, which is governed by the same law that applies to the divorce with the foreign element).

1.2. Choice of divorce law

The law applicable to divorce can be determined in two ways:

- either by subjective determination, or by the spouses' choice of the law applicable to divorce, between the express laws provided by the civil code;

[13] At its meeting on 5 and 6 June 2008 in Luxembourg, the Council found that there was no unanimity on the proposal and that the objectives of the proposal can not be achieved within a reasonable time by the application of the relevant provisions of the Treaties. On 12 July 2010, the Council adopted Decision 2010/405 / EU authorizing a form of enhanced cooperation in the area of divorce and separation from the law, and subsequently adopted Regulation (EU) No. No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

- either by objective determination, on the basis of legal criteria, if the spouses have not chosen the law applicable to divorce.

A) Extent of spouse's will to choose the law applicable to divorce

Under Article 2597 of the Civil Code, spouses can jointly choose one of the following laws applicable to divorce:

a) the law of the State in the territory of which the spouses have their habitual common residence at the date of the convention on the choice of applicable law;

b) the law of the State in the territory of which the spouses have their last common habitual residence if at least one of them resides there at the date of the applicable law choice convention;

c) the law of the State of which one of the spouses is a national;

d) the law of the State in which the spouses have lived for at least 3 years;

e) Romanian law.

B) Date of the Convention of Choice of applicable law

According to the disp. 2.598 of the Civil Code, the Convention on the choice of law applicable to divorce may be terminated or amended at the latest by the date of referral to the competent authority for divorce.

However, the court can take note of the consent of the spouses at the latest by the first time that the parties have been legally summoned.

C) Form of the applicable law choice convention

The formal conditions of the convention on the choice of law applicable to divorce are governed by provision. Article 2.599 of the Civil Code. Under these provisions, the Convention on the choice of law applicable to divorce must be concluded in writing, signed and dated by the spouses.

1.3. The law applicable to divorce in the absence of choice

A) Objective determination of divorce law

The criteria for determining the law applicable to divorce in the absence of this law by spouses are laid down in the provision. art. 2.600 paragraph 1 of the Civil Code.

In the absence of choice, divorce will be subject to one of the following laws:

a) the law of the State in the territory of which the spouses have their habitual common residence at the time of the application for divorce;

b) in the absence of common ordinary residence, the law of the State in the territory of which the spouses have their last common ordinary residence if at least one of the spouses is habitually resident in that State at the date of the application for divorce;

c) in the absence of the common habitual residence of one of the spouses on the territory of the State where the spouses had their last common habitual residence, the law of the common nationality of spouses at the time of the introduction of the divorce application;

d) in the absence of the law of the joint citizenship of the spouses, the law of the last common citizenship of the spouses, if at least one of them has this citizenship at the date of filing the divorce application;

e) Romanian law, in all other cases.

B) Invoking public order of Romanian private international law - in the matter of divorce

Public order may be invoked against divorce law or some of the provisions of this law.

In the case of removal of foreign law, Romanian law is applied as a law of the forum.

According to art. 2.600 paragraph 2, if the foreign law thus determined does not allow divorce or admits it under particularly restrictive conditions, the Romanian law shall apply if one of the spouses is, at the time of the divorce request, a Romanian citizen or has his habitual residence in Romania.

These provisions are also applicable if the divorce is governed by the law chosen by the spouses.

1.4. Recognition of divorce by unilateral denunciation

According to the disposition. art. 2.601 of the Civil Code, the act drawn up abroad, which establishes the unilateral will of the man to untie the marriage, without the woman having an equal right, can not be recognized in Romania, unless:

a) the act was drafted in compliance with all the substantive and formal conditions provided by the applicable foreign law;

b) the woman freely and unequivocally accepted this way of selling marriage;

c) there is no other reason for refusing to recognize in the territory of Romania the decision by which the dissolution of marriage was approved in this manner.

1.5. The law applicable to body separation

The determination of the law applicable to the separation from the body is regulated by provision. art. 2,602 of the Civil Code, according to which the law governing divorce also applies to separation from the body.

As an area of application, this law regulates the following aspects:

- the right to demand separation from the body;
- conditions of body separation;
- the effects of body separation.

1.6. The law of divorce law

The law applicable to divorce governs the following aspects:

- the right to divorce proceedings;
- the reasons for divorce (including the possibility of divorce on the basis of spouses consent);
- the effects of divorce on spouses 'relations, namely: spouses' personal relationships; Patrimonial relations between spouses (sharing common goods, joint debts, maintenance obligations between ex-spouses, etc.); Exercise capacity;
- the effects of divorce on parent-child relationships, namely custody of minors, the exercise of parental rights, maintenance obligations, etc. The Court of Justice of the European Union and the European Court of Human Rights have set a number of principles on the international kidnapping of children.[4] The CJEU has confirmed that the child should be returned without delay if the kidnapping occurred. The ECHR also held that once a child was found to have been misled, Member States must make appropriate and effective efforts to ensure the return of the child and that Failure to do so constitutes a violation of the right to family life provided for in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.[5]

The determination of jurisdiction in divorce matters and the trial procedure are subject to the law of the forum. Also, the provisional measures and the urgent measures taken by the court are subject to the law of the forum, with procedural problems.

1.7. Jurisdiction over divorce settlement

Council Regulation (EC) Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC)

Regulation 1347/20001 contains uniform rules for the determination of jurisdictional rules of jurisdiction between Member States and facilitates the free movement within the Union of judgments, authentic instruments and agreements, laying down provisions on the recognition and enforcement of exequatur in another State member.[6]

Based on art. 3 of the Regulation, jurisdiction in matrimonial matters (applications for divorce, legal separation and annulment of marriage, in accordance with Article 1 (1) (a) of the Regulation) belongs to:

A) the courts of the Member State in whose territory he is:

- the habitual residence of spouses, irrespective of their nationality,
- the last habitual residence of the spouses if one of them lives at the date of the court's referral to that State;
- the defendant's habitual residence,
- the habitual residence of one of the spouses if the divorce application is common;
- the plaintiff's habitual residence if he resided there for at least one year before the divorce application was filed;
- the plaintiff's habitual residence if he resided there for at least six months immediately prior to the application and if he is either a national of that State or, in the case of the United Kingdom and Ireland, has "domicile" in that place; or

B) the courts of the Member State of joint nationality of the spouses (in the case of the United Kingdom and Ireland, the Member State in which the spouses' joint domicile is situated, interpreted as meaning the legal systems of those States).

The Regulation does not provide for the possibility for spouses to designate, by their consent, the competent court (with the exception of amicable divorce, when the request is common, the spouses have the right to choose the court in the habitual residence of one of them).

According to disp. 1079 of the Code of Civil Procedure, the Romanian courts are exclusively competent to hear disputes with elements of extraterrorism from the sphere of personal status related to: ..... 5. Annulment, nullity or annulment of marriage, as well as other litigations between spouses, except those related to buildings located abroad, if at the date of filing the application both spouses reside in Romania and one of them is a Romanian citizen or a stateless person.

According to disp. 1081 of the Code of Civil Procedure, Romanian courts are also competent to hear and divorce applications, if at the date of filing the application the applicant has been resident in Romania for at least one year;

2. The main provisions contained in Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation.

2.1. The context of the adoption of the Regulation as a form of enhanced cooperation

In accordance with Article 81 of the Treaty on the Functioning of the European Union, the Union shall adopt measures in the field of judicial cooperation in civil matters having cross-border implications. When families are separated, such cooperation is needed, especially to give children a secure legal environment to maintain relationships with persons who have parental responsibility over them and eventually live in another Member State. "[14]

On 17 July 2006, the Commission presented its proposal for a draft regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and the introduction of rules on the law applicable to matrimonial matters.

At its meeting on 5 and 6 June 2008 in Luxembourg, the Council found that there was no unanimity on the proposal and that there were difficulties that made it impossible to reach unanimity. The Council has determined that the objectives of the proposal can not be achieved within a reasonable time by applying the relevant provisions of the Treaties.

On 12 July 2010, the Council adopted Decision 2010/405 / EU authorizing enhanced cooperation in the area of divorce and separation from the law.

Subsequently, Belgium, Bulgaria, Germany, Greece, Spain, France, Italy, Latvia, Luxembourg, Hungary, Malta, Austria, Portugal, Romania and Slovenia addressed a request to the Commission to establish a form of cooperation between them Strengthened in the area of applicable law in matrimonial matters. On 3 March 2010, Greece withdrew

[14] Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the application of Regulation (EC) Council Regulation (EC) No 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility, repealing Regulation (EC) 1347/2000, Bruxelles, 15.4.2014 COM (2014) 225 final.

its request. The 14 states have adopted Regulation (EU) no. No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (which entered into force on 21 June 2012).

On 21 November 2012, the Commission adopted Decision 2012/714 / EU confirming Lithuania's participation in enhanced cooperation in the area of the law applicable to divorce and legal separation. That Decision provides that Regulation (EU) 1259/2010 shall apply to Lithuania from 22 May 2014.

On 27 January 2014, the Commission adopted Decision 2014/39 / EU confirming the participation of Greece in enhanced cooperation in the area of the law applicable to divorce and legal separation. This Decision provides that Regulation (EU) 1259/2010 shall apply to Greece as from 29 July 2015.

