Petroleum-Gas University of Ploiesti

The Centre for Studies and Legal and Socio-Administrative Research

JOURNAL OF LAW AND ADMINISTRATIVE SCIENCES

No.8/2017
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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CONTENTS

Gheorghe CALCAN - ANIBAL TEODORESCU ON THE MEANINGS OF THE WORD COUNTRY……4

Mihaela Cristina PAUL - THE LEGAL REGIME OF WASTE MANAGEMENT……..12

Daniela STĂNCIULESCU, Adriana Magdalena SANDU - ETHICAL ASPECTS OF THE SCIENTIFIC RESEARCH WITHIN THE PUBLIC ADMINISTRATION……19

Adrian Cristian MOISE - A FEW COMMENTS ON THE COUNCIL OF EUROPE CONVENTION ON CYBERCRIME……28

Gabriela VASILESCU - COMMENT ON THE ADMINISTRATION OF THE ANCIENT CITY. PLATO……39

Ramona DUMINICĂ, Diana Maria ILIE, Ileana BĂDAN - FEMINISM IN THE ERA OF GLOBALIZATION. BETWEEN RIGHTS AND STEREOTYPES……...…47

Marius ANDREESCU, Andra PURAN - CRITERIA FOR DELIMITING DISCRETIONARY POWER FROM EXCESS OF POWER IN THE WORK OF PUBLIC AUTHORITIES……..64

Mircea TUTUNARU - THE CONCEPT OF FREEDOM AND THE RESPECT FOR THE LAW IN A RULE OF LAW……..75

Nicoleta DIACONU - THE LEGAL COORDINATES OF THE OPERATION OF THE EUROPEAN UNION "WITH MORE SPEED"……...…83

Valentin Stelian BĂDESCU - EUROPEAN INTEGRATION/NATIONAL IDENTITY; PLURILINGVISM/MULTICULTURALISM - ROMANIAN LEGAL LAW AND CULTURE: ASSESSMENTS, PERSPECTIVES……..92

Eufemia VIERIU - THE CONSTITUTIONAL PRINCIPLES APPLICABLE TO THE FUNDAMENTAL RIGHTS, LIBERTIES AND DUTIES OF ROMANIAN CITIZENS……..120

Dumitru VIERIU - THE CONCEPTUAL ANALYSIS OF PROFESSIONAL ETHICS……137

Cornel LAZĂR, Mirela LAZĂR - DIFFERENT EVOLUTIONS OF THE SHARE OF LIVE BIRTHS OUTSIDE MARRIAGE, IN THE EU MEMBER STATES……...…145

ANIBAL TEODORESCU ON THE MEANINGS OF THE WORD COUNTRY

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Abstract:
This paper presents the interpretations that Anibal Teodorescu gave to the word country, as exposed within the conference this great Romanian jurist held at the Romanian Academy in 1945. The etymon of the word country is the Latin terra, meaning land. Anibal Teodorescu demonstrated that Romanians, unlike any other Romanic people, had given this word new, more profound meanings which they related to their national existence and development: in his opinion, country means: state, someone's homeland and even the nation, alongside the land inhabited by the Romanian people.
Keywords: *Anibal Teodorescu, country, Romanian Academy discourse*

1. Introduction

In this paper we aim at pinpointing the interpretations that Anibal Teodorescu gave to the word country. By doing this, we also intend to bring in the foreground an aspect of the so called "minor" opera of Anibal Teodorescu, which consists of 37 articles, 6 conferences and 3 studies published in the volumes of several scientific events [1].

Anibal Teodorescu approached the topic of the possible meanings that one can give to the word country within the conference entitled "Valoarea juridică a unui vechi cuvânt românesc" (The Legal Value of an Old Romanian Word) that he held on November 9, 1945, as a correspondent member of the Romanian Academy. After a short biographical survey, we shall analyze the demonstration made by Anibal Teodorescu in front of the Romanian Academy members, and we will expose our conclusions on the issue.

2. Anibal Teodorescu: Biographical References

Anibal Teodorescu was born in 1881 near Focşani. He attended high school studies in this city and in Bucharest and, at the age of 22, he graduated from the Faculty of Law of Bucharest. Three years later, at the age of 25, Teodorescu got his doctorate in

Paris, and, from this stage, he started publishing in the specialized press. He practiced law since 1903 and became the President of the Romanian Lawyers [2].

In 1909, Anibal Teodorescu started his didactic activity, first as the collaborator of Professor Constantin C. Dissescu [3], and later on as a full member of the Department of Administrative Law. In 1939, he became the Dean of the Faculty of Law, position he held until 1940 [4]. As an authority in the field of the Romanian administrative law, the author published numerous studies, some of which, such as the two-volume Treatise on Administrative Law [5], became a landmark in the field. The main fields of interest were: powers' separation in the state, the theory of legality, the Romanian constitutional practice, the problem of decentralization, administrative responsibility, the problem of social solidarity, the history of the Romanian law and so forth. Teodorescu was also a founding member of the Romanian Institute of Administrative Sciences, a member of the Romanian Social Institute, as well as of other Romanian and foreign scientific associations. In 1945, the jurist became a correspondent member of the Romanian Academy.

During the Second Balkan War, in 1913, as well as throughout Romania's participation in the operations of the First World War, Anibal Teodorescu was concentrated in the army and got involved in the political life. He was a member of the National Liberal Party, of the People's Party and later on, of the National Revival Front. After the I WW, he was elected General Mayor of Bucharest (1926-1927) and he was also an MP.

In 1947, when the communist regime settled in Romania, the one who, exactly four decades before, had considered that socialism "had no chance" in Romania [6], was dismissed from education and detained from 1950 to 1957. After being released from prison, he was assigned to "Nicolae Iorga" History Institute in Bucharest and focused on research activity and on publishing several valuable laws of the old Romanian law [7]. Due to his efforts and results, the personality of Anibal Teodorescu revived, but the recognition of his work was, however, "partial and late" [8], as he ceased to exist in 1971.

3. Legal Meaning of the Word Country in Anibal Teodorescu' View.

The analysis of the conference Anibal Teodorescu held in front of the the Romanian Academy has enabled us to identify a three-part structure of the discourse, namely: early contacts between the Roman civilization and the Dacians, the Romance character of the Romanian language and specific meanings given to the word country (Romanian ţară < Latin terra).

3.1. Early Contacts of the Dacians with the Roman Civilization

In the conference held on November, 9, 1945, prior to announcing the topic of his discourse, Anibal Teodorescu stressed the importance of the contacts between the Dacians and the Roman civilization, long before the conquest of Dacia. These contacts began "150 years before Christ" [9], were very complex, and, even if not always peaceful, they proved fruitful for the Dacians' spirituality and for their linguistic background. The existence of such early contacts materialized in various accumulations and constituted the premise of the Dacians' Romanization in a relatively short period, from the year of their being conquered, i.e 106 AD, until the Aurelian retreat in 271/274 AD. Therefore, Anibal Teodorescu stated that "the wars between Trajan and Decebal did not represent the beginning but rather the end of the founding of our people" [10]. Only these conditions could explain why the Dacians' Romanization was realized in such a short time.

3.2. The Immutable Romance Character of the Romanian Language

Anibal Teodorescu was, undoubtedly, an admirer of the Roman culture, and, therefore, he considered the Roman influence on the Dacian society as a steady and benefic element which also contributed to an appreciable immutability of the Romanian language. In his opinion, this explains why the Romanian language has not experienced large fluctuations over time. "The entire surrounding nature, with its sky and stars, with its mountains, valleys and waters, with the fields ploughed by the Daco-Romans, with the grass that they stepped on or with the animals they used, bear Latin names. Family members and the house they lived in, as well as their beliefs, have all Latin names" [11].

In accordance with prior investigations of great Romanian historians, the orator stated that the process of the Romanian ethno-genesis was not an isolated phenomenon, as it "occurred identically or almost identically in other regions of Europe, where the Romans had settled, such as Italy or Iberia", or Gaul, we would add. The main factors of the Romanization process in Dacia were the Roman and the Dacian veterans, the townspeople settled in the villages for safety reasons, the Roman colonists and, last but not least, the "genius of Rome", as called by Gh. I. Brătianu, which was present in Dacia three centuries before Christ and three centuries afterwards. [12]

3.3. Meanings of the Romanian Word "ţară"

The word country (Romanian ţară) that Anibal Teodorescu chose to analyze represented the "slight and transparent transformation of the Latin terra", which meant land. [13] In the Romanian language, the word terra developed two dominant meanings: a) the land being inhabited and cultivated, and b) (a geographic sense) a region, a historical province or even someone's homeland. The latter meaning acquired special, sacred valences for the Romanians, aspect on which Anibal Teodorescu insisted.

In his opinion, the metamorphosis of the word terra began from the very Daco-Roman ethno-genesis. Our ancestors did not use this word to designate the land itself and preferred for this referent the term pavimentum. Daco-Romans gave the word terra other meanings, though all connected to the idea of land. Terra became in Romanian ţară, term that did not designate the land as its own anymore and that acquired a political sense. Some derivatives of the Latin terra have, however, retained the link with the land-related concept, such as ţăran (n. peasant), ţărănesc (adj.peasant), ţarină (n. piece of land), ţărână (n. dust).

The political meaning of the word can be traced in the names of several human communities organized in political and administrative forms, such as Bârsa Country (Ţara Bârsei), Oaş Country (Ţara Oaşului), Şipeneţ Country (Ţara Şipeneţului) and so forth. Later on, they united and formed state entities, such as the Country of Moldavia, Wallachia, also called the Romanian Country etc. Therefore, in the early Middle Ages, the

word country was already perceived as equivalent with the state [14], fact which is specific for the Romanian language.

The other Romance languages have strictly kept the primary, ancestral meaning of the word. Thus, in the Italian country is terra, in French - terre, in Spanish – tierra and in Portuguese - terra. Our Daco-Roman ancestors acknowledged terra as that sacred place designated by the Greeks through Gaea, as the place where the members of their collectivity, principality or Country/ 'Ţară' dwelt. "The land, terra, is equivalent with the people itself; the word now contains the juridical relationship between the Romanians' community [...], and their land, the right of the nation over its land" [15]. The person who, for one reason or another, was driven away or left the country, became what was called desţărat.

For the Romanians, the word country means not only the land that they live, but also the nation, the "race of free and proud people [...], a race that belongs to this land and not to any other, just as the land belongs to this race and not to any other" [16]. The Romanian nation remained on their territory throughout history and connected to their land despite all vicissitudes of time.

When approaching the relation between the people and their homeland, Anibal Teodorescu's expression was particularly plastic: "This nation remained steadfast on the land to which they are linked by the deepest and strongest roots, however harsh the vipers have passed or how much blood was shed for the defense of this land"[17]. In order to support his ideas and to give more credibility to his point of view, the speaker appealed to Nicolae Iorga's appraisal, in whose opinion the nation could not be destroyed by anybody, as it was the one that strengthened the state in favourable regimes, or "hid[es] it in her sacred mystery, until another dawn", just like the tree "hides its sap in the autumn for the spring to come".

Anibal Teodorescu demonstrated further meanings of the word country, by providing a series of examples from the writings of Romanian scholars, such as Grigore Ureche, Ion Neculce, Nicolae Costin and Dionisie Fotino. In his conference, the author highlighted other meanings of the word such as: reign, people, (the Romanian) nationality, crowd, lower class, all generating relations that are specific to the public law.

3.4. Final Appreciations of Anibal Teodorescu

In the conclusion of his discourse, Anibal Teodorescu pointed out that “country was the very cohesive state involving both the nation and the land itself”, state that had been naturally born in its historical evolution and did not represent “a mere legal, momentary creation of international interests and agreements”. For the Romanians, country is “above all, a notion that goes beyond the boundaries of the public law, as it represents the homeland itself”. To conclude, ţară is not a simple notion, an illusion or an artifice, but the reputation, “the highest and most beautiful human reality”, that homeland loved and praised by the poets. “For us, country is a word as old as our nation itself, a word that our language preserves and worships as a holy and precious treasure”. This word encompasses “all sorrows and struggles, all defeats and victories, all our rights”. In this word, there merge “the land and the people”. Country is, therefore, considered by Anibal Teodorescu as a magical land, which epitomizes the national ideal itself, the perpetual existence of the Romanian people for the last two thousand years. [18]

4. Conclusions

Anibal Teodorescu was a great representative of the Romanian law, who is commendable for the fact that, alongside a vast legal culture, he manifested profound patriotic feelings, as proved by his keen and constant interest in the national history [19].

In the conference held in front of the highest national scientific forum, i.e. the Romanian Academy, on November, 9th, 1945, Teodorescu chose to convey the meanings of the word “ţară”, a word with deep and rich significance in the history of the Romanian nation. The author succeeded to highlight the specificity and the sense the Romanians gave to this word, which is non-existent in other Romance languages.

Anibal Teodorescu based the argumentation on both his logic and culture, supporting the ideas with the writings of Romanian chroniclers and great historians, such as: Gheorghe I. Brătianu, Constantin C. Giurescu, Nicolae Iorga, Ion Nistor, Vasile Pârvan. His argumentation was logically structured, with explanatory and gradual steps

and the style was cursive, narrative and logical. The sensitive topic was approached using a well-constructed argumentation.

For the Romanians' psyche and collective mentality, ţară/ country is a very powerful word that enriched the initial physical, direct meaning and acquired multiple valences, namely that of state, patriotic and existential constituent, thus encompassing a certain national sacredness. The meanings identified by Anibal Teodorescu in 1945 are preserved still unaltered in the Romanian language, as assigned by the great jurist.

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THE LEGAL REGIME OF WASTE MANAGEMENT

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Abstract
Reality is bleak when it comes to the existence of waste. Waste is not only an environmental problem but also an economic loss.
Society, through consumption, has brought a lot of technical, economic and legal problems regarding the existence of waste.
Much of the waste produced by human society pollutes the environment before being destroyed, too few being recycled and transformed into resources.
People need to start being held accountable for waste collection and recycling in order to take care of our health, the environment we live in and the natural resources, and also the future generations to enjoy.
Keywords: *waste, environment, pollution, collection, recycling.*

In view of the increase in the quality and diversity of the waste, but also the awareness of the negative impact it has on the environment and the health of the population, the Romanian legislators paid attention to this problem by adopting some normative acts to ensure an elaborate regulation on the waste management regime

The framework Law on Environmental Protection, Law 195/2005 established several rules on the management of waste in conditions of protection of the health of the population and the environment (art. 29). Among these, we can mention: the prohibition of the introduction of waste into the territory of Romania, capitalizing through installations, the internal and external transit, as well as of the exports of waste.

Normative acts in force define waste as any substance, preparation or any object in the categories established by the specific waste legislation that the holder discards, intends or is required to discard.

Law 195/2005 defines hazardous waste as wastes generically classified under the specific waste regime in these types or categories of waste and having at least one constituent or property that renders them hazardous.

Dangerous waste has a detrimental effect on humans, plants and animals, but also on material goods.

The first normative act adopted to ensure an adequate level of protection of the environment and the health of the population based on the principles and the strategic elements that lead to the sustainable development of the society was Emergency Ordinance no. 78/2000 on waste regime.[1]

In order to be compatible with Union law, a number of Community Directives have been transposed into national law governing certain categories of waste or certain activities related to waste.

Legislation on the legal regime for waste management is undergoing continuous transformation due to changes in the Union's environmental policies in line with the principles of sustainable development. [2]

The competent authorities shall lay down norms, standards and rules for:

a)the prevention or reduction of waste and its degree of hazardousness by:

1.the development of clean, with a low-consumption of natural resources;

2.the development of technology and the marketing of products which, by way of manufacture, use or disposal, do not impact or have the least possible impact on the increase in the volume or the danger of the waste or on the risk of pollution.

3.Developing appropriate technologies for the final disposal of hazardous substances from waste intended for recovery.

b)re-use, recovery of waste by recycling, recovery or any other process by which secondary raw materials are obtained or the use of waste as a source of energy. (art.3 par. 1). [3]

Waste administration regime

Under Romanian law, waste management is based on general conditions, by permitting waste-related activities and by ensuring their control.

The Central Public Authority, in order to ensure an adequate level of protection of the environment and public health, has developed the National Waste Management Plan through a Government Decision which was then communicated to the European Commission (art. 8 par. 1). [4]

This National Waste Management Plan includes strategic principles and objectives to support the necessary framework for the development of an integrated, environmentally and economically efficient waste management system.

The provisions of the National Waste Management Strategy apply to municipal and assimilable waste, production waste, waste generated by medical activities, etc.

The rules that we must take into account in the processes and methods of waste recovery or disposal in order not to endanger human health and the environment are:

-not to present risks to the water, air, soil, fauna or vegetation,

-not to produce noise or unpleasant smell,

-not to affect landscapes or protected areas / areas of general interest.

The regulation of the activity for waste disposal and recovery is done in compliance with the environmental legislation in force, through the issuance of the environmental agreement and authorization and, as the case may be, of the integrated environmental permit and authorization.

Environmental permits should include: type and amount of waste, technical requirements, precautions, location of activity, treatment method.

The control of waste activities has four ways of exercising: public authorities for environmental protection, the mayors of the administrative-territorial units, the health authorities and the customs authorities respectively.

Waste management regime

Waste management refers to education on the collection, transport, treatment, recycling and storage of waste, including the supervision of such operations and the care of storage areas after closure.

The specific legislation on waste management derives from the Community environmental acquis, being transposed into national law and the implementation of which falls under the attributions of the Dangerous Chemicals and Dangerous Chemicals Division within the National Environmental Protection Agency.

The management of packaging and packaging waste is the subject of special regulation covering all packaging placed on the market irrespective of the material from

which it was made and how it is used in economic, commercial, household activities or other such activities.

According to the law, the specific packaging waste management principles are: prevention of packaging waste, packaging re-use, recycling of packaging waste, and other forms of recovery of packaging waste leading to reduction of the quantities removed by final disposal.

Failure to comply with legal obligations regarding the management of packaging and packaging waste shall be sanctioned with a contraventional fine.

The transport of waste on the territory of Romania is subject to a legal regulatory and control procedure. [5].

Specialists for urban waste transport should be authorized by environmental authorities after notification of transport activity by local public authorities.

Waste resulting from specific military activities constitutes a potential environmental risk. The collection and management of waste management data and information in the Romanian Army is carried out in accordance with GP 856/2002 on Waste Management Records and for the approval of the list of wastes, including hazardous waste.[6]

The legal regime of recyclable waste

The category of waste also includes recyclable industrial waste.

The legal regime of recyclable industrial waste is established by the GEO no. 16/2001. [7]

Recycling is a processing operation in an industrial waste production process for the re-use either for the original purpose or for other purposes.

Capitalization is the breakdown, sorting, recycling, cutting, stamping, blasting, melting, casting, blending or other operation that causes the change in nature or composition of an industrial waste by industrial processes for re-use.

For the environmentally sound management of these wastes, the law establishes special obligations according to the holder.

Failure to comply with the law on recyclable industrial waste entails contravention or criminal liability.

Recyclable industrial waste whose provenance can not be proven to be lawful is confiscated and exploited under the law.

Waste incineration regime

Incineration is a way of eliminating waste by burning. Incineration is one of the methods of thermal waste treatment. Incineration generates heat, gas, steam and ash.

Waste incineration [8] can be done with small individual or industrial scale installations.

Iinstallations authorized for co-incineration/incineration of waste on the territory of Romania are subject to the Directive 2010/75/EU on industrial emissions, which has been transposed into national legislation by the Industrial Emissions Law 278/2013.

Solid, liquid and gaseous waste can be incinerated.

We often talk about co-incineration of waste. Waste is burned in the outbreaks of large power boilers, mixed with their usual fuel.

The incineration and co-incineration activities are subject to authorization according to specific procedures.

Among the waste that can be incinerated are: agricultural and forestry vegetable waste, cork waste, radioactive waste, animal corpses, the disposal of which also complies with the sanitary and veterinary norms, etc.

Waste storage regime

Waste storage remains the main option to remove waste.

Through GD no. 349/2005 [9] Directive 1999/31/EC was transposed into national legislation, the legal act representing the legal framework for carrying out the waste disposal activity.

The landfill is defined as a site for final disposal of waste by land or underground storage.

Deposits are classified according to the nature of the waste as follows:

a.deposits for hazardous waste,

b.deposits for non-hazardous waste

c.deposits for inert waste

Domestic waste is classified as non-hazardous waste, classified as class B deposits.

The regulation of the waste disposal activity is done in compliance with the environmental legal provisions in force, through the issuance of the integrated environment permits and authorizations, in the case of the deposits subject to the legislation on integrated pollution prevention and control, and by the issuance of the environmental agreements / authorizations for deposits not subject to the statutory provisions.

The regulatory procedures for landfills must demonstrate compliance with the specific requirements laid down by:

-GEO. 78/2000 on the waste regime, approved with amendments by Law 426/2001, with subsequent amendments and completions,

-G.D. 349/2005 on waste disposal, as subsequently amended and supplemented,

-Order of the Ministry of Environment and Water Management no. 95/2005 on establishing the criteria to be fulfilled by waste to be accepted for storage on each storage class and the national list of accepted waste for each class of deposit.

Conclusions

The problem of waste management has also increased in Romania due to the increase in quantity and diversification.

The development of society, both in urban and industrial terms, has led to the production of more and more waste.

They are increasingly difficult to manage, leading, if not properly discharged and stored, to soil, air and water pollution.

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ETHICAL ASPECTS OF THE SCIENTIFIC RESEARCH WITHIN THE PUBLIC ADMINISTRATION

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Abstract
This article analyzes the deontological aspects of the scientific research performed within the public administration. Thus, starting from the general presentation of the ethical norms of scientific research, we have attempted to identify the ethical requirements regarding the protection of the participants to the research within the public administration. Because scientific research within the public administration may have as subjects persons from vulnerable categories, the role of ethics becomes essential. Subsequently, the most important ethics of the research are integrity, honesty and responsibility of the researcher towards all the participants to the research. As such, researchers are morally responsible both towards their colleagues from the domain, towards the subjects of the research and the people who are supporting them – the public and the representatives elected by the public.
Keywords: *public administration, methodology of the scientific research, ethical principles.*

I. Introduction

The scientific research may be considered a true art, given the fact that it has an original contribution to the elevation of the level of already existing knowledge. When we are talking about scientific research, we automatically think of knowledge. It is like an exciting initiation travel, where we start, urged by curiosity and we move forward from what we know towards what we do not know. We all have the vital instinct of curiosity, because when the unknown confronts us, we are surprised and our curiosity makes us research and reach the most complete understanding of the unknown. This curiosity is the mother of all knowledge. It is the method used by the man in order to obtain the knowledge of what is unknown and it is called research [1].

In the domain of public administration, scientific research has the role to analyze the collective behavior and the logics that makes an organization or public institution work. Any research in the domain of public administration starts with a question mark in front of an administrative difficulty. The researcher acknowledges this issue and is going to

formulate one or more hypothesis. The next step consists in checking the relevance of the hypothesis by facts and eventually, the research process concludes by adopting one of the hypothesis. Along this travel, the researcher must face all the uncertainties generated by the huge theoretical and methodological diversity in the domain they are studying. As such, the research involves two essential items or conditions: the interpretation of the observed world and the interpretation of the texts of the scientific literature, which speak about this world [2].

