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THE PRINCIPLE OF PRECAUTION IN THE AREA OF THE ELECTROMAGNETIC POLUTION

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Abstract
Currently, it is an uncontestable reality the fact that the electromagnetic pollution is part of every individual's life. The so-called electro smog represents a controversial subject under the aspect of the effects generated against human health; the studies conducted being controversial as well. In this context, of the scientific uncertainty, a important role is occupied by the law which must face these new challenges. Thus, the current article debates the principle of precaution and its application in this area.
Key words: *electromagnetic pollution, preventive liability, principle of precaution, jurisprudence.*

Introduction

The Smartphone, microwaves, wireless systems, radio, TV etc. are part of our lives, being considered as indispensable. But, all this scientific and technological evolution of mankind, focused on the growth of individual and social comfort is accompanied also by the negative effects on human health and the environment.

Though the negative effects of the electromagnetic fields have been denied or initially ignored, lately it is being noticed an intensification of the steps for the recognition of the existence of certain risks for human health and/or environment.

B. Blake Levitt, in one of his papers dedicated to the study of electromagnetic pollution, stated that "Modern society finds itself in the middle of a giant global experiment developed through a new form of energetic pollution, so-called electro smog or electric pollution (…) The electro smog affects the DNA of all living beings and may have a negative effect also against the Earth's atmosphere. Most likely, electronic smog will prove to be the greatest challenge of the century for the environment" [1].

In a relative recent study, Barry Trower (The Cooking of Humanity, 2005) draw attention that the "uncontrolled expansion of the mobile phones systems is the most serious genocide that this planet has ever known" [2].

Under the context in which the current studies claim that the exposure to electromagnetic fields is harmful for human health and environment, though it is not clear the how and to what extent these negative consequences occur, the law has the duty to interfere. In this meaning, it has been stated that "The legal reaction, in these cases, should be urgent, firm and appropriate (…) There are already foreseen significant developments in the area of human rights through (…) the configuration of a protective law against the exposure to electromagnetic fields, shaping the significations of the right to health and other rights to a healthy and ecologically balanced environment. The central position is taken by the institutionalization and proper regulation of the application of the principle of precaution to the risks inherent to the exposure to electromagnetic waves generated by wireless communications" [3].

1. *About the principle of precaution*

The principle of precaution emerged from the need to impose new behavior, both individually, as well as collective in front of the modern threats against environment. Though, initially stated only theoretically and considered more as a legal fiction, currently it is considered that the principle of precaution [4] has invaded the legal and social areas, by entering both the international law, as well as the communitarian one and in the national legislation of different states.

The principle has been stated for the first time in 1974 by the German legislation, on the occasion of the steps taken to reduce air pollution. Subsequently, it has been internationally stated by the Organization for Economic Co-operation and Development in 1987 and during the second International Conference on the protection of Northern Sea held in London in the same year. Its statement with international feature has been achieved by the Declaration of the Conference on Environment held in Rio de Janeiro on 1992, in its Principle 15 stating that "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".

At the level of the primary legislation of the European Union, the principle of precaution has been initially stated by the Maastricht Treaty in 1992, currently being stated by Art 191 Para 2 of the Treaty on the Functioning of the European Union (TFEU) according to which “Union policy on the environment shall aim at a high level of protection … based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay”.

In the national law, the precautionary principle in taking the decision is stated by Art 3 Let b) of the G.E.O No 195/2005 on environmental protection together with the principle of integrating the environmental requirements in all the other sectorial policies; the principle of preventive actions; the principle of pollutant containment at source; the principle “polluter pays”; the principle of preserving the bio-diversity and ecosystems specific to the natural bio-geographic framework.

From the interpretation of the above mentioned provisions, it results that the precautionary principle is interdependent with the principle of preventing the ecological risks and damages, without reducing to it because the prevention refers to a certainty about a phenomenon, about the consequences of an action or inaction, while the precaution refers to uncertainty, ignorance or insufficient knowledge of the effects of certain phenomena, processes, activities.

Therefore, the precaution also refers to the prevention of a possible danger for the environment and advices in taking the decisions with maximum care and diligence to avoid the pollution, this is why it has been established that, from a temporal perspective, “first we are talking about precaution, then about prevention and finally, when the precaution and prevention measures prove to be insufficient and the pollution occurred, we are talking about the polluter pays” [5].

In literature, the principle has been defined as being “the attitude which every person should adopt regarding an activity which can reasonably be supposed to generate a danger for the health of current or future generations or for the environment [6].

Starting from this definition, it has been shown that the principle of precaution must represent “a guide both for the state’s activity in general, either legislative, administrative or jurisdictional, as well as for the private activities” [7].

2. *The application of the precautionary principle in electromagnetic pollution. Fragments of national legislation in this area.*

For the practical application of the precautionary principle are considered as important documents the Communication of the European Commission of 2000 and the Resolution on the precautionary principle adopted by the European Council in Nice 2001, recommending the Member States to apply it.

According to the Communication of the European Commission in 2000, "the precautionary principle may only be invoked in the event of a potential risk, identified by an evaluation of the scientific data available, and this evaluation does not allow the complete identification of the risk".

Also, the Commission has stressed that [8] the application of the precautionary principle may only be invoked when the three preliminary conditions are met: identification of potentially adverse effects; evaluation of the scientific data available; the extent of scientific uncertainty. In addition, the general principles of risk management remain applicable when the precautionary principle is invoked, namely: proportionality between the measures taken and the chosen level of protection; non-discrimination in application of the measures; consistency of the measures with similar measures already taken in similar situations or using similar approaches; examination of the benefits and costs of action or lack of action; review of the measures in the light of scientific developments.

Even if Romania does not have a well-shaped jurisprudence in this area [9], still there are judicial decisions which may be considered as starting points, such as the Decision No 8164/24 June 2009, adopted in the case file no 17703/299/2008, by the Bucharest District 1 Court.

Thus, the object of the case file was represented by the obligation of to do, namely the plaintiff requested the compelling of the defendant to demolish and remove the GSM antennas installed on the terrace of the apartment block in which he lives under the sanction of comminatory damages of 1500 RON/day of delay. Also, the plaintiff requested his authorization for the demolish of the antennas, on the expense of the defendant. In fact, the plaintiff proved that he is the owner of the flat no (…) located in Bucharest, and on the terrace of the apartment block, above his place, there are installed the GSM antennas owned by the defendant.

As response, the defendant requested the dismissal of the action, by proving that he had all the necessary approvals to install that antenna, including the authorization to build, the equipment being installed on the common side of the block. Moreover, the intensity of the electromagnetic field does not overcome the limitation stated by the Order of the Ministry of Public Health No 1193/2006.

Of the Court's assessment it results that "there are controversy studies related to the damaging effects on health for the long exposure to electromagnetic fields generated by these antennas. So that, if on the one hand, certain scientific personalities, in a study conducted by the Association for Consumers Rights, claim that a long exposure could generate damaging effects against the human body, and on the other hand, the public institutions – National Institute for Public Health Bucharest, the Ministry of Communication – claim that there are no scientific proof confirming the negative effects on health (…)"[10]. The court also stated that "it results from the writings submitted by the defendant, that mobile phone interfere with certain medical devices – peacemakers, defibrillator, hearing devices – and as mobile phone transmit an RF signal (radio frequency) of small range, unlike GSM antennas, it results that the antennas may interfere with these devices" and that "it is well known the fact that the human body has its own electromagnetic field, so that it is possible the interference with the one generated by the antennas (…), but the extent to which it could cause cellular damages it very controversial, given the current limitations for the scientific knowledge or international economic interests (…)" [11].

Thus, the court also emphasized that "the right to life and physical integrity, namely health, guaranteed by Art 2 of the Convention on Human Rights, ratified by Romania by Law No 30/18 May 1947 and stated by Art 22 and 34 of the Constitution, also refers to the elimination from the biological environment of individuals of any potential risk for his health and well-being" [12] and that "for as long as it has not been established, with a certain degree of certainty, that the GSM antennas have no dangerous effect against the life and health of a person living permanently around these devices, the plaintiff must enjoy the principle of precaution, stated by Art 174 of the Treaty on the European Community (former Art 130R of the Maastricht Treaty), which could translate by the fact that, in the absence of specific data regarding the long-term consequences for the

exposure to electromagnetic fields, the authorities shall have to protect the individual against possible risks" [13].

Therefore, given all these arguments, the court "shall admit the action, by compelling the defendant to dismantle and to remove the GSM antenna installed on the terrace of the building (…) within 2 months from the remaining as definitive of the decision under the sanction of paying comminatory damages of up to 1000 RON for every day of delay" [14].

This decision is important by the fact that it is based upon a preventive liability allowing the coverage of a potential damage derived from an action whose consequences cannot be fully known at a certain moment, given the limits of human knowledge.

Thus, its main merits [15] refer to the interpretation and application of the principle of precaution and the shaping of the specificities for a new form of liability – the ecological one.

Nevertheless, we can observe the existence of certain gaps, namely the fact that the court refers only to the normative act of the European Union stating the precautionary principle, without mentioning that this principle is also found in the entire national legislation.Also, there are mentions about the violation of the right to life and physical integrity and of the right to health, omitting the fundamental right to a healthy environment guaranteed by Art 35 of the Romanian Constitution.

Conclusions

In the virtue of the right to life, physical integrity, right to health, right to a healthy environment and in close correlation with the principle of durable development, the principle of precaution and prevention, having as common point the electromagnetic pollution, a timid jurisprudence in this area starts to be formed in our country.

Even if the principle of precaution enjoys a legal regulation both internationally, communitarian and nationally, unfortunately it is ascertained a reluctance of law practitioners in its consideration as base of the preventive civil liability. We consider that in the near future, given the more and more polluted environment in which we live, as well as the permanent development of new technologies, the preventive liability shall represent a branch of the civil liability, being able to face these new realities.

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ON PARTICIPATORY DEMOCRACY AND CITIZEN'S INVOLVEMENT IN EUROPE AND IN THE WORLD

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Abstract
Participatory democracy proves the active presence of citizens in social life and shows that people are not indifferent to the major problems that affect their daily life.
In general, citizen involvement has been strictly manfested in voting, but the last decades have brought a new image of citizen's involvement in the good course of society,
Realizing the transition from the democracy of elites to popular democracy, the citizen's involvement succeeded to transform the present society into a world of equals, thing that once was just a dream.
The current involvement of NGOs or of ordinary people, politically non-affiliated, in the life of society represents a new chance for many to manifest their attitude towards major social problems.
Keywords: *citizens, involvement, society, rights.*

Introduction

Democracies have developed a "sense of crisis regarding levels of civic engagement and their own legitimacy, prompting government initiatives to reform the institutions and procedures of liberal democracy to provide more opportunities for political participation and bring citizens back in" [1].

Democratising the Union is of utmost importance in order to continue the European construction. In democracy, what is legitimate must first and foremost be clear and accessible. Unfortunately, the organisation, the method and the discourse of the community are far (from meeting such a requirement A/N). The elections for the European Parliament have so far constituted an indicator for the interest of the European citizens in the European construction as well as an instrument to measure the efficiency of democracy along with the communication performance between the EU and its citizens.

Ever since 1979, the European elections have been marked by the emphasis laid on national stakes and lower electoral participation. This is exactly the reason why the European elections have been appreciated as "secondary elections" ever since the 80s.

Moreover, due to the fact that the voter`s turnout has been more reduced than in the national elections, the political parties have so far obtained weaker results when compared to the national elections [2].

The new Treaty of the EU, The Lisbon Treaty lays the foundation (of the democratic system and of European governance A/N) of the two legitimacies, i.e. intergovernmental and citizenship [3], [2].One of the actors that plays a significant role is the European Parliament (EP), a democratic institution whose spectacular evolution has also equalled the evolution as well as the consolidation of the EU democratic process from an elitist democracy to a representative one and subsequently to a current participatory democracy [4].

The popular belief has it that “the usefulness of democracy lies in the fact that it allows equal access of all its citizens to all deliberation and decision-making processes”. Many see the importance of democracy through the perspective of its mechanisms. Therefore, it is the only one capable of ensuring equity among its citizens. In order to demonstrate the reasonable character of democratic procedures, Estlund points out that they have” the tendency of producing laws towards all citizens who have an equal say in a certain matter”. This word is known as the vote. „Whether it is right or fair according to any other standard, (the result of the vote) has at least one important thing to say: everyone played an equal part in determining the result. The result is equitable in the sense that it was produced following an equitable procedure (…) Any procedure will be equitable towards its participants irrespective of them being smart, well informed or honest” [5].

The mere term of “consultative” is assumed to be quite deceiving since the popular beliefs on norms and institutions are commonly and reasonably well known. The periodic surveys and sociological studies unofficially validate both the opinions and the states of minds and when we ask the people about a matter we are well aware of its constant opinion; its opinion is no longer the source of inspiration for that particular decision, but the evidence for legitimatizing that particular resolution [6].

Voters’ turnout was, in the past, a relationship that could be explained relatively simply as the relationship between parties and voters [7] The citizens do not have enough time and ability to process the constantly increasing volume of information and data

necessary to cast a vote well aware of and the process is also simplified by political appurtenance - “the parties simplify the process by offering extended information on the candidates’ political platforms” [8] .

Electoral participation is only one of the 4 types of possible citizens’’ participation and it adds to political participation, civic participation and community participation. The referendums are and will remain special cases that cannot be included in the tendencies as long as they reflect moments that are completely personalised and utterly contextualized [9].

“Democracy is inconceivable without citizens’ participation. Hence, despite the growing number of countries that have adopted democratic procedures, there is little reason for complacency – after all, it is not only in some of the newly established democracies that public engagement in politics leaves a lot to be desired. Many established democracies suffer from similar problems: turnout seems to be declining, parties find it increasingly difficult to recruit candidates and members, and local democracy is in danger of drying up due to a lack of interest by those living in the communities” [10].

If the legislative mechanisms result in reducing the intensity of the mechanism of the political parties to mobilize population, then even electoral participation (the only one that is above average, when compared to other participatory structures) will decrease significantly, thus causing Romania to have lower participation quotas in all chapters. The Romanian democratic mechanism is beginning to suffer and the issue of institutions being representative is increasingly severe [11].

Current manifestations of participatory democracy

Participatory democracy therefore emerges not as an alternative to representative democracy but, in fact, as an addendum to the latter, an important source capable of imprinting even more substance on it. Through participatory democracy, thus answering all democratic exigencies, the civil society will be involved in the implementation of public policies. Association represents the main drive that urges citizens to participate, a vehicle of shared solidarity and responsibility. Participatory democracy is viable when it integrates into a civil democratic tissue capable of freely associate a dialogue protagonist – dialogue represents the most important instruments of democracy – (and of conflict, as well) with

public administrative that in its turn obtains energy that is both fortified and renewed by participatory impulse.

The characteristics of participatory democracy brings institutional life closer to citizens' needs, contribute to optimizing the efficacy of the public sphere, consolidates and establishes a more direct relationship between citizen and the public administration. Just as the foundation of participatory democracy is a local one, we have all grounds to consider it as an important resource in the life of a community for its local development, civic education and social cohesion [12].

Inclusion and participation are equally important in the life of any community. Even in tighter communities it is impossible that all its members have the same role. When some of them develop leadership abilities and capabilities and when their activity will be recognized by the members of the community and will meet their support, we may than speak about a community leader. Since all the members of the community are not passive, but will stay informed with regard to the issues of the community and actively intervene in order to inform the leaders on community problems, we may say that the two notions, of participation and leadership are correlated, are closely interconnected and cannot be discussed separately. [13]

Participatory democracy has become an integral part of the European model of society and participation has become a citizen's right. The Lisbon Treaty consecrates the complementarity between representative democracy and participatory democracy and also confirms the three principles that lay at the basis of democratic governance in Europe:

• Democratic equality – citizens must enjoy equal attention from European institutions;
• Representative democracy – granting a more significant role to the European Parliament and more involvement from the national political parties;
• Participatory democracy – new mechanisms that enable the interaction between citizens and institutions, among which we would nominate the citizens' initiative [14].

Events such as Occupy Wall Street [15], The Turkish Summer [16], or The Arab Spring drew attention towards a common set of instruments, a set of social employment solutions, even though, in terms of agenda and finality they are entirely dissimilar. The simultaneous connexion via socialisation networks, the joint authorship, and the

motivational drive of the group are all significant in these cases. The all demonstrate the fact that at a global level the post (post)modern society seems to have suffered a profound mutation, one by means of which its citizens have the advantage of being more and more capable to form joint interest groups and advocate common cases, thus rapidly coagulating and dissolving communities of practises and interests. One of the most significant traits characterising these communities is represented by the tendency to transfer its practises from the virtual to the real world and the other way round, both being mutually supporting therefore cancelling al prior proclaimed borders and all limits enforced by hyper-reality [17].

The adherence of the Romanian society to this type of manifestation at the crossroad between the virtual and the reality, and its ability of producing its own causes/protest movements with effects on a global scale, thus joining the local communities and the diaspora from five continents, was initially demonstrated in the case of the protest movement ,,Salvaţi Roşia Montană" / "Save Roşia Montană". Subsidiary, there is the interest and the motivation of a large number of NGOs and representatives of the civil society, concerned about the effects on the environment of a surface mining project initiated by the Canadian mining Company Gabriel Resources Ltd. In September 2013, the movement gained a new dimension when the Government of Romania initiated the proposal of a bill that gave green light to the Canadian company to expropriate the local community and to use cyanide in unprecedented proportions for the European continent. The proposal stirred protests both in the country as well as abroad where the Romanian communities from Germany, France, Canada, USA, Italy or Hong Kong stood united in spontaneous protests [18].

The Alburnus Maior association is an NGO based in Roşia Montană [19], Alba county, and represents the interests of those inhabitants from Roşia Montană and Bucium who are opposed to the Roşia Montană project and who refuse to give up their private properties for the sake of the mining project. The association was founded on the 8th of September 2000 and has been opposing the open cast mining project proposed by Roşia Montana Gold Corporation, out of social, environmental, economic and national heritage concerns. The project proposed uses cyanide and aims to be the largest open-cast mining undertaking in Europe.

The association has initiated and has been coordinating the campaign “Save Roşia Montană” which, over the 12 years of its existence, has become the largest social and environmental movement in Romania.

The “Save Roşia Montana” campaign has taken action in each stage of the authorization process of the mining project, emphasising the weak points of the project by relying on independent specialists. The public has been informed and encouraged to express themselves each time the procedure or the developing events so required. Thus, the SRM campaign has now gathered over 100.000 active supporters [20].

Conclusions

Democracy is inconceivable without citizens’ participation. People can participate and have the power to involve into decision making, which is a great advantage for simple citizens that did not have this chance decades ago.

Today, representative democracy it is not only about the right to vote, but also the right to influence decision making and examples given in this article show us a new face of modern society in which the citizen has assumed the role of decision maker, not only that of the tax payer or the “spectator” at administrative decisions.

A more profound involvement of citizens will be able to take place in the future if they have more knowledge of law, politics, administration or sociology ,which will ensure them to create a most accurate image about of a fair picture of the decision-making procedure.

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PRINCIPLE OF THE SUPREMACY OF THE CONSTITUTION. SOME LEGAL CONSEQUENCES

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Abstract
Regarding the term of supremacy of the constitution, many authors consider that it is notorious and therefore does not require a special scientific analysis. There are taken under consideration the characteristics of the fundamental law, such as its legal force and normative content, through which it expresses its superordinate position in the normative system of the state.
In our analysis, we demonstrate that the supremacy of the constitution is a quality of the fundamental law that has complex, social, political, historical and normative determinations and relates to the role of the constitution in the state social system. The supremacy of constitution cannot be reduced only to the formal significance resulting from its legal force. In this context we consider the concept of supremacy as a constitutional obligation with specific legal consequences. There are analyzed the consequences and guarantees of the supremacy of the constitution, the role of the Constitutional Court in fulfilling the main function of guarantor of the supremacy of the Constitution, as well as the competence of the courts, to guarantee through specific procedures this quality of the fundamental law. In this aspect, jurisprudential issues are presented and analyzed.
The relationship between the supremacy of the constitution and the principle of the priority of the European Union law is another aspect of the research carried out in this study.
Keywords: *The notion of constitution / legality and legitimacy / notion of supremacy of the constitution / consequences and guarantees of constitutional supremacy / relationship between stability and constitutional reform/ the correspondence between the law and the constitutional principles.*

I. Supremacy of Constitution as principle of right

In order to understand the relation between the two principles, i.e. Constitution's supremacy on the one hand, and primacy of European Union law on the other hand, there are a few considerations that are useful in connection to this quality of the Basic Law of being supreme in the rule of law, internal and social policy.

Constitution's supremacy expresses the upstream position of Basic law both in the system of law, as well as in the entire political and social system of every country. In the narrow sense, constitution supremacy's scientific foundation results from its form and content. Formal supremacy is expressed by the superior legal force, procedures

derogating from common law on adopting and amending the constitutional rules, and material supremacy comes from the specificity of regulations, their content, especially from the fact that, by constitution, premises and rules for organization, operation and duties of public authorities are set out.

In that connection, it has been stated in the literature that the principle of Basic law's supremacy "Can be considered a sacred, intangible precept (…) it is at the peak of the pyramid of all legal acts. Nor would it be possible otherwise: Constitution legitimizes power, converting individual or collective will into State will; it gives power to the government, justifying its decisions and ensuring their implementation; it dictates the functions and duties incumbent on public authorities, enshrining the fundamental rights and duties, it has a leading role in relations between citizens, them and public authorities; it indicates the meaning or purpose of State activity, that is to say political, ideological and moral values under which the political system is organized and is functioning; Constitution is the fundamental background and essential guarantee of the rule of law; finally, it is the decisive benchmark for assessing the validity of all legal acts and facts. All these are substantial elements converging toward one and the same conclusion: Constitution's material supremacy. However, Constitution is supreme in a formal sense as well. The adoption procedure for the Constitution externalizes a particular, specific and inaccessible force, attached to its provisions, as such that no other law except a constitutional one may amend or repeal the decisions of the fundamental establishment, provisions relying on themselves, postulating their supremacy" [1].

The concept of Constitution supremacy may not, however, be reduced to a formal and material significance. Professor Ioan Muraru stated that: "Constitution's supremacy is a complex notion in whose content are comprised political and legal elements (values) and features expressing the upstream position of the Constitution not only in the system of law, but in the whole socio-political system of a country"[2]. Thus, Constitution's supremacy is a quality or trait positioning the Basic law at the top of political and juridical institutions in a society organized as a State and expresses its upstream position, both in the system of law and in the social and political system.

The legal basis for Constitution's supremacy is contained by provisions of Art. 1 paragraph 5) of the Basic law. Constitution supremacy does not have a purely theoretical

dimension within the meaning it may be deemed just a political, juridical or, possibly moral concept. Owing to its express enshrining in the Basic law, this principle has a normative value, from a formal standpoint being a constitutional rule. The normative dimension of Constitution's supremacy involves important legal obligations whose failure to comply with may result in legal penalties. In other words, in terms of constitutional principle, enshrined as legislation, supremacy of Basic law is also a constitutional obligation having multiple legal, political, but also value meanings for all components of the social and State system. In this regard, Cristian Ionescu would highlight: "From a strictly formal point of view, the obligation (to respect the primacy of the Basic law n.n.) is addressed to the Romanian citizens. In fact, observance of Constitution, including its supremacy, as well as laws was an entirely general obligation, whose addressees were all subjects of law – individuals and legal entities (national and international) with legal relations, including diplomatic, with the Romanian State" [3].