By Decision no. 1366/2016, the Commission confirmed Estonia's participation in enhanced cooperation in the area of divorce law and legal separation.

The Regulation is a tool for implementing enhanced cooperation between participating Member States, containing immediately applicable uniform rules for the resolution of legal relations with the foreign matter. [7]

Under Article 328 (1) of the Treaty on the Functioning of the European Union, a form of enhanced cooperation once opened is open to the participation of all Member States, subject to any conditions of participation laid down in the authorization decision. It shall also remain open to the Member States at all times, subject, in addition to the above-mentioned conditions, to the acts already adopted within it.[8] In accordance with Article 331 TFEU, non-participating Member States retain the right to join the enhanced cooperation established.

The Commission and the Member States participating in this enhanced form of cooperation shall ensure that they promote the participation of as many countries as possible.

The provisions of the Regulation are binding in their entirety and directly applicable in the participating Member States only, in accordance with the Treaties.

Enhanced cooperation allows a group of at least nine Member States to implement measures in one of the areas covered by the Treaties, within the framework of the non-exclusive competences of the Union.

2.2. Structure and content of the Regulation

The Preamble of the Regulation presents a very comprehensive statement of reasons, containing 30 arguments on the need to adopt this legal act. In summary, these arguments refer to the need to enhance legal certainty, predictability and flexibility in international matrimonial proceedings.

The provisions of the Regulation respect the fundamental rights and principles recognized by the Charter of Fundamental Rights of the European Union, in particular the provisions of Article 21, which prohibit any discrimination based on sex, race, color, ethnic or social origin, genetic characteristics, language, religion or belief, Political or any other kind, membership of a national minority, wealth, birth, disability, age or sexual orientation.

The regulation contains 30 articles, structured on four chapters, as follows:- Chapter I - contains provisions related to "Scope, relation to Regulation (EC) No. 2201/2003, universal definition and application ';- Chapter II - contains "Uniform Rules on the law applicable to divorce and separation from the body";- Chapter III - contains 'Other Provisions'; - Chapter IV - contains "Final Provisions".

2.3. Scope of the Regulation

A. - The scope of the Regulation is set out in Article 1, according to which the provisions of the Regulation apply to divorce and separation from the body in situations where there is a conflict of laws[15] .

These provisions do not apply to the following matters, even if they are only preliminary issues in the context of divorce or separation proceedings:

a) legal capacity of natural persons;

b) the existence, validity or recognition of a marriage;

c) annulment of the marriage;

d) the spouse's names;

e) the consequences of the marital effects of the estate;

[15] On the meaning of some terms used in the Regulation, Article 3, called "Definitions", contains the following legal qualifications: a) "participating Member State" means a Member State participating in a form of enhanced law enforcement applicable to divorce And severance under Decision 2010/405 / EU or a decision adopted in accordance with the second or third subparagraph of Article 331 (1) of the Treaty on the Functioning of the European Union; B) "court" means all authorities of participating Member States competent in matters falling within the scope of the Regulation.

f) parental responsibility;

g) maintenance obligations;

h) fiduciary / fiduciary act or succession.

B - Relationship with Regulation (EC) No. 2201/2003

- In that regard, Article 2 states that its provisions are without prejudice to the application of Regulation (EC) No. No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. [9]

C - Universal application of the regulation

Article 4 provides that the law designated under the provisions of the Regulation applies whether or not the law of a participating Member State is applicable.

D - Relationship with international conventions in force

Regarding the relationship between the provisions of the Regulation and the international conventions in force, .art 19 establishes the following:

a) Without prejudice to the obligations of the participating Member States under Article 351 of the Treaty on the Functioning of the European Union, the Regulation shall not affect the application of international conventions to which one or more participating Member States are parties at the date of adoption of this Regulation or, Pursuant to the second or third subparagraph of Article 331 (1) of the Treaty on the Functioning of the European Union, of the decision governing the conflict of laws on divorce or separation from the body.

b) However, the provisions of the Regulation prevail, in relations between the participating Member States, on conventions concluded exclusively between two or more of them, insofar as those conventions concern matters governed by the Regulation.

E - Time and space application of the regulation

Entry into force and date of application of the Regulation are matters governed by the provisions of Article 21, which stipulates that it shall enter into force on the day following its publication in the Official Journal of the European Union.[10]

As regards the Member States participating in the enhanced cooperation under a decision taken in accordance with Article 331 (1) The second or third subparagraph of the

Treaty on the Functioning of the European Union, this Regulation shall apply from the date indicated in that Decision.

The Regulation is binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties.

In art. 20 provides for a revision clause to the Regulation to the effect that the Commission shall report to the European Parliament, the Council and the European Economic and Social Committee on the application of the Regulation by 31 December 2015 and every five years thereafter. The report shall be accompanied, where appropriate, by proposals for its adaptation.

To this end, the participating Member States shall inform the Commission of the relevant elements of the application of the Regulation by the courts.

In art. 18 contain transitional provisions according to which the Regulation applies to legal actions brought and agreements concluded from 21 June 2012. However, an agreement on the choice of applicable law concluded before 21 June 2012 is also applicable, provided that Comply with Articles 6 (on Consent and the Validity of the Fund) and 7 (regarding formal validity)

The Regulation is without prejudice to agreements on the choice of applicable law concluded under the law of the participating Member State in whose territory the court seised is before 21 June 2012.

2.3. Uniform rules on the law applicable to divorce and separation from the body

A - The choice by the parties of the law applicable to divorce and separation from the body

According to disp. 5 paragraph 1 of the Regulation, spouses may agree to designate the law applicable to divorce and separation from the body, provided that it is one of the following laws:

a) the law of the State in the territory of which the spouses are habitually resident at the date of conclusion of the agreement; or

b) the law of the State in the territory of which the spouses have their last habitual residence, provided that one of them is still resident at the date of conclusion of the agreement; or

c) the law of the State of nationality of one of the spouses at the date of conclusion of the agreement; or

d) the law of the forum.

The agreement designating the applicable law may be terminated and amended at any time but not later than the date of referral to the court (Article 5 paragraph 2).

According to Article 5, paragraph 3, where this possibility is provided for by the law of the forum, spouses may also designate the applicable law before the court in the course of the proceedings. In this case, the court takes note of the consent of the spouses, in accordance with the law of the forum.

- Consent and substantive validity of the agreement

Article 6 of the Regulation lays down that the existence and validity of an agreement on the choice of law or any clause thereof shall be determined by the law which would govern it under this Regulation if that agreement or clause were to be valid. However, in order to establish that he has not given his consent, one of the spouses may invoke the law of the country where he has his habitual residence at the time of the referral to the court, if it is apparent from the circumstances of the case that it would not be reasonable to establish The effect of its conduct in accordance with the law referred to in paragraph 1.

- Formal validity of the applicable choice of law agreement

According to disp. 7 of the Regulation, the choice of law applicable to divorce and separation is concluded in writing, dated and signed by both spouses. Any communication in electronic form that allows the durable recording of the agreement is considered to be a written form.

However, where the law of the participating Member State in which both spouses have their habitual residence at the date of conclusion of the agreement provides for additional formalities in the case of such agreements, these conditions shall apply.

If, at the date of the agreement, spouses are habitually resident in different participating Member States and if the laws of those States lay down different formal conditions, the agreement is valid from the point of view of the form if it satisfies the conditions laid down in any of those laws.

If, at the date of the agreement, only one spouse is habitually resident in a participating Member State and that State provides for additional formal conditions for such agreement, those conditions shall apply.

B - Establishing the applicable law in the absence of the expression of the parties' option

In the absence of a choice of applicable law, divorce and separation are governed by State law:

a) in the territory of which the spouses have their habitual residence at the date of referral to the court; [11]Or, otherwise;

b) in the territory of which the spouses were habitually resident, provided that that period had not ended more than one year prior to the referral to the court, as long as one of them still resided at the date of the referral to the court ; Or, failing that;

c) the nationality of which is held by both spouses at the date of referral to the court; Or, otherwise;

d) where the court is seised.

C - The law applicable to the transformation of divorce from the body

In the case of divorce transformation, the law applicable to divorce is the law that applied to separation from the body unless the parties agreed otherwise.

However, if the law which applied to the separation from the body does not provide for the divorce to be converted, the applicable law shall apply in the absence of expressing the parties' option, unless otherwise agreed.

D - Law enforcement of the forum

According to art. 10 of the Regulation if the law applicable under Articles 5 (the law chosen by the parties under Article 5 (1) or 8 (applicable law in the absence of the parties' choice) does not provide for divorce or does not grant to one of the spouses , Because of their belonging to one of the sexes, equality of access to divorce or separation from the body, the law of the forum applies.