Along with the upsurge of the scientific research in the domain of public administration, there also came the necessity to regulate certain aspects referring to the research methods and ethical principles. The recent discussions related to the scientific research within the public administration are going back and forth in two directions. The first one refers to the degree in which the research may be integrated in a database of knowledge which may be fact checked, used in order to substantiate the science of public administration. The second direction aims at the methodological aspects, namely the type of issues triggered by the research, analyzing if these issues can be resolved by applying already existing methodologies and if the respective methodologies produce useful knowledge. This direction targets the contribution to knowledge of the research institutions from the public administration.

II. Ethical norms of the scientific research

The scientific research activity consists of investigating certain aspects of the world and then systematically shaping them. The diachronic analysis of the scientific research progress shows that even from the beginning, the scientific community relied upon itself in order to regulate the way in which the research activity must be carried out. In order to protect the integrity of the scientific findings, the researchers designed a set of common principles and practices which represent the basis of the ethical behavior specific to the scientific community, like the principles of originality, individualism, independence, collegiality, honesty, objectivity, and openness. All those principles intertwine with a set of unanimously accepted rules, namely:

•Communalism which refers to the expectation that discoveries will be freely shared and dedicated to the community of scientists.
•Universalism which refers to the expectation that scientists should judge empirical claims according to impersonal criteria without regard to the identity of the author.
•Disinterestedness which refers to the expectation that scientists will subordinate their own biases and interests to the advancement of knowledge.
•Organized skepticism which refers to the expectation that scientists will subject empirical claims to systematic scrutiny and validation [3].

Thanks to these norms which govern the scientific communities, the discoveries generated during the scientific process could contribute to the enrichment of the human knowledge and the resolution of the social issues. But like the behavioral norms of any community, the fact of their existence does not translate into universal compliance (Zuckerman, 1977). Although scientists are expected to disseminate their discoveries through published papers and reports read by the larger community, the research itself is vetted through a process of the peer review of the published work [4].

The ethics of the scientific research states that the researchers should not hide, distort or falsify information, data which appears in the research process. Despite this, it is necessary to distinguish between fraud and common mistakes. Thus, fraud involves a deliberated intention to distort reality, while the mistake appears fortuitously. The researchers who discover mistakes in their research must recognize, correct them and ensure that they have minimal negative consequences. Thus, a responsible researcher must propose some realistic objectives that have a social impact and bring something new on the knowledge side. The researcher must prove the fact that he has enough experience and professional knowledge that allow him to enroll in the research project. At the same time, he must prove that he has financial possibilities and informational means necessary to sustain this project. Thus the most important moral censorship instance of the scientific research activity is represented by the moral-professional conscience of the respective researcher [5].

III. The unethical behavior towards the results of the scientific research

The researchers have the obligation to respect the results of other scientific research and quote them with responsibility, by rejecting the plagiarism. This, both the researchers and the institutions where the research projects take place must reject any shape of scientific fraud, irrespective if this is about falsification, manipulation or selective presentation of the data. In a determined period of time, the researchers must put at other researchers' disposal the data obtained along their own research, for verification. The institution that hosts the research must offer space for data storage, so that they might be recovered even when the researcher ended his work relationship with the institution.

•Researchers and research institutions do not accept scientific fraudulence, either in the form of forgery, manipulation or the selective presentation of data from research conducted by themselves or others.

•Researchers and research institutions do not tolerate plagiarism of research.

•Researchers and research institutions make data accessible to others for verification within a certain period of time.

•Researchers present research done by others in a balanced and honest manner.

•Research institution must have guidelines and routines for storing research data in such a manner that the data may be retrieved, also when the researcher has terminated his or her working relationship at the institution [6].

When publishing the results, the researcher must also describe the methods used in research, and the referents must analyze firstly if the norms of the scientific community were respected. The material shape of the respect a researcher shows towards the scientific community he is a part of consists of the way he chooses to make public the results of his research. Generally, the violation of the ethical norms of research is revealed in the publications and research reports, when a paper may present fabricated methods by describing experiments that were never conducted, observations that were never performed, and calculations that were never made (Zuckerman, 1977). This is referred to as ‘‘forging’’ the data. In some disciplines, peers will not accept the findings without physical proof of the experiment. When hysical evidence is expected, it may also be

fabricated. In addition to forging data, data may also be deliberately manipulated or falsified to support conclusions that are incorrect [7].

The unethical practices may have several shapes, as per the following examples:

1.The researcher chooses to make public only the data that is according to his research hypothesis. These defective methods are revealed by the method of study replication, because if the reported results are false, they cannot be reproduced.

2.An unethical behavior is also the presentation of a result that does not have an empirical or theoretical foundation. The researcher has the responsibility to deny fraudulent research practices, either under their own name or under other person's name.

3.The researcher uses other author's data without specifying the source. This violation of the deontological research norms is known as plagiarism.

4.Another situation of this kind appears when a person (a manager) claims a work to which they did not contribute significantly or at all and does not mention the names of the subordinates which were involved, under the author section.

5.Another shape of unethical behavior is the one when parallel researches are generated, which aim at undermining another scientific research, in order to devaluate it.

6.Another dishonest practice appears when a researcher „steals" other people's ideas and incorporates them in his own research, by taking advantage of the mutual assessment process.

7.It is also immoral to deliberately communicate incorrect results or to present positively products which don't have importance or are often dangerous.

8.The most serious form of violation of the scientific research ethics is the scientific research activity carried out with purposes that affect the social security. Generally, scientists enjoy the respect of society, which makes it difficult to expose illegal deeds. The public tends to think of them as well intentioned along with the universities with which they are af filiated. The status accorded scientists is related to the role that research and development play in maintaining a healthy economy and improving the human condition. Interestingly, when scientific fraud and deception are exposed, scientists around the world have tended the 'circle the wagons' by minimizing extent of the misconduct or

characterizing the incident as aberrant and isolated fueled by stress, bad judgment, or moral corruption [8].

IV. The violation of the ethical norms towards the participants to the scientific research

The best known shape of the unethical behavior from the history of the scientific research was the one of the medical experiments performed by the Nazis. The horrors committed during the Second World War triggered the necessity for the Nuremberg Code in 1949, which includes ten moral, ethical and legal principles regarding the scientific experiments on human beings. Over the time, the provisions of the Nuremberg Code extended to the social and behavioral sciences.

Over the time, other ethical regulations appeared, such as the Belmont Report (1979) and the Declaration of the Global Medical Association from Helsinki (2000), having a significant impact in the clinical research and not only. The ethical principles which are found in the Belmont Report are:

1.Respect for persons: This principle incorporates the belief that individuals should be treated as having autonomy and that those with diminished autonomy (e.g., minors, prisoners, those mentally incompetent) are entitled to protection.

2.Beneficence: This principle conveys the obligation of researchers to ‘‘do good’’ and that human subjects are to be protected from harm. Researchers are also obliged to maximize the benefits of their research.

3.Justice: This principle ensures that the selection criteria for participation are not based on gender, race, easy availability, manipulability or compromised. Thus the benefits from research should be available not only to the wealthy and privileged, but also to the poor and less advantaged [9].

Within a social research, the consequences of an unethical behavior are not as serious as in the case of a medical experiment, for instance. The harm brought to the participants may be in this case psychological or social. Although physical harm to participants in social research is highly unlikely people can be harmed personally (e.g., by being embarrassed or humiliated), psychologically (e.g., by losing their self-esteem or

by being forced to reveal something about themselves that they would not ordinarily share with others), and socially (e.g., by losing trust in others or suffering a blow to their reputation). Almost any type of research that might be done carries the risk of harming others in some way [10].

The risks to harm the participants to the scientific research cannot always be assessed from the beginning, because the degree of psychological harm is different from one person to the other, depending on each other's sensitivity. In order to minimize the risks, the researchers have the obligation to inform the subjects of the research regarding the predictable or possible risks or the possible discomforts before enrolling in a study. In this way the participants have time to calculate the effects of their involvement in the research project.

In the attempt to avoid the possible psychological harms which may appear, the researchers should examine the participants to the research before moving forward with this. This, if they anticipate that a potential stress of discomfort may appear, the researchers must evaluate the gravity of these aspects. A common method to neutralize the stressing effects consists in informing the participants about the risks. At the same time, the main researcher has the obligation to make available to the subjects several procedures of contact in case of issues or adverse events. Similarly, the researchers must provide a special protection to the vulnerable categories, such as children, prisoners, pregnant women and fetuses, institutionalized persons with mental disabilities, elderly persons and economically or educationally disadvantages persons.

The relationship researcher – research participant is based on two fundamental principles. On one hand, the participants have the right to choose if they want to be part of the research project or not, without the fear of pressure or coercion. Thus, their consent is a guarantee that the participation to the research is voluntary. The other principle is based on the conviction that the participants have the right to receive relevant and necessary information to decide whether they should be part of the research or not. The participants' right to privacy is an inviolable condition of the research. According to Westin, privacy refers to ''the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to

others (1968, p. 7). Sieber expands this to include confidentiality and argues that confidentiality ‘‘refers to agreements between persons that limit others ’access to private information ’’(1982:146).Thus privacy refers to persons and confidentiality refers to information [11].

In spite of these, there were numerous cases when the research participants were cheated with regards to the purpose and terms of the research. In the latest years, along with the appearance of computerized databases, the potential to violate one’s individual privacy spiked, bringing up the necessity to have specific legal regulations.

Conclusions

The ethical responsibility towards the scientific research belongs entirely to the researchers who are conducting it. They are responsible with the results of the research, the way they are utilized and their effects. The responsibility is even bigger taking into consideration that the results of the scientific researches may have a major impact on the human communities. From this reason, any scientific research activity must make place not only in an organized framework, according to the technical needs of the research act but also according to certain norms or strict rules which must be respected entirely [12]. According to Constantin Enăchescu, these rules reflect the report between the researchers and the object of research, the other researchers enrolled in the same research project, as well as the beneficiaries of the research. In the context of the present development of the scientific research methodologies, the researchers are subject t some ethical challenges generated by certain unprecedented professional, social and political pressures. The scientific researcher must justify the research act, the utility and validity of the results he obtained, he must try to bring a benefit to the society through his research. Taking into account these aspects any scientific research must be subject to a moral censorship [13].

The ethical principles and standards have the purpose to resolve the unpredicted and conflict aspects which appear in the research environments, as well as the ethical dilemmas. However, sometimes the informal norms that regulate the behavior of the

researchers are insufficient to maintain the scientific integrity. From this reason, the informal norms were strengthened by implementing juridical regulations.

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A FEW COMMENTS ON THE COUNCIL OF EUROPE CONVENTION ON CYBERCRIME

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Abstract
The Council of Europe Convention on Cybercrime is a treaty in the field of criminal justice that establishes criminal law provisions based on the principles of the rule of law and human rights. The Convention has a relatively broad scope. Convention offences are grouped into four categories. The Council of Europe Convention on Cybercrime criminalizes criminal behaviours in the late 1990s. Thus, in the sixteen years of the Convention, new offences have arisen, and an update of the Convention is absolutely necessary.
Keywords: *cybercrime, computer system, computer data, Convention on Cybercrime.*

Introduction

The Council of Europe Convention on Cybercrime is a legal instrument that has been signed under the auspices of the Council of Europe. Although this Convention does not constitute an own legal instrument of the European Union, it is nevertheless effectively representing the interests of the European Union within its scope. The time of occurrence of the Convention coincides with the growing importance of the e-commerce, intellectual property, rapid access to Internet and the widespread use of mobile telephony [1].

The Council of Europe Convention on Cybercrime, which is a historic milestone in the fight against cybercrime, was signed in Budapest on the 23rd of November 2001 and entered into force on the 1st of July 2004. Today, the total number of signatures from the 47 Council of Europe member states that were not followed by ratifications is 3, while 43 states ratified the Convention, and one state, the Russian Federation, has not yet signed it [2].

The Council of Europe Convention on Cybercrime has a threefold purpose. First, it defines material criminal law in Chapter II, Section 1, which is a legislative harmonization effort aimed at creating a common crime base. Secondly, the investigation measures and criminal proceedings are harmonized in Chapter II, Section

II. Thirdly, ways for international co-operation are opened in Chapter III.

The Council of Europe Convention on Cybercrime creates an obligation for the Member States to introduce the provisions of Chapter II Measures to be taken at the national level in their material criminal law and to allow cooperation in areas of interest. By ratifying the Council of Europe Convention on Cybercrime, the Member States have agreed that their criminal law at the national level should criminalize the facts described in the material criminal law section of the Convention. Those Member States that have not ratified it, we believe that they should assess the opportunity to implement the standards and principles of the Convention in accordance with their legal and practical arrangements and to use the Convention as a guide or as a reference for the development of their internal legislation.

The Council of Europe Convention on Cybercrime criminalizes criminal behaviours in the late 1990s. New types of criminal behaviour in cyberspace must be provided by criminal law, such as botnets, spam, identity theft, virtual world crimes, cyber terrorism and massive and coordinated attacks against information networks. Many countries have adopted or prepared new laws to cover some of these criminal behaviours.

The analysis of crimes under the Council of Europe Convention on Cybercrime

The Convention has a relatively broad scope. Convention offences are grouped into four categories. The first category of offences relates to offences against the confidentiality, integrity and availability of data and information systems. The second category of offences relates to computer-related offences, such as computer-related forgery and computer-related fraud. The third category of offences includes offences related to content, such as offences related to child pornography. The last category of offences includes offences related to infringements of intellectual property and related rights. In 2003, the Additional Protocol to the Council of Europe Convention on Cybercrime was signed in Strasbourg on the criminalization of acts of a racist and xenophobic nature committed through computer systems.

The Council of Europe Convention on Cybercrime contains a provision on illegal access by protecting the integrity of computer systems by incriminating unauthorized access to a computer system in the Article 2.

The analysis of the different approaches regarding illegal access to a computer system in the domestic law of different states shows that the provisions adopted sometimes confuse the illegal access with offences committed after illegal access, or seek to limit the incrimination of illegal access only by committing serious infrigements [3].

The term access does not specify specific means of communication, but is open to future technical developments [4]. Therefore, this term includes all the means of entry into a computer system, including attacks on the Internet, as well as illegal access to wireless networks [5]. This broad approach demonstrates that illegal access covers not only the subsequent technical developments, but also covers the unauthorized access to computer data by intruders or employees [6]. As with other offences covered by the Council of Europe Convention on Cybercrime, the Article 2 of the Convention also requires the offender to commit the offence of illegal access with intent. However, we note that the Convention does not define the term with intent. The illegal access to a computer system to fall under the provisions of the Article 2 of the Council of Europe Convention on Cybercrime must be done without right. The Convention's legislators also underline that testing or protecting the security of a computer system, authorized by an owner, is done with right.

We believe that the illegal access to a computer systems is in most cases not the end of the illegal act committed by the offender, but rather the first step towards committing additional offences, such as alteration or obtaining stored data.

Under the Article 2 para.2 of the Council of Europe Convention on Cybercrime, it is noted that the possibility exists to restrict the criminalization with additional elements. The Convention includes a provision on the protection of the integrity of non-public transmissions by incriminating their illegal interception under Article 3.

The applicability of Article 3 of the Convention is limited to intercepting transmissions of computer data by technical means. Thus, interception of electronic data

can be defined as any data acquisition action during a transfer process [7]. The provisions of the Article 3 of the Convention applies only to the interception of data transmissions, the access to stored information is not considered as an interception of a transmission [8].

It can be seen from the Explanatory Report to the Convention on Cybercrime para. 55 [9], that the Article 3 of the Convention covers communication processes that take place in a computer system. However, the Convention does not clarify whether the provision in the Article 3 should apply only in cases where victims send data, which are then intercepted by offenders, or, if the provision in the Article 3 applies and when the offender himself/herself operates the computer system. A data transmission is considered non-public if this process is confidential [10].

According to the Convention, the offence of illegal interception of a computer data transmission is committed intentionally. The Convention does not provide a definition of the term of intention and the Explanatory Report to the Convention on Cybercrime para.39 indicates that this definition will occur at national level.

The illegal interception of a computer data transmission to fall under the Article 3 of the Convention must be carried out without right.

Article 4 of the Council of Europe Convention on Cybercrime regulates the protection of the integrity of computer data against illegal interference. The integrity of computer data is affected by the following actions: damaging, deletion, deterioration, alteration and suppression of data in a computer system. In the Explanatory Report to the Convention para.61 these terms are defined: the terms damaging and deteriorating refer to altering the integrity of data and programmes; the term deletion of data means the action of removing computer data from storage devices; the term suppression of computer data is the action that affects the availability of computer data; the term alteration of computer data refers to the action of altering existing computer data, in particular by installing destructive programmes. According to the Article 4 of the Convention, the integrity of computer data is affected intentionally.

Affecting the integrity of computer data to fall under the Article 4 of the Convention must be committed without right.

In order to protect the access of operators and users to Information and Communication Technology, the Convention provided in the Article 5 the criminalization of the hindering of the normal functioning of a computer system.

The offence of affecting the integrity of an information system is accomplished by the following actions: inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data [11]. In addition, the provisions of the Article 5 stipulate that the integrity of the computer system is seriously impaired. According to the Article 5 of the Convention, the integrity of computer systems is affected intentionally and without right.

Convention legislators set out in the Article 6 to incriminate certain deeds in connection with certain devices or access to data used for the purpose of committing offences against the confidentiality, integrity and availability of data or information systems.

Paragraph 1 (a) identifies the device designed for the purpose of committing the offence and the passwords that allow access to the computer system. The term device refers to a hardware and software structure. The Explanatory Report to the Convention on Cybercrime para.72 mentions as an example of software, a virus programme or a computer programme designed or adapted to gain access to computer systems.

Computer passwords, access codes, or similar computer data, as opposed to devices, do not perform operations but access codes.

The Convention criminalizes in paragraph 1 (a) a wide range of actions: the production, sale, procurement for use, import, distribution or otherwise making available of devices and passwords.

Paragraph 1 (b) discusses the regulations of paragraph 1 (a) in addition by criminalizing the possession of devices or passwords if they are related to the intention to commit a cybercrime.

The offence provided for in the Article 6 of the Convention must be committed intentionally and without right. At the same time, the Convention requires in the Article 6 that devices be used with the intention of committing one of the offences referred to in the Articles 2-5.

Following the debate on the need to criminalize the possession of devices, the Convention offers the option of a complex reservation in the Article 6, paragraph 3. If a Party uses this reservation, it may exclude the criminalization of the possession of instruments and of a number of illegal actions under paragraph 1 (a).

Articles 7 and 8 of the Convention refer to the computer-related offences.

The article 7 of the European Council Convention on cybercrime comprises the provisions regarding the computer-related forgery offence.

The target of a computer-related forgery offence is represented by computer data. The Convention defines in Article 1 par. b) the notion of computer data, these being „any representation of facts, information or concepts in a form for processing in a computer system, including a program suitable to cause a computer system to perform a function". Thus, the offence stipulated at article 7 of the Convention is committed by the actions of input, alteration, deletion or suppression, intentionally and without right of computer data, resulting in inauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. The offence stipulated at article 7 is committed intentionally and without right.

The article 7 of the Convention offers the opportunity to make a reserve in order to limit the criminality by imposing additional elements, such as the intention to fraud before the criminal liability could intervene [12].

The article 8 of the Convention, which refers to the computer-related fraud offence, stipulates the adoption of some legislative and other measures as may be necessary to establish as criminal offence according to the domestic law of a state, when committed intentionally and without right, the causing of a loss of property to another person by:

a) any input, alteration, deletion or suppression of computer data;

b) any interference with the functioning of a computer system, with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.

In most of national systems of criminal law, the criminal act which occurred must lead to economic losses. The Convention pursues a similar concept and limits the criminalization to those acts which cause a direct economic loss. As in the case of other offences stipulated in the Convention, the computer-related fraud offence too is intentionally committed. Additionally, the Convention imposes the condition that the offender must have acted with the fraudulent intention to gain economic benefits for oneself or for other person. The offence stipulated at Article 8 of the Convention, in order to be incriminated, must be committed without right.

The Article 9 in the Convention of the European Council on cybercrime refers to the offence of child pornography. The offence consists in the following conduct, which is committed intentionally and without right by producing child pornography, offering or making available child pornography, distributing or transmitting child pornography, procuring pornographic materials having children as subjects, through a computer system.

The Article 9 of the Convention requires the following elements [13]:

-Age of the person concerned

Article 1 of the United Nations Convention on the Rights of the Child defines the term minor, this being any child below the age of eighteen years old. The Council of Europe Convention on Cybercrime defines the term minor in accordance with the United Nations Convention on the Rights of the Child. However, in recognition of the differences that exist in the national legal systems, the Council of Europe Convention on Cybercrime allows parties to be able to claim a lower age limit, which must be at least 16 years old.

-Incriminating the possession of child pornography

Possession of such pornographic material could encourage child sexual abuse, so that Convention legislators suggest that an effective way to reduce the production of child pornography materials is to criminalize the illegal possession of such materials [14].

However, the Convention allows parties in paragraph 4 of the Article 9 to eliminate the incrimination of possession of pornographic material with minors.

-Creating or integrating fictitious images

Paragraph 2 (a) of the Convention focuses directly on children abuse.

Paragraph 2 (b) and 2 (c) of the Convention covers images that where produced without violating children's rights, e.g. images that have been created through the use of 3D modelling software. The reason for the criminalization of the fictive child pornography is the fact that these images can, without necessarily creating harm to a real child, be used to seduce children into participating in such acts [15].

The Article 9 of the Convention requires that the offender is carrying out the offences intentionally. In the Explanatory Report of the Council of Europe Convention on cybercrime, the drafters of the Convention pointed out that interaction with child pornography without any intention is not covered by the Convention. Lack of intention can be relevant especially if the offender accidentally opened a webpage with child pornography and despite the fact that he/she immediately closed the website some images were stored in temp-files [16].

The offence stipulated by the Article 9 of the Convention, in order to be criminalized, must be committed without right. However, we noticed that the drafters of the Convention did not specify in which cases the Internet user is acting with authorisation.

The Convention seeks to provide fundamental principles on copyright infringement in order to harmonize the existing national legislation.

Infringements of patents or trademarks are not included in the provisions of the Article 10 of the Council of Europe Convention on Cybercrime [17].

The Convention does not outline the facts that are to be incriminated, but instead refers to a number of international treaties on intellectual property, which is one of the questionable aspects of the Article 10.

Member States that have not signed the international agreements on intellectual property are not required to sign these agreements, nor can they be forced to criminalize acts related to the international agreements that they have not signed [18].

The Council of Europe Convention on Cybercrime criminalizes only those deeds which have been committed through a computer system, intentionally and on a commercial scale. The limitation of the Convention to acts committed on a commercial

scale takes into account Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), which provides for criminal sanctions for piracy on a commercial scale. The Article 61 of the TRIPS states that these deeds are committed intentionally [19]. The deeds provided for in Article 10 of the Convention to be incriminated must be committed without right.