The general significance of this constitutional obligation relates to compliance of all law to the Constitution's rules. It is understood by "law" not just the legal system's component, but also the complex, institutional activity of interpretation and enforcement of legal rules, beginning with those of the Basic Law. "It was the derived Constituent Parliament's intention in 2003 to mark the decisive importance of the principle of Constitution supremacy over any other normative act. A clear signal was given, particularly as regards the public institution with a governing role to strictly respect the Constitution. Compliance with the Constitution is included in the general concept of lawfulness, and the term of respecting Constitution supremacy requires a pyramid-like hierarchy of normative acts at the top of which is the Basic law" [3].

II. Consequences of the supremacy of the Constitution

Among the many social, political and, last but not least, legal issues that the principle of the supremacy of the Constitution has and implies, we analyze in this study two: a) the relationship between stability and constitutional reform; and b) the correspondence between the law and the constitutional principles applying to Criminal Codes.

A) An important aspect of the principle of the constitution's supremacy is the content of the relationship between stability and constitutional reform.

One of the most controversial and important juridical problems is represented by the relationship between the stability and innovation in law. The stability of the juridical norms is undoubtedly a necessity for the predictability of the conduct of the law topics, for the security and good functioning of the economical and juridical relationships and also to give substance to the principles of supremacy of law and constitution.

On the other hand it is necessary to adapt the juridical norm and in general the law to the social and economical phenomenon that succeed with such rapidity. Also the internal juridical norm must answer to the standards imposed by the international juridical norms in a world in which the ‘globalization” and “integration” become more conspicuous and with consequences far more important in the juridical plan also. It is necessary that permanently the law maker be concerned to eliminate in everything that it is “obsolete in law”, all that do not correspond to the realities.

The report between stability and innovation in law constitutes a complex and difficult problem that needs to be approached with full attention having into consideration a wide range of factors that can determine a position favorable or unfavourable to legislative modification [4] .

One of the criterions that help in solving this problem is the principle of proportionality. Between the juridical norm, the work of interpretation and its applying, and on the other hand the social reality in all its phenomenal complexity must be realized with an adequate report, in other words the law must be a factor of stability and dynamism of the state and society, to correspond to the scope to satisfy in the best way the requirements of the public interest but also to allow and guarantee to the individual the possibility of a free and predictable character, to accomplish oneself within the social context. Therefore, the law included in its normative dimension in order to be sustainable and to represent a factor of stability, but also of progress, must be adequate to the social realities and also to the scopes for which a juridical norm is adapted, or according to the case to be interpreted and applied. This is not a new observation. Many centuries ago Solon being asked to elaborate a constitution he asked the leaders of his city the question:” Tell me for how long and for which people” then later, the same wise

philosopher asserted that he didn't give to the city a constitution perfect but rather one that was adequate to the time and place.

The relationship between stability and innovation has a special importance when the question is to keep or to modify a constitution because the constitution is the political and juridical foundation of a state [5] based on which is being structured the state and society's entire structure.

On the essence of a constitution depends its stability in time because only thus will be ensured in a great extent the stability of the entire normative system of a state, the certitude and predictability of the law topics' conduct, but also for ensuring the juridical, political stability of the social system, on the whole [6].

The stability is a prerequisite for the guaranteeing of the principle for the supremacy of constitution and its implications. On this meaning, professor Ioan Muraru asserts that the supremacy of constitution represents not only a strictly juridical category but a political-juridical one revealing that the fundamental law is the result of the economical, political, social and juridical realities. "It marks (defines, outlines) a historical stage in the life of a country, it sanctions the victories and gives expression and political-juridical stability to the realities and perspectives of the historical stages in which it has been adopted" [7].

In order to provide the stability of the constitution, varied technical modalities for guaranteeing a certain degree of rigidity of the fundamental law, have been used, out of which we enumerate: a) the establishing of some special conditions for exercising of an initiative to revise the constitution, such as the limiting of the topics that may have such an initiative, the constitutionality control ex officio upon the initiative for the constitution's revising; b) the interdiction of contitution's revising by the usual legislative assemblies or otherwise said by the recognition of the competence for the constitution's revising only in favour of a Constituent assembly c) the establishing of a special procedure for debating and adopting of the revising initiative; d) the necessity to solve the revising by referendum; e) the establishing of some material limits for the revising, specially by establishing of some constitutional regulations that cannot be subjected to the revising [8].

On the other hand a constitution is not and cannot be eternal or immutable. Yet from the very appearance of the constitutional phenomenon, the fundamental laws were

conceived as subjected to the changes imposed inevitably with the passing of time and dynamics of state, economical, political and social realities. This idea was consecrated by the French Constitution on 1971 according to which “A people has always the right to review, to reform and modify its Constitution, and in the contemporary period included the “International Pact with regard to the economical, social and cultural rights” as well as the one regarding the civil and political rights adopted by U.N.O. in 1966 - item 1 - is stipulating:”All nations have the right to dispose of themselves. By virtue of that right they freely determine their legal status.

The renowned professor Constantin G. Rarincescu stated on this meaning:” A constitution yet is meant to regulate in future for a longer or a shorter time period, the political life of a nation, is not destined to be immobile, or perpetuum eternal, but on the other hand a constitution in the passing of time can show its imperfections, and no human work is being perfect, imperfections to whose some modifications are being imposed, on the other side a constitution needs to be in trend with the social necessities and with the new political concepts, that can change more frequently within a state or a society” [9]. Underlying the same idea the professor Tudor Drăganu stated: “The constitution cannot be conceived as a perennial monument destined to outstand to the viccisitudes of the centuries, not even to the ones of the decades. Like all other juridical regulations, the constitution reflects the economical, social and political conditions existing in a society at a certain time of history and aims for creating the organizational structures and forms the most adequate to its later development. The human society is in a continuous changing. What it is valid today tomorrow can become superannuated. On the other side, one of the characteristics of the juridical regulations consists in the fact that they prefigure certain routes meant for chanelling the society’s development in one or another direction. These directions as well as the modalities to accomplish the targeted scopes may prove to be, in their confronting with the realities, inadequate. Exactly for this very reason, the constitutions as all other regulations, cannot remain immutable but must adapt to the social dynamics” [10].

In the light of those considerents we appreciate that relationship between the stability and the constitutional revising needs to be interpreted and solved by the requirements of principle of proportionality [11]. The fundamental law is viable as long as

it is adequated to the realities of the state and to a certain society at a determined historical time. Much more – states professor Ioan Muraru – "a constitution is viable and efficient if it achieves the balance between the citizens (society) and the public authorities (state) on one side, then between the public authorities and certainly between the citizens. Important is also that the constitutional regulations realize that the public authorities are in the service of citizens, ensuring the individual's protection against the state's arbitrary attacks contrary to one's liberties" [12]. In situations in which such a report of proportionality no longer exists, due to the imperfections of the constitution or due to the inadequacy of the constitutional regulations to the new state and social realities, it appears the juridical and political necessity for constitutional revising.

Nevertheless in the relationships between the stability and constitutional revising, unlike the general relationship stability – innovation in law the two terms have the same logical and juridical value. It is about a contrariety relationship (and not a contradiction one) in which the constitution's stability is the dominant term. This situation is justified by the fact that the stability is a requirement essential for the guaranteeing of the principle of constitution supremacy with all its consequences. Only through the primacy of the stability against the constitution's revising initiative one can exercise its role to provide the stability, equilibrium and dynamics of the social system's components, of the stronger and stronger assertion of the principles of the lawful state. The supremacy of the constitution bestowed by its stability represents a guarantee against the arbitrary and discretionary power of the state's authorities, by the pre-established and predictable constitutional rules that regulate the organization, functioning and tasks of the state authorities. That's why before putting the problem of constitution's revising, important is that the state's authorities achieve the interpretation and correct applying of the constitutional normative dispositions in their letter and spirit. The work of interpretation of the constitutional texts done by the constitutional courts of law but also by the other authorities of the state with the respecting of the competences granted by the law, is likely to reveal the meanings and significances of the principles for regulating the Constitution and thus to contribute to the process for the suitability of these norms to the social, political and state reality whose dynamics need not be neglected. The justification of the interpretation is to be found in the necessity to

apply a general constitutional text to a situation in fact which in factum is a concrete one" [13].

The decision to trigger the procedure for revising a country's Constitution is undoubtedly a political one, but at the same time it needs to be juridically fundamented and to correspond to a historical need, of the social system stately organized from the perspective of its later evolution. Therefore, the act for revising the fundamental law needs not be subordinated to the political interests of the moment, no matter how nice they will be presented, but in the social general interest, well defined and possible to be juridically expressed. Professor Antonie Iorgovan specifies on full grounds:" in the matter of Constitution's revising, we dare say that where there is a normal political life, proof is given of restraining prudence, the imperfections of the texts when confronting with life, with later realities, are corrected by the interpretations of the Constitutional Courts, respectively throughout the parliamentary usance and customs, for which reason in the Western literature one does not speak only about the Constitution, but about the block of constitutionality" [14].

The answer to the question if in this historical moment is justified the triggering of the political and juridical procedures for the modifying of the fundamental law of Romania can be stressed out in respect with the reasons and purpose targeted. The revising of Constitution cannot have as finality the satisfying of the political interests of the persons holding the power for a moment, in the direction of reinforcing of the discretionary power of the Executive, with the inacceptable consequence of harming certain democratical constitutional values and principles, mainly of the political and institutional pluralism, of the principle of separation of powers in the state, of the principle of legislative supremacy of the Parliament.

On the other hand, such as the two decades lasting history of democratical life in Romania has shown, by the decisions taken for many times, were distorted the constitutional principles and rules by the interpretations contrary to the democratical spirit of the fundamental law, or worse, they didn't observe the constitutional dispositions because of the political purposes and their support in some conjunctural interests. The consequences were and are obvious: the restraining or violation of some fundamental rights and liberties, generating some political tensions, the nonobservance of the

constitutional role of the state's institution, in a single word, due to political actions, some dressed in juridical clothes, contrary to the constitutionalism that needs to characterize the lawfull state in Romania. In such conditions, an eventual approach of the revising of the fundamental law should be centered on the need to strengthen and enhance the constitutional guarantees for respecting the requirements and values of the lawfull state, in order to avoid the power excess specific to the politician subordinated exclusively to a group interests, many time conjunctural and contrary to the Romanian people, which in accordance to Constituion item 2 paragraph (1) of the one who is the holder of the national sovereignity.

In our opinion, the preoccupation of the political class and state's authorities in the current period, in relation to the actual contents of the fundamental law, should be oriented not so for the modification of the Constitution, but especially into the direction of interpreting and correct applying and towards the respecting of the democratical finality of the constitutional institutions. In order to strengthen the lawfull state in Romania, it is necessary that the political formations, mostly those that hold the power, all authorities of the state to act or to exercise its duties within the limits of a loyal constitutional behavior that involve the respecting of the meaning and demoratical significances of the Constitution.

B) Another aspect relates to the relationship between the Constitution and the law, meaning "law" the sphere of inferior normative acts as a legal force to the Basic Law, analyzed in accordance with the requirements and consequences of the principle of the supremacy of the Constitution, reveals two dimensions:

The first concerns the constitutionality of inferior normative acts as a legal force to the Fundamental Law, and in the general sense the constitutionality of the whole law. Essentially, this requirement corresponds to one of the consequences of the supremacy of the Basic Law, namely the compliance of the whole right with constitutional norms. The fulfillment of this constitutional obligation, a direct consequence of the principle of the supremacy of the Basic Law, is mainly an attribute of the infra-constitutional legislator in the elaboration and adoption of normative acts. The fulfillment of the requirement of constitutionality of a normative act presupposes first the formal and material adequacy of the law to the norms, principles, values and reasons of the Constitution. The formal aspect

of this report expresses the obligation of the legislator to observe the rules of material jurisdiction and the legislative procedures, which are explicitly derived from the constitutional norms or from other normative acts considered to be the formal sources of constitutional law. The formal compliance of normative acts with the Basic Law implies a strict adherence of the premiums to the norms and principles of the Constitution, and there is no margin of appreciation or interpretation by the legislator.

The material dimension of this report is more complex and refers to the compliance of the normative content of a law with the principles, values, norms, but also with the constitutional grounds. And this aspect of law compliance with constitutional norms is a constitutional obligation generated by the principle of the supremacy of the Basic Law. The fulfillment of this obligation is a main attribute of the infra-constitutional legislator, who in the act of legislating is called to achieve not only a simple legislative function, but also a legal act, , we would say new, value and scientific, to elaborate and adopt the law according to the rationale, the normative content and the principles of the Constitution. In this way, in order to give effect to the principle of the supremacy of the Basic Law, in the act of legislating the legislator must carry out a complex activity of interpretation of the Constitution, which must not lead to circumvention of the meanings, meanings and especially the concrete content of the constitutional norms. This complex process of adequacy of the normative content of a law to constitutional norms is no longer strictly formal and procedural because it implies a certain margin of appreciation specific to the work of interpretation performed by the legislator and at the same time corresponds to the freedom of law which, Parliament's case, is found in the very legal nature of this institutional forum defined in art. 61 par. 1 of the Basic Law: "The Parliament is the supreme representative body of the Romanian people and the sole legislator of the country". This is the expression of what in the literature is defined as the principle of parliamentary autonomy.

A second aspect of achieving the requirement of constitutionality of the law, which is very important in our opinion, refers to the obligation of the infra-constitutional legislator to transpose and develop in normative acts elaborated and adopted, depending on their specificity, normative content, principles and values constitutional. We can say that in the activity of drafting the normative acts, understood as the main attribution of the Parliament

and the Government, after the accession of Romania to the European Union, the preoccupation to concretize principles and constitutional values, which would give individuality to the elaborations normative, especially for the important areas of state activity and social and political life. As demonstrated by legislative practice and unfortunately also happened in the case of the recently adopted Criminal Code and the Code of Criminal Procedure, "models" are often sought in the legislation of other states or in the legal system of EU law European. Refusing to give effect to the Romanian legal traditions, but also to the principles and values enshrined in the Basic Law, and last but not least to the concrete social political realities of the state and society, often the legislator, by adopting a complex normative act for important fields of activity, performs an eclectic, formal, activity with significant negative consequences on the interpretation and application of such a normative act, especially in the judicial activity.

We emphasize that observance of the principle of the supremacy of the Constitution cannot be limited to formal compliance.

In the new Criminal Codes there are many omissions regarding the reception and transposition of the principles and norms of the Constitution of Romania, and especially the inadequacies of the content of certain legal norms with the regulations of the Basic Law, the latter being fully perceived and censored by the Constitutional Court. Undoubtedly, verifying the constitutionality of the law as regards the fulfillment of the requirements of formal and material compliance with the constitutional norms is an exclusive attribute of the Constitutional Court, if the constitutional control is constituted by the laws of the Parliament and the ordinances of the Government. According to the provisions of art. 142 para. 1 of the Basic Law, "the Constitutional Court is the guarantor of the supremacy of the Constitution". However, this fundamental institution of the rule of law is not the only one called to contribute to guaranteeing the supremacy of the Basic Law. For the other categories of normative acts, it is necessary to recognize the competence of the courts to carry out such a constitutionality review in accordance with the rules of competence and the powers laid down by law.

The constitutionalisation of the normative system and generally of law is another reality of the application and observance of the principle of the supremacy of the Basic Law and which, in a narrow sense, can be understood as the complex activity carried out

mainly by the Constitutional Court and by the courts, within the limits of the law to interpret the normative act in force, in whole or in part, with reference to the norms, principles, values and reasons of the Constitution. In the procedural sense, the constitutionalisation of law and law is the operation by which the constitutionality of a legal norm below the constitutional norms is invalidated or confirmed, and has the effect of setting or, more correctly, re-establishing the law within the value and normative framework of the Constitution. The constitutionalisation of the law is the result of the constitutional control of the laws in force, carried out by the Constitutional Court of Romania on the path of the unconstitutionality exception, a procedure regulated by the provisions of art. 146 lit. d) of the Constitution, as well as by the subsequent provisions of the Law no. 47/1992, republished, on the organization and functioning of the Constitutional. Court.

In a broad sense, the constitutionalisation of law has a complex significance, which is not limited to constitutional control, in fact it is a permanent activity expressing the dynamics of law in relation to the dynamics of the state system and the social system. It is a permanent work of lawfulness to the evolutionary, social and state reality, through a judicious interpretation and valorization of the constitutional reasons within the limits provided by the normative content of the Basic Law. Without this, we emphasize the important role of the courts in the complex work of constitutionalizing the law through their specific attribute, interpreting and applying the law, but also the constitutional norms, with the obligation to respect the normative content, the values and the reasons of the Constitution. In the literature it is argued that, by its role in the constitutionalisation of law, materialized in the procedural attributions specific to the act of the court, the judge from the common law courts becomes, in fact, a constitutional judge.

The constitutionalisation of law and law is an evolutionary process determined not only by legal reasons, but also by social, political and economic factors outside the law. This dialectic process in concrete terms, referring to a certain normative act, lasts as long as the law in question is in force. In some cases, the constitutionalisation of a normative act may continue even after it is abrogated in the case of ultra-activation.

Applying these considerations to the normative reality of the new Criminal Codes, we note that, within a relatively short period of time since their adoption, the Constitutional Court admitted numerous exceptions of unconstitutionality, finding the unconstitutionality

of a significant number of norms in the Code and the Criminal Procedure Code, which, in our opinion, raises three issues: The first concerns the constitutionality of Parliament's legislative activity, which resulted in the adoption of the Criminal Codes. The question arises as to how much the legislator respected the principle of the supremacy of the Fundamental Law and its degree of concern in order to ensure the material compliance of the norms of the Criminal Codes with the norms of the Constitution. Given the large number of admissible exceptions of unconstitutionality, we consider that the legislator's concern to respect the principle of the supremacy of the Basic Law in its simplest form, namely the compliance of the norms of the Criminal Code and the Criminal Procedure Code with the Basic Law of the country was not a priority the law-making process in this area; the second issue concerns the concrete process of constitutionalisation of the criminal legislation through the decisions of our constitutional court. We have in mind both the decisions of the Constitutional Court which rejected exceptions of unconstitutionality regarding the norms of the criminal codes and which, through the arguments put forward, contribute to the process of constitutionalisation of the law, but above all the decisions that found the unconstitutionality of some normative provisions. In the latter situation, the legal effect of the decisions of the Constitutional Court, which found the unconstitutionality of provisions of the two Criminal Codes, was raised. For the courts that are called upon to apply the rules of the Criminal Codes, as well as the Constitutional Court's decisions, the aspect raised is very important, especially in the rather frequent situation in which the Parliament or, as the case may be, the Government did not intervene, according to the Basic Law, to agree the normative provisions found to be unconstitutional with the decisions of the Constitutional Court; A third issue concerns the reception of the constitutional normative provisions, the principles and the rationale of the Basic Law, important for the entire coding work in criminal matters, in the drafting of the two Criminal Codes by the infra-legislative legislator.

The legislator did not show any particular interest in enshrining in the Criminal Code and the Code of Criminal Procedure general principles of law, especially those whose origin is formed by constitutional norms, which give systemic and explanatory cohesion of the entire normative content of the codes and to which one can report who applies and interprets criminal law.

We consider that the normative expression in the two Criminal Codes of general principles of law, which by their nature are also constitutional principles, would have resulted in a high level of constitutionality for the two normative acts through a better harmonization of the content normative with the norms of the Basic Law. This high level of constitutionality would have resulted in the functional stability of codes by avoiding the unconstitutionality of some important legal norms, as has been the case so far.

The importance of the principles of law for the cohesion and harmony of the entire normative system has been analyzed and emphasized in the literature. The principles of law give value and legitimacy to the norms contained in the law. In this respect, Mircea Djuvara remarked: "All the science of law is not really, for a serious and methodical research, than to release from their multitude of laws their essence, that is, precisely these ultimate principles of justice from which all the other provisions derive. In this way, this entire legislation becomes very clear and what is called the legal spirit. Only in this way is the scientific elaboration of a law ". Equally significant are the words of the great philosopher Immanuel Kant: "It is an old desire, who knows when will happen once: to discover in the place of the infinite variety of civil laws their principles, for only in this can be the secret of simplify, as they say, the legislation.

From the normative point of view, the source of the principles of any legal branch, and especially of a code, must be primarily the constitutional norms which, by their nature, contain rules of maximum generality, which constitute a basis but also a source of legitimacy for all other legal rules.

III. Aspects regarding the relationship between the Constitution's supremacy and the priority of the European Union’s law principle

The constitutional courts in some of the Member States – above all, Germany, Italy and France- have consistently considered that the principle of primacy of European Union law does not apply in relation to the regulations contained in a constitution, since a State’s Basic Law expresses national sovereignty and identity. This solution was particularly concerned with regulations on fundamental human rights and freedoms. By 1 December 2009, date on which the Treaty of Lisbon and the European Union Charter of Fundamental Rights became effective, European Union law did not include a coherent

normative system whereby fundamental human rights would be guaranteed. Therefore, the courts of Member States called upon internal constitutional regulations in such cases.

Furthermore, the practice of European Union Member States' courts does not offer much examples of conflict between the European Union law's regulations and constitutional regulations. This is explained by the fact that, in the course of accession to the European Union, Member States have adapted their constitutional regulations as a principle to the requirements specific to the European Union law and they have enshrined, in one way or another, the principle of primacy of this system of law over domestic law every time there is an inconsistency between the rules of the two categories of legal standards. Needless to say, this issue remains open and is far from being resolved. It should be noted that in recent years the Constitutional Council and the State Council of France have developed the concept of "constitutional national identity" in their case-law. According to this principle, national courts shall always enforce the internal constitutional regulations, but also the rules laid down by usual legislation each time they lack correspondence in the European Union law.

The Romanian Constitution makes the distinction between the principle of supremacy of the Basic Law and the principle of primacy of European Union law over national law. Thus, the provisions of Article 1 par. (5) of the Constitution enshrines the principle of supremacy of the Basic Law: "Compliance with the Constitution, its supremacy and with the laws is mandatory in Romania". This principle cannot be confused with that of primacy of the European Union law over regulations contrary to the domestic laws, enshrined in Article 148 par. 2 of the Constitution.

The Constitutional Court of Romania's case-law reflects this gap.

Our constitutional court clearly makes, by decision 148 dated 16 April 2003 on the constitutionality of the legislative proposal to review the Constitution of Romania, the distinction between Constitution's supremacy and the principle of primacy of European Union law, stating: "The consequence of accession starts from the fact that European Union Member States have understood to place the Community acquis, European Union constitutive treaties and regulations thereof on an intermediate position between the Constitution and the other laws when it comes to mandatory European legal acts". Referring to the provisions of Art. 148 of the Constitution and in accordance with decision

no. 148 dated 16 April 2003, the academic legal literature stated: “Therefore, it could be affirmed that in the domestic legal order, the legal act whereby Romania accedes to the European Union has legal force lower than the Constitution and constitutional laws, but higher than the ordinary and organic laws” [15].

The Constitutional Court seems, in its subsequent case-law, to have waived this distinction, basing decisions only on the principle of primacy of European Union law [16].

However, the Court found, by Decision no. 1258 delivered on 8 October 2009 (published in the Romanian Official Journal no. 798 of 23 November 2009), that we believe it to be of historical significance in the subsequent constitutional case-law, that an internal law whereby a European Union directive is translated into domestic law is unconstitutional. In our opinion, such a solution enshrines the principle of Constitution supremacy and the requirement of compliance with it in relation to the principle of primacy of European Union law.

By the above-mentioned number decision, the constitutional court found that provisions of Act 298/2008 (published in the Romanian Official Journal no. 780 of 21 November 2008) were unconstitutional. It follows from the decision’s considerations that Act no. 298/2008 was passed so as to transpose Directive 2006/24/EC of the European Parliament and of the Council on 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks into the national legislation. The Court refers to the legal regime of such community acts, emphasizing that: “(...) imposes its obligation to the European Union Member States as regards the legal solution regulated, not with regard to specific means by which this result it achieved, states having a wide margin of discretion for the purposes of adapting them for the legislation’s specificity and national realities”. The Court found, after having examined the content of Act 298/2008, that this normative act is liable to affect the exercise of fundamental rights or freedoms, i.e. the right to privacy and family, right to secrecy of correspondence and freedom of speech. The constitutional court holds that restricting the exercise of such rights does not comply with the requirements set forth by Art. 53 of the Romanian Constitution. Similarly, also see decision no. 17 dated 21 January 2015

(published in the Romanian Official Journal no. 79 of 30 January 2015), by which the law on Romania's cyber security was ruled unconstitutional by our constitutional court.