E - Settlement of conflicts of laws in special situations

By disposition. Contained in Articles 13-16 of the Regulation, conflicts of laws are resolved in the following situations:

- Conflicts of divergence between national laws (Article 13 of the Regulation);

- Conflicts in the case of Member States with two or more territorially applicable law systems (Article 14);
- Conflicts in Member States with two or more systems of law - interpersonal conflicts (Article 15);
- Internal Conflict (Article 16)

a) Settlement of conflicts in case of differences between national laws

None of the provisions of the Regulation obliges courts of a participating Member State whose law does not contain provisions on divorce or does not consider that marriage to divorce proceedings to be divorced as a result of the application of the provisions of the Regulation.

b) Conflict resolution for Member States with two or more territorially applicable law systems

Where a State comprises several territorial units, each with its own legal system or a set of rules on matters governed by the Regulation:

- any reference to the law of such a State shall be construed, for the purposes of determining the law applicable under the provisions of the Regulation, as referring to the law in force in the relevant territorial unit;
- any reference to habitual residence in that State relates to habitual residence in a territorial unit;
- any reference to nationality concerns the territorial unit designated by the law of that State or, in the absence of relevant rules, the territorial unit for which the parties have opted or, in the absence of the option, the territorial unit with which one of the spouses or both have the closest links.

c) Conflict resolution for Member States with two or more systems of law - interpersonal conflicts

In respect of a State which has two or more systems of law or systems of rules applicable to different categories of persons in matters governed by the Regulation, any reference to the law of such a State concerns the legal system determined by the rules in force in that State. In the absence of such rules, the legal system or system of rules with which one of the spouses or both have the closest links applies.

d) Non-application of the provisions of the Regulation to internal conflicts

A participating Member State in which the rules governed by the Regulation are subject to systems of law or systems of different rules is not required to apply the provisions of the conflict of laws regulation exclusively concerning such systems of law or systems of different rules.

- Exclusion of resignation

Where the provisions of the Regulation provide for the application of the law of a State, the concept of law encompasses the rules of law in force in that State, with the exception of the rules of private international law.

- Invoking public order

The application of a provision of the law designated under the provisions of the Regulation can only be eliminated if such application is manifestly incompatible with the public policy of the forum.

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Journal of Law and Administrative Sciences
No.7/2017

SOME CONSIDERATIONS ON CONTEMPORARY CONSTITUTIONALISM IN ROMANIA

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Abstract
In all constitutional systems, the Constitution was imposed as a fundamental law and underpins the organizing and functioning of the state.
Its adoption is a particularly important event, because it exceeds the legal status as a political-state reality, because in the Constitution are regulated and consecrated the fundamental principles of the entire social and state life.
The supremacy of the fundamental law is a quality that places it at the top of the political and legal institutions of a state-run society.
The need to comply with the Constitution for the whole right, is a consequence of the constitution's supremacy.
Keywords: *constitution, supremacy of constitution, constitutionalism, fundamental rights, rule of law.*

1. Political and legal meanings of the Constitution

Historical experience proves that any state determines how to organize and exercise power in the Constitution. Both governors and governees aim in this political-juridical act, the fundamental law of the country, the supreme law, the fundamental pact. The French Constitutionalists unanimously appreciate that any state must necessarily have a Constitution. Even the ancient states founded relations between the power pyramid and the population by investing certain individuals or bodies with the prerogatives of exercising power, with public authority according to customs and traditions that we could call constitutional custom.

The Constitution contains the general principles of law underlying the whole legal system. It is placed at the forefront of the hierarchy of normative acts to which it confers legal legitimacy, insofar as they conform to the norms and principles that it enshrines.[1]

The significance, value and content of the Constitution as the ideal of a democratic society were clearly expressed in constitutional acts and constitutions that opened the way for the constitutional process.

The Constitution was and is conceived in a wider vision that goes beyond politics, not only as a fundamental law but also as a political and state reality that identifies itself with the society it creates or shapes. [2]

Thus, the French Declaration of Human and Citizen Rights of 1789 stated that "Any society in which the guarantee of rights is not secured, nor the separation of powers established, has no constitution."

The American Constitution of 1787, the first written Constitution in the world, in its preamble provided: "We, the American people, to form a more perfect union, to establish justice, to ensure inner peace, to secure common defense, to develop general well-being and to secure the benefits of freedom for us and our descendants, command and establish this Constitution." In this political-juridical act, the spirit of constitutionalism has culminated.

In the constitutional practice of contemporary states, there are two main forms of the constitution:

- the customary constitution;
- written constitution.

From a legal point of view, the Constitution is a superior law to all other laws.

We must bear in mind that from its inception the Constitution was considered a limit in the arbitrary exercise of power. In constitutions are laid down the fundamental principles of the whole economic, political, social, moral and juridical life of a state, of a society. The fundamental principles enshrined in the constitutions are usually consistent with the fundamental values that the state, society promotes and defends. The German philosopher Hegel, in his well-known work, „The Principles of Law's Philosophy", stated that the people must have the sense of their right and the state of fact in their constitution. Once this ideal has been fulfilled, constitutionalism has continued to play an important and progressive role on the stage of history. Constitutionalism is best expressed through the notion of the rule of law. It has been a long process from the right of the state to the rule of law. The subordination of the state to the law and the limitation of the state's power by the law, is the essential requirement of the constitutional state of law. The supremacy of constitution and law requires the state authorities to respect civil rights and fundamental freedoms and to refrain from any arbitrary interference in their exercise.[3]

As Professor Ioan Muraru consider, the Constitution was initially conceived as an ensemble of legal norms aimed at limiting the powers of the governors and guaranteeing the fundamental rights of human being and the citizen.[4]

The constitution in a state of law, as Professor M. Bădescu stated, implies inter alia the observance of the law and the order of law, the protection of the individual and the citizen in the relations he has with the power of the state. The conduct of all state activity on the basis of/and within strict limits of the law is/or may be an obstacle to arbitrariness only if it expresses general will, and the respect for them becomes a paradigm for both, governors and governees.[5]

The supremacy of the Constitution is a quality that places it at the top of the political and juridical institutions of a society organized in the state, making the fundamental law the source of all regulations in the economic, political, legal and social fields. [6]

On the basis of its constitutional sovereignty, the state power has its own internal organization, determines the functioning regime of public powers, the legal status of the citizen, etc. According to the Constitution, inside the society no other social power is superior to the power of the state. [7]

If there were no specific guarantees of the Constitution that could control power and avoid sliding to arbitrariness, the supremacy of the Constitution would be just an ideal. Thus, the control of the constitutionality of the laws is an important guarantee in that it is a counterweight to the discretionary power of the Parliament and the executive.

The consecration in the constitution of the principle of free access to justice is also another important guarantee of the supremacy of the constitution as in a constitutional system based on the supremacy of the constitution and rigorous observance of the laws, the judicial role of the courts is an important guarantee of respect for the rights and freedoms of citizens. [8]

"In the conditions in which the Constitution is the supreme law of the state, having an essential role in determining the entire politico-social and state organization of all the countries of the world, the foundation of the supremacy of the constitution represents the greatest theoretical and practical significance." [9]

It is noteworthy that, in fact, the modern constitution establishes the basic rules governing the activity of the essential organs of the state establishing a certain sphere of

competence to the public authorities. The Constitution does not allow the delegation of powers, and in the modern constitutional law as in the Romanian one, the principle of the "delegate potestas non delegatur" has been established, meaning that the state bodies have only the rights conferred to them by the constitutional power. They can add nothing to the competence they have, because they do not have their own right, but only a right derived from a superior power that is of the whole people and is manifested in the constituent assembly. [10]

We note that the process of drafting constitutions as well as the entire development of modern constitutional law has been strongly influenced by the lifting of some of the constitutional principles of national law to the rank of international principles. For example, the human rights principles first quoted in the "Declaration of Rights" and the constitutions of some countries have been enshrined in numerous international documents, especially after the Second World War. We consider sufficient to mention the Universal Declaration of Human Rights, the two International Covenants on Human Rights (one on economic and social rights and the other on civil and political rights), the Convention on Non-Discrimination in Education, the Convention on the Rights of the Child Women's rights, the European Convention on Human Rights, etc.

Also, a series of principles that related to the internal democratic life, the organization of free elections, considered in the past as belonging to the eminent internal legal order of states, have increasingly been asserted internationally. We can exemplify in this respect the Paris Charter for a New Europe in 1990 which refers to the organization of free elections, the principles of the rule of law, and the guarantee of democratic principles of governance, the safeguarding of fundamental rights, etc.

Moreover, the essence and purpose of constitution and constitutionalism as a historical process lies precisely in the achievement of a balance between different realities and forces that must harmonize and coexist in order to ensure social stability, individual freedom and the legitimacy and functioning of the authorities that hold and exercise the power in the state. The goal of any democratic constitution is to achieve a fair balance between individual interests and the public interest.