Paragraph 3 of the Article 10 of the Convention allows signatories to reserve the right not to impose criminal liability under paragraphs 1 and 2 of this Article, provided that other effective remedies are available and provided that such a reservation does not infringe the international obligations incumbent upon signatories in the application of the instruments referred to in paragraphs 1 and 2 of this Article.

Conclusions

The Council of Europe Convention on Cybercrime is a guide for many countries around the world that they have used it as a legislative model when these countries have established their internal legal framework for cybercrime. Unlike other conventions or treaties, we believe that this international legal instrument is an international convention, officially debated and adopted, and this is also the legal framework governing cooperation between Member States. The Convention may be reinforced or supplemented by other additional instruments, such as the good practice guides.

The Council of Europe Convention on Cybercrime has encouraged the harmonization of cybercrime legislation worldwide. The United Nations has recommended that Member States use this Convention by developing an internal legal framework on cybercrime investigation.

Cybercrime is a phenomenon of constant change. With the change in technologies and criminal behaviour, criminal law needs to adapt to these changes, too. Thus, in the sixteen years of the Convention, new offences have emerged, such as spam, identity theft through the Internet, cyberterrorism, data spying, erotic and pornographic materials and illegal gambling on the Internet, and an update of the Convention we appreciate it is absolutely necessary.

The Convention does not explicitly criminalize spam (the unsolicited message). Convention legislators have suggested that criminalization of these acts should be limited to serious and intentional obstructions in communications [20].

Regarding the erotic and pornographic materials, Convention legislators have only focused on the harmonization of legislation on child pornography, and have excluded the incrimination of erotic and pornographic materials in a wider sense.

Not all countries have implemented provisions in the national criminal law systems that would criminalize all acts of identity theft. The only consistent elements of identity theft crimes refer to the following deeds: [21] the act of obtaining identity information; the act of holding or transferring identity information; the act of using identity information for criminal purposes. Although identity theft through the Internet is not expressly provided for in the Convention, this international legal instrument offers some solutions for criminalizing this deed. Thus, with regard to the act of obtaining information on identity, the Convention contains a number of provisions that criminalize the acts of identity theft through the Internet: illegal access (Article 2); illegal interception (Article 3); data interference (Article 4). Regarding the act of using identity information for criminal purposes, it is covered by the Convention through the Article 8, which deals with computer-related fraud. We can provide an example of computer-related fraud that uses identity theft, which is the fraud through bank cards. The act of holding or transferring identity information is not covered by the Council of Europe Convention on Cybercrime.

Even if the act of spying on computer data is not provided for in the Convention, we still believe that this act may be incriminated by the provisions of the Article 3, which refers to the illegal interception of a computer data transmission.

We note that the Council of Europe Convention on Cybercrime does not contain any provision on the criminalization of illegal Internet gambling and cyberterrorism.

In view of the six types of offences that we have just mentioned, we believe that the legislators of the Council of Europe Convention on Cybercrime should at least express a point of view on a possible criminalization of these acts in the Convention.

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COMMENT ON THE ADMINISTRATION OF THE ANCIENT CITY. PLATO

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Abstract:
The article proposes to present the administrative organization imagined by Plato in the two dialogues of The Republic and The Laws. These fundamental works for Plato's sociological conception have been achieved in a particular socio-political context: the abolition of the Athenian democracy and the consolidation of tyranny. This is why Plato leaves Athens and imagines another city where the principle of justice will determine the Good for all citizens. The two papers ponder on the administrative-territorial organization, analyzing mainly an ideal type of citizen and justice. The style is metaphorical and the main ideas aim at education, justice, social structure and the practical activities that are legally regulated. The main idea, found in both dialogues, is that of the public Good, alongside four moral virtues: wisdom, temperance, justice, and moderation. The laws contain important ideas from the constitutional, civil and criminal law. We add to these the entire social organization in the Republic as a reminder that the ancient world represented the model of the modern world.
Keywords: *administrative organization, the principle of justice, the rule of law, the moral good.*

Preamble

Finding an optimal form of organizing social life, directed towards the realization of the public good, was a dominant feature of classical ancient Greece. The political events of the years 411 BC and 405 BC will generate a major interest in returning to a democratic regime. The year 411 BC marks the coup d'etat given to the Athenian democracy by an oligarchic regime that abolishes public positions, the constitutional order, and makes it possible to generate another political regime in 405 BC, the one of tyrants in the number of 30 people. A new constitution is established and new magistrates are appointed by the new leadership. There is a council of the 500, with absolute powers, accompanied by a whip guard.

Against the background of these socio-political transformations, there is a violent confrontation between the moderate and tyrannical forces that will result in a democratic government that will adopt a new constitution. In this political dispute Socrates and his student Critias, two major characters in Plato's dialogues, will find their end. Impressed by the death of Socrates, Plato will withdraw from Athens and develop two social

dialogues, The Republic and The Laws, dedicated to an ideal form of city. The state imagined represents the model of an ideal man, which is why it must be an educational tool for the citizens. Structuring the human being will constitute the source of inspiration for the administrative and social structure of the life in the city-state. Politics and morality will form a common body, and laws will regulate all forms of practical and political activity.

The ideal city – expression of the ideal human being

The Republic is the work through which Plato desires to assess the functioning of the ancient state organization of his time and proposes another way of government to achieve the good of the city. As a disciple of Socrates, he has witnessed the process and his execution. Two things are noteworthy: Socrates did not want to be part of the regime of the 30 tyrants, nor did he accept compromises to save his life. The unjust condemnation and suppression of his master's life prompted Plato to leave Athens and build the ideal city with his mind. The Republic he imagines is not a utopia, but rather brings together politics and morality as dominant in leading a harmonious common life. We recall that modernity, along with the Prince of Machiavelli, separated the moral policy, considering that politics has its own morality. The ways used to defend the state did not follow moral principles. This is how the famous Machiavellian formula remained: "The goal justifies the means."

In the " Foreword" of the dialogue The Republic, Constantin Noica warns the reader that: "Plato does not propose ... to offer an ideal type of state, but an ideal type of human." From this perspective, Noica believes that "the dialogue culminates in the description of five types of people: the man of moral sovereignty and knowledge (here called a royal or aristocratic man), the timocratic, the oligarchic, the democratic and the tyrannical man" [1]. Plato's initial title of the dialogue, Politeia, means form of government, a form of rule within the state.

In Plato's conception, the best people must govern, politics having the role of educating the people. Only the wise, the philosophers who know the good can transmit it to the people. In this respect, the first function of politics is the educational one, by seeding transcendental values into the human "internal republic" and realizing a citizen who can

contribute to the good of the city. The ideas Plato conveys are rather theoretical and the style used in the work is a metaphorical one: the cave allegory, the Gyges myth, the theory of forms, the mimesis, the anamnesis, the symbol of the sun.

The dialogue The Republic brings forth the following political topics: the principle of justice, the constitution of the ideal state, the environment favorable to political development, the ideal principles of the state and the typology of political regimes. The problem of justice is justified "as a geometric problem", being the mathematical model of the harmony of the city. With these prerequisites Plato begins to imagine the organization of the ideal citadel and the optimal social structure. The leadership and defense of the city is carried out with great care, the arsenal being necessary for the leadership and defense of the fortress. To this profession, the guardians of the fortress, are added the other crafts: "pedagogues, nurses, hairdressers, barbers, cooks, butchers, rhapsodes, theater entrepreneurs, craftsmen of various luxury objects. Everyone has been entrusted with only one job - the one given by nature - to be practiced throughout their entire life, without missing the right time and freed from other occupations" [2].

The status of the property and forms of government

In such an imagined city, the idea of property communion is seen as follows: "no one should possess what today's men possess and (...) as war athletes and guards, receiving annually as protection of the guard, from the others, the food , they must take care of themselves and of the rest of the city" [3]. That is why the leaders of the city must have a special position in its hierarchy, morality being the characteristic feature and the rationality prevailing in decision-making.

Constitutions are, in turn, analyzed in close connection with human characters, because they are not "born of oak or stone" [4]. There are four types of constitutions, similar to "the soul's provisions of individuals" [5]. "The first is the Cretan and Spartan constitution, praised by many; less praised comes the second, the oligarchic one, a constitution full of many evils " [6]. There follows a different one, democracy, the fourth is the "last state of illness of a city," the terrible tyranny, different from the others" [7]. From the state political organization is formed the typology of human behavior: the man formed

by the political regime from Sparta, the oligarchic, the democratic and the tyrannical man. Each type corresponds to a certain conduct in the city. A lover of honors and victories is the human type influenced by the Spartan constitution. The constitution fond of honors will form the timocratic man. The oligarchic man, enjoying "reckless acts", leads to the poverty of others and does not urge the realization of virtue.

Even the chairman and the magistrates of the oligarchs, who get their positions "because they are rich, do not want to lawfully stop the young men who have come to be reckless, to spend and to spoil their wealth because they, the magistrates, buying what young people possess and lending with interest, get even richer and still more respected"[8]. Therefore, in oligarchy the income matters, and the functions, including in the legal field, are obtained in accordance with the financial position, without the appreciation of the professional training and moral qualities. The thinker states that there is a risk that these oligarchs will lead to the poverty of some valuable people. "They hurt them, throwing in their treasures the money that leaves others unceasingly" [9].

All the reckless actions of the oligarchs determine the need for another type of government, the democratic one. "Democracy arises when the poor, by victory, kill some of the rich, cast away others, giving the rest an equal share in civil rights as in dignities, and when, usually, dignities are attributed by drawing lots" [10]. It should be noted that "excessive liberty" can change into "excessive bondage", both at the individual and at the city level. At any time democracy can leave place for tyranny, "from the ultimate freedom emerges the most complete and perfect slavery" [11].

“The degradation of the ideal city is caused by the degradation of the contractual principles on which it is based (...)

-Pleonexia (abuse);

-Interference of functions (a way of doing more at once, and of some that are not our own);

-Lack of temperance (the rupture of a part against the whole so that in the soul rules the one who falls);

- Lack of courage;

- Lack of wisdom (ignorance)” [12].

In a metaphorical style, Plato predicts the danger of the "lethargic and spending" people emerging, as they cause disturbances to any political order. The attention of the magistrates must guard, like the skilled apiary, that those who gather riches, such as bonders, will not generate public harm. The tyrannical man appears from the democratic man and will depart from the authentic life, law and order.

Such a city, imagined in the dialogue of The Republic, "which is not anywhere on earth", being more of a heavenly model, will form the framework of analysis in the dialogue The Laws, the paper that ends the last period of the philosophical work written by Plato.

The form of the constitutional state

Interestingly, the Laws were written in a special socio-political context, with the regime of the 30 tyrants, one that Socrates refused to join, resulting in his trial and condemnation to death. The event disturbs Plato, he leaves Athens and develops a model of city-fortress, Kaliopolis, in which he writes all his ideas on governance. As in The Republic, the principle of justice is fundamental to the formation of a model city, Magnesia. The dialogue The Laws was considered "the Catechism" of pious people in Greece prior to Christianity. The twelve books in which the dialogue was divided by the publishers make up "a code of the best laws, suited to the best functioning of a State founded in the best possible conditions, in a world of relative contingencies" [13]. The law of the city is the daughter of reason, and wealth and power are very dangerous factors for the life of the city.

The main lack in a State is unbelief, which must be combated and corrective measures must be applied. There is even a correctional institute to cure the citizens from the lack of faith in the gods, and the heretics are educated for a period of five years. This educational tool is the State. It takes care of the healthy development of citizens through an economy that allows them to lead a good life. By the concern of the state, the culture of the people, the rightful legislation, the defense of political freedoms and the relations with other states will also develop. The state must have a suitable territory to defend and a small number of families, 5040. Discontents will be judged by the courts. Some courts will judge private cases and others will judge for the public good. The magistrate "will

enjoy the highest reputation and probity" [14] and, in case of dissatisfaction, the judges will make their decisions in public. In the event of an unjust judgment, "the judge found to have committed this offense will be sentenced to pay to the injured party half of the damage or, in the case of a large loss, he has to be sanctioned "with a fine for the public treasure or the private party having filed the complaint"[15].

The legislation will regulate science and education, thefts and robberies, animal hunting and fishing, rigorously controlled trade, observations on the irrigation system, manual crafts and agricultural practice. "No one is to touch the boundaries that separate the field from that of the fellow neighbor, or the property of the foreigner, whose land is located at the border of the state" [16]. And those "who pass the border of their neighbor and plow their field, shall pay the injured party twofold the damage suffered. The instruction, judgment and execution of such crimes will be done by magistrates of the fields (agronomists)" [17]. Damage can be caused by bee swarms and garbage flames as well as blockage of rainwater, in the event of the last damage, the author "does not want to let the rainwater drain" [18]. The damages that are not properly sanctioned will attract the punishment of the magistrates. Any dissatisfaction will appeal to public tribunals against the magistrates' sentence.

As for the argumentation of the rigidity of market goods, Plato makes clarifications for the trade with agricultural and animal products. The market will be regulated by agronomists as follows: "On the first day of each month, citizens will send to the market, with foreigners or slaves commissioned by them to sell the goods, the twelfth part of the wheat destined for foreigners". In the twelfth day of the month, "the citizen will sell and the foreigner will buy" liquid things for the whole month. On the twenty-third day the cattle trade will be held". The meat will be sold in small quantities to foreigners, whereas the goods necessary for life,"wheat or rice flour" are excluded from the sale.

There is a regulation regarding the way foreigners can operate on the commercial market. "These conditions are: to have a job, not to stay for more than twenty years, starting from the day they signed up; in order to receive it, nothing else is required, except to be behave properly; they will not pay any damage for anything they sell or buy; once the deadline expires, they shall leave with all their belongins” [19]. The acquisition of

citizenship for foreigners will be obtained by consulting the city, and for their children, at the age of fifteen they will be able to get their residency and those who wish to leave somewhere else, they can do it after the age of twenty.

Conclusions

The state imagined by Plato is a peaceful one, war being started solely to defend the integrity of the territoy. Citizens must have a solid military education, all being compelled to execute the military service. The status of the new state stipulated in the Laws is an agricultural one, the class of the guardians present in the Republic is no longer mentioned as a special one. Agriculture is mentioned as a basic activity in the development of the state and the life of the citizens. It must be practised alongside military and gymnastics exercises. The property on the land is reintroduced in the Laws, each citizen having their own batch of land to work. The philosopher king in The Republic is replaced by the rule of law in the new city; and the aristocratic regime, structured on three social classes, will be nuanced by elements of monarchy and democracy in The Laws. Both works grant a vital role to education, while the state has the role of trainer in cultivating the moral virtues of the citizens.

The elemental instruction is composed of calculations, the art of measurement and astronomy, and the next educational level takes into account the superior culture, refined by the theoretical and practical elements. "Every enlightened man, contemplating the spectacle of the universe, however far from the gods, can not fail to reach a conception of the world contrary to that of the common man" [20]. The true happiness belongs to those endowed with divine wisdom, "those who have been moderate and, by virtue of their nature, partakers of the other virtues, those who, in addition, have mastered all the knowledge required by that elated science (...) all goods have been rewarded by the divinity and thus are enjoyed by them" [21]. Let us not forget that the issue of happiness, as Plato sees it, is directed towards the city and does not stop at the individual level. Once the brighten State is achieved, it can offer happiness to every citizen.

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FEMINISM IN THE ERA OF GLOBALIZATION. BETWEEN RIGHTS AND STEREOTYPES

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Abstract
Feminism[1] still represents dynamic and controversial phenomenon, manifested at interdisciplinary level, from the political area to the socioeconomic and juridical area, where woman has successfully created her own identity, overcoming obstacles of all kinds, in order to identify a balance between career and family. Legal regulations have been the main instrument in outlining today woman's status and planning the equality policy, the law being characterised by its dynamics in its continuous re-dimensioning depending on the social, historical, cultural, political and economic context, while still keeping its moral values based on which it has been substantiated and still developed, heading, in its evolution towards a "moral ideal". Equality between men and women has become a fundamental right, a common value and a prerequisite for the achievement of economic growth, employment and social cohesion objectives, and the democratic society has successfully created full and equal citizen's rights for all, men and women enjoying the same opportunities, rights and obligations in all spheres of life. Inspite of these administrative, legislative efforts and approaches, the question still remains whether the gender equality objective has really been achieved? Has this phenomenon been turned into a constant protection topic, which can have a negative effect on woman's image, who would thus become a "victim of society"? Are we heading towards protection policies or towards policies on developing a woman able to build values and contribute to the social, economic and cultural development?
Keywords: *feminism, equality of opportunity, equality between women and men, economic, social and cultural rights, European law, feminist policies.*

BRIEF INCURSION IN TIME

Throughout the history of the feminist movement, three important waves have been highlighted, three key stages which have marked the evolutions concerning the institutionalization of feminism in the western countries and the expansion of the emancipation movement in Muslim countries, as well as in countries undergoing democratization, the ideological feminist accents being revitalized in different historical

contexts, which outlined principles such as the respect of women's dignity and autonomy by promoting women's rights as human rights.

The feminist movement started in the Illuminist-revolutionary period, being connected to the name of a feminist martyr, Olympe de Gouges, the author of the Rights of Women and the Female Citizen, in 1791 (France), a well as to the emergence of the first feminist treaty "A Vindication of the Rights of Woman", drafted by the British writer Mary Wollstonecraft in 1792, the Illuminist spirit marking the understanding of women's role in the society and on the cultivation of their reason through education[2]. This first wave of feminism was focused on obtaining the right to education, liberty and equality, culminating in the success of the suffragette movement in Great Britain, and also in other countries, whose finality was to obtain women's right to vote, substantiated in almost all countries throughout the 20th century.

In Romania, the feminist movement was strongly connected to the international movement, through personalities such as Elena Văcărescu or Alexandrina Cantacuzino, and the change in the woman's civilian, political and economic status was very controversial at that time for ideologists and politicians, who were opposing this trend. Moreover, the political agenda of the Romanian feminists was quite complex, being subsequently synthesized on areas by Eleonora Stratilescu[3] (1919), more specifically, the economic area, who evokes the equal pay for equal work, the protection of women's work and of its results, the cultural field, which was reflecting women's access to all forms of training and all types and hierarchical levels of a career, settling the career-maternity conflict, growing in the same system of values and conditions regardless of gender, the marriage and family field, which required creating equality between spouses through law and education, and last, but not least, the social and political field, which evokes equal civil and political rights, women's participation in all institutions, dignities and public functions, and women's political preparation for the exercise of their rights.

The second feminist stage began in the middle of the 20th century and was represented by two writers, namely Betty Friedan and Simone de Beauvoir, who marked the history of the feminist movement through the publications "The Feminine Mystique", and "Le Deuxieme Sexe", respectively, bringing to the forefront woman's identity problem

and the need to abandon the housewife's myth by identifying a balance between the time dedicated to the family and the time allocated to education, career, thus initiating important changes through the adoption of new laws, the establishment of organizations and associations for women (such as National Organization for Women in America).

After the 1990s we can already speak of an acceleration of the globalization process that initiated a revival of the feminist movements, both at national level, as well as worldwide, by creating international mechanisms aimed at protecting women's rights and pressure instruments used by women's organizations in advancing the gender equality agenda, the World Conference on Women, Beijing Declaration and Platform for Action of 1995 representing real opportunity windows for the increase of the visibility of the feminist ideology at global level, in a new political, social and economic context influenced by globalization. Thus, the world of global capitalism, information technology, postmodernism and colonialism triggered a reality different from that in which the feminists of the second wave of the years 1960-1970[4] militated. In this context, feminists such as Camille Paglia and Naomi Wolf renounced the idea of a "victimizing" feminism of the second wave, considered harmful and false, promoting a feminism of power and glorifying the idea of over your own life and the idea of individual choice.

In post-communist countries, the assumed feminism was an isolated ideological approach, gender problems appearing on the political agenda under the pressure of the adhesion of the new democratic countries to the European Union and less under the pressure of women's internal movements. Thus, in the conditions of a political space still dominated by the former regime, women shifted to the private sector and to the civil society, generating an academic and activist feminism, to the detriment of a political feminism.

Currently, a fourth feminist wave is emerging, focused on equality of opportunity and equal pay, in relation to which psychologists and sociologists identify an increased interest in woman's personal development, the restoration of a balance between career and family, and on exceeding all gender obstacles [5].

EQUALITY BETWEEN WOMEN AND MEN - A MULTILATERAL OBJECTIVE IN INTERNATIONAL, EUROPEAN, NATIONAL AND REGIONAL CONTEXT

The principle of gender equality was based on moral considerations shared at global level, and was initially included in the content of the Universal Declaration of Human Rights of 1948, substantiated in 1976 through the entry into force of International Covenant on Economic, Social and Cultural Rights (ICESCR), and re-dimensioned, revaluated and clarified since 1993 by the Committee on Economic, Social and Cultural Rights (CESCR), by adopting General Comment no. 16 on The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights, following a comprehensive assessment of the normative content of art. 3 in the content of ICESCR[6]. As a matter of fact, this General Comment succeeded in creating a veritable acquis in the field of gender equality, covering all its aspects and dimensions reflected in the range of rights, such as non-discrimination, equal treatment, global opportunities or human dignity that actually provide a “multifaceted” guarantee. In order to provide this balance of rights in globo, CDESC also indicates the possibility of positive discrimination of the underrepresented gender, the member states having the right to adopt measures meant to ensure specific advantages, an idea also found at the European Union level, art. 23 paragraph (2) in the European Charter on Human Rights which suggested that this principle cannot be interpreted restrictively.

Interpreted extensively, the principle of equality between women and men can also be found in the complementary sphere of civil and political rights, being resized according to the social progress and the attempt to gradually eliminate traditional customs characterised by the discrimination against women, while many countries proved to be still refractory in the real implementation of this principle.