Decision no. 80 of 16 February 2014 (published in the Romanian Official Journal no. 246 of 7 April 2014) on the legislative proposal as regards the review of the Constitution of Romania is relevant to our research theme. With regard to interpretation of the provisions of Art. 148 on integration with the European Union, the Court notes that: "constitutional provisions are not declarative in nature, but they are binding constitutional rules without which the rule of law's existence cannot be conceivable, as set forth by Art. 1 par. 3 of the Constitution. At the same time, Basic Law represents the framework and extent to which the legislator and the other authorities may act; thus, interpretations that may be made to the legal norm should take account of this constitutional requirement as well, contained precisely in Art. 1 par. 4 of the Basic law, according to which in Romania, the respect of the Constitution and its supremacy shall be mandatory".

It is the opinion of our constitutional court that to consider the European Union law applies with no differentiation within the national legal order, not making a distinction between the Constitution and the other domestic laws is to place the Basic Law at a second level in regard to the European Union's legal order. The legitimacy of the Constitution is the will of the people itself, meaning it cannot lose its binding force, even in the hypothesis that there would be disparities between its provisions and the European ones. Moreover, the fact that Romania's accession to the European Union cannot affect Constitution's supremacy over the entire domestic legal order was stressed.

The Constitutional Court has held that binding European Union acts are rules interposed between the constitutionality's control [17]. At the same time, lack of constitutional relevance of the European rule of law, interposed between reference constitutional rules within the constitutionality control was pointed out. In this instance, the referral of the Court based on non-compliance with the provisions of Art. 148 par. 4 of the Constitution was found to be inadmissible [18]. The Court ruled by the same decision that the legal standard of the European Union law needs to fall within a certain level of constitutional relevance, as such that its normative content could support the possible breach of the Constitution by the national law – "the sole direct reference rule within the control as to constitutionality". The constitutional court has enshrined, just like

the French Constitutional Council, the concept of “national constitutional identity”, whereby it understands the relevance of constitution’s supremacy every time there is a question of compliance of domestic laws with European Union acts [19].

Another issue examined by the constitutional case-law refers to the application, within the control as to constitutionality, of the European Union Charter of fundamental rights. Our constitutional court ruled that in principle it is applicable within the control as to constitutionality, “in so far as it safeguards, guarantees and develops the constitutional provisions in respect of fundamental rights; in other words, in so far as their protection level is at least at the level of the constitutional rules in the field of human rights” [20].

Also concerning the European Union rules ‘enforcement with regard to human rights within the control as to constitutionality, it has been argued that the provisions contained in an act with legal force similar to the European Union’s constitutive treaties should be referenced to the provisions of Art. 148 of the Constitution, not to those contained in Art. 20 of the Basic Law, which refer to the international treaties on human rights, other than those of the European Union [21]. Our constitutional court has ruled that provisions of Art. 41 of the European Union Charter of Fundamental Rights in regard to the right to good administration may be invoked via Art. 148, not Art. 20 of the Constitution [22].

Moreover, it has been established in constitutional case-law that analysis of compliance of a constitutional right provision with the Treaty’s wording on the functioning of the European Union does not fall on the competence of the Constitutional Court, in light of Art. 148 of the Constitution. Such jurisdiction, i.e. to determine whether there is any contradiction between national law and treaty, is vested exclusively on the court, which also has the possibility to ask a preliminary question to the Court of Justice of the European Union. It is interesting to note that the constitutional court considers it has no jurisdiction to verify compliance of a national law provision with the wording of European Union‘s constitutive treaties and, if it were to assign itself such a competence, a possible conflict of interests would arise between the Constitutional Court of Romania and the European Union Court of Justice, which, at that level, is deemed inadmissible [23].

With regard to the cooperation between the Constitutional Court and the European Union Court of Justice, our constitutional court stated that the manner of application, in

the case of control as to constitutionality, of decisions made by the European Union Court of Justice or formulation of preliminary questions by the Court in order to establish the content of the European rule is left to its discretion. “Such attitude takes account of the cooperation between the national constitutional court and the European one, as well as of the judicial dialogue between them, without calling into question matters relating to setting a hierarchy between these courts” [24].

IV. Conclusions

The supremacy of the Constitution would remain a mere theoretical issue if there were no adequate safeguards. Undoubtedly, the constitutional justice and its particular form, the constitutional control of the laws, represent the main guarantee of the supremacy of the Constitution, as expressly stipulated in the Romanian Basic Law.

Professor Ion Deleanu appreciated that "constitutional justice can be considered alongside many others a paradigm of this century." The emergence and evolution of constitutional justice is determined by a number of factors to which the doctrine refers, among which we mention: man, as a citizen, becomes a cardinal axiological reference of civil and political society, and fundamental rights and freedoms only represent a simple theoretical discourse, but a normative reality; there is a reconsideration of democracy in the sense that the protection of the minority becomes a major requirement of the rule of law and, at the same time, a counterpart to the principle of majority; "Parliamentary sovereignty" is subject to the rule of law and, in particular, to the Constitution, therefore the law is no longer an infallible act of Parliament, but subject to the norms and values of the Constitution; not least, the reconsideration of the role and place of the constitutions in the sense of their qualification, especially as "fundamental constitutions of the governors and not of the governors, as a dynamic act, further modeling and as an act of society." [25]

The constitutionalisation of law and law is primarily the work of the Constitutional Court and the courts but, in a broader sense, the entire state institutional system according to the rules of competence contributes to the process by interpreting and applying the constitutional norms complex of continuous approximation of the normative content of laws and other categories of normative acts, principles, values and reasons of

constitutional norms. It is obvious that the infra-constitutional legislator plays a very important role in the constitutionalisation of law and law, especially by taking into account in the normative acts elaborated and adopted what we call the reasons and values found in the normative content of the Basic Law.

In our opinion, the role of the Constitutional Court as the guarantor of the Fundamental Law must be amplified by new powers in order to limit the excess power of state authorities. We disagree with what has been stated in the literature that a possible improvement of constitutional justice could be achieved by reducing the powers of the constitutional litigation court. It is true that the Constitutional Court has made some controversial decisions regarding the observance of the limits of the exercise of its attributions Constitution, by assuming the role of a positive legislator. . Reducing the powers of the constitutional court for this reason is not a legal solution. Of course, reducing the powers of a state authority has as a consequence the elimination of the risk of misconduct of those attributions. Not in this way it is realized in a state of law the improvement of the activity of a state authority, but by seeking legal solutions to better fulfill the attributions that prove to be necessary for the state and social system.

We believe the principle of primacy of European Union law cannot aim at the constitutional rules also. One of the arguments to support this allegation is derived from the provisions of Art. 148 par. 2 of the Constitution. The constitutional rule links the due regard for the principle of primacy of community law to the “compliance with the provisions of the Act of Accession”. The Accession Treaty cannot be contrary to the constitutional rules, since it couldn’t have been ratified by the Parliament. The provisions of Art. 11 par. (3) of the Constitution are enlightening in this regard: “if a Treaty Romania is to become a party to comprises provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution”.

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INTERNATIONAL REGULATION OF ENVIRONMENTAL POLICIES

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Abstract
This paper addresses a number of issues that concern and affect the contemporary world. Environmental protection should not be just a momentary topic of discussion, a 'trend'; it should be a permanent topic of discussion because environmental damage affects humanity in the long run. Pollution is not a national subject, it is an international one. We can have ideals about democracy and the rule of law, but if the existence of species and of all humanity is questioned, the rest is rhetoric.
Keywords: *state, environmental protection, environmental policies, international conferences.*

INTRODUCTION

Cultured people have always written about time and times, be it literature or writings dealing with 'serious' subjects referring to the individual, citizens, liberty, or state. Climate was not only a setting established by the invisible hand of a talented scenographer to create suspense or tragedy in literary works, it could have been a factor in the creation of the first state bodies or the first forms of legal norms.

Ever since antiquity, climate theory has been a serious subject of debate, being called the five-zone theory, attributed to the philosopher Parmenides. In ancient Greek, the word climate meant tilt, referring to the inclination of the axis of the world to the horizon, i.e. the latitude of each place. The current meaning of the word climate was given by that of area, which meant a belt, and in time it got the sense it has today. The ancients approached scientific subjects related to geometry and climatology that they combined with those related to legends, magic, etc. [1]

As has been said, there are a number of factors that shape the law: the natural framework, the social-political framework, and the human factor. Geographical

environment influences social life, and economic or political development. As Charles Montesquieu also said, the laws must be in line with the country's physical, climate and soil characteristics. In this way, legislative measures are taken to combat environmental pollution, to protect the terrain, airspace or the sea. As can be seen, the natural framework is an important factor in the configuration of law and makes a real contribution to the creation of a legal system in a state. [2]

Concern for the environment has always existed, but there have been centuries when concern for economic development has been much greater, neglecting the dangers of consumerism and strong industrialization. We pay a heavy price for the pride of having smoking chimneys. Yesterday's negligence threatens our tomorrows.

The case of environmental damage is also supported by the Great Coral Barrier in Australia, which has been affected by environmental conditions. As early as 1998, the reef began to deteriorate. [3] Important time elapsed, which could have been used to improve the environment, but unfortunately, such situations never make the news, least of all during prime time.

"[...] The spread of industrial production may have already produced irreparable damage to the global environment. Ecological issues not only relate to how we can control and prevent most damage to the environment - such as natural disasters - but also to the very way of life in industrialized societies. If the goal of our continued economic growth has to be abandoned, new social institutions will probably emerge. Technological progress is unpredictable and it may happen that Earth really contains enough resources for the industrialization processes. However, at the moment, this does not seem feasible, and if the Third World countries are to achieve living standards comparable to those currently enjoyed by the West, global readjustments will be needed." [4]

INTERNATIONAL CONCERNS REGARDING THE ENVIRONMENT

At international level there have been political initiatives that led to meetings and then signing of documents that focused on the involvement and raising awareness of the participating states regarding environmental protection. The United Nations is the international organization with the greatest influence, which regulates norms in all aspects of human life, not only the political one.

The ecological crisis has been triggered since the 1960s, requiring international organizations to intervene; 1968 became a decisive year for international cooperation because the UN and two regional international bodies, the European Council and the Organization of African Unity, have launched systemic environmental activities. The European Council adopted the first texts at the beginning of 1968: the Declaration on the prevention of air pollution and the European Water Charter. In the same year, the first of the European environmental treaties, i.e. the European Agreement on the Limitation of the Use of Detergents in Laundry and Cleaning Products, was adopted. With regard to the African organization, it distinguished itself by the signing of the African Convention on the Conservation of Nature and Natural Resources, which is highlighted by its universal character, referring to the preservation and use of soil, water, flora and fauna resources. This universal character has another consequence: some parts of the convention set forth only principles. [5]

The year 1968 seems a good year in terms of international regulations. The United Nations adopted Resolution 2398 in the same year, which called for convening an international conference on the human environment and which culminated in the preparation of the first World Conference on the Environment, in Stockholm, June, 1972. During the preparation of the conference, using a series of ecological disasters for exemplification, such as the one produced by the Torrey-Canyon oil tanker near the French, Belgian and English coasts, adopted a series of international documents, particularly in the field of marine environment protection: the 1969 Bonn Convention, the 1969 Brussels Convention or the Copenhagen Accord of 1971.[6]

The United Nations Conference on Human Environment, held in Stockholm in 1972, began by marking a record in terms of the number of participants, around 6,000 participants, delegations from about 113 states, demonstrating the interest in environmental issues and protection. The document, even if it does not have full legal value, has clearly contributed to the development of environmental law. The seven-point preamble finds that man is both the creation and the creator of his environment. The fact that population increases leads to problems regarding environmental protection and the need to preserve the environment and social progress and the evolution of production, science and technology, and the man's inclination to improve his environment takes

shape daily.[7] It can be observed that social progress and economic development are not neglected, as they are the resort of the contemporary world.

The principles set out in the declaration's text are a complex set of political-juridical requirements, with multiple connotations. For example, the first principle regulates the fundamental right of man to freedom, equality, but also satisfactory living conditions in a quality environment that must enable the individual to live in dignity and wellbeing, therefore a connection between environmental protection and Environmental law must exist. The second category of principles identifies natural resources and states that they do not include just oil and minerals but also air, soil, water, fauna and representative samples of natural ecosystems that need to be protected for future generations.[8] Thus, the concept of sustainable development is being addressed, a concept that still concerns us today. This concern must include a series of actions, because we assist to an increase in population and as a consequence in the use of some resources; therefore our desire to only register economic growth leads to climate change and the occurrence of natural phenomena that create a lot of damage and not only of the material kind.

The third category of principles refers to the need for environmental protection and there are concerns about the link between economic and social development and environmental protection and the need for an integrated and coordinated approach to planning. The last category of principles is dedicated to international cooperation and establishes: the sovereign right of states to exploit their own resources according to their ecological policies and the obligation to carry out activities so as not to cause damage to the environment of other states; the obligation of states to cooperate in the development of a new branch of law - that of international environmental law regarding the responsibility and compensation of victims of pollution as well as of other environmental damage caused outside their borders.[9] It may be noted that they address, diplomatically, the need for states to assume responsibility for environmental damage. A natural thing that involves a minimum of civic education: taking responsibility for any wrongdoing.

The results of this important conference materialized in the adoption of two important documents: the Final Environmental Impact Statement, which contains the 26 principles under debate, the Environmental Action Plan, and contains 109 recommendations to the states regarding environmental protection.[10] These

recommendations can be grouped into three fundamental themes: environmental assessment, management of environmental protection issues and support measures. The first category of recommendations - environmental assessment - is to carry out an analysis, supervision and at the same time to exchange information on the environment, which is why international cooperation that has materialized in a package measures called Earth watch is important; the second set of recommendations - environmental management - refers to natural resources and human settlements, without neglecting the pollution problem; support measures aim to inform and educate the public, as well as to train environmental specialists. All these actions must be regulated internationally, and in this sense a central body with environmental attributions has been created and responsibilities are shared between UN specialized agencies and regional organizations. Thus, the United Nations Environment Program was born [11]. Besides the United Nations Environment Program, the Environment Fund was also created to contribute financially and to support realistic environmental actions, with an important role in the coordination of other international organizations under UN or regional aegis. [12]

Much later, after 20 years, the World Environment Day, June 5, was marked by an important event held in Rio de Janeiro, the United Nations Environment and Development Conference, aiming to develop strategies and measures that contribute to fighting environmental degradation in all countries, in the context of sustainable development. The goal of the organizers was to establish a new international agreement on atmospheric protection, land resources, conservation of biological diversity, protection of freshwater resources, seas and coastal areas, rational environmental management of product waste and toxic waste, improvement of the living and working conditions for the poor, the eradication of poverty and stopping the degradation of the environment, etc. The conference was held in two stages: June 3 - 12, 1992, attended by Ministers of the Environment, similar bodies and representatives of some UN bodies and specialized programs, representatives of intergovernmental and nongovernmental bodies from 181 states; and June 12-13, the Earth Summit, attended by state presidents and heads of governments. [13]

The results of the Rio de Janeiro Conference have materialized by signing important documents: the Rio Declaration on Environment and Development also called

the Earth Charter, Agenda 21, the Convention on Biodiversity, the Framework Convention on Climate Change, the Declaration on Forests and the Declaration on Desertification. The Earth Charter is the result of a compromise, without binding legal force, between industrialized countries and developing countries. This document has largely taken over the principles of the Stockholm Declaration. The element of innovation of the Earth Charter is the thesis that we will not be able to protect the environment without the involvement of the majority of the population that, although in poverty, holds a significant proportion of natural resources. [14]

It is a paradox we live in: we have generous natural resources, but a significant part of the world's population lives in poverty and the exploitation of these important resources in poor countries is done by consortia or bodies belonging to developed countries.

"[...] And the world has a problem: it gets warm, flat and crowded. More specifically, global warming, the stunning rise of the middle classes around the globe and the rapid increase in population are converging to a dangerous shake-up of the planet's stability. Particularly the hot, flat and agglomerated convergence leads to the limitation of energy reserves, the intensification of the extinction of certain plant and animal species, an aggravated scarcity of energy, the strengthening of oil dictatorship and the acceleration of climate change. The way in which we approach these overwhelming global trends will greatly determine the quality of life on earth in the 21st century." [15]

Agenda 21 was intended as a call for action. It is an action program that is applied not only by governments, but also by UN organizations and independent sectorial groups in all areas of environmental economic activity that affect the environment, and refers to: the social and economic dimensions, the conservation and resource management for development purposes, strengthening the role of international bodies and the means of execution. The Convention on Biological Diversity provides the measures to be taken to protect ecosystems and different forms of life, and the signatory states undertake to establish protected areas, to integrate these issues into development systems at national level, including the transfer of biological technologies from developed countries to developing countries. This latter aspect has led to controversy, leading to the refusal of some developed countries to sign the convention. Instead, the Convention on Climate

Change is a commitment taken by the countries that have signed the respective Convention to reduce carbon dioxide emissions into the atmosphere to the level of 1990. [16]

The Declaration of Principles on Forests has not become a legally binding document, because there was divergence between northern and southern countries. The text of the declaration contained 17 principles on forest types, representing an important stage in the process of achieving an appropriate international agreement. It insisted on the sovereignty of the states, but it also stressed the importance of adequate forest management. It underscores the intention to continue international cooperation and it states that developing countries must have special financial resources to stimulate economic and social substitution activities with a particular concern for indigenous peoples. The only institution created at this summit was the Sustainable Development Commission. [17] At national level, Romania has expressed its concerns, at least declaratively, regarding the protection of forests. In the past few years, massive forest cuts have been observed, mostly illegal, which has led to the endangerment of the entire ecosystem's equilibrium. Unfortunately, these illegal cuts were supported by cumbersome legislation, by inconsistency in the actions of some authorities, as a consequence to corruption, and materialized in several criminal files in progress.

One of the most important natural resources of Romania is the forests, they occupied more than a quarter of the country's territory, with a special economic value and with important functions in defending the agricultural lands against drought and landslides, in the improvement and restoration of the natural qualities of soil, of the purification of air, but also of the development of human settlements by creating the optimal conditions for grazing and the development of hunting, etc. [18]

When the works for the Rio Conference were prepared, the issue of desertification was not taken into consideration. It was included in Agenda 21, as a separate chapter: the management of fragile ecosystems; the fight against desertification and drought. The action was followed by the United Nations Convention to Combat Desertification, Paris, signed in 1994 by 110 states. [19]

The year 1997 is marked by an important event in the field of environmental protection, which took place in Kyoto, Japan, between December 1 and 11. The event

involved 161 signatory states to the Kyoto Protocol, which stated that by 2012 the average greenhouse gas emissions would be reduced by 5.2% below 1990 levels. By this protocol 55 industrialized countries were required to reduce their gas emissions. On December 3, 2007, 175 countries acceded to the Kyoto Protocol. The industrialized countries did not sign it. [20] In fact, there were all highly industrialized countries, members of the G8; since 2014, when there were dissensions between the big powers and Russia on the conflict in Ukraine, the group consists of seven countries. Most often the highly industrialized countries are also the biggest polluters. Perhaps this is why the Kyoto Protocol has not been signed by all countries.

The Johannesburg Summit in 2002 was held at the request of the General Assembly of the U.N. as an extension of the Rio Conference's concerns, and was devoted to sustainable development by concentrating an impressive group of participants not only on the states of the world but also on civil society. The main objective of the meeting was to take stock of the 10 years that have elapsed since the Rio de Janeiro Convention, adopting a political statement and a plan for the implementation of future objectives. The policy statement includes 6 points, but the implementation plan has 11 chapters addressing important themes such as: eradication of poverty, natural resource protection and management for the purpose of economic and social development, changing unsustainable consumption and production patterns, health and sustainable development, sustainable development in small island developing countries, etc. For the most part, these themes are the objectives that have been taken over from a series of previous international texts, and the states limited to general political commitments without concrete deadlines.[21] It seems it all sums up to political statements, and certainly bigger concerns exists for achieving economic profit, thus neglecting the environmental aspects that regard the future generations. Perhaps this is an unrealistic, individualistic and definitely selfish approach. The same trend covers the 2012 meeting in Rio de Janeiro. "Ideas are being circulated, such as: setting up a position as mediator for future generations, publishing an annual report on the state of the planet, and creating a global environmental organization to strengthen the status of the current UNEP.''[22] Mediation presupposes the existence of divergence, so it seems incomprehensible why we need to mediate on an important issue like the environment, especially as the

deterioration of climate conditions affects us all regardless of social status, economic status, ethnicity, citizenship, etc. "Why I'm sure that we have to pay for the future? For two reasons. The first is that we have already reached critical points in terms of energy demand and supply, oil dictatorship, climate change, energy poverty and biodiversity loss. We have no dampers and we cannot hide anywhere; [...] We have reached a stage where the effects of our way of life on the climate and biodiversity of the earth can no longer be outsourced, ignored or limited. Our organic savings account is empty. [...] We either pay now, or it will not be there anymore. The second reason I'm sure we will have to pay is that the real price of all these things becomes visible, measurable, taxable and inevitable." [23]

At EU level, environmental issues have been addressed over time. Treaties establishing the European Communities have not included community competences in the field of environmental protection. Even though environmental pollution signals have begun to emerge since the 1960s at Community level, interventions have been punctual about the functional aspects of the common market. The main factors that prevented for a long time the development of a concrete environmental policy at European level were, among other things, the wide differences in environmental standards applied by member countries; the limitation of treaties and the application of the subsidiarity principle to studies on environmental issues and their long-term impact, etc. Member states have had to adopt national measures to combat the phenomenon of pollution, which is a cross-border phenomenon and cannot be effectively combated only within national borders [24].

Since the provisions of the Kyoto Protocol on greenhouse effect and global warming have ceased to be applicable, it was decided, at international level, to hold another meeting to establish a new set of measures to control the global warming phenomenon and to find legal means of public international law to financially support poor countries to cope with climate change. Again, the United States denied the signing of the Copenhagen protocol in December 2009, so it became just a political agreement.[25] A lot later, in Paris in 2015, the Agreement on climate change was signed, including the main international polluters: the United States, China and India. This Agreement can be considered a historical one, because the main subjects who always refused to sign

international documents in this respect were brought into the group of those who signed the document.

The objectives of the Paris Agreement were, among others, keeping the average temperature under 2°C, as a long term objective; participating countries decreed to present their contributions every five years, in order to establish even more ambitious objectives. Also, it was decided that the actors involved in this agreement manifest transparency and inform both themselves and the public over the results of the efforts invested; financing these efforts is also important to fighting climate change. [26] Due to political changes in the United States, what was once considered as an important moment in environmental protection was overturned by the United States' decision to retreat from this Agreement, in spite it being one of the largest polluters globally. Thus, what is considered merely an internal politics decision can provoke unimaginable consequences internationally.

The environmental issues were not included in the Treaty on the European Economic Community (1957, March) when it was amended by the Single European Act (April 1987) and it finally resolved the Community competence in the field of environmental protection. Over time, there has been a growing concern over the field of environmental protection, and eventually a derived right and a special policy in the field developed.[27] Regarding the Paris Agreement on Climate Change, considered a historic moment in the field of environmental protection, the European Parliament gave its consent, almost a year after, to get the Agreement ratified by the European Union. At least 55 parties had to ratify the Agreement in order for it to enter into force - condition fulfilled. Among the Member States that have ratified the Agreement was also Romania. The European Union accounts for about 12% of global greenhouse gas emissions. Following the consent of the Parliament, the Council was able to adopt the decision to finalize the ratification process. [28]

After the United States announced their withdrawal from this Agreement, the European Union Council approved the conclusions through which the European body confirms that all the conclusions of the Paris Agreement are adapted to its purpose and therefore it cannot be renegotiated.