As professor Ioan Muraru states, "Constitutionalism must be a complex political and juridical state, which expresses at least two major aspects: a) on the one hand,

accepting in the constitution the exigencies of the movement of ideas (origins and evolution) regarding the rule of law and democracy, public freedoms, the organization, functioning and balance of powers; b) on the other hand, the mass reception of the subjects of law, constitutional provisions. This reciprocal reception is the only one that can ensure the efficiency and especially the viability of the constitution, and can ensure consistency between constitutional rules and political practice." [11]

The Constitution is the fundamental source of constitutionalism, the political system and the national legal system. [12]

According to that reason, "Any constitution is placed in the hierarchy of political acts as well as normative acts (laws, ordinances, regulations, decrees, judgments, etc.) which give them political and legal legitimacy insofar as they correspond to the norms and principles they enshrine." [13]

We can say that the fundamental law of any state - the Constitution - is the supreme legal act inspired by a certain political philosophy that is adopted by a nation or on its behalf by a body invested with the original constitutive power to determine the ways of formation, organization and functioning the public powers and their relations, as well as the rights and duties of citizens. [14]

The constitutionalism is the act of replacing arbitrary regulations with constitutional law rules called to guarantee in particular the rights and freedoms of citizens. This is an important contribution to creating a legal order based on legality.[15]

We mention that there is a tendency of modern constitutions to regulate an increasing number of domains, with constitutional texts acquiring the value of true "codes". In this regard, we can exemplify the constitutions of Argentina and Brazil with a very large number of articles. [16]

The reality of a constitution essentially means the interpretation and application of its provisions as well as abiding by the public authorities in particular.

Constitution as a fundamental settlement is effective only if it is appropriate to state, political, ideological and economic realities. It should not be formally understood. If there is a constitution in any state, we cannot say that everywhere there is a genuine constitutional regime.

The reality of the fundamental law and the constitutionalism is determined by the features of the present constitutional regime in a state, but also by the way in which the constitution is received and respected. The reality of constitutionalism in each state can be determined by objective and subjective factors. When the inevitable transformations in a state's social, economic, political or legal life lead to a distance of these realities to the viability and effectiveness of constitutional norms, it is necessary to review the fundamental law.

Of course, constitutional change may be necessary if social and political realities so require. Constitutional courts play a fundamental role in avoiding the arbitrary interpretation of the fundamental law. The tendency of state authorities to abuse power in a discretionary way, sometimes in contempt of constitutional norms, is an important subjective factor of contemporary society that distorts the letter and spirit of the constitution with the consequence of building an economic and social political reality in contrast with the fundamental law. However, there may be situations where constitutional, although democratic, regulations are in contrast with the socio-economic realities of the moment, far inferior to the standards and principles of the constitutional democracy of the rule of law. The history of Romanian constitutionalism gives us a conclusive example in this regard if we are considering the (historical) period between 1866 and 1938, in which the reality of Romanian constitutionalism was inferior to the values and principles regulated by the constitutions of 1866 and 1923.

Romanian constitution adopted in 1991 meant the revival of constitutional life in Romania, as it represents the fundamental legislative framework for the functioning of the Romanian society and state on a democratic basis. The reality of constitutionalism in today's Romania is often demonstrating an abandonment or a violation of constitutional values and spirit by state authorities through their obvious tendency to discretionary exercise the attributions established by law and the partial interpretation of constitutional norms. For example, according to the provisions of art. 80 of the Romanian Constitution, the President of the state has the obligation to observe the enforcement of the Constitution and the proper functioning of the public authorities. In this respect, the president exercises the function of mediation between the powers of the state, but also between the state and society. However, this constitutional regulation remains in the

sphere of the constitutional ideal, or a political principle, because it is not materialized in terms of means and the procedure of accomplishment, nor it is accompanied by specific constitutional sanctions.

The political practice of the last decade in our country has been without power to disagree that there is the possibility of a discretionary manifestation of power by the President of the State on the basis of this constitutional text.

In our opinion, state authorities should be more concerned about the proper observance and enforcement of the Constitution.

Romania's integration into the new European legal order claims an increased role for the human rights and freedoms guaranteed by the Constitution and laws, and must become a reason for the very existence and functioning of the rule of law.

2. The relationship between modernity and tradition in constitutional law

The edification of the whole Romanian political life on the ideas of law and legality became a erudition of Romania's acceptance in the European Union.

Analyzing the issue of the relationship between modernity and tradition in constitutional law, we mention:

- Over time, some constitutional concepts have evolved to gain new connotations that have more clearly defined their profile. Thus we can mention the concepts of supremacy, sovereignty, human rights, etc.

-In modern constitutional law, new institutions have emerged, meant to guarantee to a greater extent the human rights and the functioning of the mechanisms of the rule of law. Of these new institutions set out in the constitution we mention the institution of the Ombudsman (People's Advocate), the courts of accounts, the courts/ constitutional councils.

-A flexibility of the constitutional principle was observed regarding the achievement of the separation / balance and cooperation of the powers in the state, which remains a fundamental principle.

- New opportunities have emerged to guarantee the constitutional rights of citizens, the legal channels have improved, while a junction between the internal mechanisms for the defense of citizens' rights (justice, administrative litigation, the unconstitutionality

exception in the process) and international mechanisms, such as the recognition of the right of citizens who are prejudiced in their rights, who have exhausted their domestic means of addressing the European Court of Human Rights.[17]

3. Constitutional reform

The act of revising the Constitution depends on the political decision to initiate the Revision procedure, but at the same time it must be legally grounded and correspond to the historical needs of the state' social system in view of its subsequent evolution. The revision of the fundamental law must not be subordinated to the political interests of the moment, but only to the general social interest, well expressed and outlined in law.

The 2003 constitutional reform in Romania aimed at clarifying and implementing some of the fundamental rights and freedoms of citizens and made it important to state that the Romanian state guarantees equal opportunities for women and men in order to occupy public positions or dignities. [18]

The revision of the Romanian Constitution aimed at strengthening the principles of the rule of law, political and institutional pluralism, the principle of the separation of powers in the state, and the principle of parliamentary supremacy. According to art.152, the limits of the revision of our Constitution are laid down, but the erroneous, political interpretation of these constitutional provisions may distort the meaning and purpose of these constitutions.

It has been observed that in the two decades and half of constitutional and democratic life in Romania they have demonstrated that the political power, through the decisions taken, has often distorted constitutional principles and rules by interpreting contrary to the democratic spirit of the Fundamental Law in order to support conjunctural or political interests. The consequences were and are obvious, generating the restriction or violation of fundamental rights and freedoms, or social tensions. Failure to respect the constitutional role of state institutions and the organization of political actions contrary to constitutionalism goes beyond the rule of law.

The bicameral structure of the Romanian Parliament is appropriate to the state and social system and it is a necessity for Romania to represent the counterpart to the executive in the context of the exigencies and the balance of powers in a democratic

state. The current parliamentary system of Romania continues the democratic traditions of bicameralism. Prof. Tudor Drăganu stated that: "The revised Constitution establishes a system that is claimed to be bicameral, but it is currently functioning as a unicameral system, condemned to violate in some aspects the most elementary principles of the parliamentary regime and incorporating itself the danger of future serious malfunctions in the implementation of legislative activity.[19]

The opinion of Professor T. Draganu is the correct one, as there is no distinction between the two Chambers of Parliament, and this aspect has also been noted by the Constitutional Court, and it is therefore imperative that a future amendment to the Basic law should taken into account these aspects in order to achieve a real functional differentiation of the two chambers.[20]

Nowadays, although the Parliament is bicameral, by examining the draft laws in a first reading room, and the other in the second reading, the bicameral Parliament is a one-chamber in fact.

Another important aspect that violates the principle of the separation of powers in the state is the adoption of laws by engaging the government's political accountability. This constitutional procedure must be exceptional, well justified by a political situation and a well-defined social imperative. The frequent use of the procedure of adopting laws by engaging government responsibility would weaken the role of Parliament, violating a fundamental principle of the rule of law - the separation of powers in the state.

The constitutionalization of law is the main effect of constitutional control and is manifested by the complex action of interaction between the constitution and the other legal provisions.[21]

General control of the implementation of the Constitution is the essential condition of the rule of law because in its absence the Constitution would have only a symbolic significance.

In our opinion the exercise of constitutional control is necessary due to the existence of the principle of separation / balance of powers in the state and, on the other hand, the constitutionality control is based on the principle of the supremacy of the constitution. This principle is characterized as a "generator of legal and legal stability in constitutional and democratic organization".[22]

Nowadays, the principle of legality has become more and more enforced. From the point of view of the principle of legality, the most important social relations must be regulated by legal norms issued by a representative body (parliament) and the relations between the state and the law are expressed most impressively by the doctrine of the rule of law.

Conclusions

1) The Constitution is the fundamental source of the political system and the national legal system.

2) The rule of law is opposed to any legality established otherwise than through a parliament elected by universal suffrage and acting in full accordance with constitutional principles.

3) The general control of the implementation of the constitution is accomplished by the state activity realized through the organization and functioning of the public authority by establishing the competences of the state bodies and the principles of the relations between them by imposing the imperative that all the state organs carry out their activity only in accordance and within the limits established by constitution.

4) The Government of Romania is imitated in the practice of emergency ordinances, in order not to create an imbalance between the executive and the legislature through the discretion of the Government's discretionary power.

5) We consider it necessary to strengthen the role of the Constitutional Court in its capacity as guarantor of the Constitution and to confer new powers in the sense of limiting the excess power of the state authorities.

6) The control of the constitutionality of laws is a result of state and legal realities, it is the guarantee of constitutional structures and principles of the rule of law.