Starting from the idea of placing this principle in the context of the other rights approached in diversity, we evoke in a concise and intercultural manner the voice of woman’s rights manifested in Africa, based on the data obtained following an survey on-site carried out in Se Village, Mono Department south of Benin [7], which provide a real, authentic perspective which highlights once more woman’s trajectory in outlining her own identity by its unavoidable comparison to the system of values, culture, traditions and past

and present practices that influence this sinuous journey. This time, equality between women and men is related especially to the ownership right, more specifically, to woman's situation in the real property field, because in recent years, woman's role has acquired new meanings in the development process. Thus, despite the situation of inequality between men and women still perpetuated in Africa, we are witnessing an intensification of the fight for women's rights, especially in relation to the access to real property. From this point of view, an important set of problems is that of the nature of the reference system the inhabitants of Se Village use to define women's access to ownership, because the current legal framework interacts with the rules of the traditional system, and the inhabitants of Se Village or Benin actually live in a context of transition between the traditional law and the modern law. As a matter of fact, a basic characteristic of the policy in Africa is represented by "the multiplicity and diversity of the political institutions, cultures and logics, in short, of the manners of governing" [8]. This highlights the fact that the state is no longer able to impose his norms, which leads to a relative autonomy of the local political arenas. "We must say that at Benin there is a law that is official, the law that is officially recognized but apart from that, at the level of each family, at the level of each community, tradition is the one that prevails…" –Department Chief ("Il faut dire qu'au Benin il y a la loi qui est officielle, la loi qui est reconnue officiellement mais en dehors de ça, au niveau de chaque famille, au niveau de chaque collectivité, il y a la tradition aussi qui prime… » - Chef de l'Arrondissement"). The analysis of the land system in Western Africa is focused on the encounter between land systems characterised by what we could call traditional law (le droit coutumier) and the modern land law (droit foncier moderne)[9]. Thus, in Benin, persons act according to a double scale of values, namely that of the traditional law, substantiated through "le Coutumier du Dahomey (1930)", and on the other hand, to that of modern law (le droit moderne), and the problem of woman's right to land ownership is "paralysed" and "corseted" by the traditional system of values, and women still fight to win their right to property, especially in the rural environment, where the traditional law prevails, which means that man is entitled to own land. In the evolution of the legal framework of Benin, an important role was played by all international ratified legal instruments, such as: la Charte africaine des droits de l'homme et des

peuples (African Charter on Human and Peoples' Rights), adopted in 1981 and ratified by Benin on 20th January, 1986, the Universal Declaration of Human Rights, adopted and proclaimed by United Nations General Assembly Resolution 217 A III of 10thDecember, 1948, the International Covenant on Economic, Social and Cultural Rights - ICESCR, ratified in 1966, and the Convention on the Elimination of All Forms of Discrimination against Women, signed by Benin on 11th November,1981 and ratified on 12thMarch, 1992.

The promotion of the rights of the women in Benin-Africa has also stood out due to the activity of certain institutions and bodies created especially for this purpose, namely: the Ministry of Woman, Child and Family, the Observatory on Family, Woman and Child, the organization "The Woman in the Rural Development" ("l'organisation Cellule "Femme dans le développement rural") and the National Committee for Woman's Promotion. In this legislative context, we should admit that the current level of the recognition of the dignity of women of Benin - Africa enables them to reach their full capability at social, economic and political level. Nevertheless, the reality shows another social facet, as women are still fighting to win and their rights and have them respected, and are forced to resort to justice and endure lengthy trial periods in order to clarify countless rights limited by the traditional practices, a phenomenon present especially in the rural environment. Moreover, the doctrine in the African environment has been increasingly invoking the need for a just policy by observing the same rights and liberties fir all, through the effective application of the legal norms and the cultivation of social peace meant to allow for the substantiation of the development policy [10].

Leaving the African area, we are again turning our attention to the international law, bringing to the forefront the International Convention on the Elimination of All Forms of Racial Discrimination, which enshrines the right to equality before the law and the elimination of discrimination in the category of universal rights. At the same time, in international context, the international Labour Organization plays an essential role in prohibition of discrimination in employment and occupation.

In the light of a narrower framework, namely the European community, gender equality is an integral part of human rights and a criterion for democracy, as advocated

by the Council of Europe. As a matter of fact, the most important juridical instrument for the social and economic rights guaranteed by the Council of Europe, the European Social Charter, revised, reinforces equality between women and men, highlighting in the content of article 20 that “With a view to ensuring the effective exercise of the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex, the Parties undertake to recognise that right and to take appropriate measures to ensure or promote its application in the following fields: access to employment, protection against dismissal and occupational reintegration, vocational guidance, training, retraining and rehabilitation, terms of employment and working conditions, including remuneration, career development, including promotion."

The right to equal opportunities is a fundamental right within the European Union as well, and all necessary measures are being taken in this respect to combat discrimination and promote equality between women and men. In fact, the principle of equality between women and men is one of the objectives of the European Union, the legislation, jurisprudence and amendments to the treaties contributing to its consolidation and implementation. The European Union promotes equality between women and men, article 2 and article 3 paragraph (3) of TEU establishing that ,,the Union shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child”. Moreover, article 8 of TFUE confers on the European Union the task of eliminating inequalities and promoting equality between men and women through all its activities, a concept also known as ,,gender mainstreaming”[11].

These objectives are also enshrined in articles 21 and 23 of the Charter of Fundamental Rights of the European Union, which became mandatory from the legal point of view, after the entry into force of the Treaty of Lisbon, and the right to equal treatment was thus recognized in the external sphere of labour relationships. On a derived level, the aforementioned principles were applied in a gradual and complex manner through the adoption of certain measures, for the most part through ordinary legislative procedure, out of which we remind here the most important ones: Directive 79/7/EEC of 19 December 1978 which compels member countries to gradually apply the principle of

equal treatment between men and women in the field of social security, Directive 92/85/EECof 19 October 1992 introducing measures to improve the safety and health at work of pregnant workers, workers who have recently given birth or who are breastfeeding, Directive 2004/113/ECof 13 December 2004 implementing the principle of equal treatment between women and men for the access to goods and services and to the provision of goods and services, Directive 2006/54/ECof 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, a directive the content of which is to be reviewed in relation to the provisions on equality and remuneration, the Parliament adopting an implementation report based on several surveys commissioned by the European Parliamentary Research Service (EPRS) [12], Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC, Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, including agriculture, in a self-employed capacity, and on the protection of self-employed women during pregnancy and motherhood, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

The European Union has intensified its preoccupation with the development of the social dimension by improving working conditions and living standards, promoting equality between women and men and guaranteeing basic and equitable rights that are harmonized at the level of the legislation of all member states. Among the measures adopted by the European Union in the field of equality between men and women there is the “Rights, Equality and Citizenship” Progrmme, which finances projects aiming to achieve gender equality and to eradicate violence against women. Thus, for 2017, budget line 33 02 02 - Promoting non-discrimination and equality-had 35 064 000 EUR allocated in commitment appropriations and 24 000 000 EUR as payment appropriations, which is a significant increase in payments compared to the previous years and, at the same time, shows progress in the implementation of this programme. Moreover, budget line 33 02

01 was allocated 26 451 000 EUR in order to contribute, among other objectives, to combating and protecting against all forms of violence against women, a budget allocated, as a matter of fact, following a survey carried out at the request of the FEMM Committee[13] and published in the autumn of 2016, through which an overall image of the European Union budget spent for gender equality is provided.

At European Union level, ever since 2006, European Institute for Gender Equality (EIGE) is also operational, with the office at Vilnius, in Lithuania, with a strategic role in the promotion of gender equality, combating discrimination based on gender, and raising awareness of gender equality, by providing technical assistance to the EU institutions.

Another representative document in this sector is the Charter of Fundamental Rights of the European Union, aimed at improving the promotion of equality between men and women in Europe and worldwide. These principles are implemented and developed through strategic measures and engagements, thus, in December 2015, the Commission published Strategic engagement to gender equality 2016-2019, in order to continue the Commission's Strategy for equality between men and women (2010-2015), focused on five key areas of action: increasing female labour-market participation and the equal economic independence of women and men; reducing the gender pay, earnings and pension gaps and thus fighting poverty among women; promoting equality between women and men in decision-making; combating gender-based violence and protecting and supporting victims; andpromoting gender equality and women's rights across the world.[14]

In 2015, the Council also adopted the ,,Action Plan on Gender Equality 2016-2020" based on the Joint Staff Working Documentof the Commission and European External Action Service (EEAS) on ,,Gender Equality and Women's Empowerment: Transforming the Lives of Girls and Women through EU External Relations (2016-2020)", underlining the need for women to fully and equally enjoy all human rights and fundamental freedoms, as well as the need to achieve gender equality and women's empowerment. The ,,Achievement of gender equality and empower all women and girls" is also, in fact, one of the 17 sustainable development goals (SDG) on the 2030 Agenda

entitled ,,Transforming our World: the 2030 Agenda for Sustainable Development”[15], adopted by the General Assembly of the United Nations Organization.

This brief overall presentation of the regulations, institutions, organizations, and mechanisms that have created a veritable “engine” for the promotion, implementation and awareness of women’s rights reflected at transdisciplinary, cross-sector level, by overcoming the economic, political, social, cultural boundaries, with the beginning of the globalization process, presents us with an ideal status of today's woman.

Nevertheless, equality between women and men remains a principle far from being reality, despite all legislative and administrative efforts displayed at international, national, and sectoral level, and gender stereotypes continue to deeply mark the feminine gender that persists in its poor representation on the labour market and in the economic and political decisional process. However, the statistical data obtained at European Union level show an improvement in the unemployment rate among women and an improvement of the increase of woman’s presence in the labour market[16]. In 2016, 44% of the women aged between 30 and 34 years had a degree in higher education compared to 34% of the men of the same age and one in three parliamentarians was represented by women. On the other hand, a pay gap between women and men of 16.3% was identified and a five-fold increase over men's house hold responsibilities, which is why a much higher number of women has opted for part-time work, these disadvantages, specifically highlighted by recent statistical data (end of 2016), counterbalance the attainment of the maximum capacity for women's development and the realization of established rights,a 16.3% remuneration difference was identified between women and men, as well as an allocation by women of five times more time to household responsibilities compared to men, which is why far more women chose a part-time job, and these disadvantages, highlighted in practice by recently collected statistical data (the end of 2016), counterbalanced the attainment of woman’s maximum development capacity and the realization of her consecrated rights.[17]

WOMAN’S IMAGE REFLECTED IN NATIONAL REGULATIONS. GENDER STEREOTYPES

The ever more profound and accentuated visibility of the feminist ideology worldwide, reconfigured in a new political, social and economic context through the international interinstitutional cooperation in the globalization era, triggered a veritable legislative reform at national level, as Romania transposed, as a priority, the Directives adopted at European Union level on woman's rights.

The Constitution of Romania enshrines the principle of equality in the content of Article16 – Equality of rights – paragraph (1) stipulating that ,,Citizens are equal before the law and the public authorities, without privileges and without discrimination'', which is supplemented by paragraph (3) that guarantees equal opportunities between women and men in relation to in the occupation of civil, military or civilian functions and dignities. Moreover, article 41 – Labour and social protection of labour - paragraph (4) enshrines the principle of non-discrimination on the basis of gender in terms of remuneration and provides that for equal work, women and men have equal pay The Labour Code – Law no. 53/2003, as amended and supplemented, also stipulates in the content of article 5 that the principle of equal treatment of all employees and employers operates within labour relationships.

National regulations on equality between women and men were multilaterally developed through the adoption of numerous normative acts, the implementation of strategies for equal opportunities, action plans for employment and the establishment of institutions, commissions for the protection of the under-represented gender. For example, the adoption of Ordinance no. 137/2000 on the prevention and punishment of all forms of discrimination, republished in March 2014, had an important role, as it includes in the definition of discrimination the gender criterion as well, followed by Framework Law no. 202/2002, republished in June 2013, which regulates gender equality and promotes equal opportunities between women and men, for the elimination of all forms of discrimination based on gender, thus taking over the provisions of the European Directives on the principle of equal treatment between women and men in the field of labour relationships. In relation to the protection of the protection of the job of the pregnant women or women who have recently given birth, as well as mothers' rights at the workplace, among others, the national legislation has many regulations in this field,

among which: Government Emergency Ordinance no. 158/2005 on sick leaves and medical allowances, Government Emergency Ordinance no. 96/2003 on the maternity protection at work, with the specific Application Norms, Government Emergency Ordinance no. 111/2010 on parental leave and child care monthly allowance, as amended and supplemented. These regulations confer the right to maternity leave, the right to parental leave, leaves during which the dismissal is forbidden (an interdiction that extends for a period of 6 months after the woman's return to her workplace, as well as in the period of the payment of the insertion incentive), the right to a free work day per year for child health care etc. Many of these rights can also be exercised by the father, but in most cases, tradition and culture have deeply rooted the image of the woman dedicated exclusively to the family, above the professional life.

In fact, in the labour market, gender inequalities, gender stereotypes are still manifest, despite obvious progress, especially legislative ones, in the direction of ensuring equal opportunities and treatment. The doctrine[18] highlights the role of the so-called "double workload" in creating this imbalance in the labour market, as women continue to undertake almost all family tasks, a fact reflected in their lower availability in carrying out professional activities, opting often for part-time work, the chance to hold leadership positions being obviously decreased with the lower possibility to benefit from professional training, with an unavoidable impact on the chances of promotion and incomes obtained. We cannot deny that the employer is always confronted with a representation concerning the woman's unavailability to work overtime, as well as with her need for flexible working hours in certain situations, which is why it will hesitate to hire and promote her, or to give her a leadership position. Thus, although the Labour Code regulates the employer's possibility to set flexible working hours or individualized working hours as an alternative to normal working hours, with the agreement or upon the request of the employee in question, employers are still reluctant to address such regulations, which can be found more often in the strategies of multinational companies that are very interested in creating strategic advantages for their employees. The Organization for Economic Cooperation and Development shows that in 84.5% of the cases, Romanian employees are compelled to come to work based on fixed working hours set exclusively

by the employer, unlike, for example, in the Northern countries, such as Sweden and Denmark, where only 36%, and 43.5% of the employees, respectively, have to observe working hours imposed by the companies they work for, the others being free, to a greater or lesser extent, to set their own working hours. [19]

Our research[20] proves that gender stereotypes limit integration in the labour market, prejudice and discriminatory attitudes against women remaining widespread, including in relation to undertaking new roles in the professional sphere and in the public life. The stereotype according to which woman is responsible for the household chores, domestic tasks, and men remain those who have the main right to undertake leadership positions and positions in the public and professional area, persist in the centre of social dialogue promoted at European Union level, and in 2017 there have been several such debates for the improvement of the imbalance created in the labour market between women and men, as a measure included in the strategic ensemble approached in balancing the often negative effects of globalization, and the European union created its own corpus of global integrative rules, able to filter external policies in a manner that is beneficial for its own citizens, own economic, social policies etc. [21].

Certainly,,,the substantial equality between men and women will never be achieved by the mere adoption of normative acts or policies that are obviously gender-neutral" [22], but only by what we call positive discrimination, which implies specific unequal measures meant to eliminate or at least restore the balance of the real situation concerning gender equality and the inclusion of this principle in the broadened sphere of rights and liberties.

On the other hand, our opinion is that all these policies on protecting woman should not slip in a wrong direction, perpetuating the weaker sex stereotype, and outlining a false image of the woman always in the position of a victim of the society, who becomes the permanent object of protection. Legal regulations, which we mentioned exhaustively, due to lack of space, often create this impression among the population, outlining the image of the woman who needs help, support, being many times cast in the category of socially assisted and consumers of resources. Nevertheless, the object of protection of these regulations are maternity, life, family, not the woman herself, and the required

support is indeed provided with the purpose of finding a balance between family and professional life. The society needs a real awareness of women's rights that allows for the actual transposition of theory into practice, but also the knowledge of the correct and concrete dimension of these rights, by giving up protection policies and promoting women's development policies, able to build values and to contribute to the social, economic and cultural development.

A balanced participation in the labour market of both women and men, in terms of employment, wages, promotion and participation in life long learning, is substantiated by taking into account the family context, which is why it is necessary to outline and apply consistent policies meant to stimulate this process of reconciling the professional life and the family and private life, not only on the light of the economic dimension, but also in the light of the social and cultural one, in which gender stereotypes are perpetuated and reflected in the unequal allocation of the economic and political power in the society and in the limitation of women’s access in various spheres of the social life, certain professional areas being promoted as “naturally masculine”.

Through the implementation of the National Strategy in the field of equal opportunity between women and menand of the general Action Plan for the 2014-2017 period, carried out under the authority and coordination of the Ministry of Labour, Family, Social Protection and Elderly through the Employment and Equal Opportunities Department, the intervention areas taken into account were: the labour market, through the promotion of the gender perspective in the labour employment, mobility and migration policies, the increase in the awareness concerning the legal provisions on equal opportunities between women and men, the difference in the wages between women and men, encouraging the integration of women vulnerable to the discrimination phenomenon into the labour market, the balanced participation to the decision by monitoring the balanced participation of women and men to the decision-making process, the integrative gender approach by introducing the gender perspective in the national policies, but also gender violence, by combating the phenomenon of sexual harassment at the workplace and of the gender violence. In fact, according to Romania’s commitments related to the achievement of the targets of Europe 2020 Strategy, which include reaching the 75%

percentage concerning the employment rate, at national level, a strong motivation is required so that policies can continue to be strongly focused on the use of the unexploited or under-exploited potential of women who are outside the labour market or do not capitalize their full potential in the labour market for the increase in their employment rate up to 70%[23].

Although women's participation to the economic life has contributed to the revival of the women's statute and quality of life, laying the foundations for a society in which gender equality really exists, they still face an increased risk of social exclusion, being confronted with many obstacles to employment as can be inferred from the data on the long-term inactivity and unemployment. In such context it is necessary to take social and political attitudes and behaviours in the spirit of gender equality that are reflected in the actual overcoming of the "customary" barriers, of the gender clichés, which have corseted the evolution of feminisms over time.

CONCLUSIONS

Feminism was outlined at multidisciplinary, interdisciplinary and even transdisciplinary level becoming a triggering factor for social and economic strategies and policies in the context of globalization. This article highlights women's rights counterbalanced by gender stereotypes still present worldwide, as well as the relationship between the two essential dimensions characteristic of women, namely the mother role and the "career woman" one, the international and national legal norms succeeding in creating a balance when both dimensions come to be equally demanding. In the context of globalization, the international, union, national, regional institutions and bodies have outlined a veritable "range" of rights transposed and reflected in the complementary sphere of the civil and political rights, women's rights being gradually reconfigured and redimensioned by legislative harmonization and the adoption of an integrative vision of social, economic, political and cultural realities. The society needs what the European Commission has recently promoted: "A new start to address the challenges of work-life balance faced by working families".[24]

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CRITERIA FOR DELIMITING DISCRETIONARY POWER FROM EXCESS OF POWER IN THE WORK OF PUBLIC AUTHORITIES

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Abstract
A problem of essence of the state is the one to delimit the discretionary power, respectively the power abuse in the activity of the state's institutions. The legal behaviour of the state's institutions consists in their right to appreciate them and the power excess generates the violation of a subjective right or of the right that is of legitimate interest to the citizen.
The application and no observance of the principle of lawfulness in the activities of the state is a complex problem because the exercise of the state's functions assumes the discretionary powers with which the states authorities are invested, or otherwise said the 'right of appreciation" of the authorities regarding the moment of adopting the contents of the measures proposed. The discretionary power cannot be opposed to the principle of lawfulness, as a dimension of the state de jure.
In this study we propose to analyse the concept of discretionary power, respectively the power excess, having as a guidance the legislation, jurisprudence and doctrine in the matter. At the same time we would like to identify the most important criterions that will allow the user, regardless that he is or not an administrator, a public clerk or a judge, to delimit the legal behaviour of the state's institutions from the power excess. Within this context, we appreciate that the principle of proportionality represents such a criterion.
The proportionality is a legal principle of the law, but at the same time it is a principle of the constitutional law and of other law branches. It expresses clearly the idea of balance, reasonability but also of adjusting the measures ordered by the state's authorities to the situation in fact, respectively to the purpose for which they have been conceived.
In our study we choose theoretical and jurisprudence arguments according to which the principle of proportionality can procedurally be determined and used to delimit the discretionary power and power abuse.
Keywords: *discretionary power, power excess, subjective right, principle of lawfulness, principle of proportionality, constitutional law.*

INTRODUCTION

The lawfulness, as a feature that needs to characterize the juridical acts of the public authorities, has as a central element the concept of "law". Andre Hauriou defined the law as a written general rule established by the public powers, after the deliberation

and involving the direct or indirect acceptance of the governors [1]. In a wide meaning, the concept of law includes all juridical acts that contain the law norms. The law in a restricted acceptance is the juridical act of the Parliament elaborated in compliance with the constitution, according to some pre-established proceedings, that regulates the most general and most important social rules. A special place in the administered legislative system is owned by the constitution defined by the fundamental law that is placed on top of the hierarchy of the legislative system which contains juridical norms with a superior juridical force regulating the fundamental and essential social relationships, mostly those regarding the installing and exercising of the state power.

The lawfulness status in the public authorities' activity is founded on the concept of supremacy of the constitution and supremacy of the law.

The supremacy of the constitution is a quality of the fundamental law which in essence expresses its supreme juridical force in the law system. An important consequence of the supremacy of the fundamental law is the compliance of the entire law with the constitutional norms. The concept of juridical supremacy of the law is defined like "its characteristic that is seeking its expression in the fact that the norms it establishes should not correspond to neither of the norms, except for the constitutional ones, and the other juridical acts issued by the state bodies, are subordinated to it, from the point of view of their juridical efficacy".

Therefore, the supremacy of the law, in the above given acceptance is subsequent to the principle of supremacy of constitution. Important is the fact that the lawfulness, as a feature of the juridical acts of the state authorities involves the observance of the principle of supremacy of constitution and supremacy of the law. The observance of the two principles is a fundamental obligation of constitutional nature consecrated by the provisions of item 1 paragraph 5 of the Constitution. The non observance of this obligation results, as the case might be, into sanctions of non-constitutionality or unlawfulness of the juridical acts.

The lawfulness of the juridical acts of the public authorities involves the following requirements: the juridical acts should be issued with the observance of the competence

stipulated by the law; the juridical act should respect the superior law norms as a juridical force.

The “legitimacy” is a complex category with multiple significances that forms the search topic for the general theory of the law, philosophy of law, sociology and other branches of instruction. The significances of this concept are multiple. To remind a few: the legitimacy of the power, the legitimacy of the political regime; the legitimacy of a governing, the legitimacy of the political system, etc.

The legitimacy concept can be applied also in the case of the juridical acts issued by the public authorities being linked to the “appreciation margin” recognized to them in the exercising of the duties.

The applying and observance of the principle of lawfulness in the activity of state’s authorities is a complex problem because the exercise of the state’s powers implies also the discretionary power with which the state’s bodies are invested, or otherwise said the right of appreciation of the authorities regarding the adopting moment and the contents of the disposed measures. What it is important to underline is the fact that the discretionary power cannot be opposed to the principle of lawfulness, as a dimension of the rightful state.

In our opinion, the lawfulness represents a particular aspect of the legitimacy of the juridical acts of the public authorities. Thus, a legitimate juridical act is a legal juridical act, issued outside the appreciation margin recognized by the public authorities, that does not generate unjustified discriminations, privileges or restraints of the subjective rights and is adequate to the situation in fact, which is determined by the purpose of the law. The legitimacy makes distinction between the discretionary power recognized by the state’s authorities, and on the other side, the power excess.

Not all the juridical acts that fulfill the conditions of lawfulness are also legitimate. A juridical act that respects the formal conditions of lawfulness, but which generates discriminations or privileges or unjustified restrained to the exercising of the subjective rights or is not adequate to the situation in fact or to the purpose aimed by the law, is an un-legitimate juridical act. The legitimacy, as a feature of the juridical acts of the public

administration authorities should be understood and applied in relation to the principle of supremacy of Constitution.