In February this year, in Brussels, the results of the works of the European Union Council on Climate Diplomacy established the importance of a global order regarding the fulfilment of climate action and set out to implement the 2030 Agenda, with the UN at its centre; it took note, with great concern, of the evidence indicating the acceleration of climate change, especially in the Arctic areas, which is twice higher than the world average; it established the decision to fulfil the commitments made in Paris; it noted, also with concern, the deterioration of water resources and ecosystems; it underlined the importance of cross-border cooperation regarding the environment between member states and partner states, etc. [29]

Agenda 2030 for sustainable development was the result of the 2015 UN Summit and set 17 objectives for sustainable development, with the focus being on the following: the eradication of poverty and hunger; ensuring a healthy life; guaranteeing quality education; gender equality; clean water and sanitation for all; ensuring everyone's access to sustainable, affordable energy; etc. [30]

IN LIEU OF CONCLUSIONS

Environmental concerns have started in the 1960s, as environmental pollution and deterioration have been noted. These concerns were initially in the form of meetings, international conferences, without any improvement in the environment. As a rule, the issue of the environment becomes a hot topic in the electoral campaigns of the world, along with the fight against terrorism, job creation and wage growth. Humanity cannot survive without actual measures of environmental protection and without creating a real climate of social justice at international level.

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IMPLICATIONS OF THE CONSTITUTIONAL COURT DECISION No. 104/2018 ON LOCAL PUBLIC ADMINISTRATION

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Abstract:
The Constitutional Court of Romania, within the previous constitutional control, declared unconstitutional the Law amending Law no.161/2003 on certain measures for ensuring transparency in the exercise of public dignities, public functions and in the business environment, prevention and sanctioning of corruption. The normative act declared unconstitutional, by the Constitutional Court Decision no. 104/2018[1] , removes from the scope of the incompatibilities of the members of parliament, members of the Government, prefects, sub-prefects, mayors, presidents of county councils, vice mayors and vice-presidents of the county councils, the quality of trader as a natural person. The article analyzes the reading and the device of the decision of the Constitutional Court of Romania and highlights the implications for the local public administration.
Key words: *local elected, constitutional court decision, incompatibility, trader as natural person*

Preamble

The regime of incompatibilities of local elected representatives was the subject of several legislative initiatives aimed at eliminating from the scope of incompatibilities certain functions or qualities that the legislator considers incompatible with the status of local elected. Such an initiative, which became a normative act after the parliamentary debate, is the Law amending Law no. 161/2003 on certain measures for ensuring transparency in the exercise of public dignities, public functions and the business environment, the prevention and sanctioning of corruption. Through this normative act, the legal provisions of the various articles of Law no. 161/2003 have been annulled. The annulled legal provisions have the following content:

- Article 82 paragraph (1) (e): “(1) The capacity of a deputy and senator is also incompatible with the exercise of the following functions or qualities: ... (e) the status of trader as a natural person”;

- Article 84 paragraph (1) (g): “(1) The capacity of a member of the Government is incompatible with the exercise of the following functions or qualities: ... (g) the status of trader natural person;
(1) The function of a member of the Government is incompatible with the exercise of the following functions or qualities: [...] (g) the status of trader as a natural person”;

- Article 85 paragraph (1) (i): “(1) The office of prefect and sub-prefect is incompatible with the exercise of the following functions or qualities: ... (i) the status of trader as a natural person”;

- Article 87 paragraph (1) (g): “(1) The office of mayor and vice mayor, general mayor and vice mayor of Bucharest, president and vice president of the county council is incompatible with the exercise of the following functions or qualities: ... (g) the status of trader as a natural person”;

The law restricts the legal framework of incompatibilities between mayors, presidents of county councils, vice mayors, vice presidents of county councils, and also of senators, deputies, members of the Government, prefects, sub-prefects by eliminating the quality of trader as a physical person from the incompatibilities of these categories of public dignities. In its jurisprudence[2], the Constitutional Court has ruled that the incompatibilities are intended to ensure the neutrality of the mandate by persons exercising a public office of authority, in full compliance with the principles of impartiality, integrity and transparency, representing a guarantee capable of conferring a moral authority that is indisputable to persons exercising certain mandates. At the same time, the Constitutional Court emphasizes[3] that the state has the obligation to impose ethical and professional standards, especially those called upon to perform activities or services of public interest and those who carry out acts of public authority. In turn, the doctrine[4] shows that incompatibility is a way of protecting the mandate of the elected, having an imperative character, being of public order and, thus, mandatory.

The normative act was attacked by the President of Romania before the Constitutional Court, invoking aspects of both extrinsic and intrinsic unconstitutionality, and the constitutional litigation court, following the previous constitutional control, as an adopted but still unprompted law, declared the law unconstitutional, by Decision no. 104/2018. Regarding the significance of constitutional control, the doctrine[5] appreciates

that this form of control is a fundamental factor in the process of constitutionalizing the law.

Decision of the Constitutional Court of Romania no. 104/2018 and its implications on the incompatibility regime of local elected representatives

The Constitutional Court of Romania has been called upon to rule on the constitutionality of the provisions of the Law amending Law no. 161/2003 regarding certain measures to ensure transparency in the exercise of public dignities, public functions and business environment, prevention and sanctioning of corruption, a normative act that allowed senators, deputies, prefects, sub-prefects, mayors, vice mayors, presidents and vice-presidents of the county councils to hold, at the same time, the status of trader as a natural person. Practically, the law submitted before the Constitutional Court of Romania by the President of Romania eliminated the quality of trader as a natural person from among the incompatibilities of those dignitaries and local elected officials. If the law had entered into force in the form adopted by the Parliament, all the listed elected categories of persons could have held and exercised, at the same time with the dignity entrusted by citizens through vote, also the status of trader as a natural person. The Constitutional Court has held that the law amending the incompatibility regime of local and national elected officials violates the provisions of Article 1 paragraph 3 and 5 of the Constitution. The decision of the Constitutional Court is final and generally compulsory, and it also concerns the provisions and the operative part of the decision[6] .

It is not the first time that the members of the parliament are trying to eliminate certain inherent qualities or functions from the incompatibility scope of national or local elected officials, either in the desire to escape allegations of violation of the incompatibility regime, or, in the future, to exercise, in an unhindered manner, certain functions or qualities, which, according to the regulations in force, are considered incompatible with the public office or dignity held.

What is important to underline in the Constitutional Court Decision no. 104/2018 and which is relevant to the Romanian state practice, including the application of European law, is that the Constitutional Court has recognized the exclusive right of the

lawmaker to modify the normative framework of integrity, and implicitly, the legal regime of the incompatibilities of the local or national elected officials, stating that “The establishment of integrity standards is a matter of opportunity that falls within the discretion of the legislator, and a diminution of these standards is not automatically a violation of constitutional provisions”.

Even if the President, in his complaint, argued that the elimination of the incompatibility of certain public functions or dignities with the status of a trader as natural person by the law deducted from the constitutional control would have the following consequences: 1) diminishing the standards of integrity; 2) violation of the constitutional provisions of Article 11 paragraph (1), according to which the Romanian state undertakes to fulfill properly and in good faith its obligations under the treaties to which Romania is a party; 3) violation of the constitutional provisions of Article 147 paragraph (4) regarding the general and compulsory nature of the decisions of the Constitutional Court; 4) violation of the constitutional provisions of Article 148 paragraph (4), as they are contrary to those established by the Constitutional Court’s jurisprudence on incompatibilities; 5) violation of international treaties, namely the United Nations Convention Against Corruption, ratified by Romania; 6) breach of the obligations arising from the European Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for the cooperation and verification of the progress made by Romania in order to achieve specific benchmarks in the field of judicial reform and fight against corruption, being likely to affect the activity concerning the verification of incompatibilities by the National Integrity Agency, and to relativize the legal framework of integrity, respectively to contradict the standards of the Constitutional Court on integrity; the Constitutional Court held that the legislature has the power to intervene in the matter of integrity standards, being a matter of opportunity that falls within the discretion of the legislator, it no longer affects the constitutional provisions or the commitments made by the Romanian state at the moment of accession to the European Union, nor the case-law of the Constitutional Court.

The Constitutional Court declared the unconstitutionality as a whole of the normative act under discussion on the grounds of deficient regulation, not on the grounds that the legislative solution itself, namely the restriction of the normative framework of integrity, by granting the possibility to mayors, vice mayors or other categories of local or

national elected dignitaries to hold simultaneously with the public office or dignity also the status of trader as a natural person would constitute a constitutionality issue. The Court considered that the normative act does not lead to the creation of a coherent and clear legislative framework on incompatibilities, which is detrimental to the constitutional requirements regarding the quality of the law. Therefore, the law is not clear, precise, predictable and accessible, conditions resulting from the provisions of Article 1 paragraph 5 of the Constitution, and violates the provisions of Article 1 paragraph 3 of the fundamental law. In its jurisprudence[8] , the Constitutional Court has established that the requirement of clarity of the law refers to the unequivocal nature of the regulation object, the precision referring to the accuracy of the chosen legislative solution and the language used, while the predictability of the law concerns the purpose and the consequences it implies.

In the context, the Constitutional Court stresses that, on the basis of the principle of unity for the regulation in matter, the legislator has both the right and the constitutional obligation to regulate incompatibilities, but such regulation must be found either in the own statutes of each category of public functions and dignities, or in a single piece of legislation and covering all categories of functions and dignities that the legislator considers that should be circumscribed to these incompatibilities.

Therefore, the legislator may make changes to the incompatibility regime of local or national elected officials in the sense of extending or rejecting it, but they must comply with the requirements of legislative technique.

Declaring the unconstitutionality of the law as a whole leads to the banning of mayors, vice mayors, presidents and vice-presidents of county councils and of the other public functions and dignities covered by the normative act declared unconstitutional, to simultaneously hold public office or dignity and the status of trader as a natural person.

It is also worth mentioning that in its decision and with reference to the jurisprudence[8] , the Constitutional Court qualifies the local elected as persons who do not represent a socio-professional category that pursues the development of a career as a local elected, but as someone who has been elected within the respective administrative-territorial unit to handle issues of the local community.

Conclusions

The Constitutional Court of Romania, as the guardian of the Constitution's supremacy and as an essential body in the architecture of the rule of law[9] , exercising the constitutional control over the Law amending Law no. 161/2003 on certain measures to ensure transparency in the exercise of public dignities, in the business environment, the prevention and sanctioning of corruption, considered that the law under review violates the constitutional provisions.

The Constitutional Court of Appeal did not rule out the idea of amending the legislative framework of integrity by the Parliament, under the law, but found that the normative act suffers from the point of view of the quality of regulation, failing to fulfill the condition imposed by Article 1 paragraph 5 of the Constitution, which also leads to a violation of the provisions of Article 1 paragraph 3 of the fundamental act. In line with this idea, the Constitutional Court states that "the constitutional democracy, in a rule of law (...) is the reality of a system in which the supremacy of the Constitution limits the sovereignty of the legislator who, in the process of creating legal norms and adopting some normative acts, must take into account certain principles, such as the principle of legality, which is of constitutional rank".

Of course, the Parliament, as the sole legislative authority of the country, can intervene in the legislative sphere, regulating primarily the social relations, nevertheless the social values also have to be protected so that society evolves, and integrity represents one of them. Therefore, one aspect that must be taken into account is that citizens have less and less confidence in local or central public decision-makers, and a relaxation of the integrity framework, by removing certain qualities or functions from the sphere of incompatibility, will further reduce the level of trust with negative effects on state practice in our country. Even the Constitutional Court, before arguing that the standards of integrity are set by the legislator on the basis of its discretion, emphasizes that "the state is obliged to assure all premises, the legislative framework being one of them, for the exercise of its functions by professionals who meet professional criteria and those of moral probity".

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A MODEL FOR THE SOCIETY. ON THE CENTENARY OF THE FIRST WORLD WAR AND OF THE NATIONAL GREAT UNION: MIHAIL V. GHEORGHIU (A CASE STUDY)

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Abstract:
In our work we aim to present the life and activity of one of the hundreds of thousands of heroes who played an active role in the Great War of 1916-1918, namely a case study on Mihail V. Gheorghiu, an impressive personality from Săgeata Village, Buzău County, that may still be considered a vivid example in nowadays context of celebrating the centenary of the event. He participated in almost all the essential moments of this war: Gheorghiu was on the Transylvanian front when the Carpathians were crossed in 1916, he fought in Dobrogea, then in West Wallachia, as well as in battle to defend the city of Bucharest. In the summer of 1917, he took part in the combats from the heroic perimeter Mărăști, Mărășești and Oituz, was captured as a prisoner and detained in a camp in Germany. After having returned to his country, Gheorghiu played an active role in the battles from Galaţi area, as well as in the defense of the eastern border that was engaged on the Dniester river, where he fought permanently in the first line and proved remarkable deeds of heroism. During the interwar period, Mihail V. Gheorghiu got involved in erecting a beautiful monument to the WW I heroes in his native village and, since 2010, the main street in Săgeata has been bearing his name.
Keywords: *First World War, Mihail V. Gheorghiu, monument, administrative decision.*

1. Introduction

The First World War was an event of major importance in the history of mankind, with notable repercussions in the history of Europe and of the world. As it is very well-known, this event had a special significance in the history of the Romanian society as well. Romania entered the conflict in 1916, with the well-defined and declared purpose of liberating the territories that were at that time under foreign domination [1]. In 1918, after a sinuous journey between heroism and grandeur on the one hand, and tragedy, despair and humiliation, on the other, Romania was in the end in the victorious party, and, therefore, Bessarabia, Bukovina and Transylvania united with their motherland [2].

By uniting all these provinces, there was fulfilled the long-lasting national ideal, due to the efforts and sacrifice of hundreds of thousands of Romanian soldiers. In the

year of celebrating the centenary of the Great Union, and in the context of the general tribute paid to the WW I heroes, we focus our attention, through a case study, on one of the hundreds of thousands of known or unknown soldiers who made the national ideal possible. We therefore highlight and honour the life and heroic deeds of lieutenant Mihail V. Gheorghiu who participated in almost all the military operations of the Romanian Army during the First World War. After the end of the war, he also got involved in erecting an imposing monument dedicated to the heroes in his native village. We would like to mention the fact that the information related to his participation in the military operations has never been published before and was found during our investigation of the Romanian Military Archives located in Pitești.

2. Mihail V. Gheorghiu: Biographical data

Mihail Gheorghiu was born in 1889 in Săgeata village, Buzău county, in a family of wealthy peasants. After graduating from high school in Romania, he attended Mining Academy of Berlin for two years and a half. He began his military career as a soldier, during his service in 1910, later on becoming a corporal and a sergeant. In the context of the summoning during the Balkan wars of 1912-1913, he got the military rank of plutonier and sub lieutenant in reserve. In 1916, he became an active force in the army, obtaining the rank of lieutenant. There followed the ranks of captain in 1919, of major in 1828, and that of lieutenant colonel - in 1938. He was retired for old age in November 1940, but was again convoked during the World War II operations, when he carried out various military activities behind the front. On June 15, 1944, he was definitely retired from the army for medical reasons. He was married twice and had a son from his first marriage [3].

3. Mihail V. Gheorghiu during the First World War

Mihail Gheorghiu got distinguished especially during the First World War, when he participated in almost all military operations held on the national territory, deploying the whole campaign from 1916, by crossing the Carpathians, fighting in Dobrogea, participating in the defence of Bucharest and later, in the summer of 1917, in the fights from Mărăşeşti area, where he was taken prisoner by the German troops.

His record of service, stored at the military archives in Piteşti, charts that he took part in the fighting from Transylvania, starting with 16 August 1916 in Vama Buzău area, where he "effectively contributed to the capture of an entire enemy battalion"[4]. After nearly two weeks, Mihail Gheorghiu fought on the front in Dobrogea, participating in the entire campaign from this region.

For this stage of Gheorghiu's military career, his qualifying sheet records the following: "He looks well, he is healthy and very resistant. Therefore, he may participate in the campaign for a long time. He rides well." His superior estimated that Mihail Gheorghiu knew military regulations, as well as the secrets of the machine gun, which got him good results. He was considered in the same record as being "intelligent, zealous and conscious in his service"; "during battles, he has always been at the forefront of the machine-gun unit". All assessments throughout the period 15 August to 31 October 1916 are extremely appreciative, Mihail Gheorghiu being praised equally for his military and administrative skills, dealing with his subordinates "fairly and impartially" and taking good care of the horses [5].

After Dobrogea stage, there followed the campaigns in East Oltenia and West Wallachia where he took part, on 12 November, in the battle from Drăgoeşti-Verguleasa on river Olt and, on 23 November 1916, in Chitila fighting, as the commander of Company III.

The fourth stage of "Mihail Gheorghiu' war" is set on the front of Southern Moldavia, where he participated, from 25 July 1917 to 1 August 1917, in the fightings from Străjescu Forest, Cosmeşti Bridge and Mărăşeşti where he vanished [6].

His record of service from the period 31 October 1916 - 1 August 1917 maintains the same laudatory assessments. During the winter 1916-1917, Mihail Gheorghiu attended special schools and prepared his company for the battles to come, taking care in a rather "fatherly" manner of his people, horses and materials. He was conscientious and impassioned. There followed the stage of Nămoloasa, Mărăşeşti and Doaga. "On the night of 24/25, he was noted due to the night attack and conquest of Doaga village, by going in the first line with his machine guns." His heroic deeds continued and "he was distinguished on 25 July, when he managed to reject three German attacks with machine-gun fire, to completely destroy two Prussian regiments, 453 and 454 respectively, while

fiercely defending Doaga village". Nevertheless, Mihail Gheorghiu was taken prisoner in the context of these fierce battles. In his qualifying sheet it is noted: "He took part in the attack on 29 July and in the defensive battles on 30 – 31 July and 1 August, when, surrounded by superior enemy forces, he was taken prisoner". The concluding paragraph of his sheet summarizes his deeds as follows: "Throughout the campaign, this officer proved brave, would fight in the front line, permanently encouraging his soldiers to fight and causing important losses to the enemies in all battles" [7].

His dedication and heroism during the war were rewarded with numerous medals. [8].At his return home, he was reintegrated into the army and his military career continued on a trajectory somewhat ordinary after the end of World War I. It was not a spectacular career, with its ups and downs, sometimes dramatic ones, with several failures on personal level that severely affected his professional career. Nevertheless, Mihail Gheorghiu is to be remembered as a worthy man-at-arms that shone during the First World War through heroism. In this respect, we consider eloquent another appreciation made by his superiors in the qualifying sheet: "he impetuosly fought for the achievement of national ideals" [9].

After being detained in Germany, Gheorghiu returned to his home country and was reintegrated into the army where he played an active role in the battles from Galaţi area, as well as in the defense of the eastern border from the Dniester river against the Bolsheviks. His military evolution continued, on a rather common trajectory after the end of the First World War military operations. Nevertheless, it was not spectacular anymore, it had ups and downs, sometimes dramatic ones, with some failures on the personal level that seriously affected his professional career as well.

4. Mihail V. Gheorghiu and the Heroes Monument from his home village

In the interwar period, Mihail Gheorghiu had another brilliant moment of his life, this time in the sphere of public activity, namely that of coordinating the efforts to erect in his birthplace a monument dedicated to the heroes of the World War I. The idea to erect such a monument in Săgeata village emerged in 1923 and belonged to C. Cazan, a primary school teacher that would later become a deputy and left the village. Therefore, the idea did not materialize immediately and the efforts were resumed in 1928. At that

moment, there was constituted a committee headed by Major Mihail Gheorghiu [10], highly esteemed in the village, as everyone knew he was “himself a hero in the war of national unification” [11].

The committee was made up of local notables: the mayor, the priest, the secretary of the commune and other village leaders. An intense fundraising activity was initiated and in the village there were organized various public cultural activities, parties, proms, collections and so forth. To this public effort, there joined various central and local institutions, such as The Ministry of Education, Buzău Prefecture, Buzău Mayor House, “The Sons Defenders of the Homeland” Society, as well as various personalities in the region.

The actual construction of the monument began in 1934 [12] and was completed in 1939 [13]. A very beautiful monument was erected, a monument that exceeded what had been previously considered to be the condition of the rural universe. Created by the famous sculptor Jon Jalea, the monument was cast in bronze in Bucharest and represents a life-size soldier in lunge position attack, with his hand clutching the gun with a bayonet and his gaze fixing the enemy. Body position denotes strength, boldness and patriotism.

The 5.5-metre monument represents a very harmonious compositional complex which comprises a platform and a pedestal. The hard rock platform is composed of three rows of steps and supports a three-part good quality stone pedestal. The base body is solid and allegorically engraved with the army’s insignia, the central body is rectangular and slender, decorated with marble medallions, whereas the upper body, smaller and flattened, is highlighted by a beautiful belt and stands as the base for the bronze statue [14].

This monument, located on the church perimeter, in a central, visible place, on the main road has always been a mark of reverence, respect and admiration for all the inhabitants of Săgeata village. Its educational valences transcend time and maintain their viability, becoming perennial: “there is no better and more beautiful school for the patriotic education of this village youth than this monument which will always speak the language of light and mystery about their parents and siblings with rotting bones in the halo of their glory” [15].

5. A decision of the local public administration: Mihail V. Gheorghiu Street

The monument and the deeds of Major Mihail Gheorghiu have permanently remained in the collective memory of local inhabitants. On 29 January 2010, the Council of Săgeata Village decided to name the streets of this village [16] and the main street that runs through the entire locality was named after Mihail Gheorghiu. This decision represented a formal recognition of the person to head the efforts of erecting a Heroes Monument in Săgeata, and of the soldier whose heroism was noted throughout the First War World'military operations.

6. Conclusions

As a conclusion, the actions of Lieutenant - Colonel Mihail V. Gheorghiu were trully remarkable. He was both a hero of the First World War and a personality noted in public life, mainly due to his admirable effort to erect a Heroes Monument in his hometown. Mihai Gheorghiu has constantly enjoyed appreciation from his fellow villagers due to his intellectual formation, elite family environment and to his wartime heroism. His involvement in the erection of the Heroes Monument in Săgeata transformed him into a local personality, status oficialized in 2010 when his name was assigned to the main street of the homevillage.

One is to highlight the fact that this monument was erected due to the involvement of a man who made war and was distinguished due to his heroism, who saw the fragile boundary between life and death, had the necessary determination and could appreciate better than others the true value of a monument that would pay tribute to the ones dying for their homeland.

By erecting such a monument Mihail Gheorghiu showed a profound civic spirit and became a very beautiful example for his contemporaries and a benchmark for the descendents. From a brave hero of the WW I, also known as the war of national unification, he has become over time an important personality of his native village.

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ECOLOGICAL PREJUDICE - ELEMENT OF DELICTUAL CIVIL LIABILITY

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Abstract
In this study, we want to analyze the occurrence and legal recognition of environmental damage.
The numerous environmental influences have led to the characterization and consecration of the notion of ecological damage in the legal doctrine.
The environment – as a victim – is considered to be independent from the right of ownership and of persons, and has to make the subject of specific protection. [1]
Keywords: *the environment, environmental damage, ecological prejudice, legal doctrine.*

Under the impact of economic development, environmental law has become an important institution of environmental law due to the global environmental situation.
In the view of the European Community, the environment is defined as the set of elements that, in the complexity of their relationships, constitute the framework, medium and condition of human life.

The environment is seen as a set of factors that act upon the existence and the living conditions of people.