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Journal of Law and Administrative Sciences
No.7/2017

ECONOMIC AND ADMINISTRATIVE MEASURES TO STOP THE DEMOGRAPHIC DECLINE IN ROMANIA

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Abstract

The demographic decline represents one of the serious problems faced by most European countries over the last decades. Starting with 1992, Romania also has entered a demographic decline that has increased from year to year, mainly characterized by the decrease in the number of the population and by the aggravation of the age structure. This paper aims to analyze, first, the dimensions of the demographic decline in Romania as well as to highlight the determinant role of the natural increase of the population in maintaining this decline. At the same time, the paper highlight the need for a coherent, demographic policy, scientific fundamented, in order to ensure the recovery of the birth rate and, implicitly, to stop the demographic decline. I have presented some of the economic or administrative measures put in place by the Romanian state for stimulating birth rate and supporting families, measures that have a birth-boost effect only for certain social categories.

Keywords: demographic decline, birth rate, demographic policy, administrative measures, economic measures

Introduction

In the last decades, most European countries have been experiencing worrying demographic phenomena, having as key features birth rate drops and the aging of the population. With a different country-to-country causality, depending on the actual economic and social conditions, these unfavorable demographic developments, especially through the medium and long-term negative implications, have begun to be seriously addressed by national authorities, Member countries of the European Union, that have developed their own social policies regarding the population, based on complex multidisciplinary analyzes.

Romania is no exception to the developments registered at the European level; the last decades have been marked by a continuous and significant drop in Romania's population, but also by a worrying increase in the share of the elderly population.

In the new context, analyzing the causes that have determined the current serious situation of the Romanian population and elaborating recovery policies of limiting the negative consequences, becomes imperative for the entire Romanian society. They must be found in a science-based demographic policy that is capable of hindering the drop in birth rates and gradually increasing it, further reducing mortality and reducing external migration to normal dimensions, all on the background of improving the quality of life.

Along with other measures included in the demographic policy, the measures of an economic or administrative nature also contribute to reducing the demographic decline, at least by boosting birth rates among certain social categories.

The content and the necessity of demographic politics

Just as in other domains, in the case of human populations it is also necessary to implement coherent measures to ensure the desired evolution, measures which, in a simplified formulation, are called demographic policies. The demographic policy is one of the important components of the socio-economic policy and represents [1] a system of measures taken to influence the demographic variables in the sense that the state consider them desirable on short term, but especially on long term, in accordance with its general interests, respecting the fundamental rights of the individual and the couple.

A demographic policy gathers the options, objectives, related legislation, financial means and the assessment of the effectiveness of the adopted measures. Demographic policies must be developed based on a pertinent analysis of the demographic trends, in a general socio-economic context, completed with their prospective evaluation, especially in terms of consequences.

In terms of the determined objective, the demographic policy can aim either to keep the population number at the existing values at a given time, or to obtain an increase or decrease in this number. Therefore, we have to deal with public policies of intervention in a natural process of increasing the population, on which there are very different conceptions [2]**.** It should be mentioned that between demographic policies and other economic and social policies there are close interdependencies in the sense that we encounter both situations in which the demographic objectives (population control) are

achieved by extra-demographic actions (political, social, economic, cultural) and situations that use demographic means to achieve objectives in other domains. All these aspects make it necessary to analyze the relationships between objectives and means in public action.

Regardless of the nature of the adopted demographic policy, the possible means of use are:

a) economic-financial or fiscal means;

b) legal and administrative means;

c) healthcare means;

d) cultural, educational or propagandistic means.

The nature or the actual content of these means depends on the pronatalist or antinatalist orientation of the respective policy, whether it is intended to stimulate or to discourage fertility. For example, if we want to encourage the birth rate, we will use stimulating economic means such as children's allowances, family allowances, tax deductions, economic aid for families with many children, etc. Alternatively, if an antinatalist policy is promoted, economic or fiscal penalties of various kinds may be used if the optimal number of children is exceeded. The question is whether demographic policies are needed or not, whether it is correct or not to intervene in the natural evolution of population. We believe that the answer is an affirmative one because there are frequent cases when the dynamics of the populations show developments that can have serious social, economic or even demographic consequences.

What can we say about the need for demographic policy in Romania?

To answer to this question we should start with the trends that have sprung in the evolution of the population over the last 25 years.

The statistical data published by the NIS mainly highlight the following changes that have occurred in the evolution of the demographic components after 1989:

a) the noticeable decrease in birth rate and fertility;

b) maintaining general and infant mortality at high levels;

c) maintaining the negative balance of external migration.

As a result of these trends, the population of Romania registered negative developments, mainly related to the process of continuous numerical reduction and acceleration of

demographic aging and implicitly increasing the "pressure" of the elderly population on the important systems in society. Seeing the direct negative consequences that the aforementioned demographic aspects have on the public social insurance system, the health insurance system, the labor market, etc., we can affirm that even in the case of Romania there is an absolutely necessary need for coherent, effective demographic policies.

Some demographers [3] appreciate the need for a well-funded strategy aimed at the recovery of the population, which should be the result of initiatives of the political class with the essential contribution of specialists, supported by the church, civil society, non-governmental organizations. The economic component, oriented towards the children, the mothers, the young families should be essential in this strategy.

Table no.1

The evolution of usual resident population, in Romania, during 1990 - 2015

Years	Inhabitants number on July 1	Dynamic 1990=100 %	Years	Inhabitants number on July 1	Dynamic 1990=100 %
1990	23206720	100.0	2003	21574365	93.0
1991	23185084	99.9	2004	21451845	92.4
1992	22788969	98.2	2005	21319673	91.9
1993	22755260	98.1	2006	21193749	91.3
1994	22730622	97.9	2007	20882980	90.0
1995	22680951	97.7	2008	20537848	88.5
1996	22607620	97.4	2009	20367437	87.8
1997	22545925	97.2	2010	20246798	87.2
1998	22502803	97.0	2011	20147657	86.8
1999	22458022	96.8	2012	20060182	86.4
2000	22435205	96.7	2013	19988694	86.1
2001	22408393	96.6	2014	19913193	85.8
2002	21675775	93.4	2015	19819697	85.4

Data sources: : Calculated data by authors based on the information from Data base TEMPO-on line, NIS Bucharest, [4].

Negative trends of the number and structure of Romania's population, after 1990

On July 1st, 2015, Romania's resident population was 19.8 million inhabitants, dropping nearly by 15% compared with July 1st, 1990 (-3.3 million inhabitants). The data in Table no. 1 highlight the fact that starting with 1990, Romania's population has entered a continuous reduction process, which has led to a significant dropping in its population.

The changes occurred after 1989 in the political system, economy and social life, have led to changes in the demographic behavior of the population, which had the main consequence of decreasing its number.

Without being a singular international phenomenon - similar developments being recorded especially in all European countries - this demographic decline is, however, likely to alarm us, through its dimensions, and in particular through the serious economic and social consequences in the medium and long term. Without attempting a detailed analysis of the causes that determined the demographic decline in Romania, it should be noted that it is necessary to start this approach from the determinants of the evolution of the population: birth rate, mortality and migration. Hereafter, we will only analyze the influence of the natural movement on the evolution of the population of Romania. The natural movement of the population (the difference between live birth and deaths) is an essential component of characterizing the demographic processes in a particular human community [5]**.**

The data in Table no. 2 highlight that only in 1990 and 1991 the number of live births was higher compared to the number of deaths, since 1992 and so far a negative natural increase has been recorded (chart no.1).

But what are the causes of this negative natural increase, which reached 60674 in 2015?

Analyzing the data from Table no. 2 we can easily notice that the negative natural growth registered in Romania since 1992 is mainly caused by the unfavorable birth rate, the number of live births decreasing from 314746 in 1990 to 201023 in 2015. In the same period, but especially after 2000, the number of deaths remained relatively constant around 260000. In these circumstances, we can safely affirm that, in order to reduce the negative natural growth or even to record positive growth, the main solution is to restore the birth rate of the population.

In the case of birth rate, the significant decrease in Romania was expected after 1989 [6], as a result of access to family planning facilities and the possibility of legal interruption of pregnancy. The downward factors have been existing for a long time, their influence was visible in the early 1960s, but it was stopped by Communist decrees, and only the

liberalization following 1989 was the beginning of this decline, but it was also emphasized by the social and economic context.