Antonie Iorgovan asserted that a problem of essence of the rightful state is that of answering to the question: “where ends the discretionary power and where begins the law abuse, where ends the legal behavior of the administration, materialized by its right of appreciation and where begins the subjective law or the legitimate interest of the citizen? “ [2]

Approaching the same problem, Leon Duguit in 1900 makes an interesting distinction between the “normal powers and the exceptional powers” conferred to the administration by the constitution and the laws, and on the other side the situations in which the state’s authorities act outside the normative framework. The last situations are split into three categories by the author: 1) the power excess (when the state authorities exceed the limits of the legal mandates; 2) the embezzlement of the power (when the state’s authority fulfils an act that enters its competence aiming a different scope, other than the one the law stipulated), 3) the power abuse (when the state’s authorities act outside their competence, but through acts that don’t have a juridical character) [3].

In the administrative doctrine, that studies mainly the problematic of the discretionary power, it was underlined that the opportunity of the administrative acts cannot be opposed to their lawfulness, and the conditions of lawfulness can be split in general lawfulness conditions and respectively in lawfulness specific conditions on opportunity criterions [4]. As a consequence, the lawfulness is the corollary of the conditions of validity, and the opportunity is a requirement (a dimension) of the lawfulness. [5] Nevertheless, the right of appreciation is not recognized by the authorities of the state in the exercising of all duties they have. One must remember the difference between the linked competence of the state’s authorities that exists when the law imposes them a certain strict decisional behavior, and on the other side the discretionary competence, situation in which the state authorities can choose between more decisions, within law limits and its competences. To remember the definition proposed in the literature in specialty to the discretionary power: “it is the margin of liberty that is let to the free

appreciation of the authorities, so that in view of fulfilling the purpose indicated by the law maker, to use any means of action within its limits of competence." [6]

Yet the problematic of the discretionary power is studied mainly in the administrative law, the right for the appreciation in the exercise of some duties represents a reality met in the activity of all state's authorities. The Parliament, as a supreme representative organ and with a unique law making authority, disposes of the largest limits in order to show its discretionary power, which is identified by the characterization of the legislative act. The discretionary power exists in the activity of the law courts. The judge is obliged to decide only when it is noticed for, within this notification limit. Beyond these it is manifested the sovereign right of appreciating the facts, the right to interpret the law, the right to fix a minimum punishment or a maximum one, to grant or not extenuating circumstances, to establish the quantum of the compensations etc. The exercising of such competences means nothing else but the discretionary power.

Exceeding the limits of the discretionary power signifies the violation of the principle of lawfulness and of legitimacy or, of what in legislation, doctrine or jurisprudence is named to be the "excess of power".

The power excess in the activity of state's organs is equivalent with the law abuse because it signifies the exercising of the legal competences without the existence of a reasonable motivation or without the existence of an adequate relation between the disposed measures, the situation in fact and the legitimate purpose aimed at.

The law of the Romanian administrative prosecution uses the concept of "power excess of the administrative authorities" which is defined to be the "exercising of the right of appreciation belonging to the public administration, by the violation of the fundamental rights and liberties of the citizens stipulated by the Constitution or by the law" (item 2, paragraph 1, letter m). For the first time the Romanian law maker uses and defines the concept of power excess and at the same time acknowledges the competence of the administrative prosecution instances to sanction the exceeding of the discretionary power limits throughout the administrative acts. The exceptional situations represent a particular case in which the Romanian authorities, and mainly the administrative ones, can exercise the discretionary power, obviously existing the danger of the power excess.

Certainly, the power excess is not a phenomenon that manifests itself only in the practice of the executive organs it can be seen in the Parliament activity or in the activity of the law courts.

We appreciate that the discretionary power acknowledged by the state's authorities is exceeded, and the measures disposed represent a power excess, anytime it is ascertained the existence of the following situations:

1.The measures disposed do not aim to a legitimate purpose;

2.The decisions of the public authorities are not adequate to the situation in fact or to the legitimate purpose aimed, in the meaning that everything that is needed in order to reach the aimed purpose, is exceeded;

3.There is no rational justification of the measures disposed, included the situations in which it is established a juridical treatment that is different for identical situations, or a juridical treatment identical for different situations;

4.By the measures disposed the state's authorities limit the exercise of some fundamental rights and liberties, without the existence of a rational justification that would represent, mainly, the existence of an adequate relationship between those measures, the situation in fact and the legitimate purpose aimed at.

The essential problem remains that for the identification of criterions through which are to be established the limits of the discretionary power of state's authorities and to differentiate them from the power excess, that should be sanctioned. Of course there is the problem of using some criterions in the practice of the law courts or in the constitutional prosecution.

In connection to these aspects, in the literature in specialty it is expressed the opinion according to which the "purpose of the law will be then the legal limit of the right to appreciate (the opportunity). Therefore the discretionary power does not mean a liberty outside the law but one allowed by the law." [7]

Of course, "the purpose of the law" represents a condition of lawfulness or, as the case may be, of constitutionality of the juridical acts of the state bodies and that's why it can be considered as a criterion to delimit the discretionary power from the power excess.

Such as results from the jurisprudence of some national and international law courts, in relation to our search topic, the purpose of the law cannot be the only criterion to delimit the discretionary power (synonymous with the margin of appreciation, term used by C.E.D.O.), because a juridical act of the state can represent a power excess not only in the situation in which the measures adopted do not aim to a legitimate purpose, but also in the hypothesis in which the measures disposed are not adequate to the purpose of the law and are not necessary in relation to the situation in fact and with the legitimate purpose aimed at.

The suitability of the measures disposed by the state authorities to the aimed legitimate purposes represents a particular aspect of the principle of proportionality. Significant is the opinion expressed by Antonie Iorgovan which considers that the limits of the discretionary power are established by the: “written positive rules, the general law principles subscribed, the principle of equality, the principle of non-retroactivity of the administrative acts, the right to defense and the principle of contradictoriality , the principle of proportionality” (s.n.).[8]

Therefore, the principle of proportionality is an essential criterion that allows the delimiting of the discretionary power from the power excess in the activity of state’s authorities.

This principle is consecrated explicitly and implicitly in the international juridical instruments or by the majority of the constitutions of the democratic countries. Romania’s Constitution regulates explicitly this principle in item 53, but there are other constitutional dispositions that imply it.

In the constitutional law, the principle of proportionality finds its use mainly in the field of protection of human fundamental rights and liberties. It is considered as an efficient criterion of appreciation of legitimacy of the interventions of the state authorities in a situation limiting the exercise of some rights.

Much more, even if the principle of proportionality is not consecrated expressly in the constitution of a state, the doctrine and jurisprudence considers it as being a part of the notion of a rightful state. [9]

This principle is applied in many branches of the law. Thus, in the administrative law it is a limit of the discretionary [10] power of the public authorities and represents a criterion in the exercising the jurisdictional control of the discretionary administrative acts. Applications of the principle of proportionality exist in the criminal law or in the civil law .

The principle of proportionality is found also in the community law, in the meaning that the lawfulness of the community rules is subject to the condition that the means used to be adequate to the aimed objective and not to exceed what it is necessary to reach this objective.

1.The jurisprudence has an important role in the analysis of the principle of proportionality, applied in concrete cases. Thus, in the jurisprudence of the European Court of the Human Rights, the proportionality is conceived as a just, equitable ratio, between the situation in fact, the restraining means of the exercise of some rights and the aimed legitimate purpose, or as an equitable ratio between the individual interest and the public interest. The proportionality is a criterion that determines the legitimacy of state interference of the contracting states in the exercising of the rights protected by the Convention.

2.In the same meaning, the Constitutional Court of Romania, by several decisions established that the proportionality is a constitutional principle . Our constitutional instance asserted the necessity to establish some objective criterions, by the law, for the principle of proportionality: “it is necessary that the legislative institutes objective criterions that should reflect the exigencies of the principle of proportionality” .

3.Therefore, the principle of proportionality is imposed more and more as a universal principle consecrated by the majority of the contemporary law systems, to be found explicitly or implicitly in constitutional norms and acknowledged by the national and international jurisdictions.[11]

4.In the literature in specialty were identified three jurisdictional levels of the administrative acts: “a) the minimum control of the procedure rules (form); b) normal control of the juridical appreciation of the facts; c) the maximal control, when the judge asserts upon the necessity and proportionality of the administrative measures”.[12]

The maximal control, to which the quoted author refers to, represents the correlation between the legality and the opportunity, otherwise said, between the exigencies of the principle of lawfulness and the right of appreciation of the public authorities, the proportionality couldn't be considered as a super legality criterion, but as a principle of law, whose main finality is to represent the delimiting between the discretionary power and the power excess in the activity of the public authorities.

There are situations in which the Constitutional Court used a "proportionality reasoning" as an instrument for the interpretation of the correlation between the legal contested dispositions and on the other side the constitutional dispositions, and in situations in which the proportionality, as a principle, is not explicitly expressed by the constitutional texts. Self-evident in this meaning are two aspects: invoking in the Constitutional Court's jurisprudence of C.E.D.O. jurisprudence, which, in the matter of restraining the exercise of some rights, analyzes also the proportionality conditions, and the second aspect, the use of such a principle in situations in which it is raised the question of respecting the principle of equality.

Declaring as non-constitutional a normative disposition on the ground of non-observance of the principle of proportionality, applied in this matter, signifies in essence the sanctioning of the power excess, manifested in the activity of the Parliament or of 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 are violated, if by the law or by the Government ordinance it is applied a differentiated treatment to equal cases, without the existence of a reasonable justification or if exists a disproportion between the aimed purpose and the means used.

CONCLUSIONS

There are two most important finalities of the constitutional principle of proportionality: the control and the limiting of the discretionary power of the public

authorities and respectively the granting of the fundamental rights and liberties in situations in which their exercising could be conditioned or restricted.

The proportionality is a constitutional principle, but in several cases there is no explicit normative consecration, the principle being deducted by different methods of interpretation from the normative texts. This situation creates some difficulties in the application of the principle of proportionality.

In relation to these considerations we propose that in the perspective of a reviewing of Romania's Constitution that at item 1 having as a side denomination "Romanian state" to be added a new paragraph that will stipulate that: "the exercising of the state power must be proportional and non-discriminatory".

In such a manner many of requirements have been answered:

a) The proportionality is consecrated expressly as a general constitutional principle and not only with a restrained application in case of restraining of the exercise of fundamental rights and liberties, such as it may be considered presently, when having into consideration the provisions of item 53 in the Constitution:

b) This new constitutional provision corresponds to some similar regulations contained in the "Treaty instituted by the European Community" or in the draft for the Treaty for the establishment of a Constitution for Europe, which is very important in the perspective of Romania's adhering to European Union.

c) This new regulation would represent a genuine constitutional obligation for all state authorities to exercise their duties in such a way that the measures adopted, to subscribe within the limits of the discretionary power limits acknowledged by the law and not to represent a power excess;

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

e)To make a better correlation between the principle of proportionality and the principle of equality.

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THE CONCEPT OF FREEDOM AND THE RESPECT FOR THE LAW IN A RULE OF LAW

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Abstract
Freedom is a concept as old as the democracy one, but freedom led to the edification of democracy. Within human society, the issue of fredom, of the concept of freedom, starts from the pereuisite that the individual depends on the values and norms of the society he lives in. „Freedom consists in being able to do what the law allows to do." (Montesquieu)
Freedom of conscience is considered the foundation of all public freedoms. If, according to Hobbes' theory, safety is a is a purpose of the social contract, freedom is a higher purpose and freedom of conscience is connected to reason.
It is an axiomatic truth that law is a phenomenon related to social life and the disruption of social order creates favourable conditions for breaking the law. Law enforcement is intended to ensure the social order in correlation with other factors generating democracy, among which human rights occupy an important place.
The principle of legality is a principle of the constitutional democracy and an essential demand of the rule of law.
Keywords: *freedom, law, democracy, right*

Freedom is a concept as old as the democracy concept, even older, if we take into account the fact that freedom helped bulding the democracy and not vice versa. In this century the content of freedom has experienced increased developments, which are also marked by the fact that human rights have become a political and social theme of major concern.

Regarding freedom, Hobbes said: "A free man is one who is not prevented from doing what he intends to do." So it results that the individual's freedom in society is not the same as freedom as a state of mind, as freedom as a philosophical concept.

The issue of freedom in human society is thus analyzed because within the concept of freedom it is assumed that the individual depends on the values and norms of the society in which he lives. [1] Thus, Montesquieu appreciated that "freedom is to be able to do what laws allow"

Freedom of conscience, however, is the foundation of all public freedoms. For over two millennia, since this concept was present in the culture of humanity, has

undergone significant developments, and today it is ascertained that there is an interpenetration between democracy, liberty and liberalism.

Human society as a whole is governed by rules and legal norms that express and impose the requirements of the society, demanding a certain conduct of its members, as well as respect for them. [2]

John Locke considered that upholding the laws is one of the fundamental safeguards of natural rights as a system of pre-existing positive laws. [3]

Most members of a society live abiding the law, but within the society there are also minorities which believe that in a democratic state freedom has no limits, considering that they have more rights than in reality, and fewer duties. Article 23 from the Romanian Constitution regulates individual freedom, and the provisions of this article take over the provisions contained in the Universal Declaration of Human Rights ("Everyone Has the Right to Freedom and Security") and the International Covenant on Civil and Political Rights ("every person has the right to freedom and the security of its person").

Moreover, the Romanian Constitution stipulates that: “Individual freedom and the person's safety are inviolable”, therefore, individual freedom concerns the physical freedom of the person, its right to behave and move freely, not be held in slavery or in any other servitude, not to be apprehended, arrested or detained, except in the cases and by the express forms referred to by the constitution and laws. [4]

Freedom of the person means the existence of those conditions that allow the man to dispose of himself, to manifest himself freely in accordance with his desires, needs and conceptions. [5]

Living within the society, the man cannot have absolute freedom. It is admitted the freedom that does not violate the legal order, does not harm the rights and freedoms of others or of the good morals. [6]

Violation of the legal order legitimizes the intervention, the repression of public authorities, taking some measures that concern directly the person's freedom (searches, detentions, and arrests). [7]Talking about these measures we must refer to the concept of the person's safety, which identifies all safeguards that protect the individual in situations where public authorities take measures regarding individual freedom,

guarantees which ensure that these measures are not arbitrary, excessive, and abusive. [8]

The individual, when in contact with a public authority, regardless of his or her level, must be protected and have effective means to defend his / her rights. Violation of a right produced by an administrative authority can be repaired either by addressing that authority, or by addressing to the courts of the State, so that the individual disposes of effective steps in stages to defend its rights and freedoms. It can also address European jurisdictions. [9] In this regard, article 23 from Romanian Constitution stipulates the conditions under which searches, detentions and arrests can be carried out.

The whole issue of those who violate the law has different aspects. By breaking the law, people and their heritage, family and social well-being are affected. We mention that immoral practices represent important costs that are sustained by collectivities, economic agents, individuals etc. those who do not respect the law affect y their antisocial needs the fundamental institutions of the state as well. [10] At the forefront of these manifestations are included the facts of corruption. Corruption must be seen in correlation with the disturbances that manifest in the economic, political and normative area. We must take into account the fact that the market economy has not only beneficial consequences for the democratic society, because its resource-sharing mechanisms also create inequalities that lead to some individuals gaining an influential role in society at decision-making level. These advantages are materialized in different alliances and networks that strengthen their power. All such manifestations lead to the delay of the economic growth of the state, to the violation of the citizens' fundamental rights and freedoms, and divert the allocation of resources to the important objectives.

Today, more and more specialists, from different fields of activity are concerned about the relationship that exists between the freedom of the individual, the rules of law and the respect for them. [11] These concerns are due to the changes that take place today in the world both in economic and social terms, but also in the functioning of some institutions as a result of the transition from industrial society to the computerized post-industrial one. The economies of the states have evolved towards globalization and the computerization has created only a technical progress and increases in labor productivity,

it has also led to the increase of unemployment as well as the emergence of new forms of crime - cybercrime. Globalization did not contribute to the expansion of the economic system generator of prosperity, but on the contrary, in the rush of resources, there were great economic gaps between states.

With the disappearance of totalitarian regimes it has been opened the road towards democratization, but there have also been major legal deficiencies. Nowadays, the so-called democracy has serious problems and, as Alexis de Toqueville said: “the nations that have been deprived of their liberty for a long period of time will face difficulties in using their unexpectedly acquired freedom”.

During the period that has passed since the events from December 1989, Romania has become a part of many international legal instruments, moreover, adopting provisions for the adjustment of its domestic law to the requirements of the European law and the international conventions. [12]

The generouse ideas comprised in the statute of the European Council have guided this prestigious organization and have happened and materialized in the European convention for the protection of the human rights adopted in 1950, which was subsequently completed with multiple protocols annexed. It must be observed that compared with the protection system of the human rights existing in the United Nations, the European mechanism offers the image of a much more integrated system, with increased possibilities for the remediation of the human rights violation, if they were disregarded. [13]

It is noteworthy that by enforcing a series of rights that also appear in the Universal Declaration of Human Rights, the European Convention still brings a number of clarifications and developments in relation to the person's right to freedom and security. Including the legal principles specific to democratic societies, the European Convention for the Protection of Human Rights largely develops the idea of the right to a fair trial that must be conducted within a reasonable time before an independent and impartial tribunal established by law (article 6). As Kant stated in his theory about the essence of the state, its sole purpose is to protect the law and guarantee freedom. Kant argued that in regulating mutual relations between people, "the legal power of the whole being called

civil society can oppose violation of natural freedoms." [14] Kant defined the part of the civil society by the legal power, that is, by the state. The state, he said, must recognize the value of personality and limit the action where it would destroy that value, which is also a right.

The state being a regulator of individual activities must encompass all new areas of human activity. The State can and must embrace within its field any activity and must encourage the good everywhere, but always in the form of law, so that any act of it be based on the law, on the manifestation of the general will, on the respect and on the guarantee of the fundamental rights and freedoms.

As Giorgio del Vecchio stated, the state reptresents the supreme organ of the law and the law is an emanation of the human nature. The state is the man itself regarded as the species of law. [15]

The sovereignty of law and legality remain in reality the pillars of the modern state which, therefore, wants to be a state of law, its essence being the normativism.

The law is the legal instrument with a higher juridical value, being distinguished from the other legal instruments by its superior position in the system of sources of law and by the normative content of its constitution. In a democratic society the authority of law and the rule of law are supreme. The obligation of law is so strong that no one can ignore the legal rules under the pretext of its incognizance. [16]

The principle of legality implies the democracy of power manifested through the sovereignty of the people. The people exercise their power through their elected representatives by universal, equal, direct, secret and freely expressed vote. The Parliament is elected by the people and exercises the powers of law-making and control over the executive. This principle calls for an order of law in which the Constitution is the supreme place - the fundamental law of the state that compels all to obey the law.

When social control weakens, the freedom of social action of the individual leads to disregard and violation of the rule of law. Also, a series of acts such as vagabondage, beggary, drunkenness in public places, shaky or aggressive street behavior lead to breaking the law and creating a phenomenon of social disarray. In this situation, the state

must intervene through its specialized institutions in order to regulate the relations between the members of the society by resorting, if necessary, to the force of coercion.

The fundamental principle of the theory of the rule of law is that the state can be bound by law, that is, the organs and officials of the state, the state itself, can be limited in their action by legal norms which they cannot violate without responding, i.e. without incurring the sanction which applies to any subject of law when violating the law. Legality means strict adherence to a rule of law. The state of legality is achieved, either by complying with a legal provision voluntarily, by persuasion, or through law enforcement by the power of constraint of the public power.

The principle of legality is a fundamental universal principle that, as professor Victor Popa observes, forces all the subjects of the legal relationships to respect the law in their activity. [17] within the llegality there is also included the notion of constitutional legality, which means the compliance of all legal provisions with the provisions of the Constitution. The principle of legality implies that the entire conduct of individuals as well as the work of public authorities and other social organizations must comply with the general and impersonal norms adopted by the Parliament. The relations between the state and the law viewed from the point of view of the principle of legality are expressed most impressively by the doctrine of the rule of law. [18]

We underline the fact that the legality does not mean only law enforcement, but compliance with all legal norms. [19]

In the contemporary age, the principle of legality has become a fundamental principle of all the legal systems consisting of the respect for the law by its recipients: the citizens and the state. [20] Lawmakers and those applying to them must understand their purpose well; understand that in democratic societies there is a direct link between democracy, freedom and law, but also the respect for this. [21]

The vast majority of people undoubtedly value democracy. They also value the conditions that allow them to lead a decent life and its foundation is the order. In the absence of order, freedom does not bloom. The purpose of the law, as John Locke said, "is not to abolish or restrict, but to increase freedom, and law enforcement is intended to

ensure order." But this must be done firmly and in correlation with other factors generating democracy, among which human rights occupy an important place. [22]

In a broad sense, the concept of law is extended to any binding rule of law. [23]

The rule of law is mainly ensured by establishing in the Constitution or by customary law, of the sphere of regulation of the social relations reserved to the law.

Conclusions

1) Freedom and equality of rights represent a fundamental criterion of progress, and the rule of law must defend human rights in accordance with national and international law.

2) Fair laws and their correct application underpin the economic basis and lead to the present and future development of society, to the genuine edification of the rule of law, to the safeguarding of human rights and fundamental freedoms. The legal order of the European Union creates for all the citizens of the Member States not only obligations, but also specific rights.

3) The jurisprudence of the national courts always exists, but the mandatory jurisdiction of the European Union courts is the expression of the new state concept of its sovereignty over human rights.

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THE LEGAL COORDINATES OF THE OPERATION OF THE EUROPEAN UNION "WITH MORE SPEED"

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Abstract
"Multi-speed Europe" is the unofficial expression of enhanced cooperation not involving all Member States either because they do not want to opt-out to such cooperation or do not fulfill certain conditions for the envisaged cooperation.
The concept of "enhanced cooperation" was introduced by the provisions of the Treaty of Amsterdam, which amends the original treaties by introducing the concept of flexibility, in the sense of regulating a "closer" or "enhanced" or "intensified" cooperation of a group of states, achieving a higher level of integration, without progress in this area being conditional on coordinated cooperation with other Member States.
Enhanced cooperation is a procedural way in which a group of states can impose a different pace of development than the rest of the Member States in order to achieve the objectives proposed in the Community policies concerned.
Keywords: *enhanced cooperation; enhanced cooperation; flexibility; the future of Europe; scenarios; European Union; legal basis.*

1. Reflections and future scenarios for the European Union

In 2017, on the anniversary, celebrating 60 years, since the six founding member states have agreed on the Treaties of Rome, the European Union has to face challenges of both internal and international nature.

As the European Union evolved, a series of tensions and dysfunctions have been accumulated, whether caused by economic, social, cultural, political differences between Member States, or by external challenges.

Internally, the Union is confronted with economic problems, as well as with some fragmented tendencies expressed by some Member States (eg Brexit - Great Britain, the declaration of independence by Catalonia and the breakup from Spain).

At an international level, the European Union must find solutions for maintaining security and maintaining regional peace.

In this context, the European Commission presented the "White Paper on the future of Europe - Reflections and scenarios for the EU-27 by 2025" [1].

The Introduction states that the Union was built on the backdrop of false crises and debates, for which it found solutions and succeeded in shaping its ascendant evolution. The current situation must not limit the future of Europe. The European Union must find solutions to overcome the challenges it is currently facing.