According to the legislation in force, in the case of committing an illicit, offensive and guilty act, the subject will have liability, be it contraventional or criminal, as the case may be. Criminal or contraventional liability may be accompanied by civil liability, this form of liability may also be applied if there is a lack of guilt or unlawfulness of the offense, however only provided that there is damage.

The notion of ecological damage has been first used by [2], in order to emphasize the particularity of the indirect damages caused due to the actions done in the detriment of the surrounding environment.

According to a definition accepted by both national legislation and international regulations, ecological prejudice is defined as the prejudice done to the inappropriable wildlife, res nullius, or to the interests of the collective though the receiving environment – air, water, earth, independent of the damages brought to a human interest

According to GEO 195/2005 ecological prejudice means the quantifiable effect in cost of the damages done the health of the people, to goods or to the environment, caused by pollutants, damaging activities, or disasters. [3]

In 2007, along with the adoption of GEO no. 68 which transposes Directive 2004/35/CE regarding environmental liability, prejudice was defined as being a measurable negative change of a natural resource, which can occur directly or indirectly.

We consider that there is a need to distinguish between the notion of ecological prejudice and the environmental damage, since ecological prejudice is a direct damage to its people and property through the pollutant environment, and environmental damage is a direct damage to environmental factors.

Ecological prejudice is understood in broad terms, because it allows for the consequences an attack upon the environment has on the health of the people, as well as their property to be taken into account.

The concept of ecological prejudice was initially perceived with the person as the victim in what damages brought to the health and property of the individual are concerned, but also their activities and well-being. [4]

A definition of ecological prejudice was also given by R. Drago and that is that: ecological prejudice is that caused to persons and their goods by the environment in which they live. [5]

Pure ecological prejudice has yet to be defined by the legal doctrine, however in order to be able to characterize it, the following definition was proposed: the maintenance of the essential ecological processes, the maintenance of genetic diversity and the maintenance of a sustainable exploitation of the species and of the ecosystems; the damages brought to these objectives would constitute a pure ecological prejudice [6].

The pure ecological damage or the ecological prejudice is strictly understood, covering only the presumption of the damages brought to the environment in itself, regardless of its impact on the people and/or property.

Romanian law tends to indirectly take into consideration the notion of pure ecological prejudice, in the sense that in order to gain legal recognition of the ecological damages one must start from the definition of the environment and then continue with the legal determination of the deterioration of the environment.

Thus, the directive regarding the civil liability for the prejudices caused by waste makes distinction between the damages brought to the persons and their goods, and the damages (damage or degradation) brought to the environment, underlining, while stating the reasons, the necessity of isolating these damages as a new category in reference to those preceding. [7]

In order to see if we can talk about a derivative of ecological prejudice, three conditions must be fulfilled: the prejudice must be direct (which refers to the causality link between the generating event and the prejudice), personal (the damages must be claimed by the person who suffered it), and it must have a great probability.

For example, ecological damages occurred when more victims fell ill and the causality link between the illicit gas spills from an ICPE [8] and their illness [9].

Gh. Durac, when he referred to the victim of the ecological damage, considered that the man was not only a victim of ecological damages, he himself also being at the same time the author the the degradation of the environment, being thus a victim of his own actions [17].

This recognition was also made by a decision of the Constitutional Council in 2011, which admitted an obligation to be vigilant in what what concerns the damages brought to the environment, whose breach involves civil liability of its employee. [10]

The certainty of the current or future existence of an injury must take into account its reality and its actuality, leading to the destruction of a species, the massive pollution of the seas, contributing to the constant destruction of fish and birds.

The reality of ecological injury can pose the problem of future damage, so there must be possibilities for evaluation, even if it occurs later.

An example in this sense is the famous Zoe Colocontroni case [11] – the judge noting that the loss caused by an oil spill in a plantation is not only that of the loss of a certain number of plants and animals, but a much more important one, which concerns

the capacity of the polluted elements of the environment to regenerate and to permit the same thing to the respective life forms [12].

In order to be admitted, future ecological damage must not be hypothetical or eventual, but only be a safe and straightforward extension of current damage.

In the legal legal doctrine, illicit acts are known that produce their harmful effect at a time after their being committed.

For example, the effects of the substance called Freon in the gaseous state are known. These substances come into the stratosphere, decompose under the influence of ultraviolet rays and release chlorine atoms. A single molecule of chlorine can destroy several hundred ozone molecules, forming so-called ozone strips. The consequences of these gases in the stratosphere will only be perceived after 50-100 years.[16]

In the specialized doctrine it was posed to know from what degree of negative environmental effects we can talk about repairing the damage.

In this respect, French jurisprudence consecrated the notion of probable and credible cause when no cause other than pollution or damage to the environment can reasonably be considered as the main cause of the damage.

Until now, an effective method of assessing environmental damage has not been found.

In the American jurisprudence four methods of assessing damage to the marine environment have been retained: calculating the value of replacement of destroyed marine organisms, assessing the cost of restoration to the previous state; using a flat rate assessment; evaluating the cost of compensation by restoring an equivalent size area in the vicinity of the polluted area [13].

Several ways have been considered to determine the extent of damages [14] .

Only certain damages can benefit from a pecuniary assessment and those are the ones that bring damages to the integrity of the person, goods, or commercial activities. In other situations what must also be taken into account is the damages done to the goods outside of the civil sphere.

Particularities of environmental damage have led to the consideration and assertion of new types of damage and the recognition of original repair methods.

There appear to be new types of prejudice: non-financial prejudice, safeguard measures, developmental prejudice and prejudice to the natural environment. [15]

There have been difficulties in repairing and recovering environmental damage, as there is a problem with the fact that damage can sometimes not be repaired in nature, or repair is unpredictable, or it is not known who should be held liable for the damage.

Since reparation of damage in nature is not always possible, repair is made by an equivalent, for example by paying an amount to make the ecological reconstruction of the affected environment.

Conclusions

We appreciate the need to establish a special legal regime of legal tort civil liability in the field of environmental law, requiring a harmonization between man and nature, at the level of all states, to prevent and eliminate environmental damage.

The legal regulation of new types of damage, as well as original ways of evaluating, will make it possible to determine precisely the extent of the reparation and the compensation that is due to the victim of the ecological prejudice.

At present, although we have regulations in the field of environmental law, the chance to benefit from a clean environment and guarantee that we will no longer be subjected to harmful activities to the environment done by our peers is minimal.

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MATRIMONIAL CONTRACTS AND THE RIGhHTS OF WOMEN IN ISLAM - A SAUDI ARABIA CASE STUDY

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Abstract
Marriage is regarded both as a social agreement and a legal contract in Islam. Unlike the optional Western prenuptial agreement, the matrimonial contract is a compulsory component of an Islamic marriage. In Saudi Arabia the matrimonial contract is used to ensure certain rights and privileges for the woman after marriage. Women who desire a non-traditional type of marriage (to have a job, not to be responsible for certain house chores presumed to be their obligation), stipulate such clauses in the matrimonial contract.
Key words: *marriage, Islam, matrimonial contract, women rights, mahr, Saudi Arabia*

Marriage is regarded both as a social agreement and a legal contract in Islam. Unlike the optional Western prenuptial agreement, the matrimonial contract is a compulsory component of an Islamic marriage. In modern times the matrimonial contract is signed in front of an Islamic judge called imam or in front of an elder member of the community who is familiar with the Islamic laws. Signing the contract is usually a private matter attended by the groom's and the bride's families. The contract is called nikah.

Matrimonial Contracts' Conditions in Islam[1]

The contract uses specific terminology for each of its elements which helps to identify the exact stage corresponding to any given situation.[2]

Signing the contract is a condition for the marriage according to Islam laws and certain requirements must be met for such a contract to be acknowledged:

1. Consent. Both the groom and the bride must consent verbally and in writing to the marriage. This implies a formal marriage proposal (ijab) and acceptance of the proposal (qabul). The bride is usually represented for the contract's negotiations by a wali – a male guardian representing her interests. The bride has to express the will to contract

the marriage. The consent can't be given by minors, mentally disabled, people unable to understand and consent to a legal contract.

2. Mahr. This word is often translated as dowry, but the appropriate translation would be bridal gift. The bride has the right to receive a gift from the groom that legally becomes her property, as a security measure for the marriage. The gift is paid directly to the bride and remains her property even in case of divorce. [3]. Mahr can come in the shape of money, jewels, properties or any other valuable good.

3. Witnesses. Two adult witnesses are required to check the matrimonial contract. After the contract is signed, the couple is legally married and can enjoy all rights and obligations of the marriage. Nevertheless, the majority of the Muslim couples won't formally share a house until after the public celebration of the marriage (walimah). Given the tradition, celebration of the marriage can last hours, days, weeks or even months.

Matrimonial contracts in Saudi Arabia

In Saudi Arabia matrimonial contracts are used to ensure certain rights and privileges for the woman after marriage.

Saudis assume that men will have the final word regarding the arrangements for living conditions after marriage, except the situation when the bride or her family stipulate something else in the matrimonial contract. Women who desire a non-traditional type of marriage (to have a job, not to be responsible for certain house chores presumed to be their obligation), stipulate such clauses in the matrimonial contract.

Since bringing a case in a court room and ask a stranger to settle the issue is regarded as shameful, the misunderstandings concerning women rights after marriage are cleared within the family by the male relatives of the woman who negotiate with her husband. The matrimonial contract itself is drafted by the negotiating men and not by the woman herself.

In Saudi Arabia the debates on women rights start by turning for guidance towards the rights given to them by the Islamic law. Thus, if a woman wants to become a doctor or a teacher she can achieve this goal by using the argument that during Mohamed age women could work outdoors and Islamic law allows this stipulation to be included in the matrimonial contract.

Saudi women became an important part of the workforce in Saudi Arabia and have jobs within the medical, education or business fields. If they work for the state that is a

major employer for a significant number of Saudi women (mainly in medical and education fields), their income is equal to men's holding similar jobs. Thus, a working woman's income represents an important amount in a household. However, within "a household with two incomes", as the American sociologists qualify it, the woman is not expected to bring her contribution to the household expenses, these being man's responsibility. Many Saudi men believe it is a shame to accept money from their wives or their daughters for any type of expense regarded as man's duty. This attitude concerning women's income seems to last for several generations in spite of the massive changes for women's access to money in the form of income.

This idea starts from the beginning of the life as a couple when the man is responsible for paying at least one, or both of the marriage celebrations (the milka and the dokhla). The expenses can be massive: two spaces are rented (one for the women and the other one for men), there is a rich menu, photographers are hired, etc. The groom must buy two expensive sets of jewelry for the bride, he is also responsible for mahr – a gift in the form of a huge amount of money or properties. He is also responsible for ensuring the living conditions for the couple and the marriage can't take place until the apartment or the house are not fully furnished and ready to be inhabited.

From a social perspective, the mahr paid by the groom before marriage, along other expenses, prove his or his father's financial ability and the will to maintain the new household. The mahr is also a key element of the matrimonial contract meant to protect women before marriage. Saudi women interviewed by Lisa Wynn [4] claim that the purpose of the mahr is to help the brides begin a married woman's life as a financially independent being, regardless of her employment status.

Since money belong only to the woman she is financially independent from both her family and her husband.

Saudis also claim that the mahr protects women against divorce since huge amounts of money invested by the husband in the marriage prevent him from using divorce as an easy solution to get out of a troubled marriage. According to the Islam laws (Sharia Law) interpreted in Saudi Arabia, the man can divorce the woman by simply verbalizing it, while the woman in a similar position must bring the case in front of a judge

and prove that her husband failed to fulfill his marital duties. The man knows that in case of a divorce, he gives up all money invested in the marriage.

The case of Nejwa [5], a Saudi woman is a prime example. She was engaged to a cousin while still attending high-school, but the marriage was postponed for four years because her mother insisted she graduated before changing her marital status.

Her family was extremely traditional and the two were barely allowed to talk to each other and they never met. They were technically married given the matrimonial contract had been signed and the mahr agreed upon even if not paid yet. The groom got tired of waiting and one night he complained about the situation to his friends who advised him to get a divorce. He regretted his decision the next day. A judge from the city heard about his story from one of the witnesses and summoned him to the court house asking him to draft a new matrimonial contract and specify a new mahr even if the amount was no different from the previous one. The judge advised him to take divorce seriously in the future.

Conclusions

Even if Saudi society follows more and more often the pattern of romantic love for marriage, extended family still has an important role in mediation of the woman's requirements, especially in the first years of marriage.

In 2018 Saudi Arabia abolished the article "The house of obedience" [6] of the matrimonial law that gave the right to the husbands to oblige the wife to return home against her will. Abolishment of the article considers woman's dignity and mutual consent that should be the fundament of the life as a couple.

According to a report published by Saudi Gazette [7] The General Authority of Statistics (GaStat) pointed out that 10,3 % of the women past the ideal age for marriage were not married in 2017. The report GaStat reveals that 230.512 women out of 2.2 million aged over 32 were not married in 2017. The ideal age for marriage in Saudi Arabia is between 15 and 32.

The report shows that 2,83% of the women got married when they were 32. 33% of the total unmarried women are aged 15-32. 58,8% out of the same age group are married, 5,6% are widows and 2,5% are divorced.

The smallest percent of unmarried women aged 15-32 is in Baha. The highest percentage of unmarried women is in Quassim, 35,48%.

The average age of men who get married for the first time is 25, while 20 is the age for women. The report states that 46% of the women get married for the first time before they turn 20. The study shows that a 32 years old Saudi woman has limited chances to get married.

According to the Minister of Justice, around 700.000 Saudi women are married to foreign citizens, which is 10% of the total married women in the kingdom. There is no figure for the Saudi men married to foreign citizens [8]. However, Tawfiq Al Swaylem, the head of Awasir, the Charitable Society for the Welfare of Saudi Families Abroad, said that marriages with foreign women became a usual practice in the last 20 years.

Saudi citizens must meet certain conditions to marry foreign citizens. A Saudi man must be 40-65 years old and a Saudi woman 30-50 years old.

A Saudi man must earn at least 3000 riyals monthly and must have a proper house or an apartment for his marriage to be approved and the woman he wants to marry must be at least 25 and the difference of age between them should not be more than 15 years.

Saudi women must sign an affidavit stating that the marriage to a foreign citizen won't grant Saudi citizenship to her future husband or their children.

Roughly a third of the 32 million people of the kingdom are foreigners working mainly in construction or services.

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CONSIDERATIONS ON THE PROCEDURE FOR THE NOTIFICATION OF NATIONAL MEASURES IMPLEMENTING THE EUROPEAN DIRECTIVES

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Abstract:
The EU membership obliges each state to be responsible for the implementation of the Union law, i.e. transposition within the deadlines, harmonization and proper application within the national legal system. The directive is a binding legal act for the member states which it addresses with regard to the result to be achieved, while the national authorities remain competent regarding the form and means to obtain it. The legal systems of the member states are based on different procedures for the transposition of directives, so national authorities are faced with a number of differences in their implementation. The effectiveness of monitoring the application of EU law depends to a large extent on the cooperation between the Commission and the member states. The notification process is the way in which the European Commission assesses the extent to which EU member states have fulfilled their obligation to transpose the European directives. The notification is made by introducing national enforcement measures (NEMs) into the Electronic Notification System, managed by the Secretariat-General of the European Commission.
Keywords: *European acquis, transposition of directives, national execution measures, transposition deadline, notification, monitoring*

Introduction

From the date of accession, the quality of member state has obliged Romania to fully apply the acquis of the European Union. The directive, as one of the forms embodied in the EU law, is a flexible legal instrument adopted by the European institutions [1] for the implementation of Union policies [2].

The legal regime of the directive is found in Article 288 paragraph (3) of the Treaty on the Functioning of the European Union (TFEU), according to which the directive is a binding legal act for the member states to which it is addressed concerning the result to be achieved, while the national authorities remain competent in the form and means for obtaining it. In the doctrine [3] it was considered that the directive is “a type of act more specific to the European Union system than regulations and decisions. Its practical

importance has grown over the years". Also, through the directive, "the authors of the treaties have provided the EU institutions with a legal equalization instrument, a formula based on task-sharing and collaboration between the national level, which is more sophisticated, and especially suited to the task of harmonizing national legislation" [4].

The directive is part of the EU compulsory acts, together with the regulation and the decision, and, like the decision but unlike the regulation, it only obliges the recipients it indicates. If it is addressed to all member states, the Directive is subject to simultaneous application, more precisely as an indirect legislative process, a situation which takes into account the "general applicability" [5] referred to by the Court of Justice of the European Union (CJEU) in its case-law. In the doctrine [6], it is considered that the directive can not be given a general binding character, just like the regulation, but it is obligatory only for the recipients.

An analysis of the directive by reference to the regulation and the decision, which are mandatory in all their elements, shows that it imposes on the member states solely an obligation regarding the result to be achieved, leaving them with the choice of form and means.

With regard to the evolution of the concept, initially, in the ECSC Treaty, the recommendation was considered to be the legal instrument equivalent to the directive, and in the Treaty establishing a Constitution for Europe, the European framework law was intended to be the act corresponding to the directive. Subsequent debates [7] triggered by the process of re-launching a Reform Treaty retained the original name.

It can be noticed that the use of directives has increased in recent years. If, initially, their role was to indicate the objectives to be achieved whereas the states enjoyed absolute freedom in choosing the means of attainment, this freedom was gradually reduced, as the objectives to be achieved were clearly defined and detailed. As such, it can be said that the freedom of action of the states is subordinated to the goal pursued at EU level.

Enhanced transposition of directives

The process of transposing and enforcing EU law is a dynamic and permanent one, which is dealt with by the specialized national authorities with the right of legislative initiative and attributions in the areas covered by the Union legislation.

In accordance with Article 4 of the Treaty on European Union, “member states shall take any general or specific measure to ensure fulfillment of the obligations deriving from the Treaties or resulting from acts of the institutions of the Union”. Thus, each member state is responsible for the implementation of Union law, which means transposition within the deadlines, harmonization and correct application within the national legal system.

The legal systems of the member states are based on different procedures for the transposition of directives, so national authorities are faced with a number of differences in their implementation. The doctrine states that neither the Treaties of the European Union, nor the Union law establish a general scheme of the substantive or procedural right to govern the legal channels for the application of EU law [8]. Based on Article 17 of the Treaty on the Functioning of the European Union “The Commission shall promote the general interest of the Union, (...) ensure the application of the Treaties and the measures adopted by the institutions pursuant to them”; as such, the task of oversight is entrusted to the European Commission in its exclusive role as “Guardian of the Treaties” [9].

An effective monitoring of the application of EU law depends to a large extent on the cooperation between the Commission and the member states. However, over the years, a number of reasons [10] have been identified that have led to problems in the application of EU law: member states are not paying enough attention to correct interpretation and enforcement; delaying the implementation of activities and notifying transposition measures at national level; interpretation and choice of procedural options. After each action of the Union, the European Commission is the institution that analyzes the manner in which the actions have been effective or not and proposes new measures [11], which may be of simplification, such as codification [12].

Each directive provides for a transposition clause, i.e. the period expressed in months or years, as of the date of entry into force, or the date by which the member states are obliged to adopt and implement the European norm, after which the European Commission must be immediately informed about the respective acts [13].

The transposition [14] of the directive is the operation by which a recipient member state adopts measures of a legislative nature necessary for its implementation. The member state may decide both on the way and the means used to achieve the result. The

modalities concern the internal legislative or regulatory technique, and the means refer to the legal institutions involved in achieving the stated objective.

It may be appreciated that the transposition into national law of the EU legislation may be unsatisfactory as a result of late transposition, partial transposition, erroneous transposition or, more seriously, non-transposition.

Both the doctrine and the jurisprudence use various terms to indicate the transposition process: application, putting into practice, execution, implementation, terms that broaden or reduce the scope of this concept. The definition of the directive given by Article 288 paragraph (3) of the TFEU does not explicitly mention the issue of its application in the member states, as compared to the regulation, on which paragraph 2 of Article 288 states that “it is applied directly in each member state”. With regard to the transposition of directives, the TFEU refers to in Article 153 paragraph 3 and Article 260 paragraph 3. The terminology used in English “a directive or a decision must be transposed or implemented” or in French “une directive ou une décision doit être transposée ou mise en oeuvre”, distinguishing between “transposition” and “implementation” [15]. Thus, from a terminological point of view, the doctrine suggests the use of the terms “transposition” and “implementation”.

A Guide [16] drawn up by the European Commission specifies that the harmonization of the legislation can be achieved by combining several stages: transposition, implementation and enforcement. The directives are designed precisely to give member states flexibility. The practice of word by word transposition, known as “total reproduction”, is not preferred if the specifications of the directive are in conformity with national laws, since transposition, without the legal and administrative measures necessary to implement the directive effectively, is not sufficient. Naturally, in order to achieve the practical results of the directive, it is necessary to detail the transposition of the legislation more than the broad wording of the directives, in which the purpose of the directive’s obligations should not be restricted. Another important aspect is the literal and full transposition of the definitions of the EU Directives into the national legislation proposed for the implementation of the directive.

The importance of notification of the national execution measures of the directives

Failure to fulfill the obligations of a member state can be the result of a positive action consisting in the inappropriate application of European normative acts and of a negative action, such as the failure to notify the national regulatory acts transposing the directives.

In the process of transposing the Union directives, the member state which has to fulfill its obligations under the directive adopts a series of measures necessary to comply with that directive. In addition, transposition requires member states to eliminate those rules of the national law that are incompatible with the directive [17].

Each directive stipulates an article setting out the date of entry into force for the act, and also the deadline by which the member states are required to transmit the transposition documents to the European Commission.

The notification process is the way in which the European Commission assesses the extent to which the EU member states have fulfilled their obligation to transpose European directives. The notification is made by introducing national execution measures (NEMs) into the Electronic Notification System [18], managed by the Secretariat-General of the European Commission.

The Electronic Notification System, which determines the automatic triggering of the procedure for such cases, has been in operation since 3 May 2004 and allows the member state to enter the notification documentation directly into the Commission's database [19]. Therefore, Romania also ensures the notification (communication) to the European Commission, in electronic format, of all legislative measures that are adopted for the purpose of transposing the provisions of the current directives. The central authority responsible for coordinating the process of notifying the European Commission of the EU legislation is the Ministry of Foreign Affairs (MFA).

National Execution Measures (NEMs) shall be communicated electronically by electronic mail and shall contain the following documents: the electronic format (PDF file) of the Official Gazette of Romania in which the transposition normative act(s) was/were published; table of concordance between the directive and the transposition act(s) in Romanian (Word file).

The responsibility for ensuring the timely adoption of legislative measures for the transposition of directives and the transmission of the documents necessary for the

completion of the notification process to the MFA lies with the specialized authorities with legislative initiative and powers in the areas covered by the respective directives.

It can be stated that the notification is the final stage of the path drawn by a draft normative act that takes over a European directive in the internal law. From the point of avoiding action in failure to communicate the transposition measures, the notification is a formal requirement: any transposing national legislation in force must be in the Commission's database; otherwise a member state's failure to fulfill its obligations is taken into consideration.

Thus, at the level of the MFA, the National Program for the Transposition and Notification of Directives [20], is drafted, permanently updated and monitored. This is an electronic tool, i.e. a database containing, in tabular format, the directives for which the transposition documents need to be communicated. The program, for the current year, is submitted to the Government for adoption. In practice, this document includes all the directives published in the Official Journal of the European Union with a transposition deadline scheduled for that year, as well as the institutions and central public administration authorities competent to promote for approval/adoption those national normative acts necessary for the internal legal order of those directives [21].

In addition, in order to improve this process, the Network of contact points for the notification of directives [22] has been set up, comprising the contact persons designated at the level of the central public authorities responsible for transmitting updated information on the assumed transposition deadlines, the form of the transposition normative act and the stage of the process of drafting/adopting the normative acts in their area of competence.