Table no.2

The evolution of live-births, deaths and natural increase, in Romania, during 1990 - 2015

Years	Live-births	Deaths	Natural Increase	Years	Live-births	Deaths	Natural Increase
1990	314746	247086	67660	2003	212459	266575	-7406
1991	275275	251760	23515	2004	216261	258890	-42629
1992	260393	263855	-3462	2005	221020	262101	-41081
1993	249994	263323	-13329	2006	219483	258094	-38611
1994	246736	266101	-19365	2007	214728	251965	-37237
1995	236640	271672	-35032	2008	221900	253202	-31302
1996	231348	286158	-54810	2009	222388	257213	-34825
1997	236891	279315	-42424	2010	212199	259723	-47524
1998	237297	269166	-31869	2011	196242	251439	-55197
1999	234600	265194	-30594	2012	201104	255539	-54435
2000	234521	255820	-21299	2013	214932	250466	-35534
2001	220368	259603	-39235	2014	195612	254791	-59179
2002	210529	269666	-59137	2015	201023	261697	-60674
Total 1990-2016					**5938689**	**6790414**	**-851725**

Data sources: : Calculated data by authors based on the information from Data base TEMPO-on line, NIS Bucharest, [4]

Among the factors of decrease in birth rates in Romania, after 1989, the most significant are considered to be:

− women's empowerment and increased participation in economic activities outside the household;

− increasing the duration and level of education;

− the emergence of modern contraceptive means ;

− weakening the influence of cultural norms;

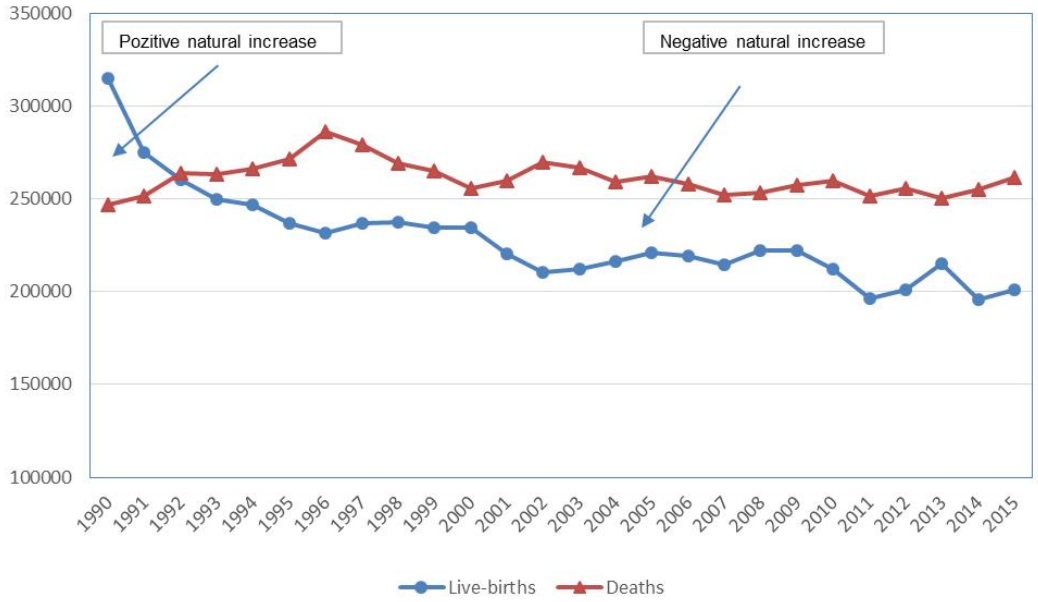
− increasing social mobility;

− high childcare costs;

− unemployment and job insecurity, etc.

Chart no.1

The evolution of live-births, deaths and natural increase, in Romania, during 1990 – 2015 (number)



Data sources: : Calculated data by authors based on the information from Data base TEMPO-on line, NIS Bucharest, [4].

We can therefore conclude that the new economic and social realities have substantially contributed to changing the demographic behavior of the Romanian population in the sense of reducing birth rates.

Maintaining the low level of birth rate for a long time, namely from 1991 until now, has resulted not only in the significant decrease of the population of Romania but also in the deterioration of the age structure of the population.

In other words, not the decrease in the number of the population is the most worrying development for Romania, but the fact that this development is associated with a continuous degradation of the age structure. The data in Table no. 3 (and Chart no. 2) show an increase in the share of the elderly population in the age group of 65 and over, from 10.4% in 1990 to 17.2% in 2015, while the share of the young population (0-14 years) decreased over the same period from 23.6% to 15.5%.

This change in age structure is unfavorable because the third-age population, continuously increasing in number, is a vulnerable social category with specific problems

compared to other social segments. Ensuring the needs of the elderly for a decent living covers a wide range of concerns, not only economically, but also socially and psychosocially. The elderly population will need the country's support, but the short-term estimated economic and institutional capacity limits the possibility of meeting this need. In other words, there is a danger of a serious demographic imbalance in the country, which causes serious economic and social imbalances: the labor market, the pension system, the health services, the education, the general social protection system, the income system and budget expenditures, etc.

Table no.3

The structure of population, by age, in 1990 and 2015 (%)

Grupe de vârstă	1990	2015
Total	**100,0**	**100,0**
0-14	23.6	15.5
15-64	66.0	67.3
65 si peste	10.4	17.2

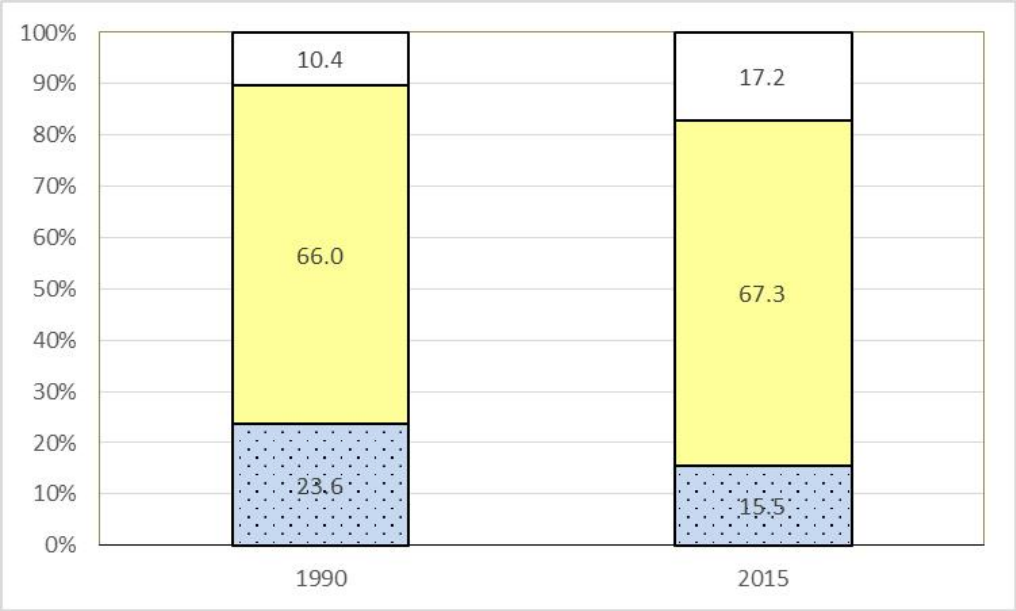
Data sources: : Calculated data by authors based on the information from Data base TEMPO-on line, NIS Bucharest, [3].

The gradual accentuation of the demographic aging process will bring about a new pressure in society: the ratio between the number of people entering the labour market and contributing to the budget and social security pension and health insurance funds and the number of elderly people who are beneficiaries of the funds of pensions and health, a ratio that is continuously dropping, creating imbalances.

Consequently, taking into account the profound economic and social implications of the demographic decline, a vigorous intervention of the state is needed, not to stop the decline of the population, a difficult and even impossible objective to achieve in the short and medium term, but to diminish the level of degradation of its future structures.

Chart no.2

The structure of population, by age, in 1990 and 2015 (%)



Data sources: : Calculated data by authors based on the information from Data base TEMPO-on line, NIS Bucharest, [3].

We will further present some economic and administrative measures that have been taken to improve birth rates, as well as some proposals in the same direction.

Some measures for stopping the demographic decline in Romania

As previously mentioned, the most important measures for demographic recovery and, especially, for stimulating the birth rate are those of economic, financial, administrative, legal nature, etc. We will further discuss some of the economic or administrative measures used in Romania to support birth growth.

The Social Assistance Law no. 292 of 2011 [7], generally states the benefits for child and family support related to the birth, education and maintenance of children and comprises the following main categories:

a) child allowances;

b) allowances for children who are temporarily or permanently deprived of parental care;

c) child raising allowances;

d) facilities, according to the law.

The method of determining, as well as the categories of beneficiaries of these incentives, are specified in the following normative acts:

- *the child state allowance*, established by Law no. 61/1993 [8] on state allowance for children, modified by the adoption of Law no. 125/2015 9] regarding the approval of Government Emergency Ordinance no. 65/2014 [10] for amending and completing some normative acts;

- *the child raising allowance and the incentive* were established by the Government Emergency Ordinance no.148/2005 [11] on the support of the family for raising children, subsequently adopting the Government Emergency Ordinance no. 111/2010 [12] on the parental leave and monthly allowance for raising children, modified by Law no. 66/2016 [13] for amending and supplementing the Government Emergency Ordinance no. 111/2010.

- *allowance for family support*, the benefit was established by Law no. 277/2010 [14] on family support allowance and it is addressed to families who have children in their dependence and earn less than the value of a threshold set by law;

- *the monthly placement allowance* is granted to each child taken in familly placement, being established by Law no.272/2004 [15] on the protection and promotion of children's rights, modified by the Government Emergency Ordinance no.65/2014 [10] for the modification and completion of some normative acts.

However, we consider that these economic measures are not always an incentive for the birth rate, given the example of countries with a very high level of development, such as Germany, which has a lower birth rate than Romania. Economic and financial incentives can indeed lead to an increase in the birth rate for social categories with low-income and a lower level of education.