Europe has the necessary resources, building on its historical achievements: it houses the world's largest single market and holds the second most used currency. It is the largest trading power and the largest donor of humanitarian aid and development. Thanks, in part, to Horizon 2020, the largest multinational research program, Europe is at the forefront of innovation. Its diplomacy has an effective weight and contributes to maintaining the safety and sustainability of the planet. [2]

The White Paper advances five scenarios that will help guide the debate on the future of Europe. Each scenario is based on the premise that the 27 Member States are advancing together as a Union.

The European Union, bringing together the 27 Member States, will jointly decide on the combination of features taken from the five scenarios it considers best able to help bring the joint project forward, in the interest of European citizens.

Scenario 1: Continuing on the same path

According to this scenario, the Union maintains its initial course and focuses on the implementation of the Common Reform Agenda, in line with the guidelines "A New Start for Europe" presented by the Commission in 2014 and the Bratislava Declaration agreed by all 27 Member States in 2016.

Scenario 2: Exclusive focus on the single market

This scenario involves concentrating joint action on the key elements of the Single Market, to the detriment of other policies, as the number of policy areas in which the 27 Member States are unable to reach a common position is growing.

Scenario 3: Those who want more do more

Under this scenario, the Union is working as it has done so far, but allows Member States that want more than others to achieve specific objectives in areas such as defense, internal security or social affairs. One or more "coalition of those who want to do more" is

formed. This scenario implies 'two-speed European Union operation' in various areas such as defense, internal security, taxation or social aspects.

Scenario 4: Less, but more efficient

In this scenario, the European Union is focusing on more and more rapid results in some policy areas, while at the same time doing less in those where there is no perception of added value. Limited attention and resources are concentrated on a number of policy areas.

Scenario 5: Much more together

Member States decide to pool more powers, resources and decision-making powers in all areas. Decisions are being taken more quickly at European level and are implemented in a short time. Cooperation between all Member States is deepened more than ever in all areas.

The way to follow

Regardless of which of the scenarios presented in this White Paper will be the closest to reality, these values and aspirations will still link Europeans. The EU is a unique project in which internal priorities have been correlated and sovereignty has been shared in a voluntary way to better serve national and collective interests.

The united Europe is the guarantee of the effective realization of fundamental human rights, the guarantee of real security for all citizens, and of general welfare.
That is why all Member States must strive for restoring confidence, obtaining consensus and creating a sense of union ownership.

"Multi-speed Europe" is the unofficial expression of intensified cooperation, which does not involve all Member States because they do not want to opt-out or do not fulfill certain conditions for the envisaged cooperation. [3]

2. The legal basis for enhanced cooperation

The Treaty of Amsterdam modifies the initial treaties by introducing the concept of flexibility in the sense of regulating a "closer" or "enhanced" or "intensified" cooperation

of a group of states in order to achieve a higher level of integration without progress in this area be conditional on co-ordinated cooperation with the other Member States.

The introduction of Community rules in the treaties on enhanced cooperation between Member States is a real progress in the Community, although it has been considered that this flexibility is rather a change in shape than the substance, since the Treaty on European Union already provided for the same type of cooperation for the Monetary Union, and initiatives such as the social policy or Schengen agreements, even if they were carried out outside the Community framework itself, all had the characteristics of a "closer cooperation". [4]

Enhanced cooperation is not a stand-alone Community policy but a procedural way in which a group of states can impose a pace of development different from the rest of the Member States in order to achieve the objectives set out in the Community policies concerned.

This type of coordination which gives expression to a new principle - the principle of flexibility - in Community law is currently governed by the following provisions:

- Article 20 of the Treaty on European Union (consolidated version) [5], which contains general provisions on enhanced cooperation;
- Article 326-334 TFEU on enhanced cooperation. [6]

The analysis of these provisions of the Treaties shows that enhanced cooperation is allowed at the level of the three Community pillars established by the provisions of the Maastricht Treaty.

Enhanced cooperation requires compliance with the legal legal framework and the possibility of establishing procedures to allow the European integration process to proceed smoothly. The enhanced cooperation obligation justifies any practice based on the Community's tendencies to complement them and to ensure the functioning of the procedures which it establishes.

The changes introduced by the Treaty of Nice made it possible to promote a more cooperative mechanism of cooperation. The Nice meeting of 9-11 December 2000 also envisaged improving the system of enhanced cooperation, specifying the need to create a system of facilities for this form of cooperation.

1. Until then, a majority of Member States needed to establish a reinforced cooperation after the Nice summit, at least eight states could be detached on the basis of such a report, without the risk of their actions being limited by any veto. In the perspective of enlargement, the minimum number of states needed to establish a strengthened cooperation relationship will be one third of all Member States.

2. Enhanced cooperation may cover any area, including the internal market (taxation).

The strengthened cooperation mechanism allows Member States to collaborate and even detach themselves in certain areas in which they are able to move faster than other states.

3. The general conditions and the intensified cooperation procedure

3.1. The conditions for initiating enhanced cooperation

Community rules state that integration should take place at different pace between Member States, establishing the legal framework in which this is possible and the conditions to be met.

According to Article 20 TEU, Member States wishing to establish a form of enhanced cooperation among themselves within the framework of the non-exclusive competences of the Union may resort to the institutions, procedures and mechanisms provided for in the Treaties, provided that such cooperation favors the achievement of the objectives Union, to defend and serve its interests and to consolidate the integration process.

The decision authorizing enhanced cooperation shall be adopted by the Council as a last resort where it determines that the objectives pursued by that cooperation can not be attained within a reasonable period of time by the Union as a whole and provided that at least nine Member States participate in it.

Acts adopted under a strengthened form of cooperation are only binding on the participating Member States. They are not considered as the acquis to be accepted by the candidate countries for accession to the Union.

According to the provisions of Article 326 TFEU, enhanced forms of cooperation respect the Treaties and Union law. They can not affect the internal market or economic,

social and territorial cohesion. Forms of enhanced cooperation can not constitute a barrier or discrimination in trade between Member States or promote a distortion of competition between them.

The forms of enhanced cooperation must respect the competences, rights and obligations of non-participating Member States. The latter shall not prevent their implementation by the participating Member States.

From the date of their establishment, enhanced cooperation forms shall be open to all Member States subject to any conditions of participation laid down in the authorization decision. They shall also remain open at any time during their term of operation, subject, in addition to the above-mentioned conditions, to the acts adopted thereunder.

The Commission and the Member States participating in a strengthened form of cooperation shall promote the participation of as many Member States as possible.

Outside the framework of the general conditions established for enhanced co-operation between countries, there are also a number of additional criteria established for co-operation in certain areas.

The Commission and, where appropriate, the High Representative of the Union for Foreign Affairs and Security Policy shall keep the European Parliament and the Council regularly informed of developments in the forms of cooperation. In this area, the Treaty of Lisbon introduces a simplified method for enhancing cooperation between Member States, ie permanent structured cooperation. Thus, Member States with more prominent military capabilities can commit themselves to taking part in the most demanding defense missions. [7]

3.2. Enhanced cooperation procedure

The procedure for the establishment of enhanced cooperation is regulated by the provisions of art. 329-334 TFUE.

 In accordance with the provisions of Article 329 TFEU, Member States which propose the establishment of enhanced cooperation in the fields covered by the Treaty, except for areas of exclusive competence and common foreign and security policy, submit

to the Commission a request on the scope and objectives pursued through the form of enhanced cooperation envisaged. The Commission may submit a proposal to the Council to this effect. If it does not submit such a proposal, the Commission shall inform the Member States concerned of the reasons for doing so.

 The authorization to cooperate more closely is granted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

 Any Member State wishing to take part in a form of enhanced cooperation in one of the areas covered by the Treaties (with the exception of areas of exclusive competence and the common foreign and security policy) shall notify its intention to the Council or the Commission.

Within four months of receipt of the notification, the Commission shall confirm the participation of the Member State concerned. Where appropriate, it shall ascertain whether the conditions for participation have been fulfilled and shall adopt any necessary transitional measures for the application of the acts already adopted in the form of enhanced cooperation.

However, if it considers that the conditions for participation are not fulfilled, the Commission shall indicate the provisions to be adopted for their fulfillment and shall set a deadline for re-examining the request for participation. Upon expiry of that period, the Commission shall re-examine the application in accordance with the procedure laid down in the second subparagraph. If the Commission considers that the conditions for participation are still not met, the Member State concerned may refer the matter to the Council, which shall decide on the application. The Council shall act in accordance with Article 330. It may also adopt, on a proposal from the Commission, the transitional measures.

 The request of the Member States wishing to establish enhanced cooperation between themselves in the framework of the common foreign and security policy is addressed to the Council. It shall be forwarded to the High Representative of the Union for Foreign Affairs and Security Policy, who shall give its opinion on the coherent form of enhanced cooperation envisaged with the Union's common foreign and security policy

and on the Commission, which shall give its opinion in particular on the consistency of the form enhanced cooperation envisaged with the other policies of the Union. The request shall also be forwarded to the European Parliament for information.

 The authorization to use a form of enhanced cooperation in this area is granted by a decision of the Council acting unanimously. All members of the Council may participate in the deliberations, but only the members of the Council representing the Member States participating in a form of enhanced cooperation participate in voting. Unanimity is made only through the votes of the representatives of the participating States.

 Any Member State wishing to take part in enhanced cooperation under the common foreign and security policy shall notify its intention to the Council, the High Representative of the Union for Foreign Affairs and Security Policy and to the Commission. The Council shall confirm the participation of the Member State concerned, after consulting the High Representative of the Union for Foreign Affairs and Security Policy and after having determined, as appropriate, the fulfillment of any conditions of participation. The Council, on a proposal from the High Representative, may also adopt any necessary transitional measures for the application of the acts already adopted in the form of enhanced cooperation. However, if it considers that the conditions for participation are not fulfilled, the Council shall indicate the provisions to be adopted in order to fulfill those conditions and shall set a time limit for the re-examination of the request to participate.

 Expenditure resulting from the implementation of a form of enhanced cooperation other than the administrative costs necessary for the institutions shall be borne by the participating Member States, unless the Council, acting unanimously after consulting the European Parliament, decides otherwise.

The Council and the Commission shall ensure the consistency of the actions undertaken under enhanced cooperation and the consistency of these actions with the policies of the Union and shall cooperate to that end.

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[1] COM(2017) 2025, 1.03. 2017

[2]https://ec.europa.eu/commission/sites/betapolitical/files/cartea_alba_privind_viitorul_europei_ro.pdf, p.8

[3] For example, exempting some countries (Great Britain, Ireland, Denmark) from implementing decisions in the field of Justice and Home Affairs (JHA), or integrating others into the Schengen area or the euro area.

[4] Theodor Tudoroiu, Introduction to the Treaty of the European Union, Lucretius Publishing House, Bucharest 1997, p. 15

[5] Modifying Articles 27A-27E, 40-40B, 43-45 TUE and ex.art.11 and 11A-TCE.

[6] In the contents of which they are taken over and modified art.27A-27E, 40-40B, 43-45 TUE şi ex.art.11 şi 11A –TCE.

[7] Dragomir Eduard, Niţă Dan, "The Treaty of Lisbon", Nomina Publishing House, 2009, p.60.

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EUROPEAN INTEGRATION/NATIONAL IDENTITY; PLURILINGVISM/MULTICULTURALISM - ROMANIAN LEGAL LAW AND CULTURE: ASSESSMENTS, PERSPECTIVES

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Abstract
As is commonly known and generally accepted, a legal rule must be clear, predictable and accessible, predictable to leave no room for interpretation. A questionable, imperfect (unclear) or unclear or uncorrelated law with other legal provisions becomes disputed and therefore may be interpreted differently, generating in this way a non-unitary practice and contempt for justice and justice. Right is the inestimable heritage, culture, education, science of a state, is the result of many generations who have learned, who have gone to the world, to society, to the community; and where they went they became, in turn, a living lamp that enlightened, educated, formed part of the community in which it lives. Think of a law graduate as a jurist who, with his teachings and feelings, the experience he has acquired will carry him with his whole life and pass them on to all generations. This is a formidable trump, which can not be compensated with anything else; which can not be measured in anything other than a contribution of the right to education, to the formation, to the evolution of the Romanian state and people. This is the spirit of time, and if we do not take it into account, we remain behind the train. This Europeanization tends to uniformize, and if we do not keep what we have at home, we risk running out of history. How can we proceed? The influence of EU law has steadily increased and now it is about to jump to a much higher level and to cross other borders. As a consequence, we will all live and work in the environment generated by Union law or its consequences. Revolutionary change is similar, but with far more important effects than the industrial revolution - when thousands of seemingly independent transformations have come together to form a new economic system, accompanied, neither more nor less than a new way of life, a new civilization called "modernity" as well as new legislation. For legislation to be truly revolutionary, it must undergo changes not only in quantity but also in the way it is created, distributed, transferred. In addition, the extent to which it is tangible or intangible must change. Only when transformations occur at all levels we have the right to call "revolutionary" legislation.
Keywords: *European integration, national identity and sovereignty, legal culture, European Union law, Romanian law*

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 nationaI 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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THE CONSTITUTIONAL PRINCIPLES APPLICABLE TO THE FUNDAMENTAL RIGHTS, LIBERTIES AND DUTIES OF ROMANIAN CITIZENS

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Abstract
Fundamental rights, freedoms, and duties are not only a reality but also a condition for a democratic society. Fundamental rights, freedoms, and duties, with their many ramifications and theoretical and practical implications, are an important area in the concerns of each state. The constitutional principles applicable to the fundamental rights, freedoms, and duties of Romanian citizens are generally recognized mandatory rules that have proven their reliability over time. Their institutionalization at the constitutional level provides them with the most effective legal guarantee, as they benefit both from mechanisms guaranteeing the supremacy of constitutional norms, as well as from legal mechanisms specific to the protection of subjective rights. Regulated in the Constitution of Romania, these principles refer to universality, no retroactivity, equality, legal protection, free access to justice, restriction of rights or freedoms, and the presumption of innocence. The present paper will try to make a brief presentation of these constitutional principles, which constitute the fundamental source of the fundamental rights, freedoms, and duties of the Romanian citizens.
Keywords: *universality, no retroactivity, equality of rights, legal protection, extradition or expulsion, free access to justice, restriction of rights or freedoms, presumption of innocence*

The universality of fundamental rights, liberties and duties

The universality of rights and liberties is the citizen's vocation to all the rights and liberties. [1, 158] The universality also represents the idea that all the citizens of a state benefit from these rights and liberties. Certainly this is a judicial possibility, general and abstract, given by the Constitution to every citizen, the concrete revaluation and the actual exercise of these rights and liberties are also guaranteed by the Constitution but the manner of exercise of these rights depends on every citizen.

The universality of rights also implies the universality of duties. It also is natural that the citizen has both rights and duties towards his siblings and the society. [2, 194] These principles basically express the indissoluble bond between rights, liberties and duties, their interconnectivity. In a broader and concrete division, the duties also become guarantees of the rights and liberties. [3, 300]

This rule is also explicitly stated in the two international pacts regarding human rights which show that „the individual has duties towards others and towards his

collectivity and he is bound to make efforts in promoting and keeping the recognized rights." [4, 203]

The non-retroactivity of law

According to this principle and adopted law that is put into effect causes only future judicial consequences because it is absurd to ask from a person to answer for a conduct that was previous to the coming into force of that law. [3, 300] The constitution also provides an exception, namely the more favorable criminal and contravention law.

Regarding the exceptions of the non-retroactivity of law, within the doctrine there are certain pertinent and conclusive observations, worthy of being examined. Thus, it is shown that the constitutional principle of the non-retroactivity of law is seldom found within the law of other states. In France, it has been provided by the Constitution of year III but it has never been applied. In 1948 and 1946 the proposals of its constitutional regulation had been rejected. This principle is also unclearly regulated by the Constitution of USA. In accordance with other authors it is shown that the non-retroactivity should be reexamined, at least regarding the civil law, and this, along with the criminal and contravention one, to be able to be retroactive. Such a regulation would be demanded by certain situations that can occur in the social life. Certain retroactive civil regulations could be the „waiver" laws that are leges confirmatoriae and leges annulatoriae. The first have the purpose to retroactively modify some states of fact, with beneficial effects. Thus the risk of nullity or the unjustified prescription can be avoided.

Within the doctrine there is sometimes examined, still as an exception, the interpretative law. This is not an exception from the non-retroactivity of law because the general-compulsory interpretation, as well as any other interpretation for that matter, clarifies the meaning of the interpreted norm but does not add to or modify that meaning.

Any act of applying a norm of law implies its previous interpreting in other to establish whether it is applicable or not within the judicial situations taken into consideration. Usually such an interpretation lies within the competence of the organ who issued the norm.

The principle of the non-retroactivity of law is expressly stated within the Civil Code, art. 6, according to which „The civil law is only applicable as long as it is in effect. It does not have retroactive power" as well as in the Criminal Code, art. 11, according to which „the criminal law does not apply to the deeds that, when they were committed, were not labeled as offenses."

There are only two exceptions from this principle when the law is also retroactively applied:

- when the new criminal law is more favorable then it is retroactively applied
- In the case of interpretative laws.

In what concerns the interpretative law, it is retroactively applied only when it does not bring new regulations, otherwise the non- retroactivity principle is kept.

The non- retroactivity principle ensures:

- the stability of the earned legal right;
- prevents the law abuse trough modifying the regulation, in the case of power rotation;
- ensures the legitimacy of law, its recognition as compulsory and just;
- Abiding a nonexistent law cannot be asked until that certain law comes into effect. [4, 203]

The non-retroactivity of law, as a constitutional principle, is compulsory for all fields of law, without exception, not only for those that explicitly provide it. Then, besides the exception established by the Constitution, no other exception can limit this constitutional principle. [5, 159]

The principle of the non-retroactivity of law is presented as a fundamental guarantee of the constitutional rights, especially of the liberty and safety of the individual.

The citizens' equality of rights

According to art. 16, points 1 and 2, as well as art. 4 point 2 of the Constitution, Romanian citizens regardless of race, nationality, ethnicity, language, religion, gender, opinion or political affiliation, wealth or social origin, can benefit equally from all the rights and laws provided by the Constitution, can equally participate in political, economical,

social and cultural life, without privilege or discrimination and are equally treated by both public authorities and the other citizens.

The citizens' equality of rights is the constitutional principle according to which the Romanian citizens are equal regardless of race, nationality, ethnicity, language, religion, gender, opinion or political affiliation, wealth or social origin, and they can equally benefit from all the rights and laws provided by the Constitution, can equally participate to the political, economical, social and cultural life, without privilege or discrimination, receive equal treatment from both the public authorities and by the other citizens.

The citizens' equality of rights regards all rights and all Romanian citizens without discrimination or privilege and manifests itself in all fields of activity. No measure taken in case of public danger that threatens the existence of the nation cannot lead to discrimination based only on race, color, gender, language, religion or social origin. [3, 301] The law guarantees equal protection to all citizens and punishes discrimination.

Within the specialty doctrine it is stated that equality of rights has three aspects, namely: equality of rights of women and men; equality of rights of citizens regardless of race, nationality, ethnicity, language, wealth or social origin; equality of rights of citizens regardless of religion, opinion or political affiliation. [6, 138]

Equality of rights of men and women represents the reality that women are half of the country's population and that is why they must benefit equally from all the rights and duties.

Equality of rights of women and men is guaranteed by certain means, including by the special care that is given to the mother and by the protection and assistance granted to the family.

Equality of rights of citizens regardless of race, nationality, ethnicity, language, wealth or social origin states the reality that within the territory of Romania, across history, there settled, lived, worked and fought alongside Romanians citizens of other nationalities (national minorities) such as the Romanian people, Hungarians, Germans, Serbs, Turkish people, Hebrews, Armenians etc.

All these citizens benefit in equality with Romanians of all rights and liberties and can equally take on the fundamental duties.

According to art. 6, paragraph (1) of the Constitution, the state recognizez and guarantees to national minorities the right to keep, develop and express their ethnic, cultural, linguistic and religious identity.

In the practice of the European Court of Human Rights it has been decided that the principle of equality is violated and discrimination is committed in cases where there has been established that children who are French speakers have the right to go to a school in a city only if their parents live in that city (Belgium linguistic case – 1968).

The aspect referring to the equality of rights of citizens regardless of religion, opinion or political affiliation seeks that the political or religious opinions of people to not represent means of discrimination.

In the practice of the Constitutional Court there have been established several landmarks having the value of principles for our law system and for the principle of equality, thus, it has been decided that „within the normative structure of the Constitution the criteria of non-discrimination are nominated by art. 4 paragraph (2), these being race, nationality, ethnicity, language, religion, gender, opinion, political affiliation, wealth, social origin, However, this being of utmost importance, the constitutional dispositions must be correlated and interpreted in relation with the dispositions of the international judicial instruments concerning human rights, only thusly being able to establish the equality of rights of citizens in their judicial meaning and dimensions.

The protection and duties of Romanian citizens abroad

The protection of Romanian citizens abroad as well as their duties is based on the fact that the Romanian citizenship is the political and judicial bond between the citizen and the state that, by its effects determines the judicial status of the individual wherever he might be within or outside the state's frontier. For this purpose, the Romanian citizens that are abroad have the right to call for protection of the Romanian authority and the Romanian authority has the duty to grant it.

The status of Romanian citizen ensures the citizen's right to ask for protection from the Romanian authorities and the authorities' obligation to offer the necessary protection.

In this regard, the protection of the Romanian citizen abroad implies [4, 207]:

- The right to ask from the embassy and the consulate to interfere among the rightful organs of that country to ensure the right to protection, stopping of abuse etc.
- advice on exercising their rights abroad;
- the embassy can notify, require explanation or protect when in the foreign country the rights of the Romanian citizen are violated;
- the performance of certain judicial acts within the embassy in the interest of the Romanian citizen;
- the insurance of a bond between the Romanian citizen and the authorities of Romania as well as with the authorities from the foreign country;
- judicial assistance etc.

The Romanian authorities, in virtue of their duties, close agreements, treaties with the authorities of other states regarding the protection of the Romanian citizens abroad based on the principle of reciprocity.

Benefiting from the protection of the state, the Romanian citizen who is outside Romanian frontiers must, however, fulfill his duties stated by the Constitution and the laws of Romania, if they are not incompatible with his absence from the country.

The foreign and stateless citizens benefit from judicial protection in Romania

Within the constitutional regulation for the status of the foreign and the stateless in Romania, there are taken into consideration:

- the foreign and stateless citizens, as human beings, have certain natural, inalienable and imprescriptibly rights (to live, to dignity, to liberty, to conscience);
- Certain rights can only be given to Romanian citizens.

All constitutional systems state that only that state's citizens have political rights (to elect or be elected) because only they can and must participate to the governing of their own state. This quality is expressly required in order to be able to own lands in Romania or to occupy a magistrate post. [1, 160] Furthermore, the citizens belonging to that state cannot be extradited or expelled at the request of a foreign state.

There also are other subjective rights that can be acquired and exercised regardless of the citizenship. Such rights must also be granted to foreign or stateless citizens who live in Romania.