The NEM notification process comprises two stages. The first step is to communicate the NEM to the Secretariat-General of the Commission, and the second refers to the validation of the Communication by the Secretariat-General.

In practice, the notification requires the fulfillment of certain conditions [23] to ensure the effective functioning of the monitoring system:

- it must be carried out within the deadline stipulated by the directives, since each directive contains provisions on the date of entry into force and the deadline for transposition, i.e. the deadline for notification to the European Commission;

- it must contain the electronic format of the Official Gazette of Romania in which the transposing act(s) has/have been published, the table of concordance between the directive and the transposition act(s), in Romanian;

- it is supposed to be met if the NEMs meet 2 cumulative conditions: they are officially communicated by the Romanian State and they are complete, i.e. they are applicable throughout the territory of the sovereign state and aim at fulfilling all the provisions of the transposed directive.

There are also situations where the notification is considered partial or even "non-communication" when the two above mentioned conditions are not fulfilled, which determines the initiation of the infringement procedure under Article 260 of the TFEU.

The non-communication of the measures transposing the directives is one of the main types of breaches of EU law [24], together with: non-compliance with the obligations (where the Commission considers that the legislation of a member state is not in conformity with the requirements of the EU directives); violation of treaties, regulations and decisions; improper/inappropriate application of the Union law by national authorities.

These cases of non-compliance of obligations can be detected by the Commission's own investigations or can be brought to its attention by complaints or petitions of citizens, businesses, NGOs or other organizations. The Commission actively informs the complainants about the decisions taken at all stages of the procedure [25].

If we are in a situation where there is insufficient or inadequate transposition of a directive, the Commission has an obligation to determine the real effects of the national transposing legislation.

It should be noted that a significant aspect of the use of these mechanisms is precisely the prevention of excessive recourse to the judiciary system, involving very complex procedures, and the mechanisms for guaranteeing the protection of individuals often represent an obstacle to access to justice.

An important role is also that of the mechanisms created specifically at the level of the European Union and its member states, the EU Pilot project and the SOLVIT system. Their creation was aimed at ensuring the correct application of Union law, creating a partnership between the Commission and the member states in an attempt to resolve possible infringements before the infringement procedure is triggered.

The infringement procedure represents an original mechanism to ensure respect for the European Union law, to ensure its primacy over domestic law systems and, last but not least, to ensure the continuity and viability of the mechanisms necessary for the functioning of the European Union [26].

In other words, the main purpose of the infringement procedure is to oblige those member states which have breached a rule of European Union law to comply with that rule [27]. In this regard, the Court of Justice has stated that the purpose of the infringement procedure is "to enable the member state, on the one hand, to remedy, correct or level its position on the issue presented before the Court and, on the other hand, to present its own defense against the Commission's complaints" [28].

Conclusions

The directives, regardless of the distinction made in practice - in framework directives or implementing directives -, set out targets for the EU member states to be considered as obligation to deliver. The directives involve transposition into the national legal order by specific regulatory acts, but within a deadline indicated by each directive for its application. In other words, a directive is considered to be applied in a member state only when it has been transposed into national law and when the national execution measure has been communicated to the Commission.

The way the directives are transposed into the national law of the states is constantly checked by the European Commission. The Commission's annual reports [29] on the monitoring of the application of European Union law have noted that the most frequent cases of non-compliance with the transposition obligation consist in overcoming the transposition deadline.

One solution for facilitating the dialogue between the Commission and the member states is the EU Pilot mechanism, which is set up to quickly resolve possible breaches of EU law at an early stage, in appropriate cases, in order not to reach the contentious phase of the infringement procedure. At the end of 2016, most of the EU Pilot files leading to formal infringement procedures stating the unfulfillment of obligations concerned the following policy areas: the environment (53 cases), the internal market, industry,

entrepreneurship and small and medium-sized enterprises (SMEs) (38), energy (29) and taxation and customs union (25) [30].

That is why the correct and timely application of European Union legislation is absolutely necessary in order to achieve the goals pursued in the framework of European policies and to ensure the conditions of progress and development for the citizens of the Union.

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[2] Also, Article 116 TFEU (ex Article 96 TEC) provides that "Where the Commission finds that a disparity between the laws and regulations of the various member states distorts the conditions of competition in the internal market and thereby causes a distortion that should be removed, the Commission shall consult the member states concerned. If this consultation does not eliminate the distortion in question, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the relevant Directives. Any other useful measures provided for in the Treaties may be adopted".
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PSYCHOSOCIAL INFERENCES AND LEGAL REGULATION OF CONJUGAL RAPE

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Abstract
In this study, we sought to analyze issues related to the regulation of domestic violence against women and, in particular, the regulation of rape committed between spouses (marital rape). The awareness of the magnitude and severity of the phenomenon of domestic violence in Romania, which we are talking about in this paper, has recently developed, thanks to the campaigns that have been conducted to inform the public and that have promoted the adoption of Law no. 217/2003 regarding the prevention and control of domestic violence.
Moreover, we also want to consider that "The judiciary system's culture does not understand the women who have been assaulted by their partners and ended up killing them have been both victims and criminals."
Keywords: *domestic violence, rape, domestic rape, sexual abuse, marital rape*

Considerations about domestic violence

Considering that domestic violence is one of the oldest forms of violence, we believe that this is a social problem with a high degree of danger, some specialists seeing it as a "form of torture"[1]. We draw attention to this particularly serious phenomenon, because the social impact of this type of violence is widespread, as it affects both victims and those indirectly involved by family, witnesses or third parties who are aware of violence in family.

Moreover, this form of violence is often "behind the closed doors", being hidden by the victim, because of the fear of the aggressor, of the opprobrium of society, but also of the reticence of the judicial bodies to intervene in a field considered even nowadays "taboo."

For the purposes of Article 3 of the Council of Europe Convention on the Prevention of and Fight against Violence Against Women and Domestic Violence (Istanbul, 11.05.2011) domestic violence means all acts of physical, sexual, psychological

or economic violence occurring in the family or in the domestic unit or between former or current spouses or partners, regardless of whether the aggressor divides or shared the same domicile with the victim.

According to the UN Declaration on the Elimination of Violence Against Women (1993), violence against women (VAW) means "any act of gender-based violence that results in, or is likely to result in, trauma or physical, sexual or psychological suffering for women".

Definition of marital rape

Definition given by art. 3 par. (1) and (2) of Law no. 217/2003 on the prevention and control of domestic violence, as corroborated with the provisions of the current Criminal Code, is the following:

"(1) domestic violence represents any intentional act or omission, except for acts of self-defense or defense, physically or verbally manifested, committed by a family member against another member of the same family that causes or is likely to cause harm or physical, mental, sexual, emotional or psychological suffering, including the threatening of such acts, coercion or arbitrary deprivation of liberty.

(2) It also domestic violence preventing women from exercising their fundamental rights and freedoms."

The concept of sexual violence according to art. 4 let. d) of the same normative act is defined as "sexual violence - sexual assault, impositions of degrading acts, harassment, intimidation, manipulation, brutality in order to maintain forced sexual relations, conjugal rape;"

Family member, according to art. 5, means:

For the purposes of this law, a family member means:

a) ascendants and descendants, brothers and sisters, their children, as well as persons who have been became, according to the law, such relatives;

b) husband/wife and/or former husband/ex-wife;

c) persons who have established relationships similar to those of the spouses or between parents and children, if they live together;

d) the tutor or other person who exercises in fact or in law the rights to the child;

e) the legal representative or other person who cares the person with mental illness, intellectual disability or physical disability, except for those who perform these duties in the exercise of their professional duties.

The criminal law dictionary defines aggression as "the violent behavior manifested by one person, towards other persons" [2], and violence as an aggressive behavior that can be manifested on a physical or mental level and most often acquires criminal significance [3] "

The specialized literature contains different definitions of violence in various fields. Thus, in the psychiatric field, violence is a human action that involves the intensification of brutality, carried out with the help of force, which is directed against a person, situation, institutions, communities or against any other object, the action following which the object can be destroyed [4].

In psychology, the authors Svetlana Rusnac, Victoria Gonţa, Svetlana Clivada, Ludmila Zmuncilă consider that "domestic violence is a powerful stimulus for inadequate conditions that in most cases lead to consequences no less serious than the act itself, under certain conditions even stronger.[5] "

Although the Romanian legislator uses the notion of domestic violence, the Romanian doctrine operates most often with the concept of domestic violence, equating them in meaning. The author Bodrug-Lungu Valentina, however, differentiates them by explaining that "the notion of domestic violence (domestic violence – engl.) is wider also covering the sphere of aggressive relations between concubines".[6] In her opinion, "domestic violence refers to all physical, sexual, psychological, economic and abusive actions in a legal family relationship."[7]

Comparative law issues of marital rape

Given that this type of rape is regulated differently internationally, we can see that all definitions of rape have common features, namely:

- Sexual constraint on the victim
- The absence of will.

Following the analysis of the various law systems on marital rape, we note that internationally, legislative reforms for preventing this kind of crime also have common

points, namely: In Europe, only Spain and Sweden incriminate domestic violence as specific offenses, in the case of countries such as Turkey, Germany, Belgium, the relationship between the victim and the aggressor constitutes an aggravating circumstance.

"The legal definition of rape involves sexual intercourse (vagina, anal or oral) by the use of force by a person without the consent of the other person. This definition tends to focus on the penetration of a particular hole by the penis or other object. Penetration is not, however, the central element in rape."[8]

At present, marital rape is sanctioned under the rules of common law. With regard to the burden of proof, the absence of consent is presumed when there were no prior relationships between those persons, unlike the situation where the persons are married or between them there were previous relationships, as the existence of consent is presumed.[9]

Under civil law rules, the victim may request a restraining order against the aggressor or, at the same time, orders with regard on the seizure of the marital domicile.

Thus, in Spain, after 1989, considering that the rape has as legal object the sexual freedom, both the doctrine and the judicial practice consider that only the respective person decides, and not someone else, when, how and with whom he or she has sexual relations.[10]

Beside the Swedish legislation, the Spanish one is the only one in Europe that inflicts through a specific offense the domestic violence. According to the law on the protection of victims of inhumane treatments, any person who has been physically or mentally abusive on his wife, ex-wife, or other persons with whom he or she maintains or has maintained family-like relationships, commits an offense of "torture and other crimes against moral integrity."

In Turkey, it is not considered rape maintenance of sexual relations with the wife using force, because, by virtue of the act of marriage, the woman is legally obliged to obey her husband and follow him in bed whenever required.[11]

Psycho-sociological issues of marital rape

Considering those above, we would like to point out that sexual violence is a traumatic phenomenon, whether it is just an incident or repeated cases in a certain period of time.

We will further notice that the consequences of this type of aggression are not limited to the immediate future, but can affect the life of the victim on long term, the consequences depending on age, personality, concurrence, the nature of the offense, but also the relationship between the victim and the aggressor . Also, as a result of such an experience, we can see that victims may be affected the physical, emotional, behavioral, social and professional functioning.

Also, the consequences of this phenomenon can also affect both children, who are often witnesses, and those persons close to the victim.

The consequences of aggression can be:

1. Physical: lesions, urogenital infections, pregnancy;

2. Mental: attempted suicide; shock, partial or even total amnesia, depression, anxiety; shock, partial or even total amnesia, depression, anxiety; (self-blame, feelings of shame and humiliation, mistrust in one's own person, fear of intimacy in relationships), behavioral disorders (fear of strangers, situations/new places, losing someone dear, social isolation, fear of establishing relationships of any kind, difficulty in concentration, attention etc.)

Moreover, psychological research has highlighted that children themselves suffer such physical, psychological and sexual violence. Also, the lack of respect for the father in these cases disappears, leading to the loss of the male example, and the lack of respect for the abused mother outlines the lack of respect for the woman in general.[12]

As far as a man has suffered a nervous shock or fear dominates him, he is exhausted, weakened, the body loses its muscular strength and mental coordination. Continuous living in such a tension makes the body cease and hence the appearance in the beaten women the degenerative and mental illnesses in forms that are hard to manage.[13]

Regulation of the marital rape in Romania

Prior to the appearance of Law no. 197/2000, in the absence of jurisprudence in the matter, the doctrine has ruled against the existence of this type of offense/aggression between spouses. In the specialty studies it was argued that the wife cannot be considered a victim of the rape, because the sexual relations with her husband are a marital duty, of which fulfillment can be achieved even by coercion and because with the marriage she has given her consent to this duty throughout the entire marriage.[14]

It was also appreciated that the act of marriage implies a woman's agreed restriction of her sexual freedom (even if in fact the husbands live separately) so it could not operate the provisions of art. 197 in the spouses' relationships.[15]

In relation to the above, we consider that the arguments used in the doctrine are not pertinent, as the consent of the wife at the time of marriage is a general consent to the acceptance of family-related customs.

The wife does not consent to the mutual duty of spouses to maintain sexual relations, not to be forced, constrained to have sexual relations, just as neither the law nor the "covenant" specifies anywhere, the number, the way and their periodicity.

With the Law no. 197/2000, the legislator incriminated marital rape, both in simple and aggravated form, also considering the possibility of sanctioning the rape committed by the wife over her husband, renouncing the idea that only the man can be considered a passive subject. Given the negative consequences that sexual intercourse can have on both children and family members, the offense committed in this way must be incriminated.

If before the changes on Penal Code occurred in 2000, where the man can become a passive subject, not just a circumstantiated active subject, the old wording of art. 197 Penal Code, stipulated: "sexual intercourse with a female person, (...) the active subject was qualified (the man)".

In view of the changes made to other offenses related to sexual life, we appreciate the fact that the phrase "of different sex or of the same sex" has been dropped in the wording of art. 218 of the new Criminal Code.

Thus, in the sense of the new Criminal Code, the rape offense provided by art. 218, is worded as follows:

"(1) Sexual intercourse, oral or anal intercourse with a person, committed through coercion, impossibility to defend himself or to express the will or to take advantage of this state, shall be punished by imprisonment from 3 to 10 years and the prohibition of the exercise of certain rights.

(2) The same punishment shall be sanctioned to any other acts of vaginal or anal penetration committed under the conditions of par. (1).

(3) The punishment shall be imprisonment from 5 to 12 years and the prohibition of the exercise of certain rights when:

a) the victim is in the care, protection, education, guard or treatment of the offender;

b) the victim is a direct relative, brother or sister;

c) the victim is a minor;

d) the act was committed for the purpose of producing pornographic material;

e) the act has resulted in body injury;

f) the act was committed by two or more people together.

(4) If the deed has resulted in the death of the victim, the punishment shall be imprisonment from 7 to 18 years and the prohibition of the exercise of certain rights.

(5) The criminal action for the deed stipulated in par. (1) and par. (2) begins at the prior complaint of the injured party."

Rape has been regulated from the idea of penetration so that the content of this crime will include the sexual intercourse, oral sex and anal sex, respectively, no matter if heterosexual or homosexual.

In the previous regulation, the material element had a different sphere of coverage, constituting any means of obtaining sexual satisfaction by using sex or acting on sex, between persons of different sex or of the same sex, by constraining or taking advantage of the impossibility of the person to defend or express their will. [16]

In another opinion [17], it is argued that art. 218 also suffered changes on regards of the form of co-authorship in the criminal participation. Thus, if in the old regulation the co-authorship was not possible because the natural sexual intercourse with a female person could not be achieved simultaneously [18], the new regulation states that the co-authorship is possible, because the legislator refers to "sexual intercourse of any kind"

either that natural, unnatural sexual acts performed simultaneously or by several offenders.

Conclusions

Studies have shown that a "woman is more likely to be injured, raped or murdered by the man who is or was her partner than any other person."[19]

It is also considered that the one guilty of violence is not only the aggressor, but also the victim who always accepts its role. In psychiatric literature there is discussed the Stockholm syndrome also called the paradox attachment syndrome, that is to say, aggressive women who are subjected to violence, who are threatened and mistreated, see their own aggressor as a savior.

In my own opinion, I consider there would be welcome the proposal to set up crisis centers for rape situations that would function as integrated services, in accordance with art. 23 of the Istanbul Convention.

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THE GLOBALISATION, LAW AND JUSTICE - GENERAL CONSIDERATIONS

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Abstract
The evolution of international law, the processes of continuity and discontinuity of law have also made their presence felt at the level of relations among states, the problem of lawmaking at this level being much more sensitive compared to the legal transplantation of international legal rules at the level of the domestic law of the states. Both the normative stability and the uniform application of legal rules in a society represent only the necessary but not sufficient premise to achieve social justice, because, at a given moment, even though the legal standard may be fair or correct from a legal-legislative point of view, it can also generate a multitude of inequities and injustices that are due to the way it is enforced by the courts or by those with attributions in applying the law, mainly judges. Under these principles and evaluating the instrumental and moralizing qualities of legislation, it is tempting to consider the law as being equivalent to social justice, representing a general form of adapting moral justice to the various social requirements and circumstances, adaptation which involves, however, the use of public restraint within the judicial process.
Keywords*: justice, globalisation, law, rule of law, legal system*

Introductory elements

Cohabitation within society involves imposing on its member certain conducts absolutely necessary for their coexistence, conducts upon which several categories of social rules, the most important being the legal rules, exercise their action.

Man cannot live but in society and any human society needs organization, order and discipline.

The evolution of human society has confirmed the Roman saying ubi jus, ibi societas but the opposite is also accurate ubi jus ibi societas.

The specificity of legal rules [1] in relation to other social rules, the finality or the purpose of these rules, their mechanism of action in society, the connections of the law with the state, with public power, all these aspects constitute as many branches and chapters of the law.

The scince of law

The law is the principle for direction, for social cohesion, it gives society its defined, consistent characteristic. [2]

In the course of history, legal science also had a reverse evolution than that of the world, from a universal legal science, it has become a national law, from a general one, to a particular one. The main reason is that law is divided between two contradictory trends, namely: globalisation [3], the ever increasing planetary integration; the sovereign state and its autonomy, which circumscribes the lives of peoples and the third trend is that the law represents the standard formula for the organization of the world.

The evolution of international law, the processes of continuity and discontinuity of law have also made their presence felt at the level of relations among states, the problem of lawmaking at this level being much more sensitive compared to the legal transplantation of international legal rules at the level of the domestic law of the states.
The current international realities have brought and still bring a series of problems of interpretation and grading in the matter of lawmaking, the sovereignty of states being an example, sovereignty which, in this context, no longer appears in its classical form, but involves grading, within the meaning that states no longer have sovereignty over all of their prerogatives, as is the case of the member states of the European Union. This aspect also involves an element of discontinuity, or better said a change of one of the essential elements of continuity at the international level.

The law has lost its relative autonomy and the authority which derived from its role of control exercised on the state. [4] The state has acquired control over the law, the latter becoming a mere instrument of state domination. The serious disruption of the principles of the rule of law also consisted in the total domination by the state of the individual, subject to surveillance and control exercised over all aspects of his life and being in a situation of legal uncertainty.

By the end of the last century the orientation toward a new understanding of the law had appeared, as evidenced in studies dedicated to the legal pluralism of complex societies. [5] They started from the observation that within the same geopolitical area there is not a single legal order, but several, and held that the claim of the state to have the monopoly on creating law is absurd, that there are legal orders and legal communities

which overlap. The law in general and state law, in particular, are relativised, desacralised. In the last decade of the last century, the aging of state law, the undermining of its role in social modeling and innovation, in planning for the future, have been observed, and ephemeral and renegotiable forms of law have appeared, such as regulations for relations between corporations and European regulations. A series of social problems can no longer be resolved by modern law whose limitations are becoming more and more obvious. Alternative solutions are required more and more, the monopoly of the state over legality starting to end and legal minimalism starting to manifest itself, meaning that legal relationships are becoming more and more power relationships.

In order to be able to define as clearly, or as appropriately as possible the concept of law three essential elements must be connected: authoritative lawfulness, social efficiency and correctness of content and, depending on the way in which the relative significance of these elements is valued, different conceptual approaches on law may be established. [6]

Therefore, whoever assigns meanings only to the correctness of the content and does not deal with authoritative lawfulness and social efficiency only obtains a pure concept of the law and, otherwise, a pure positivistic concept of law is obtained.

For the defining elements of the concept of law - authoritative lawfulness, social efficiency and correctness of content, there are three corresponding components of the concept of the validity of law, namely: the sociological concept, the ethical concept and the legal concept. [7]

The concept of social validity has as its object social validity and assumes that a rule is valid from a social point of view if it is observed, or if its non-compliance is punished, the social efficiency of the law being affected through such actions.

A judicial rule may be maintained differently in so far as failure to comply with such rule may be punished differently, the result being that the social value of a rule is a matter of measure, this being one of the perspectives for researching the effectiveness of social validity.

A second perspective of researching the effectiveness of social validity is that it can be recognized on the bases of two criteria: compliance or non-compliance with the rule.

The third perspective is that failure to comply with the rules of law has as consequence physical restraint through the coercive force of the state.

Obedience to the law is a social necessity but each is free to appreciate the value of a law and make what is possible without recourse to violence with the purpose of evading a law which he considers contrary to law, as well as the execution of an act which he considers illegal. [8]

Thus, social validity actually represents the forms for the implementation of the law which, in a concrete manner, takes place in two ways:

- achieving the law through the activity of compliance and enforcement of laws in the sense that the law establishes a mandatory behaviour for the topics it addresses and legal rules are always commandments or orders of the state. In this respect, so that they can be observed and so that the law can achieve its purpose, legal rules must be brought to the attention of the public.

- enforcement of law by public authorities and institutions. Social requirements should be satisfied by adopting the general regulatory framework of society.

The rules of law issued but must also be pursued in their execution, which implies the direct involvement of public authorities in the process of achieving the law.

The achievement of the purpose of the desired legal rules, therefore, rests, sometimes, on the coercive intervention of the state.

In the strict legal sense, the act for the enforcement of the law must have a concrete character, deriving from a particular case which it settles, it is, therefore, the application from the general to the particular.

The process of the enforcement of law depends on the type of the rule violated - criminal, civil, administrative, etc., on the authority called to restore the law - courts of law, administrative, financial bodies, etc., on the competence and means that it uses according to law.

Considering [9] the role of the law as the main guarantor of social and regulatory order and of the observance of the rights and freedoms of individuals, the law is not, as a rule, equivalent to justice, since the latter is characterised by a series of rational elements such as: the equality of the parties, the rational and logical nature of the justice

system, the idea of equity and proportionality in the distribution of justice and materialised in fact in the stability of laws and their uniform enforcement.

Consequently [10], the law cannot fully achieve these rational and factual elements of social justice, therefore it can never be, at the same time, right, fair and equitable for all individuals, as no right or fair society will be efficient and functional, from an unfair one from a legal-legislative point of view, which would lead to the relativity of the criteria according to which the concepts of justice and fairness are defined in different normative systems.

The concept of justice in context of globalisation

Originally, the concept of social justice [11] is based mainly on religion; therefore, Christianity, Judaism, Buddhism, Hinduism, Islam, contain components which are found within social justice. Because of this, for a long time, social justice was part of religious teachings.

Based on the teachings of Saint Thomas Aquinas, the Sicilian priest Luigi Taparelli D'Azeglio, in the year 1840, initiates the term of social justice, which later becomes a concept and designates the way in which justice is enforced in a society in relation to its existing social classes. Essentially, it refers to the concept that everyone should have the same rights and economic, political and social opportunities. For the followers of social justice, the most important role of the state is to ensure the welfare and the enforcement of the rights of its citizens, regardless of the social class to which they belong.

Social justice is seen as part of a series of moral and political constructs, aimed at the equality of rights and collective solidarity, primarily being a project necessary for a more just society, but which must admit the continued existence of injustice. Social justice is based on the equality of rights of any person and on the possibility of all human beings, without any discrimination, to take advantage of the economic and social progress, anywhere in the world. It does not consist only of an increase in income or job creation, but is also, equally, an expression of rights, dignity and freedom of expression, of economic, social and political autonomy.