The issue of the birth rate's declining in Romania and the measures to stop it is a serious concern for demographic specialists, for the academic world, public authorities, non-governmental organizations, etc. In this sense, we recall the work of the National Commission for Population and Development [6]**,** who set out some measures to stimulate birth rates in the population with a high standard of living and education:

− flexible work schedule for parents with small children;

− women's possibility of early reintegration into the labor market after the maternity leave;

− strengthening regulations regarding job stability for parents who raise children;

− specific policies to stimulate the birth of the second child;

− increasing the accessibility and quality of free social care and health services for children and mothers, closer to real needs;

− policies to prevent unwanted pregnancy, abortion and child abandonment.

Regarding the proposals of the non-governmental organizations, we allude to those of the Family Coalition [16], which refer to a set of measures for increasing the birth rate in Romania, such as:

- A substantial amount assigned for each child, starting with the second child;
- For mothers with at least 3 children, the possibility of reducing the retirement age by 2 years for each child;
- Extending parental leave up to 3 years of extra-uterine life, i.e. 5 years of extra-uterine life, for the child classified in any of the disability degrees;
- Supporting practicing the job of nanny / babysitter;
- Support consisting of material incentives (reintegration bonuses), legal, economic, professional and psychosocial guidance for young emigrated families who return to the country.

We believe, however, that stopping the decline of natality can not be achieved solely on the basis of economic, administrative or legal measures, and in no case in the short term. Recovery of birth rate in Romania would be possible only in the long term and the conditions are multiple, of cultural, social, demographic, ethnic, economic, etc. nature.

Conclusions

After 1989, the population of Romania has recorded negative developments, materialized mainly in the process of continuous numerical reduction, as well as in accelerating the demographic aging and implicitly increasing the "pressure" of the elderly population on important systems in the society. Regarding the direct negative consequences that the aforementioned demographic aspects have on the public social insurance system, the

health insurance system, the labour market, etc., we can assert that even in the case of Romania, there is an absolutely necessary need for coherent, effective demographic policies. Major changes in the structure of population require structural changes in society: in economy, infrastructure, health care and social assistance specific to the elderly population. At the same time, we can affirm that economic or administrative measures can have only a short-term impact on the birth rate and only on some social categories.

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[12] OUG nr. 111/2010 privind concediul și indemnizația lunară pentru creșterea copiilor

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Journal of Law and Administrative Sciences
No.7/2017

NATIONAL WEALTH – PREMISE OF ECONOMIC AND SOCIAL DEVELOPMENT

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Abstract

National wealth is one of the most important macroeconomic indicators that basically highlights the material and spiritual wealth of a nation, accumulated over time. Both through the produced capital and the intangible capital, the national wealth plays a decisive role in ensuring sustainable economic and social development. This paper aims to present first the concept of national wealth, as well as the concerns and difficulties in measuring this indicator on a national and international level. Secondly, based on a World Bank study, we conducted a comparative analysis of the national wealth of 28 EU member states, insisting on Romania's place. The presented data highlight both the trend of increasing the value of the national wealth of all the 28 EU countries, but also the significant differences in the level of total national wealth.

Keywords :national wealth, produced capital, natural capital, intangible capital, wealth per capita

Introducere

National wealth is an important economic category that represents, on one hand, a result of the activities carried out during the whole period of existence of a country, and on the other hand a premise of socio-economic development, of increasing the quality of life and the country's international competitiveness. Moreover, during the development of society and the intensification of the law of ascension of human needs, the category of national wealth has become a key issue of the economic science and of the progress of society from the ontological and axiological point of view [1].

We can affirm that the process of economic growth and development requires policy substantiation by carefully analyzing the components of national wealth. These are, in fact, the resources of a nation that boosts its economic well-being. The concept of national wealth is considered to be a major part of the economic potential of a country and it is defined [2] as the total of the material, natural and spiritual resources existing at one point in society. According to other authors [3], the national wealth comprises all the goods a nation possess at a given moment and usually includes material goods

accumulated over the years, non-material goods, human resources, natural resources and financial resources. Other Romanian economists appreciate that the national wealth is a major social economic category, used to evaluate the economic potential and the level of development of a country [4].

We encounter concerns regarding the definition and measurement of national wealth in the case of some international bodies and institutions, financial institutions, etc. In the OECD concept, the national wealth is the sum of the material and spiritual assets of a nation [5].

Through the indicators regarding the size, the structure and the evolution of national wealth, it is possible to characterize the state and dynamics of a country's economy. Taking into account the previous approaches of the Romanian economists, we consider [6] that the national wealth has the following components:

- non-material wealth, including non-material items such as human capital, individual freedom, personal and collective security, unrelated stock of people etc.;
- material wealth with two components: non-reproducible material wealth (mineral resources, land, forests etc.) and reproductive material wealth (durable consumer goods, goods that primarily serve productive purposes);
- the net position regarding foreign countries, which expresses the difference between claims on other countries and the country's commitments to foreign affairs.

We also find a similar composition of the national wealth, but in a different form of presentation, in economists from abroad [7] who appreciate that its main components are:

- physical or produced capital(physical infrastructure, buildings, machine etc.);
- human capital(the education and stock of knowledge embodied in human beings within a country);
- natural capital, which includes the underground assets (minerals, fossil fuels), commercial land, fish stocks, and natural land;
- intellectual property(the value of contracts, leases, patents, software, databases, and other intangible property);
- social/institutional capital which incorporates intangible factors;

- net financial assets, the measure of the net holdings of financial assets across national borders.

In a synthetic formulation, other authors [8], consider that national wealth has three major components: natural capital, produced assets and human resources.

Concerns regarding the measurement of national wealth in Romania and on the international level

The important role played by national wealth in supporting economic and social development, in ensuring a certain level of quality of life for a nation, has determined, over time, the interest of economics specialists in defining the concept and assessing its size. In Romania, estimations of national wealth have been achieved only since the 20th century, in the previous centuries, only simple approaches to the sources of economic growth or the components of national wealth had existed.

In the following, I shall present some of the first attempts of some Romanian economists to measure the national wealth:

- N. Angelescu, in his 1915 paper „*Avuția Națională a Romîniei"*, assessed the agricultural land, the forests and the fish ponds at 19.1 billion lei, representing 70% of the national wealth estimated at 28.8 billion lei [9].

- D. Gheorghiu (in 1916) and D.G. Creanga (in 1927) conceived and published an estimation of the national wealth worth 30 billion lei of gold [9]**.**

- According to L.Turdeanu [9], during 1930-1940 some components of the national wealth were evaluated by economists such as Roman Moldovan, Virgil Madgearu, Victor Jinga, Mihail Manoilescu and others.

- N. Georgescu-Roegen estimated Romania's national wealth on the basis of its own methodology at a minimum of 1337 billion lei, paper [10].

- In 1940, L.Turdeanu made an estimation of the national wealth, including for the first time the energy potential and subsurface riches [9].

- V. Axenciuc, on the basis of complex studies and researches, carried out the assessment of Romania's national wealth for the period 1947-1948, which he estimated at a value of 1098 billion lei in foreign currency, 1938 prices [11].

During 1950-1990, the attempts to assess the national wealth of Romania focused mainly on the calculation of the components that make up the accumulated wealth, the estimation of intangible capital's components raising particular methodological issues.

Among the international bodies, the World Bank is distinguished by its preoccupations with the establishment of a methodology for estimating national wealth, as well as with the conception of studies aimed at estimating national wealth for a large number of countries.

The system of indicators of the national wealth developed by the World Bank's specialists comprises three categories of components, as follows [12]:

1. The produced or physical capital (machinery, equipment and structures, urban land).
2. The natural capital(energy resources, mineral resources, timber resources, nontimber forest resources, crop land, pasture land, protected areas)
3. The human and institutional capital

According to the World Bank's methodology, the intangible capital is determined as a residual value, starting from the total national wealth's value.

The human capital is the sum of the knowledge, skills and know-how held by the human resources of a country.

The institutional capital represents the confidence that the citizens of a state have in the institutions and in the political environment of that state, which leads to the increase of labor productivity, and thus to the increase of the national wealth

In estimating the national wealth, the World Bank's economists are resting upon a postulate of economic theory, which defines total wealth as the actual net value of future consumption. Considering this definition, the total national wealth is estimated by forecasting the evolution of consumption over a period of time and updating the values thus obtained at the level of one reference year for the latest World Bank calculations in 2000.

The national wealth of Romania compared to that of European countries, based on World Bank's data

Table no. 1

The evolution of Total Wealth per capita, in the EU28 countries, in 2000 and 2005

EU (28 countries)	Total Wealth (2005 US$ billions)		Wealth per capita (2005 US$)	
	2000	2005	2000	2005
Belgium	5345	5893	521329	562363
Bulgaria	378	495	46892	63993
Czech Republic	1571	1851	152942	180820
Denmark	3672	4024	687959	742954
Germany	43269	45127	526329	547201
Estonia	…	…	…	…
Ireland	1948	2492	511867	599115
Greece	3732	4362	341860	392815
Spain	15108	17723	375243	408385
France	31897	35699	541594	586448
Croatia	620	740	137597	166497
Italy	27236	29203	478252	498277
Cyprus	241	…	347611	…
Latvia	179	279	75566	121274
Lithuania	327	454	93437	132915
Luxembourg	363	419	827661	917530
Hungary	1373	1745	134456	173007
Malta	95	104	244702	257968
Netherlands	8857	9687	556176	593547
Austria	4353	4698	543344	570654
Poland	4359	5188	113350	135941
Portugal	3004	3226	293743	305832
Romania	*1383*	*1750*	*61643*	*80906*
Slovenia	…	…	…	…
Slovakia	606	767	112471	142373
Finland	2494	2992	481870	570256
Sweden	4996	5667	563351	627950
United Kingdom	34411	39908	575979	662624

Data source: Extracted data from *The Changing Wealth of Nations, Measuring Sustainable Development in the New Millennium,* The World Bank, Washington DC, 2011, [12].