Article 18 of the Constitution regulates the right to refuge, being known that asylum is by excellence a right belonging to the foreign and stateless citizens. The right to asylum implies the hosting and protection granted by the Romanian state to these people because in their state of origin they are pursued or prosecuted for political activities in favor of humanity, progress and peace, being also called political asylum. People that are granted asylum by Romania benefit from all the rights and have all the duties except for the ones that exclusively belong to the Romanian citizens. At the same time, these people cannot be extradited.

According to international documents regarding this matter, the asylum is a peaceful and humanitarian act and cannot be considered an unfriendly act towards that state.

Likewise, both the international judicial documents and the practice of the states in this field believe that any person has the right to request and obtain asylum in another country. A certain right cannot be summoned by people considered to have committed a crime against peace, a war crime or a crime against humanity, by the understanding of the international instruments that have dispositions referring to such crimes. The assessment of the motivation of asylum is to be made by the state that grants it, in the exercise of its sovereignty.

Romanian citizens cannot be extradited or expelled from Romania

This principle represents an application of the rule recognized by the states of the world according to which that state's citizens cannot be extradited or expelled. As a consequence to the European and euro-atlantics opening of Romania, in art. 19 paragraph (2) of the Constitution a derogation of this rule is regulated, stating that Romanian citizens can be extradited but not expelled, based on the international conventions that Romania is part of, within law terms and based on reciprocity. As a consequence, to extradite Romanian citizens all the conditions stated by the Constitutions

must be fulfilled along with the ones from law (Law no. 296/2001 regarding extradition) and the European Convention regarding the approved extradition by Law no. 80/1997.

Likewise, according to art. 19 paragraph (3) of the Constitution the foreign and stateless citizens can be extradited only based on a convention or condition of reciprocity.

It is observed that there is a difference between the constitutional requirements based on which Romanian citizens can be extradited and the ones for the stateless or foreign citizens. In the case of the latter only the fulfillment of one condition is sufficient, a convention or reciprocity. [3, 303]

Extradition and expulsion are two very serious measures that especially regard the individual liberty and the right to free circulation.

Extradition

It is the judicial institution that allows a state to require from another state on whose territory one of its citizens requested asylum to surrender him. It insures that people who have committed crimes, especially serious international crimes, to not escape without judgment or punishment by hiding on the territory of other states.

It is an act of judicial interstate assistance regarding criminality that aims for the transfer of an individual that is criminally pursued or convicted from the judicial sovereign domain of a state into the one of the other state.

Extradition is not accepted when it is requested for political causes or when in his own country the individual might be sentenced to death or there is the risk that the individual might undergo torture or other cruel, inhuman or degrading punishment or treatment etc. Extradition is accepted and practiced in case of nautical or aerial piracy, women or children trafficking, weapon traffic, drug traffic, terrorism, genocide etc.

Expulsion

It is the judicial institution that allows public authorities of a state to force a person (foreign or stateless citizen) to leave the country, thus ending the person's residence on that state's territory.

The expulsion measure is usually taken for the protection of the rightful order, being motivated by political, economical or judicial considerations, such as public nuisance, illegal actions or political actions against the safety of the state, insults to the state of residence or to a foreign state.

Within the international law some rules have been established in regard to the expulsion stating the expulsion execution must not be useless, brutal, fast or insulting and the expulsed has the right to choose the state where he is going to be sent meaning that the expulsion is made while keeping the inherent human rights.

According to art. 7 of the Declaration of Human Rights of the people that do not have the nationality of the country they live in (O.N.U 13th of December 1985) „a foreign person that resides legally on the territory of a state can only be expulsed if a decision is made according to law, only if serious national security issues do not interfere, he must have the possibility to gather reasons against his expulsion and to request that his case be examined by the appropriate authority or one or more people especially designated by a certain authority, being represented for this purpose. The individual or collective expulsion of foreigners that are in this situation on grounds of race, color, religion, culture, ethnicity or nationality is forbidden. [2, 203]

Expulsion or extradition are decided by law, within a lawsuit, based on proven facts provided by law. Any expulsion or extradition that is not legally decided by justice represents an abuse, a violation of the right to free circulation guaranteed by the Constitution and the International Conventions. [4, 208]

Towards the reality that both measures seriously harm fundamental liberties, it is normal that justice should decide because within the structure and System of the Constitution of Romania justice is one of the guarantees of the constitutional rights and liberties.

The priority of international regulations

By art. 20 of the Constitution of Romania some rules are established regarding the relation between internal and international law.

The first rule of the constitutional provisions regards the interpretation and application of dispositions regarding the rights and liberties of the citizens according to the provision of the international treaties of which Romania is part.

The explanation for this lies within the attachment of Romania towards the Universal Declaration of Human Rights, the International Pact regarding economic, social and cultural rights and the Pact regarding the civil and political rights (adopted and open to signing, ratification and adhesion on the 16th of December 1966, ratified by Romania in 1974 and put into effect on the 3rd of January 1976 and 23rd of March 1976) as well as towards the European Convention for protecting the fundamental human rights and liberties (1950) which Romania has ratified (1994)

The second rule gives priority to international regulations (from the treaties that are ratified by Romania) in case of the occurrence of certain contradictions, or conflicts – inconsistencies- between them and the internal regulations, other than the Constitution.

Nevertheless The Constitution and the internal regulations will have priority if they have more favorable dispositions. [1, 162]

The opening of Romania towards Europe and the international community is thusly constitutionally guaranteed. This is a modern solution that can be found in the Constitution of France (art. 55), Spain (art. 96 and art. 93 that allow the attribution of constitutional competences to some international organizations or institutions) and Germany.

An issue that can occur regarding art. 20 of the Constitutions is that of knowing the solution if certain international regulations contravene the Constitution. In France, the Constitution provides in art. 54 that „If the Constitutional Council, notified by the President of the Republic, by the prime-minister or by the President of one of the gatherings, has declared that an international commitment includes a clause that is contrary to the Constitutions, the authorities in charge of ratification or approval can only interfere after the revision of the Constitution" and the Constitution of Spain provides in art. 95 that „closing an international treaty that contains dispositions contrary to the Constitution must be followed by a revision of the Constitution."

The supremacy of the Constitution does not allow the ratification of an international treaty that would contravene with its provisions. In the Romanian judicial system the provisions of the international treaties cannot be placed, under the aspect of their judicial power, above the provisions of the Constitution. From here follows the constitutional obligation of the competent authorities to negotiate and close international treaties while keeping their consistency with the Constitution. If the provisions of some international treaties contain provisions that are against the Constitution, their ratification can only be made after the Constitution is revised.

A certain doctrinaire solution inspired by the constitutions of other states (France, Spain) has been also acknowledged by the Constitution which, in art. 11, paragraph (3) states that if a treaty to which Romania is to become part of has contrary dispositions its ratification can only take place after the revision of the Constitution. A certain constitutional law must be applied to all the international instruments that Romania is to become part of and not only to the ones regarding human rights and liberties.

The free access to justice

Solving conflicts by an independent and impartial power is a guarantee of the rights and liberties if every person has free access to justice. According to this principle anybody must have free access to justice regardless if he is Romanian, foreign or stateless citizen, for protecting his rightful rights, liberties and interests.

The Constitutional Court has decided [7] that any person can appeal to justice in order to protect his legitimate rights and interests and no law can prevent the exercise of this right. Also, a disposition that prevents judicial people to exercise the attack against the lawsuit – verbally, of contravention to the courts of law, violates „the free access to justice".

The access to justice implies the submission of some applications as well as their solve by the competent judicial authorities, namely the efficiency of the application.
In the practice of the Constitutional Court there have been two very important legal issues that regard the content of this principle.

Regarding the first problem, the Court has decided that „according to the provisions of art. 125 of the Constitution, justice are made by the Supreme Court of Justice and by the other judicial courts provided by law. Thus being the existence of some administrative and jurisdictional organs it cannot let to the removal of the intervention of the judicial courts, within the terms provided by law. This consequence also results from the exigencies of the principles of separating the state powers, that, in what concerns the relation between the public and judicial administration, excludes the possibility that an organ of public administration, even with jurisdictional character, to substitute judicial authority. As a consequence, the decision of the administrative jurisdictional organ is subdued to the judicial control of the administrative legal department or other competent institution, according to law, and the parts cannot have limited exercise of a right sanctioned by the provisions of the Constitution."

Overtaking the jurisprudence of the Constitutional Court, in art. 21 paragraph (4) of the Constitution it has been provided that the administrative jurisdictions are optional and free. These jurisdictions „represent an activity done by a jurisdictional organ which functions within an institution of public administration or some autonomous administrative authorities that is made according the procedure imperatively provided by a special law, procedure resembling the one of the courts of law developed separately by them" [8]. These jurisdictions can be legally regulated or not, that is why they are optional, by once they are regulated they become mandatory, must be notified and are free. At the same time „a difference must exist between the preliminary administrative procedure and the administrative-jurisdictional procedure. [9]

Regarding the second problem the Court has decided that the enforcement of the rule for developing the court trial is to be made by the legislator according to the provisions of art. 125 and 128 of the Constitution. Consequently, the legislator can enforce, taking into consideration special situations, special procedural rules as well as ways of exercising the procedural rights, the principle of free access to justice assuming the open possibility of those interested to use these procedures in their forms and ways that are established by law. Therefore the rule of art. 21 paragraph (2) of the Constitution means

that the legislator cannot rule out from the exercise of procedural laws that he has enforced any category or social group.

The Constitution and its laws does not defend or guarantee any interests but those that are founded on law, custom, generally on sources of law.

The free access to justices allows the submission of any request that can be solved by the courts of law. The legitimate or illegitimate character of the requests will result only after the judgment of the case and will be established by the court order. Using the expression „legitimate interests" the constitutional text does not condition the admission of the action by justice but binds justice to protect only legitimate interests. [3, 306]

The possibility of notifying justice to protect legitimate rights, liberties and interests can be made either through direct action or any other procedural method, including the one of unconstitutional exception mentioned in art. 144, letter c) of the Constitution.

An important part of the free access to justice is represented by the right of the parts to an equal trial and to the solving cases within a reasonable time, regulated by art. 21, paragraph (3) of the Constitution. This text is in accordance with the provisions of art. 6 of the European Constitution for protecting the fundamental human rights and liberties (1950). Regarding this European text and the rules provided by the constitutional disposition there is a very rich jurisprudence of the European Court for Human Rights and also of the Constitutional Court.

The public positions and dignities can only be filled by people that have the country's citizenship and reside within that country

The Constitution uses the terms public positions and dignities. In what regards public dignities, at a closer analysis there can be observed that the position of deputy, senator, head of state, minister is however more than a public function from the point of view of the manner of filling, of attributions and of course as a manner of termination of public dignity. For the constitutional law a certain distinction is not solely terminological but fundamental as well because the dignitaries are not public servants according to the meaning of administrative law.

Public dignity is by excellence a category of the constitutional law.

In what regards the public positions it is without doubt that the constitutional text refers to the ones that imply the exercise of state authority, a certain status and the taking of the oath, according to art, 54 of the Constitution.

Certainly filling a public position or dignity can only be made by people who fulfill all the legal conditions (age, competence etc.) to which the Constitution also enforces two more important conditions, namely: Romanian citizenship and residence on the territory of Romania. In what regards the first condition, double citizenship is allowed by both Constitution and law and the interest of the society is to allow access to public positions and dignities only to people who have Romanian citizenship.

The condition regarding residence on the territory of Romania is, along with the citizenship, a guarantee of the person's attachment to the country to whose governing he participates as a dignitary or public servant. [1, 164] The Constitution regulates within art, 16, paragraph (3) an application of the great principle of equality in the field of filling the public positions and dignities. Thusly, it is provided that the Romanian state guarantees equality of chance between men and women for filling these positions and dignities. A certain constitutional rule does not imply the creation of parity in the domain but only the guarantee of equality of chance for men and women to accede in public positions and dignities. Consequently, the equality of chance must not be mistaken for egalitarianism.

The Constitution also regulates another application of the constitutional principle of equality in art. 16, paragraph (4) according to which the citizens of the Union who meet the conditions of the organic law have the right to elect and be elected within the local public administration authorities.

This text implies certain specifications. Thus, by the examined constitutional disposition it is regulated at the highest level the equality between Romanian citizens and the citizens of the European Union in the election domain. More precisely the national regimen is granted to the citizens of the European Union and the European integration is made in this important field. Regarding the exercise of the right to elect and be elected an organic law must be issued that provides for this purpose the conditions that must be met by the citizens of the European Union, namely which of the citizens of the European Union will be able to elect and be elected. It is certain that this organic law will also decide

regarding with which authorities of the public administration would these rights be exercised.

- firstly, it is observed that only the local public administration authorities are taken into account and not any other type of public authority;
- secondly, within the legislation of the European states the access of foreign citizens to all the local public administrative authorities is not regulated;
- thirdly, the constitutional text refers to people with citizenship not to stateless people;
- lastly, the expression „right to elect" and not „right to vote" is correctly used as it is regulated in art. 36 of the Constitution, due to the fact that the citizens elect one or more people and they do not vote.

The text makes another important specification namely that on one hand the exercise of this rights will be made in accordance to the organic law which will be adopted in accordance with the provisions of the treaty of adherence to the European Union.

The exceptional character of restraining the exercise of certain rights or liberties

According to the Declaration of Human and Citizen Rights „The liberty is the power to do anything that does not harm another. Likewise, the exercise of the natural rights of any human being does not have other limits than those that ensure the same rights to the other members of the society; these limits can only be determined by law". [10]

The European Convention for Human Rights shows that „NO disposition from the present convention can be interpreted as implying for a state, group or individual a certain right to perform an activity or fulfill an act that follows the destruction o the rights and liberties recognized by this Convention or to bring a higher limit to the rights and liberties than provided by the Convention". [11] The examination of these provisions concludes that the limits and restrictions are possible if:

- they are expressly provided by law;
- they are needed in a democratic society to protect national security public order, public health or morality, the rights and liberties of the others;
- they are proportional to the cause;

They are exclusively regulated in favor of the general good of a democratic society where certain legal restrictions can be enforced for the members of the police' armed forces.

The exercise of the rights and liberties has however special duties and responsibilities.

At the same time, according to art, 15, paragraph (1) of the European Convention the contracting states can take measures that derogate from the duties provided by the Convention in case of war or other public danger that threaten the life of the nation if the situation requests it and if the measures do not contradict other duties of the international law.

According to art. 53 of the Constitution, the restriction of the exercise of certain rights and liberties can only be made by law for: [3, 307]

protecting the national security, the public order, the public health or morality, the rights and liberties of the citizens;

the performance of criminal instruction;

The prevention of the consequences of a natural calamity, a disaster or a severe sinister.

The restriction must be necessary in a democratic society, must not touch the existence of the right or liberty and must be proportional with the situation that determined it and applied in a non discriminatory way.

The presumption of innocence

According to art. 23 point 8 of the Constitution of Romania „until the definitive conviction given by the court of law, the person is considered innocent".

According to art. 6 point 2 of the European Convention for Human Rights „any person accused of committing a crime is presumed innocent until his guilt will be established by law".

As a consequence the presumption of innocence provides that:

a person can only be accused within law limits, based on proof and clues of guilt and only by the appropriate authorities; any accusation that is outside these limits goes under

the incidence of the Criminal Code that provides crimes in this regard such as: illegal arrest and abusive inquiry, slanderous denunciation, unfair repression, slander etc;

- the person is not complied to prove his innocence, being presumed innocent until the definitive conviction;
- a person who is not definitively convicted by the court of law must be allowed all rights that are entitled to an innocent person;
- The duty to manage the proof of guilt mainly belongs to the competent organs of the state that must do this while keeping the legal procedures; violation this disposition can become a crime of: slanderous denunciation, perjury, abuse of office etc.

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THE CONCEPTUAL ANALYSIS OF PROFESSIONAL ETHICS

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Abstract
The professional ethics is intermediary, between the philosophy of the morality and the particular ethics of the different professional categories, being characterized through reflexivity. If the law usually intervenes after the breach has appeared, the professional ethics acts preventively, this being the main motive for being introduced. There are authors who deny the existence of a professional ethics, saying that there are only ethics applicable to different professions.
Kewords: *professional ethics, moral, ethical formalization, professional codes*

Introductive considerations

Ethics is indispensable to any profession, giving solutions where the judicial norms are not clear or do not expressly provide the moral-conflict situations of a professional in a certain domain. Thus, professional ethics is of great importance.

Moral and Ethics

The moral is an ensemble of judgments regarding the difference between right or wrong having the purpose of directing the human behavior. [1, 10]

Moral has a double meaning:

- as a universal social fact, as it is also shown by the Latin etymology (mores – habits); every society has a set of values and rules of conduct; [2, 4]
- As a result of the universal experience that seeks justice, the punishment of criminals and repair of damage. [1, 5]

A moral judgment consists of comparing what it is (imperfect reality) with what it should be (the idea of good). [1, 45] Therefore, moral implies denying the satisfaction of our own interests in favor of the ideal exigencies of virtue. Ethics (in Greek ethos – habits) is a theory of moral. If moral invokes universal truths, ethics invokes different positions to the moral choice issues. A narrow meaning of ethics would be knowing what deserves to

be desired. At large, ethics studies the general standards applicable to most people for the most part of their lives. [3, 11]

Ethics' purpose is to help people decide what is best for them, based on what criteria to choose and what is the moral reason for their actions. In other words, ethics implies the rational definition of the rules of moral evaluating collective choices, laws, institutions, professional and civic behavior (especially the behavior of government, politicians and public managers, including public clerks) as well as revealing ways for institutions and organizations to facilitate the freedom and fulfillment of people.

In the civic, professional and political life ethics interferes when conflicts of roles occur (conflict between private life and career, conflict between professional status and the wishes of the loved ones), when there are social changes (these determine the change of values and norms), in case of social pluralism (when people choose what is best for them).

Profession and professionalism

The profession is a social occupation with a permanent character of a person, exercised based on a practical and theoretical learning of a field. A profession implies knowing the theories of the field and a lengthy and thorough training. Any profession has the purpose to satisfy certain social needs.

The initiation, maintenance and promotion standards of a person within its professional competence are established by the professional corpus. The members of a professional group have collegial relations, there also being an ethical code in this regard. In the case of professional offenses, the harshed measure is withholding the right to practice (elimination from the professional group).

Professionalism brings together the common beliefs of a profession, helping increase identity and self-esteem (the profession becomes part of the personal identity and of the identity regarding the rest of the members of the professional group).

Professionalism means trusting the autonomy of professional decisions and the power of self-regulation and collegial maintenance of professional standards. An essential feature of professionalism is the fact that working for the client's benefit is a more

obligation, but an exaggerated moral implication is not necessary. Empathy is allowed but preferential treatment and arbitration are not.

Professional ethics

There are specific laws and regulations for professionals. Along with the legal norms, ethical norms are also necessary. The latter mainly regard professional authority, paternalist practices and the rights of the clients.

Professional ethics is the total of rules regarding the rights and duties of the members of a professional group, professional practices, criticising and punishing professional malpractice. [4, 32]

Professional ethics is an intermediate between the philosophy of moral and particular ethics of different categories of professions [3, 54] and is characterized by reflexivity. If the law usually acts after it has been broken, professional ethics acts preventively – this being the main reason for its introduction. There are authors who deny the existence of professional ethics, stating that there are only ethics applicable to certain professions.

There are several types of ethics:

- For difficult situations (it is not based on codes that have a strong idealist character but in negative cases: in politics on compromise and cynicism, in journalism on misinformation, in administration on corruption etc. ; the positive aspect of focusing on negative cases resides within the virtues that are offered by criticising malpractices of a field: this type of ethics is preferred by mass-media when journalists believe that everything that is not scandalous is not a piece of news).
- The standard approach (focuses on the features of professional practice analyzed by rights and duties – for example, doctors and social workers have a greater duty to help people, parliamentarians have the duty to establish cohabitation rules, governors have the duty to divide public resources – it is necessary for the strategical development of a profession.

Central concepts of professional ethics

Professional ethics uses the following concepts:

- Autonomy – the possibility of choosing our courses of action in virtue of having discernment and knowing our own interests.
- Benevolence (almost all professions require compliance not only with the duties written in the job description but also caring for the collective, protecting the name of the institution).
- paternalism (according to this concept there are vulnerable, powerless people with no means to follow their goals or people who don't have enough discernment; it refers to the recognition of professional authority)
- Rights and right action (refers to professions that include the rights of people affected by the rights of patients, clients, contributors, students or those employed within their profession – union rights). [5, 24]

Ethical formalization and professional codes

Ethical formalization is the elaboration of ethical codes for different professions. The elaboration of the ethical code is made to cover the free space between the frame-values of a society, namely professional group, and law.

An ethical code is a model of behavior, protecting the organization from opportunist and unfair behaviors. Also, an ethical code is a moral agreement between the members of an institution as well as between the members and the beneficiaries of the institution and it is regarded as a reference frame for making decisions.[4, 56]

The creation of the ethical climate is the creation of a climate where actions are perceived as being just or the correlation between contractual actions and responsibility and trust. Thus, the respect for the institution increases, as well as its reputation and the loyalty of contributors. In order to have authority, an ethical code must be tacitly or explicitly accepted by all members of the professional group. Certain professions require this agreement to be stated whenever a new person enters the field; should the person not agree, she is not accepted by the profession.

Ethics in public administration

Nowadays there is more and more talk about the public function and the public clerk – they became premises of integration into the European Union. For this purpose The National Agency of Public Clerks has been founded, professional corpus, stable and politically neutral and organ of the central public administration subordinated to the Ministry of Internal Administration who elaborated The Ethical Code of Public Clerks.

Ethics within the public administration is of great importance. To state that public administration only manages the technical issues of government or to ignore the fact that public clerks are people with their own values, with different education and that professional identity is a component of personal identity is a serious error. The preponderant role of ethics in public administration is derived from the fact that if a bureaucracy is no longer ethical, meaning that people no longer perceive it as being just, correct and equitable, then the beneficiaries lose their trust in government and the political system, Keeping the public faith is an essential condition of democracy.

Through the presence of ethics in public administration, whose general idea is what is best for the public, there must be promoted the best integrity, liberty, equality and political trust. If political people take leadership of society for a determined period, public administration undertakes the aspect of the lasting development of the society.

Ethics and law

The state of law implies the rule of law. In a democracy, the law represents the public will and the administration must ensure the legal rights and responsibilities. The public clerks are not mere executors of law, but they also take part in the process of projecting the laws, and in this stage, the public clerk does not show only what is permitted. The law regards the future and the future is uncertain, there can occur social movements for civil rights that the legislator might not have predicted. In the stage of enforcing the laws, the public clerks can be considered public manager within a bureaucracy whose activities are limited by law. [3,91] The law is the one protecting the public clerks from arbitration and the pressure of political parties.

The Ethical Code of Public Clerks

Elaborated by the National Agency of Public Clerks (NAPC), a specialized organ of the central public administration, the Ethical Code of Public Clerks regulates the general rules of moral and professional conduct of public clerks, being compulsory for people that temporarily occupy a public function. The improvement of the quality of public service, a better administration of the fulfillment of public interest, the elimination of bureaucracy and corruption are aimed.