The psychosociology of social justice has as object of study the subjective justice [12], aiming to understand what people think is fair or unfair, just or unjust, honest or

dishonest, as well as the way in which people justify these judgements, dealing with the origin of the feelings of satisfaction and dissatisfaction with the incomes, relating to groups, as well as authorities and the rules of governing, in which people are involved in relation to one another.

The classic concept of social justice refers to the way in which social wealth, power and prestige are distributed among the members of society. The central concepts with which it operates are equality and equity. If this issue is analysed based on the persistence with which data are used to emphasise inequality, left-wing doctrines claim that the only truly equitable society would be that in which social wealth and power would be distributed, theoretically, equally among the various social categories. On the other hand, liberal doctrines consider that such an egalitarian society would be unfair, because in any organised society its members shall contribute unevenly to the creation of social wealth, and equity is achieved when each receives a part proportionate to his contribution. The equality of opportunities to access benefits ensures equity in society.

Another author [13] has a more complex and nuanced point of view as regards the equity of social justice through which he has developed a pluralist, compensatory theory of distributive justice, according to which the distribution performed by different procedures should not be a means of dominance. Such a broader concept of justice requires that people be dominant in a certain situation and dominated in another. If there are multiple principles of social justice, without being a single distribution centre and unique criterion, in this case equality does not mean an equal sharing of all goods, to all members of a society. The different nature and social significance of goods makes equal distribution neither possible, nor desirable. A complex and multi-mediated relationship between people, equality is not an identity of possessions. It requires a variety of distributive criteria which reflects the diversity of social goods. The regime of complex equality is the opposite of egalitarianism, and also of tyranny. It establishes a set of relations so that domination would become almost impossible. Beyond a certain simplification and idealisation of the spheres of justice, as well as a separation of them in the process of achieving redistributive justice, the theory of complex equality proves, in fact, to be a theory of equity from the postmodern perspective of communitarianism.

Procedural justice [14], as opposed to normative theory, is a theory of an empirical nature, and focuses on the way in which the state should proceed, in order to do what it should do. Depending on the type of allocation at the basis of the redistribution (universalist, discretionary, or personalised, individualised), procedural justice can be translated through equal treatment of all individuals (in the case of universalist categorial benefits - a universalist distribution), the treatment of all individuals according to the specific circumstances in which they are in, on the basis of criteria deemed to be relevant and defining for them (in the case of social benefits - a distribution of an individualised type), or the treatment of all individuals according to need (in the case of personalised social services, but also in the case of offering, for example, medical assistance).

Hayek also believes that we can speak of social justice only in primitive communities, in which there is a single common goal (obtaining the necessary food), and a deliberate distribution of the results on the basis of the merit each person had in obtaining them. Modern society, however, is organized differently. People also cooperate here, but there is no single common goal, no unique hierarchy of goals or needs; the merit of each person in order to achieve common prosperity is practically impossible to assess exactly, due to the complexity of the activities and contributions.

As such, modern people are no longer organized on the basis of rules focused on merits, rewards commensurate with merits, common goals and contributions made in their achievement. They are organized on individualistic bases, each following to their own goals and rewards in a competition in which nobody has the ultimate authority to decide how much and what a certain person deserves, or which needs are more pressing and should be satisfied with priority.

Justice and in particular social justice is defined as being the first virtue of social institutions, as the truth is for systems of thought, for philosophical systems. Any theory, no matter how elegant and economical it might be, must be rejected or revised if it is not true; similarly, laws and institutions, no matter how efficient and well-structured, must be reformed or abolished if they are unjust. [15]

In any society, social justice must ensure the unrestrained exercise by individuals, of the fundamental rights and obligations, thus achieving the legality and the legitimacy of the act of justice. The concept of legality is closely related to that of lawmaking and

legislation, which is why they are sometimes confused, although they relate to different activities. If lawmaking includes the activity of elaborating laws and regulatory acts, its result is the legislation which, in turn, is the objective of legality.

A system built on social justice is not based on doing favours for each member of society, because the social interaction configured around it becomes of no importance. The notion of gift is replaced with the social benefit and aid, defined as the expression of a fundamental right.

The person receiving social benefits is not the subject of a favor, be it out of pure love; he has the right to benefits under a system which ensures that the principle of justice is applied properly to the injured party. In a society based on social justice - the favour takes the form of a type of moral and material reparation, being an act of justice done to its beneficiary.

This approach is based on a type of philosophy, which implicitly recognizes the essentially unjust and arbitrary character of this world, and tries, by means of the instruments which are at its disposal, to alleviate the consequences of the fundamental injustice of the world.

Providing these material repairs means, in fact, ensuring the equal exercise of fundamental rights by all citizens, not only by the wealthy. Without the implementation of positive rights to achieve social justice, it is not possible to ensure the implementation of negative rights such as the right to freedom, to life or property, etc., and, as another author [16] showed in a famous example: if a poor man and a rich man have a dispute on the right to property, the rich man will hire good lawyers and will win, therefore the right to property of the poor man will be breached. Therefore, positive rights serve those human interests which are necessary for a minimal exercise of negative rights.

There is a strong connection between social justice and social welfare, as long as establishing a model or requirement of social justice involves the redistribution of resources [17], dividing the benefits and obligations within social cooperation. A very important connection can also be considered the one between social justice and freedom and rights, on the one hand, and social justice and equality, on the other. Some authors consider that freedom is incompatible with any redistributive form. [18]

John Rawls [19] succeeded, at the beginning of the 70's, to bring to the attention of the scientific community the concept of social justice and wrote that a society is fair if it complies with three principles, in this exact order: guaranteeing fundamental freedoms for all, equitable equality of opportunity, maintaining those inequalities which may be for the benefit of the disadvantaged.

The current approaches regarding the issue of social justice are based on the concepts of opportunities in life and equal opportunities. Life chances refer to the possibility of members of society to access the things considered desirable and to avoid things considered undesirable in the given society.

Conclusions

The evolution of globalisation, the legal order created by these new currents, have led to the adoption of new rules of domestic law, rules that are part of a modern legislative system, a system created and used in the interest and for the good of the litigant.

The new economic order, based on knowledge, which will be carried out in the future society of knowledge integrates the objectives of sustainable development, based on social justice and equal opportunities, freedom, cultural diversity and the development of innovation, the restructuring of the industry and of the business environment, representing a new stage of human civilization which allows wide access to information, a new way of working and gaining knowledge, boosting the possibility of economic globalization and the increase of social cohesion.

Social justice was, is and will continue to be an important factor influencing public policies all over the world. It is ever more obvious that the modernization of a state depends greatly on the design and development of an efficient system of social justice, a system which is very likely to change with each generation.

The big reforms are not carried out only at a legislative level, although such an element is essential, they also involve considerable budgetary efforts, and also a more thorough and impartial involvement of people who serve justice in the act of social justice; even if great progress has been made, the problem of social justice has not disappeared but it is raised today in particular with reference to the distribution and redistribution of human values and resources in a society.

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THE MIGRATION OF LABOR FORCE WITHIN THE EU

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Abstract:
Within the European Union, the migration of labor force has stimulated politics leading not only to a high level of occupancy but also to the modernization and improvement of the existent social security system and the creation of a community system that ensures the social protection of migrant workers.
Free circulation of people is a fundamental liberty guaranteed by the community legislation and encompasses the right to live and work in another member state. On the other hand, the community treaties provide the possibility of restricting its application for citizens of states that have newly adhered to EU but these restrictions only regard the free circulation with employment purposes and can differ from a member state to another.
Keywords: *migration, labor force, migrant workers, migration politics, free circulation of people.*

At present, all member states of the European Union are affected by the flux of international migration. They have agreed to develop a common policy regarding European migration. The Committee has made numerous propositions for the development of this policy, many of which became an integral part of EU legislation. The main objective is a better management of the migration flux by using a coordinated approach that takes into account the economic and demographic situation of EU.

In spite of the restrictive immigration policies that exist in numerous member states ever since the 70's, a great number of illegal immigrants continued to enter European territory along with people who were in search of asylum. Taking advantage of people in search for a better life, a number of traffic and smuggling networks infiltrated the European territory. This situation leads to the necessity for assigning considerable resources to fight against illegal immigration, especially aiming traffickers and smugglers. Moreover, it is a known fact that EU needs immigrants in some regions in order to satisfy the economic and demographic needs. [1,129]

The most important aspect is that the status of European demographic is not in accordance with the attitude of the political leaders of developed countries. The aging of the population and implicitly its decrease will determine more and more imbalances of the

labor market in its whole. There will be a shortage of labor force that can only be adjusted by the free circulation of the labor force. [2]

Acknowledging that a new approach regarding the management of migration is necessary, the EU leaders have decided, during the European Council of October 1999 that took place in Tampere (Finland), on the required elements of an immigration policy on a European level. The approach established at Tempere in 1999 has been confirmed in 2004 by adopting the Haga Programme which establishes the objectives for the consolidation of liberty, security, and justice within EU between 2005 and 2010.

At the same time, the Committee's plan of 2005 regarding legal migration is a nonlegislative document of the European Committee which establishes the EU priorities regarding legal migration. The context of these priorities depends on the growing need of the EU to attract labor force from third countries in order to sustain the economic growth within the EU.

Subsequently, through the Stockholm Programme adopted in May 2010, there have been defined the major priorities of the European Union regarding justice, internal affairs and immigration between 2010-2014, this being a continuation of the Programmes of Tampere (1999-2004) and Haga (2005-2009). Within the range of legal immigration, the program provides the taking of some measures to regulate the state and the labor conditions of different categories of workers from third countries, according to the Committee's Plan regarding legal migration (2005).

A study of the United Nations Organization shows that Europe cannot come out of the crisis without import of people. The EU, in order to withstand the economic challenges, will have to annually attract 6.1 million specialists (people with higher education or qualified for a technical profession) between 2015 and 2040.

Likewise, it is remarked that the improvement of labor conditions and the keeping of workers' rights are some of the most important objectives of the European Union through which it aims that the development of the single market is not followed by a decrease in labor standards or distortions. [3, 269]

The priorities of the European Community for the labor legislation are directed to the definition of the minimal labor requirements through national legislation.

At this point, the situation of the labor force in the EU is the following:

- the European population is continuously decreasing which also affects the active population on the labor market (the Romanian population of 2050 will be of approximately 17 million – the second highest decrease in the EU after Bulgary);
- it is foreseen that by 2050 the active population of the labor market will decrease by more than 10% or 50 million people;
- the aging of the population and the increase of life expectancy negatively participate to the diminution of the EU's labor force;
- internationally, USA attracts 55% of the highly qualified labor force while the EU attracts only 5%, the fact which will determine the decrease of the competitivity of the European economics;

Due to the lack of the judicial frame, the immigrants of third countries who come on EU territory are forced to work illegally thus not paying taxes and not benefiting from access to health, education and basic public services.

All these factors lead to the idea that the European Union needs to attract labor force both highly qualified and unqualified from third countries, therefore, taking some regulatory measures for legal migration on a European level is overdue.

However, despite the efforts made by the EU to solve the migration issue and to satisfy the regional economic and demographic needs, it does not focus enough on issues and implicitly solutions that could come from within European borders.

Thus, for the citizens of the newly adhered member states to the European Union, namely: Bulgaria and Romania (and until recently the Czech Republic, Estonia, Letonia, Lithuania, Hungary, Poland, Slovenia and Slovakia) there are temporary restrictions for the liberty of movement of the labor force enforced by the other member states of the EU.

Presently, 8 out of the 27 member states of the EU apply a restriction to Romanian citizens who wish to work in another member state of the EU. The states applying this restriction are Austria, Belgium, France, Germany, Luxemburg, Malta, Great Britain and Holland.

Spain, Portugal, Hungary, and Greece have stopped applying the transitory regime to Romanian citizens since the 1st of January 2009 and Denmark since the 1st of May 2009. [1,132]

The access of Romanian citizens to the labor markets of other states that have restrictions is granted based on the national legislation of that state and on the potential bilateral agreements regarding the circulation of labor force signed by Romania and these states (mainly with Germany, Spain, and France).

The free circulation of people is one of the fundamental liberties granted by the community legislation and includes the right to live and work in another member state. The right to free circulation does not refer only to workers but also to other categories such as students, pensionaries and all the EU members in general. This is probably the most important right provided by the community legislation regarding people and it is an essential element both for the internal market and for the European citizenship. [4, 253] The community treaties provide the possibility of restricting the application of this liberty during a period of maximum 7 years for the newly adhered states. These restrictions only regard the free circulation with the purpose of employment and can differ from a member state to another. [5, 254]

In the case of Romania, by the Treaty of Adherence of Romania to the European Union, there has been established the possibility of applying some transitional measures during a period of 2 years to regulate the right of every member state to establish the access policy for employment for people from the member states of the European Union that are newly adhered according to the situation of the national labor market so as to not cause an economic imbalance and to not put higher pressure on the social security system.

The application of the transitional measures could be extended to a subsequent period of another 3 years. After this, a member state of the EU that applies transitional measures can be authorized to continue the practice for another two years, but only if it is going through a serious imbalance of the international labor market. The transitional dispositions cannot extend to a period longer than 7 years.

Thus, Romanian workers should be given priority before the workers from third countries and at the same time, once the worker is granted access to the labor market, he/she needs to benefit from equality of treatment. [1, 153]

Presently there are several documents within the European Union that approach the issue of the free circulation of workers.

In July 2010 the European Committee has published a Communication on " The reaffirming of the free circulation of workers: rights and major evolutions" which recounts a general perspective over the rights of the migrant workers within the EU and discusses the rights of workers that are in a more vulnerable situation than national workers.

After this communication, the European Parliament, namely the Committee for Employment and Social Affairs, has opened the debate of the Report over the Free Circulation of Workers within the EU which analyzes the present situation of the member states and comes with concrete suggestions for the future.

In spite of the general fear regarding the immigrant issue, namely that a powerful flux from countries that are less developed to more prosperous ones would lead to the loss of numerous jobs for the citizens of the ladder or to salary decreases, the report shows that recent studies prove the irrelevance of these factors, on the contrary, sustaining that the migration of labor force has granted numerous benefits to the European Union. Moreover, the same studies say that the illegal migration of workforce has experienced a significant decrease because of the liberty of circulation of the workforce.

The starting point of this approach, which must be reached on a European level, is the acknowledgment of member states that the free circulation of workers is a fundamental right and that the exercise of this right does not cause negative effects on the labor markets. At the same time, a clear need for adapting the labor force migration to the existent strategies on a European level is visible, especially to the EU 2020 strategy. The present situation and the laws learned from the financial crisis have revealed a new spectrum of possibilities to stimulate economic performance and to increase employment rates. [6, 89]

The main point of the report, which must be understood by all member states, is that as long as there are no registered negative effects caused by the mobility of labor force, especially after the two EU extensions of 2004 and 2007, there is no socio-economical reason to mention the restriction of free circulation of labor force, especially for Romanian and Bulgarian citizens. All unnecessary administrative procedures that can delay or prevent the exercise of the right to free circulation of workers are seen as

unjustified and must be promptly eliminated; they were an economical and social burden. [6, 91]

The economic arguments for opening the labor markets gain more and more power within the present European situation. The overprotectiveness over the liberty of movement of workers will create distance between the member states and a lack of trust that may affect the performance of the European Union as a part of the world market and can weaken its competitivity position.

In terms of legal migration, there is a fundamental issue within the European Union regarding the gap between what is declared and is agreed on a European level and the politics of each member state. There is, on one side, the ambitious objectives of the Stockholm Programme which emphasize EU's need for legal immigrants to solve the demographic issues of the European labor market. However, on the other side, what really happens is the exact opposite of the European strategy namely a growing closure of the labor market to immigrants.

The treatment of Romanians and Bulgarians leads to the second fundamental issue of the EU regarding legal migration namely the discrimination on the European labor market of workers from new member states.

Practically, after more than 10 years since their adherence, Romania and Bulgaria are treated within the Union as any other third country. The citizens of the two new member states have limited access to the labor market of certain occidental European states. This second-hand citizen’s treatment can also be found in the case of seasonal work which is performed by many Romanian and Bulgarian people in countries such as Spain, Greece or Italy.

An improvement is necessary for the European legislation that can drive things in the right direction. Continuing to implement the legislative package regarding legal migration is essential. The labor conditions, especially for seasonal workers must be highly improved because, as far as this field is concerned, standards start very low, a level which violates fundamental rights and practices of modern slavery.

Procedures for granting work and residence permits must be simplified and must grant real social and economic rights to all legal immigrants who work on the EU territory.

A fact equally as important is that the mediators that ensure the immigrant recruitment must be closely monitored and controlled because, most times, they behave as organized crime networks promoting forced labor, prostitution, sequestration.

At last, it is believed that when creating a regulation for legal immigration one must first observe its own country and see that there are major issues in this regard even in what regards the migrational intra-European flux.

Romanian and Bulgarian citizens still have to deal with discrimination in numerous member states. Moreover, citizens from outside the EU sometimes benefit from better labor conditions than the ones previously mentioned a thing which violates the principle of community preference.

Restrictions on the labor market for the citizens of the two states must be urgently lifted in order to enable the effective circulation of all European citizens, a fundamental value of the European Union. Furthermore, I am convinced that enabling total liberty of the labor force within the EU is an important advantage for the economic recovery of the whole Union. [7, 236]

Assessments Regarding the Migration of Labor Force within the EU

The importance of the migration phenomenon has registered a continuous growth during the post-war period. Apparently, this phenomenon does not need special measures regarding national social security. However, reality has proven that the existent regulation must be permanently perfected and adapted to the evolution of migration, so as their applicability to be more efficient. [6, 110]

Within the European Union, the migration of labor force has stimulated policies that lead not only to a higher level of employment but also to an improvement and modernization of the existent social security systems and creating a community system to ensure the social protection of immigrant workers.

The free circulation of people – the fundamental principle of the European Union – would not be possible if the social security rights of the migrant workers and their families would not be ensured.

The perspective of the eastern expansion of the European Union generated through the old member states a series of fears regarding labor force migration. It can be proven however that these fears are proven in very few cases and, eventually, only from

the point of view of the national interest. At the level of the European Union, the free circulation of people is a means to create a European labor force market, more efficient and flexible, benefitting the workers, employers and the member states. [6, 115]

In fact, the effects of labor force migration are very complex, connected both to the economic and demographic aspect and for the new and future member states which will be the main providers of migrant labor force within the European Union during the following years, the migration phenomenon has multiple effects: financial-economical, social and occupational, political and cultural.

For this reason, accepting workers who come from the new member states as means to sustain and grow both the economy and the social security systems and the pensions programme, will be a particular concern of the European Union.

Free circulation of people, especially workers, has therefore certain advantages both for the old member states of the European Union – mainly the destination states for migrant workers – and for the new future member states. It probably is the most important individual right within the community legislation and an essential element both for the Internal Market and for European citizenship. Therefore, it is very important that the candidate states and the workers know the consequences of this liberty. [7, 240]

Migration has existed ever since the beginning of mankind. The phenomenon has not ceased in time but has changed and taken new forms. Migration processes happen simultaneously and are growing in multiple countries all over the globe. One of the long-term results of this evolution would be the apparition of multicultural societies, aiming for new concepts of citizenship or national state. The majority of developed states have become diverse, multiethnic societies and the ones who did not reach this level yet have a decisive orientation in this direction.

For researchers from the migration domain, it has become clearer that this phenomenon must be regarded as a natural and structural element of human society throughout history.

For the citizens of the EU member states the free circulation of workers has been one of the first community recognized rights. The competition with the politic socialist model of Central and Eastern Europe has helped the development of policies that lead not only to the achievement of a higher level of employment but also to the improvement

and modernization of the social security systems and therefore to the evolution towards the general welfare states of Western Europe. Heavy industry, manufacturing, construction and public activity fields have been developed determining an important economic growth in European countries.

During the last years a growth in permanent migration and the temporary migration of the labor force has been registered as a result of, on one hand, the intensity of the expansion at the end of the 90's and, on the other hand, the development of the information and communication technology, health and education, fields that need highly qualified labor force. At the same time, there has been a growth in the demand for unqualified labor especially in agriculture, constructions and public works, as well as domestic services (in the case of Italy, Spain, Greece, and Portugal).

After 1989, migration has grown especially in Germany and Great Britain, the policies regarding the recruitment of foreign labor force favoring the solution of temporary foreign workers. At the same time, foreign students have contributed to the coverage of the necessary labor force within the host countries (Great Britain, Germany, France and Spain).

During the 90's the number of female workers amongst migrants has also grown. This is especially observed in France, Greece, Sweden, Great Britain, and Italy. The feminization tendency is observed in every component of migration fluxes not only in the case of family reunification.

The countries from Eastern and Central Europe are not only emigration states but also transitional and immigrational becoming attractive for the immigrants from the Extreme Orient. While the population from Central Europe (the Czech Republic, Slovakia, Hungary, and Poland) migrates to Western Europe, the same countries become a destination for migrants from the Eastern European countries such as Belarus and Ukraine. At the same time, illegal migration has taken new dimension and has become more dangerous. As a consequence of the development of international trafficking networks and the growth of their role in the international circulation of the labor force, the policies of the member states regarding migration and employing foreigners have increased the repressive measures against trafficking, illegal employers or immigrants. [5, 50]

Since the second half of the 90's, discussions regarding the effects of international migration of highly qualified workers have intensified. In Europe, the migration of specialists and students of Central and Eastern Europe to Western Europe has been observed after the fall of the Berlin Wall and the socialist regimes of 1989. Countries such as Great Britain, Germany, and France have adopted certain measures to ease the entrance of highly qualified people, especially IT specialists, in order to cope with the global competition for such workers. The requirement for highly qualified workers can mostly be satisfied by developing countries, the direct benefits of the "brains' migration" still be greatly appreciated. The specialists' import still takes place even if its significance has decreased. It can, however, be seen that a growth in the reverse flux of specialists, from rich countries to the less developed ones, as a result of the decrease of demand for highly qualified staff because of the growth in economic efficiency in developed countries. At the same time, the capital and direct investments will go to poor countries, attracting specialists from rich ones. [5, 52]

The connections between demographic changes and policies regarding migration, including the migration of highly qualified people, will represent an important problem in the near future. It is to be expected that some of the member states will prefer that the specialists' migration to develop regulations and procedures to facilitate it. The European Union will have to also identify, at the same time, solutions to limit the negative effects of the "brain exodus" over the development of the states of origin.

The OECD statistics regarding migration show that, in the last years, the number of foreign workers has grown in the majority of the developed European countries. Immigrant workers are, on average, younger than the rest of the labor force and are distributed to a wide range of activities throughout the economy: agriculture, constructions and civil engineering, light industry, tourism, the hotel, and catering field, domestic activities or various services including informatics. Foreigners have a higher average in certain fields than within the total of the workforce. Usually, this over-representation occurs in the secondary field. In Germany and Italy, for example, more than a quarter of the foreign labor force is employed in the mining and industrial fields. In Austria, Belgium, France, and the countries from the South of Europe foreigners are preponderant to the constructions field.

Generally, foreigners are more vulnerable to unemployment than inland. Likewise, foreigners are differently affected by unemployment depending on their nationality. These differences occur due to economical tendencies but also because of the nature of the activities performed by foreigners. The same influences are inflicted by the demographic structure of the foreign population and the moment when migrants have entered the host country. The degree of employment of migrants is also determined by their profiles. Unemployment varies depending on age, gender, nationality, migrant category (refugees, family member or worker), abilities, professional experience and the duration of the stay. Knowing the language of the host country significantly contributes to the integration in the labor market and in society. [1, 205]

The European Union presently considered that an integrant and extensive approach is to be desired for a better management of the migration phenomenon. The member states must establish exactly the conditions for the citizens of other states can enter and live on their territory, the rights and obligations of these people and ensure their access to information as well as to the functional control mechanisms. The external policies and and the current programmes of the European Community for the support of human rights, the consolidation of democracy, decrease of poverty, job creation and improvement of the general economic situation of the countries involved in the circulation of workforce, in the migration phenomenon, are essential instruments for the decrease of migration pressure.