In the following, based on the World Bank's data presented in Table 1, we will analyze the level of the national wealth in the case of the 28 EU member states, taking two indicators into account: the total national wealth and per capita national wealth. Regarding the total wealth, we note that in 2005 there were very large discrepancies between the 28 EU countries. The lowest values of total national wealth were estimated in some countries

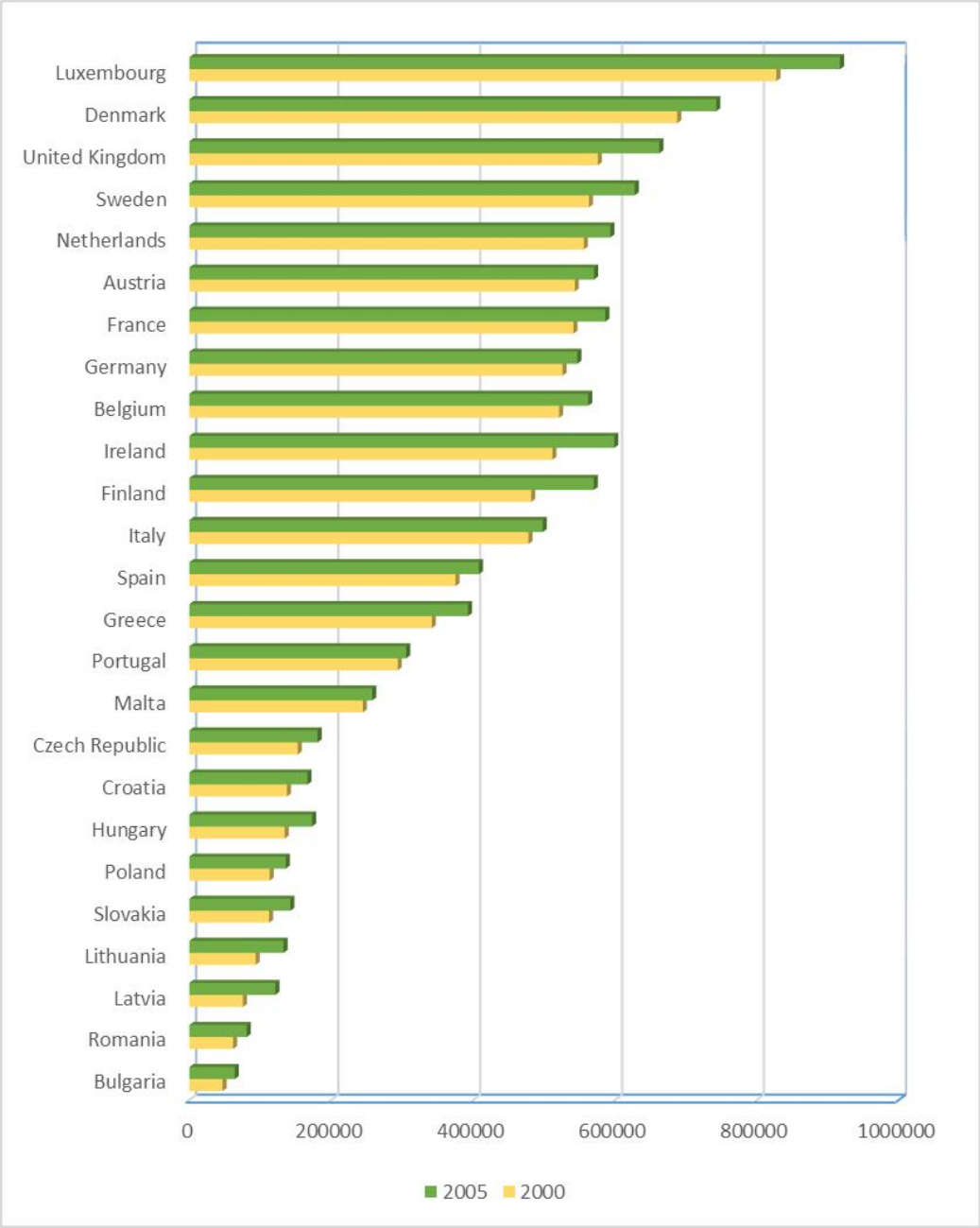
like: Malta (104 billion USS), Latvia (279 billion USS), Luxembourg (419 billion USS), Lithuania (454 billion USS), Bulgaria (495 billion USS), etc. Also, very high national wealth values were estimated in the case of the developed European countries: Germany (45127 billion USS), United Kingdom (39908 billion USS), France (35699 billion USS), Italy (29203 billion USS) etc. Romania's total national wealth increased from 1383 billion USS in 2000 to 1750 billion USS in 2005.

Also, the data in Table 1, highlight the fact that in all 28 EU member states, the total national wealth increased in 2005, compared to the year 2000, due to the accumulations achieved during this period, both for tangible and intangible capital.The data on average national wealth per capita are much more suggestive, being an indicator that expresses the possibilities a state has to provide a certain level of economic and social development. Even though the differences between countries are not as high as in the cases of the total national wealth and per capita wealth, there are significant differences, as they result from chart 1. The highest values of the national wealth per capita were estimated for 2005 in the case of Luxembourg (917530 USS), Denmark (742954 USS), UK (662624 USS), Sweden (627950 USS) etc. whereas the lowest values were found in countries such as: Bulgaria (63993 USS), Romania (80906 USS), Latvia (121274 USS), Poland (135941 USS) etc. It can be seen, therefore, that the lowest per capita national wealth is found in the case of former communist countries, countries with a much smaller development potential than that of Western European or Nordic countries.

As previously mentioned, in 2005 Romania occupied the penultimate place among the EU member states, in terms of per capita national wealth, a situation caused to a certain extent by the low level of gross domestic product achieved in the last decades, compared to that achieved in developed European countries.

Chart no. 1

The evolution of Total Wealth per capita, in the EU28 countries, in 2000 and 2005 (2005 US$ per capita)



Source: Authors based on Table 1.

The total value of the gross domestic product annually contributes to the consolidation of the national wealth, accumulated mainly by the gross capital formation component. On the other hand, we can say that the level of gross domestic product has been influenced by the size of the national wealth which, as I mentioned, is a premise for economic growth.

Table no.2

Estimates of Romania's total wealth and its subcomponents by economy
for the year 2005

	2005	
	2005 US$ per capita	Structure (%)
Total wealth	**80906**	**100.0**
Natural capital	9058	11.2
Produced capital+Urban Land	14282	17.7
Net Foreign Assets	-1403	-1.7
Intangible Capital	58959	72.9

Data source: Calculated data by authors based on the information from *The Changing Wealth of Nations, Measuring Sustainable Development in the New Millennium,* The World Bank, Washington DC, 2011, [12].

Based on the data in Table 2, we will make some comments on the structure of Romania's national wealth. It can be observed that the highest share in per capita income is held by the intangible capital (72, +%), followed by the produced capital (17.8%) and natural capital (11.2%). In the case of Romania, the net position vis-à-vis foreign countries recorded a negative value (-1403 USS / capita) and implicitly a negative share (-1.7%). It should be noted that the share held by the intangible capital in Romania's national wealth (72.9%) is quite small compared to that estimated for the developed European countries such as: Germany (79.9%), France (82.1% %), Denmark (%), Belgium (79.6%), Austria (80.0%), Sweden (84.1%), etc. This higher share of intangible capital registered in more developed European countries highlights the higher attention paid to the human capital, the education and knowledge and education stock in these countries. We can affirm that the structure of Romania's national wealth, characterized by an insufficient accumulation of intangible capital, is not a modern one adapted to the requirements of sustainable economic and social development.

Conclusions

The national wealth is a very important macroeconomic indicator, that highlights the wealth a country has accumulated over time and that represents the base of economic and social development. Estimating the value of national wealth is a very complex scientific task and requires laborious calculations. For these reasons,determining and estimating the national wealth is done at high time intervals and only in countries with top of the range statistic and accounting records. The World Bank's study highlights large

discrepancies in the total value of national wealth held by the 28 EU member states. Therefore, in 2005, the total national wealth of the 28 EU member states amounted to 45127 billion US $ for Germany and 104 billion US $ for Malta. In terms of per capita national wealth, even though there are differences, these are lower compared to the existing ones in the case of total wealth. Romania, unfortunately, occupies the penultimate place with regard to the level of national wealth per capita, which limits its possibilities to ensure a higher level of economic and social development.

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