The basic principles of the professional and moral conduct of a person that occupies a public function are:

- the supremacy of law (the public clerk must keep with the Constitution and the laws of the country);
- the priority of public interest (the public interest must be above all);
- the equality of treatment of citizens by public authorities or institutions (applying the same treatment in identical situations);
- professionalism (public clerks have the duty to fulfill the job duties responsibly, competently, efficiently, correctly and consciously);
- impartiality and independence (while exercising their function, all public clerks must be objective, neutral towards any political, economic or any other type of interest);
- integrity (according to this principle the public clerk must not ask or accept, directly or indirectly, for them or for others, any advantage or benefit in consideration of their public function or to abuse their function);
- The liberty of thought and expression (public clerks cand express and state their opinion while keeping the order of law).

This code of conduct also establishes the loyalty principle of public clerks towards the law (applying the legal provisions, keeping their attributions and the rules of professional ethics) and of loyalty towards the public institutions and authorities (protecting the reputation of the public institution or authority where the public clerk practices and refraining from any act that may prejudice the image or legal interests of that public institution or authority).

Public clerks have the duty to have a respectful, good-faith, correct and kind behavior both in relations with the staff within that public authority or institution and with judicial persons or individuals.

N.A.P.C. controls and coordinates the application of norms provided by this code of conduct, Other attributions of the agency refer to receiving petitions and complaints regarding the violation of the provisions of the code (while respecting the confidentiality regarding the identity of the person who filed the complaint), recommending solutions for the causes for which it has received the complaint, collaboration with the nongovernmental associations which promote and protect the legitimate interests of the people in relationship with public clerks, elaborating studies and research regarding the keeping of the norms of the code.

The importance of ethics in public administration

Within the ethics of the public life, trust is the main concept. The administrative decisions that need to be fulfilled by public clerks are taken by people invested with the public trust. Public institutions perform their activity in a political environment where values and purposes are at conflict and ethics becomes a guide of values for overcoming those conflicts. Tese is founded on values such as authority, rationality, efficiency, and the public clerks must practice and maintain values such as individual liberty, equality, justice and respect for personal dignity. [4, 54]

Public clerks are searching for strategies and ways of practicing public politics. They can find themselves in dramatic situations (where resources are poor and choosing a strategy can lead to the dissolution of another) or in tragical situations (when the distribution of provisions is an issue of life or death). Critical situations can also occur when more groups of interest are involved, each with their different request. In these situations, ethics is the only way to solving the dilemmas.

Summarizing, professional ethics is the practice of a profession analyzed under a moral aspect, having the main purpose to overcome dilemmas and making the perform activity more efficient. The official recognition of a professional ethics, namely the

elaboration and enforcement of a code of moral and professional conduct requires the keeping of ethical rules, sanctions being provided for their violation.

Founding the National Agency of Public Clerks, as well as the elaboration and enforcement of the Ethical Code of Public Clerks, are the first steps for the improvement of the quality of the Romanian administrative system, for improving the relations between administration and civil society, for implementing the community acquis and for the integration in the European Union.

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DIFFERENT EVOLUTIONS OF THE SHARE OF LIVE BIRTHS OUTSIDE MARRIAGE, IN THE EU MEMBER STATES

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Abstract
Over the last decades, in most EU countries, there has been a steady increase in the number and share of live birth outside marriage, a demographic phenomenon with negative social effects, at least on those children.
In this paper, we realised an analysis of the evolution of live birth outside marriage, in EU member states during 2005-2015. The study emphasize that during the analysed period, only in the case of 4 countries there were reductions in the share of the live birth outside the marriage, all the others having increases, in some cases even significant.
From the comparative analysis of the statistical data we concluded that a determinant factor of extra conjugal fertility is the accentuated increase registered in the last decades of consensual unions, to the classical marriages detriment.
At the same time, the increase of the age at first marriage, a phenomenon encountered in all EU Member States, is another determining factor in the increase in the share of live birth outside marriage. Another conclusion of the study is that there is no direct correlation between the level of economic development of countries and the share of live birth outside marriage.
Keywords: *live birth outside the marriage, extra conjugal fertility, marriage, consensual unions*

Introduction

The indicator *live births outside marriage* generally refer to the live births whose mothers, at birth date, have civil status other than married. In the category of live births outside marriage are included the children whose mothers are alone or live in consensual union as well as those whose mothers are widowed or divorced.

Children born outside of marriage may be ranked one, two, three or more. The issue of live births outside marriage is not a recent one and it is beginning to manifest at higher levels in the middle of the last century. If 5-6 decades ago the live births outside marriage were rare and usually associated with negative social and legal implications for the child and even for mothers, nowadays, many of the unmarried mothers are currently in stable relationships [1].

In fact, one of the determinants of the increase of the number and the share of the live births outside the marriage is the increase of the number of consensual unions. In the last few decades, in most European countries, the number of consensual unions (unregistered marriages) has increased considerably, in the detriment of official marriages, several family models have emerged (cohabitation, consensual union, marriage de facto, intimate relationships, couples), these tendencies being recognized as contemporary processes inseparable from other social changes [2].

The process of the accentuated increase of live births outside marriage must be related not only to the attributes, the parents' characteristics and contextual conditions but also to the socio-economic, political and legislative situation in a country or region [3], which explains otherwise, also, the significant differences that exist between countries, regarding the share of live births outside marriage.

Some analysts in sociology consider that an important cause of the rise of live births outside marriage is the increasing of the number of women who put on the first place the job, professional development and secondarily the marriage [4]**.**

Even if there are currently enough negative outcomes in society regarding the birth of the child outside marriage, they are far more liberal compared to those of 5-6 decades ago. We can say that the notion of "born non-legitimate" has lost its meaning, observing a more tolerant attitude towards unmarried women, who give birth to children, especially if they have done so consciously.

However, the alarming increase of the share of live births outside marriage, which reaches over 50% in many European countries, requires an analysis of this situation, with important demographic and social implications. Why is this process a problem, however, given that in many countries, the birth of a child outside marriage it is considered something normal?

According to some authors, in many cases children born out of marriage, especially by single mothers, have socio-emotional problems [5], they have less chances to achieve in society and more often than children born in marriage, they divorce or have children out of marriage [6]. Married couples generally have greater opportunities to provide a higher standard of living and education than single mothers.

Therefore, some specialists believe that to prevent the increase of the number of live births outside the marriage, some school or community programs would be needed to warn of the negative consequences of this process [7].

Literature review

The issue of live births outside of marriage began to emerge in particular in the 1960s when major changes in the structure and formation of families as well as in their fertility, occurred in most industrialized countries in Europe and North America [8].

The main reason why the increasing dynamics of the number and the share of the live births outside the marriage determined the specialists' concern is the fact that they consider that in most cases these children are disadvantaged compared to the children born during marriage, having lower chances to succeed in the future [9], [10], [4].

The increasing of the divorce rate, of the number and share of consensual unions, the reducing of fertility, the increasing of the number of live births outside marriage - demographic phenomena with negative implications, that have manifested in many of the European countries over the past decades - have attracted the attention not only of the specialists but also of the authorities, who also supported the need for policies in these areas [11].

One of the issues most frequently addressed by specialists regarding the live births outside marriage was represented by the analysis of the causes that determine this process. The increasing of the number of live births outside marriage is attributed in many countries to cohabitation changes, namely the increase of the number of consensual unions against marriages [12].

The rapid dynamics of consensual unions in the last few decades, the lesser attention given by the new generations of marriage, have led consensual unions to be considered normal situations and not exceptional cases with negative consequences for children or for those who living together.

It is believed that the children born in consensual unions, with two parents, have the same conditions and chances of development as children born during marriage. Moreover, some authors believe that a distinction must not be made between children

born during marriages and outside marriages, but also between those born to single mothers and those born in consensual unions [8].

The increase of the number and the share of the consensual unions in the last decades have been determined not only by the changes in the economic and social life, but also by the way in which this form of marital relations was institutionalized and promoted in society [13].

In this respect, we have to mention the fact that in the past decades, religious institutions, which almost without exception, support fertility in marriage, have lost their influence on the way of forming families [14]. Even in the case of some countries, such as Romania, where the traditional family and the influence of the religious institutions on the way of family formation is still preserved, we are witnessing a relaxation and implicitly, an increase of the number and share of the consensual unions [15].

An important cause of the rise of live births outside marriage is also the emancipation of women, who have become more economically independent in recent decades, as a result of easier access to the labor market. The phenomenon of increasing the economic and financial independence of women was accompanied by a more relaxed position of women towards the marriage institution and the situation of having children without a legal state [16].

The dimension of extramarital fertility is especially influenced by the structure of the population by various socio-demographic characteristics. This also explain the major differences that exist between European countries [10]. Thus, in Northern Europe, live births during marriages have become an exception, especially in the case of the first child, while in South Eastern Europe there are still countries such as Greece or Albania, where the live births outside marriages are rare cases [17].

Research methodology, data, results and discussions

In the analysis of the evolution of the live births outside the marriage in the case of the EU member states, we used a statistical indicator of structure, respectively the share of the live births outside marriage in the total number of live births. We chose this approach because we considered that a comparative analysis based on the total number

of live births outside marriage would not be suggestive, because it is normal to exist significant differences between EU countries regarding this indicator, taking into account also the differences regarding the number of population. The analysis refers to the period 2005-2015 and was based on the statistical data from EUROSTAT.

Even if, in the last few decades, as we have previously stated, there is a much clearer and permissive position towards extramarital fertility, however, in many cases this phenomenon is considered to be a negative one, especially through the consequences on live births outside marriage.

Unfortunately, in the last few years, we witness an alarming increase of the share of live births outside marriage in most EU countries. The statistical data presented in Table 1, highlights that during the period 2005-2015, only 4 countries (Estonia, Latvia, Lithuania and Sweden) experienced a reduction of the share of live births outside marriage, all the other countries registering an increase, in some cases, even significant.

The evolution of the share of live births outside marriage in the EU 28 member states, in 2015 in comparison with 2005

Table 1

geo\time	**The share of live births outside marriage (%)**		**Dynamic 2015/2008 (%)**
	2005	**2015**	
Belgium	39.4	:	*
Bulgaria	49.0	58.6	119.6
Czech Republic	31.7	47.8	150.8
Denmark	45.7	53.8	117.7
Germany	29.2	35.0	119.9
Estonia	58.5	57.9	99.0
Ireland	31.8	36.5	114.8
Greece	5.1	8.8	172.5
Spain	26.5	44.5	167.9
France	48.4	59.1	122.1
Croatia	10.5	18.1	172.4
Italy	15.4	30.0	194.8
Cyprus	4.4	16.6	377.3
Latvia	44.7	41.5	92.8
Lithuania	28.0	27.7	98.9
Luxembourg	27.2	38.8	142.6
Hungary	35.0	47.9	136.9

Malta	20.0	26.9	134.5
Netherlands	34.9	49.8	142.7
Austria	36.5	42.1	115.3
Poland	18.5	24.6	133.0
Portugal	30.7	50.7	165.1
Romania	**28.5**	**31.0**	**108.8**
Slovenia	46.7	57.9	124.0
Slovakia	26.0	39.2	150.8
Finland	40.4	44.3	109.7
Sweden	55.4	54.7	98.7
United Kingdom	42.9	47.9	111.7

: = not available

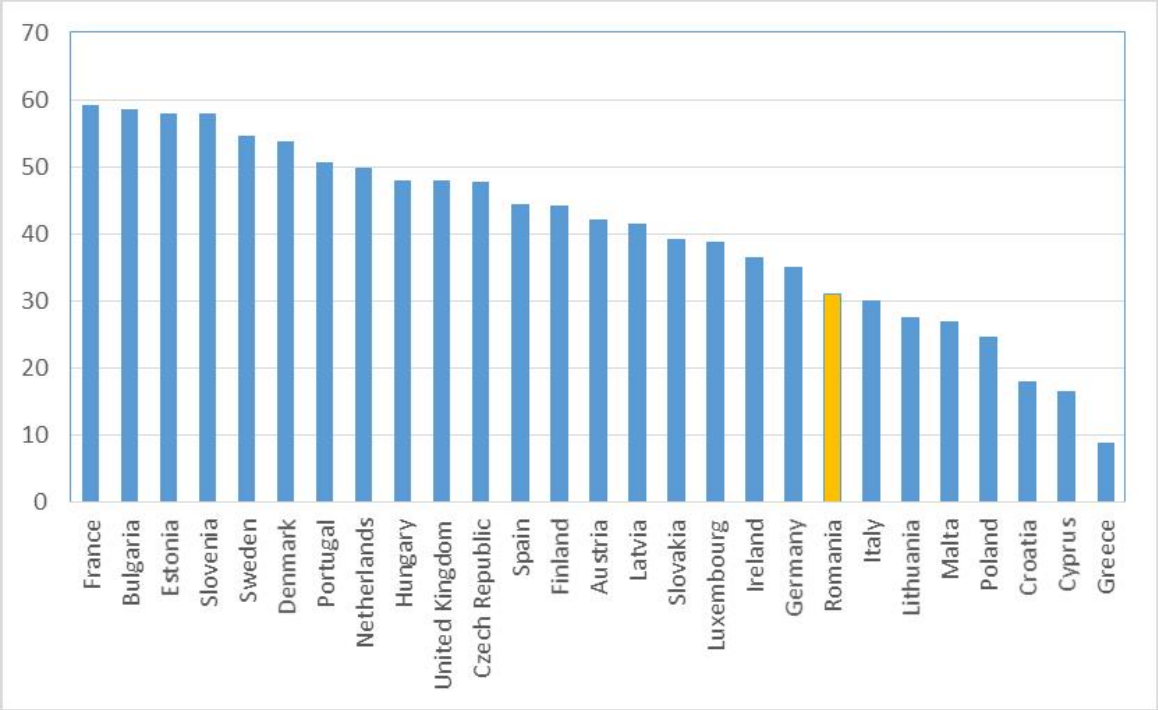
Data sources: Based on the information retrieved on July 27, 2017, from EUROSTAT, [18].

The largest increases of the share of live births outside marriage, registered in 2015 as compared to 2005 were in Cyprus (+ 277.3%), Italy (+ 94.8%), Greece (+ 72.5%), Croatia (+72.4%). These significant increases are all the more worrying because they have been recorded in countries where extramarital fertility is very low.

The statistical data from Table 1 as well as from Fig. 1, show that at the level of 2015 there were significant differences between the EU member states regarding the share of the live births outside the marriage. Nordic countries are a category of countries with high extramarital fertility compared to the EU average (42% in 2014): Sweden (54.7%), Denmark (53.8%), Finland (44.3%).

The share of live births outside marriage in the EU 28 member state, in 2015

Figure 1



Data sources: Based on the information retrieved on July 27, 2017, from EUROSTAT, [18].

These large shares of live births outside marriage, registered in the Nordic countries are explained by both the very permissive, liberal policies of these states regarding extramarital relations and by the fact that traditional families do not benefit from tax exemptions or other benefits. As regards the countries of southern Europe, Portugal (50.7%) and Spain (44.5%) recorded high birth rates outside the marriage, while Greece (8.8%) and Italy (30.0%) are among the countries with a situation favorable countries, where the traditional family, the institution of marriage plays an important role.

In western and central European countries, countries in which consensual unions became normality, extra-marital fertility had high values in 2015: France (59.1%), the Netherlands (49.8%). Austria (42.1%). Non-marital fertility is very different in former communist countries. Thus, in 2015, the share of live births outside marriage exceeded the European average and recorded very high values in Bulgaria (58.6%), Slovenia (57.9%), Estonia (57.9%); in other countries where the cultural factor plays an important

role in maintaining marital fertility, the share of live births outside marriage was relatively low: Croatia (18.1%), Poland (24.6%), Lithuania (27.7%), Romania (31.0%).

As mentioned above, a determinant factor of the increase of the number and the weight of the live births outside the marriage is the sharp increase of the number of consensual unions against the (legal) marriages. The phenomenon of marriage has registered a significant decline in most of the EU member states in recent decades (Table 2).

The evolution of marriage indicators in the EU 28 member states, in 2015 in comparison with 2005

Table 2

geo\time	**Crude marriage rate (‰)**		**Mean age at first marriage – females (years)**	
	2005	**2015**	**2005**	**2015**
Belgium	4.1	3.6	28.1	:
Bulgaria	4.4	3.9	25.6	27.0
Czech Republic	5.1	4.6	26.4	28.8
Denmark	6.7	5.1	30.9	31.9
Germany	4.7	4.9	29.1	30.9
Estonia	4.5	5.2	26.4	29.3
Ireland	5.1	4.8	30.5	31.9
Greece	5.5	5.0	28.3	30.1
Spain	4.7	3.6	29.4	32.7
France	4.5	:	29.6	:
Croatia	5.1	4.7	26.2	27.9
Italy	4.3	3.2	29.1	:
Cyprus	8.0	7.2	27.3	:
Latvia	5.6	6.9	25.8	28.5
Lithuania	6.0	7.6	25.0	27.5
Luxembourg	4.4	3.6	28.9	32.1
Hungary	4.4	4.7	26.7	29.2
Malta	5.9	7.0	:	:
Netherlands	4.4	3.8	29.2	30.8
Austria	4.8	:	28.6	:
Poland	5.4	5.0	25.3	26.9
Portugal	4.6	3.1	26.3	30.2
Romania	6.7	6.3	25.1	26.8
Slovenia	2.9	3.1	28.7	30.0
Slovakia	4.9	5.3	:	28.2
Finland	5.6	4.5	29.4	31.0
Sweden	4,9	5.3	31.7	33.6
United Kingdom	:	:	:	:

: = not available

Data sources: Based on the information retrieved on August 1, 2017, from EUROSTAT, [19].

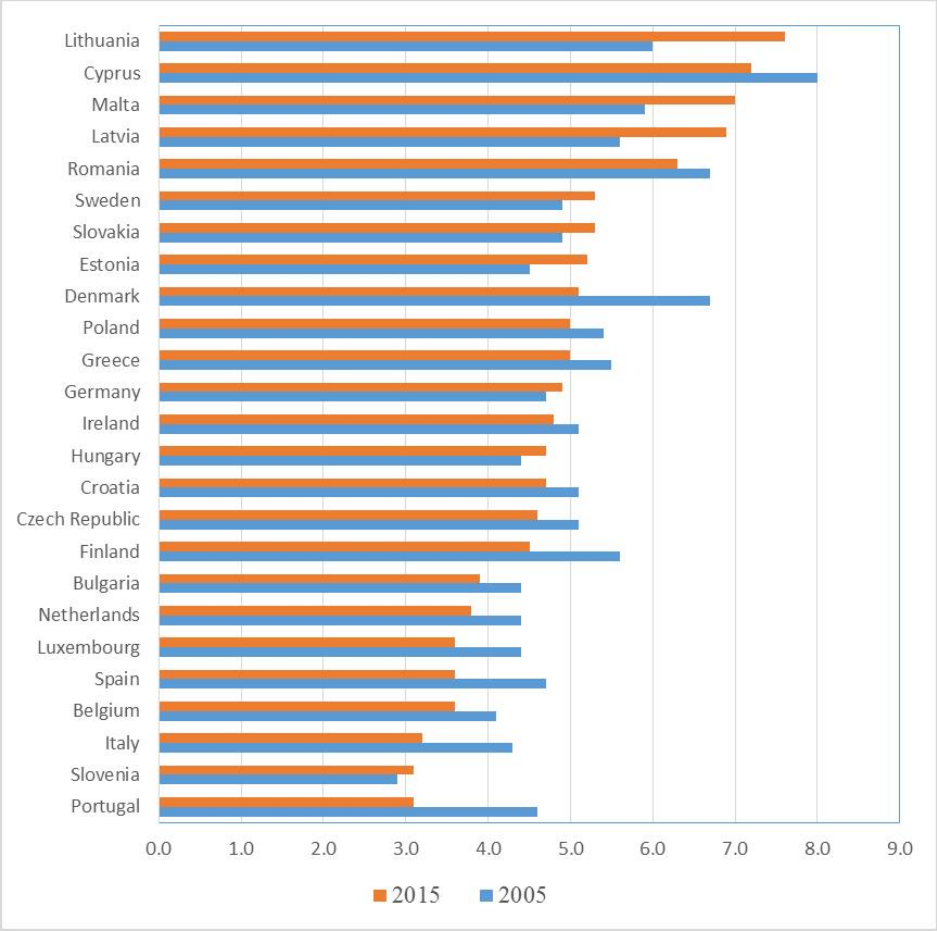
Thus, as shown by the data presented in Table 2 as well as Figure 2, only 9 EU Member States recorded increases in marriage rates in the period 2005-2015, the other countries registering more or less significant decreases.

In 2015, the lowest marriage rate (marriages per 1000 inhabitants) were registered in Slovenia (3.1 ‰), Portugal (3.1 ‰), Italy (3.2 ‰), Spain (3.6 ‰), Luxembourg 3.6 ‰), the Netherlands (3.8 ‰) and Bulgaria (3.9 ‰), which are also characterized by a high proportion of live births outside marriage.

On the other hand, the countries with the highest rates of marriages such as: Lithuania (7.6 ‰), Cyprus (7.2 ‰), Malta (7.0 ‰) are among the countries with the lowest share of live births outside marriage.

The evolution of crude marriage rate in the EU 28 member states, in 2015 in comparison with 2005 (‰)

Figure 2



Note: there are represented only the states with data in both years

Data sources: Based on the information retrieved on August 1, 2017, from EUROSTAT, [19].

Another factor influencing the increase of the number of live births outside marriage is the change in the last two decades of the marriage model in most EU countries, but especially in the case of former communist countries, in the sense of increasing age at the first marriage.

According to specialists, women postpone marriage by putting their professional or material achievement first, which means, in many cases that they born children, but without a legal status. Based on the data from Table 2, in all EU countries, the age at the first marriage of the women increased in 2015 compared to 2005.

Among the countries with the highest age of the women, at the first marriage are: Sweden (33.6 years), Spain (32.7 years). Luxembourg (32.1 years), Denmark (31.9 years), countries with a high share of the number of live births outside marriage.

Conclusions

The analysis carried out for the period 2005-2015 in the case of EU Member States shows an alarming increase in the phenomenon of extra-marital fertility, the share of live births outside marriage exceeds in several states half of the total number of live births (France, Bulgaria, Estonia, Sweden, Slovenia, Portugal) and in other states has quite high values. Only in few countries (Greece, Croatia, Cyprus, Poland) the marriage institution and conjugal fertility still have the role that society should have in society.

The determinant factor in the increase in the share of live births outside marriage is, from our point of view, the sharp increase in the number and weight of the consensual unions in recent decades, accompanied by a significant reduction in marriage rates in many EU countries. Increasing the age of women at the first marriage is also another important factor of extramarital fertility.

Taking into account the negative effects that extramarital fertility has in many cases on children, especially those born of a single mother, we believe that states should take steps to stop this phenomenon.

Even though this is the current trend, and especially the mentality of young people related to marriage has changed, we still think that, at least for children, a stable family based on trust, love and mutual support is obviously a better option than that of a disunited or single parent family.

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