The member states of the European Union face very different situations regarding migration: different migration history, different level of economic dependency on immigration, and, not lastly, a different preoccupation regarding the tendency of the manifestation of migration in the last period.

The circulation of labor force encourages the dissemination of technical knowledge and the modern work methods between the states affected by the migration phenomenon. Likewise, within the European Union, the free circulation of people enables the assimilation of a European way of thinking. On one hand, in the origin country, the unemployment rate drops and the salaries grow, the migration of labor force decreasing the imbalance of the labor market. At the same time, there occur new factors of economic

growth: the transfer of the income of the migrants and the improved qualifications of the workers who come back.

On the other hand, in the destination country, the human resources reserve grows which leads to the slowdown of the salary and capital increase.

The negative effects of migration for the origin countries are determined by the loss of highly qualified labor force but also by the consequences of illegal immigration, namely the need to integrate the repatriated within society and the labor market. For migrant workers, the main advantage is the possibility to find a workplace, according to abilities and qualifications, most times gaining a higher salary than in the country of origin. Accepting an employment offer from abroad makes professional evolution on a medium and long-term uncertain. Moreover, immigrant workers are mostly willing to make compromises regarding the type of activity they are going to perform abroad in relation to their studies, qualifications, and abilities gained in the country of origin. The interruption of the specialized activity has a negative impact on professional continuity as well as on the necessary ability for practicing that certain profession upon returning to the home country.

From this perspective, the emigration of the qualified and highly qualified personnel is a loss for the state of origin, it not being able to benefit from the result of its investment in forming human resources. For the countries of origin, the departure of specialists can have an effect the decrease of technological development, economic growth, income and employment in certain fields.

The migration of labor force within the EU and the issues it causes has a very important place on the work agendas of European organizations and governments from the European community space. The discrepancy between the sovereign right of the states that wish to protect their internal labor market and the fundamental rights of the individual who, for various reasons, is forced or chose to migrate in search of a workplace is accentuated more and more. [1, 210]

There are, however, states that, although officially combat illegal migration, they informally tolerate it for various reasons – the need for cheap and unqualified labor, the possibility to quickly reduce, during certain periods, the number of migrants through forced repatriation etc. This only encourages a series of illegal practices and, at the same

time, causes multiple negative consequences for migrant workers regarding their social security rights, labor conditions, representation.

Conclusions

For the European Union, the free circulation of people is a means to create a more efficient and flexible European labor market, for the benefit of workers, employers, and the member states. It is recognized on a community level that the mobility of workforce allows individuals to improve their perspectives regarding career and employers to recruit the staff they need. It is, therefore, an important element in the creation of an efficient labor market and a high level of employment. To ensure the mobility of labor force within the Community – which implies the elimination of any form of discrimination based on nationality – the community judicial frame has continuously developed and perfected itself.

The level of income, the salary differences, the harsh labor conditions, the inequalities between individual determine the emigration of the labor force. The increase of unemployment and the loss of job, the general growth of prices as a result of the growth of inflation, the widening of the discrepancy between salary levels, the deterioration of living conditions and health determines the reduction of the migrants' capacity to move and live in another country, determining the decrease of emigrant flux from the states of origin to the main destination states within the European Union.

On the other hand, the improvement of living standards by the growth of the GDP/resident, the growth of life expectancy, determines the growth of immigrant flux mainly due to the access to the necessary financial resources for this process. [8, 12-17]

The effects of the migration of labor force are very complex, because, on one hand, migrants increase the labor force of a country, with the consequences unfolding from this, and, on the other hand, it generates new jobs and increase the demand for a series of activity fields. At the level of community labor market, the economical migration prevents the growth and even decreases the costs of the labor force, thus participating in the growth of international competitivity.

Taking into account the already evident tendencies in the dynamics of demographic tendencies, with the perspective of the decrease of the population of

Romania during the following decades up to 16 million people, it is clear that the need for adopting a new national strategy occurs regarding the management of demographic issues and issues regarding the jobs from our country, strategies that take into account the emigration of population and the free circulation of people who are tempted to go work abroad.

At the same time, we should ask ourselves how the migration flux will affect the final lift of transitional measures. We will witness a reorientation of fluxes towards Germany and Austria, for example, who hold more important growth factors and who, in spite of the transitional measures in force, has already attracted a great number of workers from the new member states? Will Romanians actually be tempted to work in developed countries from the Western side of Europe?

The current economic crisis makes its presence known in the evolution of the migrational fluxes as well. A common effort from the member states of the EU is needed in order to better manage migration and the labor market in order to create a sustainable future.

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ON SANCTION AND CRIMINAL NORM, NUANCES OF INTERPRETATION OF THE WILL OF THE STATE

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Abstract:
The role of the norm is to ensure the stability of the organization of social life and the functioning of the state. The deviation from the legal norm, the penalty is the price paid for the deviation from the legal norm by the coercive force of the state. The article aims to present aspects of the philosophy of ancient criminal law, namely Plato's thinking on The Laws, Book IX, to compare the role of the ancient criminal sanction, associated with moral education, with the relativity of the legal norm in modern and contemporary times.
Key words: *law science, legal norm, criminal sanction, coercive force.*

Conceptual clarifications

The law is the system of norms recognized by the state in order to regulate the relations between the members of the community, translating the general will of the state. "The constitution of the law as a fully contrived entity can be appreciated to occur with the constitution of the public power as state power in the countries of the Ancient Orient and in the Greco-Roman antiquity." [1, 56]

Other conceptual clarifications refer to the concept of order and norm. The order expresses a spatial-temporal distribution, certain relatively invariant rapports, ensuring certain regularity in the predictable inter-human manifestations and behaviors. One can speak of a natural order, one specific to society, one specific to thinking. There is a specific type of order at the level of society, the legal order, belonging to the law and with normative value for the entire social life. Norms are firm obligations for social individuals, tracing the action range and, in the case of violation, emphasizing the coercive effects. It does not follow from this that all norms have the same degree of social acceptability, nor that the coercive force, which arises through their non-observance, is equally applicable.

"In the case of violation of legal norms, the social reaction reaches the highest degree of constraint in relation to the pressure exerted by society for the compliance with

non-judicial norms, involving the intervention of the specialized institutions of the public authority (police, justice, penitentiary system, etc.)." [1,36] In other words, the system of legal norms is much more restrictive and any offense brings with it sanctions, with different degrees of application that describe the seriousness of the act. Unlike the moral norm that governs human relationships and behaviour without institutionalized constraint, the legal norm requires a range of factors contributing, depending on the degree of legal responsibility, to the application of sanctions.

We are about to ponder on another concept, that of the law. The law has the role of ordering the life of society fairly and normally. It was considered, in classical ancient Greece, as the reason for the rule of a state. Plato considered them a "regulator" of the city, ensuring the leadership of the ideal state. They have the role of preventing abuse, of restraining intemperance, being the price paid for the commission of injustice. Applying the law is done for the sake of the one being punished. The law is the expression of the reason that ordains the city. The existence of a code of laws has the role of putting forward a statement of reasons before each law. Such a function reason of the fortress has the purpose of ensuring everyone's happiness and this must be understood by every inhabitant of the city.

The modern world brings with it rights and freedoms that will often be in rather tense relations with individual interests. The law has the role of inserting the future in the present, guaranteeing equality for all citizens, regulating competences among various social actors. There are also situations where anti-social facts go beyond the power of regulating laws. In this case, we are witnessing the emergence of new realities that the market economy encompasses and that operate by placing politics as a dominant factor in the landscape of social life. The independence of justice is relative when the electoral act records a clear dominance of a political force. The entire legislative process may also make changes that will not be aimed at the public good and, in this case, deviations from the fundamental values of human rights appear. Which entails that the democratic majority can not always defend general rights and freedoms, being able to follow the path of group interest. Machiavelli motivated the way of gaining the goals by any means, understanding that the prince will be the one who decides the way of maintaining the state. "Whoever understands that it is wholly to the praise of a prince to act upon the word

and to proceed honestly, not cunningly." [2,63] We have brought forth this argument to clarify the idea of the wise ruler and not to misunderstand the metaphor of the lion and the fox used by Machiavelli when he considers that the prince must use the means of the lion and fox to recognize races and those of the lion to scare the lions. As we can see, the modern world nuances the place and role of the legal in regulating inter-human and interstate relations.

Comment on Plato's Laws. Book IX

The work The Laws represents the last work developed by the great philosopher, a major change in vision relative to the ideal state imagined in The Republic. This is how the role of reason is taken by the laws governing the city, the deeds committed by the three classes, and their punishment when they offend the harmony of social life. Laws are not mere abstractions, beyond the particularities of a state, but they are adapted to its best functioning. They can not be associated with all the cases that take place in the life of the city. This is where the magistrates' regulatory role appears together with their competence in applying laws to the variety of cases. Let us not forget that the role of the laws was associated with good morals in the city, in the absence of positive moral values, the legal sanction had no purpose in the city. The punishment was the price paid and the liability assumed for the deviation from the legal norm.

"The natural order of our laws is to talk about actions in justice (...)", [3, 262] declares Plato in the Book IX of The Laws. Such actions concern the "property offense" in the area of agriculture and "punishments due", which associate the "competence of judges". All legal actions must be able to "cultivate virtue", proving the good organization of the state. The legislator has the role of stopping crimes and punishing "wrongdoing". Laws address people to "bend" or "soak", like seeds that resist fire". [3, 263]

The laws address human weaknesses and must be related to "hard to heal or incurable" facts. "Every man, whether a master or a slave, who will be caught stealing a holy thing, after havingbeen engraved on his forehead and hands with the imprint of his iniquity, shall be cast naked across the borders." [3, 263] Such a measure takes into account two aspects: either he will become better or he will be prevented from doing something worse. As for the fate of his children, the judges will determine what the

appropriate measures to get rid of the parent's "habits" are. If the judgment includes the payment of a fine, the "law-keepers" will report to the judge the incomes of the convict for the sum to be covered.

No offense remains unpunished and no one can escape the execution of the sentence by fleeing. As far as the death sentence is concerned, it is up to the guardians of the fortress, the best magistrates from the previous year.

Only the appeal procedure is up to the young legislators. The sentence will be public, "all judges will sit down in a row according to the old age, having the plaintiff and the accused in front of them. Citizens can assist at these meetings if they do not have "urgent matters", the meetings having an educational role. The strength of the arguments will be weighed and the decision will be taken by the signature of all the judges.

The gravity of the crimes begins with the disregarding of the gods and continues with conspiracies against the state. There follows an overlooking of public interest, for those invested with public functions. The punishment applied to the grandfather or father will not affect the child. Families in which there are boys older than 10 will choose ten of them, their names will be transmitted to Delphi, and the god's voice will choose the heir of the expelled citizens. The judge will have an educational mission, "curing" these diseases that make them slaves of undue use.

Therefore, the legislator also makes civic education giving "advice on what is beautiful, good and just" [3,267] in order to lead a happy life. In the analysis of legal sanctions, Plato brings clarifications that harmonize the justice (just) with the moral good and the aesthetic dimension of human behavior, the beautiful. Morality and politics make a common body until the emergence of politics as a science of government, along with Machiavelli. From this moment on, a new morality emerges, specific to politics, to the interest of maintaining the state by any means.

Returning to the statute of the laws in Plato's view, he emphasizes their educational role on the man in the city: "the law is to teach and, especially, to oblige, that in the future, never to dare the will of unrighteousness" and to instill "people loathe for injustice and make them love the nature of justice (...)". [3,272]

For the investigation of a serious criminal offense, Plato ponders on the crime, excluding the mad or the old ones who can no longer control their deeds. The only case

that can not be exempt is homicide, “when the guilty has blood-stained hands.” [3, 274] We mention that the status of the slave is associated with the good that you possess. Because of this status, the one who kills the slave of another master, believing that is his own, will pay the respective price to the master, and if he does not recognize the deed, he will pay double. Whoever kills a free person will give to the family of the deceased the places where the deceased used to walk and will be exiled for one year. The same punishment applies to a foreign person. In the event of non-compliance with the judgment, he will be expelled five years from his homeland. The exile represented the worst punishment for the Greeks.

Murder can be “willful” or “angry”. The premeditated one draws the toughest punishment. The law-keepers consider all types of crimes. Thus, the one who is blinded by anger and carries out a murder shall be exiled forever, and if he returns to the country he shall be punished like the foreigners. The slave who kills his master or any other free person will be killed in the way desired by the relatives of the deceased.

Family murder has its own place in the sanctions. If “a father or a mother - (...) - kills his/her son or daughter with strikes or otherwise violently, they shall do the same penances as the other murderers and shall be exiled for three years.” [3,278] The same punishment is also applied in the case of husband-wife, brother-sister. “Anyone who kills his father or his mother in anger is punished by death.” [3, 279]

All these deviations are considered to be the effects of bad education. They are added to those premeditated deeds that are due to “insatiable and unlimited desires.” Plato mentions that “the Greeks and barbarians give too much importance to wealth.” [3, 279] Several causes are the reason for voluntary homicides: greed and ambition, plus the fears of the cowardly and unjust man to not be found doing unrighteous deeds.

The laws are needed to live in the city for the “good of the community”. Because of its transience, man wishes to have more than the others, he only thinks of his own personal interest, “runs away from pain and pursues pleasure in a foolish manner.” [3, 284

In addition to homicide, the criminal offenses that Plato examines in The Laws are of various instances to be decided by the judges. The holding of court sessions may be closed or public, as the judges decide. The tribunals “are organized as well as possible, where the judges are educated and elected after rigorous exams.” [3, 285]

In terms of hitting people of the same age, they can defend themselves “with bare hands, without arms”. The legal procedure and the application of the sanctions will take place when someone hits a person older than him, at least by 20 years. Two years of imprisonment will receive the stranger who hits an old man. The punishment is higher for a foreigner domiciled in the country, who will receive three years for violating the law. Such trials are judged by “army generals and others.” [3, 289]

All these criminal aspects analyzed from a philosophical point of view prove that the legal act is understood as a means of education, that justice does not involve only legal elements - the organization of the courts, the selection of judges, the care for the defeat of any injustice - but particularly the civic education of the citizens. Morality and justice form a common body, and the legal act has as its central purpose the exemplary citizen. In this way, the judge had the most important role in consolidating the state. The magistrate’s decision could not be subjective, without arbitrary deviations. Citizens’ rights and obligations were binding, and they strengthened the state order. The state order will also be taken over in the modern age, amid the emphasis on the area of citizens’ rights and freedoms.

Modernity and the way of relativity of the criminal deed

Any relativity in the case of the legal act is equivalent to mistrust in court judgments, leaving room for abuses of any kind. At the same time, the revisions to the Penal Code, the Criminal Procedure Code, are equivalent to a lack of confidence in the courts, with the diversification of deviations from the legal norm in order not to have the power to decide on the punishment. If the flight was an offense, severely sanctioned in antiquity, it becomes a way used to evade punishment in contemporaneousness. The act of justice takes the form of a lost illusion, concealing strange shades, especially when conducting the tele-visual juridical analysis. Media coverage offers performances on television sets, inoculating the idea that justice can be done by anyone and shifting the purpose of the vigilante to the journalist who can avoid any judgment without arguments. That is why social networks, television channels have come to be able to issue any information, relativizing the rigor of the law, and raising the perpetrator to the rank of savior of justice. It is a way of political marketing that falsifies/ sells the image of the person you want to

receive the consent of as many recipients/consumers as possible. Thus, justice is integrated with the laws of consumption and transforms into a commodity that can be sold.

The Penal Code, the Criminal Procedure Code and the Implementing Laws can be modified in such a way that a number of sanctions are abrogated and the judicial decisions are no longer viable. Such relativization in relation to what is or not a crime is correlated with the new aspect of the facts included in the criminal law at the time when it was committed.

"The criminal law shall apply to offenses committed during the period in which it is in force." [4 Art. 3, Chapter II, Section 1] and Article 5 (1) clarifies the application: "If one or more criminal laws have intervened since the commission of the offense until the final hearing of the case, the more favorable law is applied." [4] Article 6 (1) has the details: "When, after the final judgment of the conviction has been enforced and until the punishment or imprisonment has been fully enforced, a law which concerns an easier punishment has intervened, the sanction applied, if it exceeds the maximum specially prescribed by the new law for the offense committed, is reduced to this maximum." [4]

All these changes in the content of criminal laws demonstrate the intent to clarify when the codes were drawn up, then the existence of another orientation in relation to the criminal case, moving from the obligation to apply the punishment to possible interpretations of the facts. In this way, justice can no longer fulfill the rigorous normative status of the science of law in society. The legal rule should not be referred to cases, it is a system of obligations for human conduct.

As a conclusion

Let us consider the Hegelian perspective on the law and justice, the law being considered "something holy in general" because it is the "existence-in-fact of the absolute concept." Every step of freedom has its own law, because it is the very expression of freedom. "The law regards liberty, what is more divine and holy man in him, which, since it is to become an obligation for him, he himself must know." [5, 61]

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LEGAL FRAMEWORK CONCERNING THE EXERCISE OF FREE CIRCULATION CAPITAL IN THE EUROPEAN UNION

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Abstract
The free movement of capital is a basic pillar of the Internal Market of the European Union, along with three other pillars, namely the free movement of goods, persons and services.
The liberalization of capital movements in the European Union was achieved gradually, initially enshrined in the provisions of the Single European Act (1986), then in the Treaties of Maastricht (1992) and Lisbon (2009).
At present, the content of this freedom is also extended in relations with third countries.
The free movement of capital contributes to the overall economic development of the European Union and involves the use of the euro as an international currency.
Keywords: *capital; payment; European Union; third countries; taxation; money laundering.*

1. Legal basis

The free movement of capital is a fundamental element of the Internal Market of the European Union along with three other pillars, namely the free movement of goods, persons and services.

The Internal Market is the economic engine of the European Union, the driving force behind the entire economic, social and financial system of the European Union.

The liberalization of the capital market was achieved through an evolutionary process, coordinated with the other Internal Market objectives.

The Single European Act (1986) provided for the liberalization of payments, lending and investment operations.

Subsequently, through the provisions of the Maastricht Treaty (1992), the full liberalization of capital movements, both in relations between Member States and in relations with third countries, was made as a necessary measure for the introduction of the single currency in the European Union.

The provisions of the Treaty of Lisbon provide for unitary regulation of capital and payment issues.

The legal basis for the free movement of capital within the European Union is the provisions of Articles 63-66 TFEU on "Capital and payments".

The Green Paper on "Building a Capital Markets Union" in 2015[1] sets out the main objectives of developing, by 2019, a "capital market union" for the 28 EU countries. The document explores ways to encourage the use of European financial markets and ensure their better integration.[2]

2. Free movement of current payments

The EC Treaty originally regulated only "current payments" in relation to "capital movements". It follows that freedom of payments was qualified by the Treaty as a distinct freedom in the process of realizing the Internal Market, but it must be borne in mind that the freedom of payments derives from the other Community freedoms, not having a stand-alone existence, freedom with a derived character. Freedom of payments is in a relationship of interdependence with other freedoms, interconditioning and influencing each other.

The concept of free movement of capital is not defined by the provisions of the Treaty, giving the Court of Justice the task of providing some criteria for the legal qualification of these notions. According to European Community case-law, the expression "movement of capital" means those financial transactions which essentially reflect the placement or investment of amounts of money and not the remuneration for a benefit, while "payments" mean those money transfers that constitute a counterparty within a transaction, a remuneration for a given benefit.

It follows that the movement of capital is a transaction of an autonomous nature, whereas the movement of payments entails a transfer of ancillary amounts as a result of another principal operation.

The Court of Justice has stated that the physical transfer of banknotes can not be considered as a capital move when it corresponds to a payment obligation resulting from a transaction in the movement of goods and services[3] ; also, transfers resulting from

tourism, commerce, education or medical treatment activities must be qualified as payments and not capital movements[4] .

The concrete distinction between the flow of current payments and the movement of capital is difficult to achieve.

Thus, in practice, the payment of insurance premiums for material damage or civil liability insurance was considered as a current payment whereas the payment of life insurance premiums was qualified as capital movement.

Payments can include:

- payment of the consideration for the exchange of goods, services and capital (such as, for example, the distribution of profits or the payment of interest);

- transfers of wages for work done in a Member State by persons who have moved to that State by virtue of the free movement of persons

The Treaty contains express rules on current payments by art.63 (2) TFEU according to which all restrictions on payments between Member States and third countries are prohibited.[5]

In the "capital" category, the following operations can be included: [6]

- Real estate investments;

- Investments made for the purpose of establishing or extending the business of a company (or in other terms investments linked to freedom of establishment);

- Securities acquisitions;

- Long-term financial placements (creation of bank deposits abroad);

- Capital transfers in the personal interest (donations, successions, transfer of savings from one state to another).

The 2007 Payment Services Directive[7] provides the legal basis for establishing a set of rules applicable to all payment services in the EU so that cross-border payments become as simple, efficient and secure as "national" payments, and to promote efficiency and reduction of payment costs through greater competition and thus opening up payment services markets to new entrants.

3. The legal regime of the free movement of capital

The free movement of capital entails moving them through financial transactions concluded for the purpose of investing those funds.

By the provisions of Article 63 (1) TFEU, all restrictions on capital movements between Member States and between Member States and third countries are prohibited.

In order to progressively achieve the free movement of capital, it was necessary to adopt internal Community rules implementing the provisions of the Treaty.[8] The most important issues covered are:

- liberalization of capital movements between Member States,

- the suppression of all transfer authorizations, even those that were automatically granted;

- the right of Member States to take measures to regulate bank liquidity, even if those measures may have consequences for capital transactions by credit institutions with natural or legal persons who are not resident in a Member State of the Community;

- administrative control measures, principally designed to prevent tax evasion or to ensure compliance with prudential rules in the banking system or for statistical purposes;

- a specific safeguard clause in relations between Member States or between Member States and third countries on short-term capital movements in case of strong tensions or disturbances in the exchange markets. Where disruption affects only one State, safeguard measures must be adopted by the Commission, except in emergencies. When disturbances originate in relations with third countries and affect one or more Member States or intra-EU trade relations, only a simple consultation is foreseen.

The Maastricht Treaty emphasized the process of capital movements, with the provisions of the Treaty being directly applicable.

The basic principle enshrined in the Treaty entails total liberalization of capital movements between Member States but also in relations between Member States with third countries.

Although the established rule concerns the total liberalization of capital movements in relations between Member States with third countries, however, some exceptions to this rule have been provided.

A Member State may take restrictive measures on the free movement of capital for reasons of its own general interest, but such measures may be applied in a non-discriminatory manner. Any person to whom such a measure applies must have an appeal.

The regulated exceptions are as follows:

a) Under the provisions of Article 64 TFEU[9] , restrictions were maintained in relations with third countries until 31 December 1993. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, were responsible for adopting measures concerning the movement of capital with as a destination or coming from third countries, where they involved direct investment, including real estate investments, the establishment, provision of financial services or the admission of securities on the capital markets.

b) The provisions of Article 66 TFEU provide for a safeguard clause, stating that if, in exceptional circumstances, capital movements originating in or destined for third countries cause or threaten to cause serious difficulties for the functioning of the Economic and Monetary Union, acting by a qualified majority on a proposal from the Commission and after consulting the European Central Bank, may adopt safeguard measures for a period not exceeding six months in relation to third countries where such measures are strictly necessary.

c) Under the provisions of Article 75 (1) TFEU, the European Parliament and the Council, acting through regulations in the ordinary legislative procedure, on the prevention and combating of terrorism and related activities define the framework for administrative measures on capital movements and payments, such as be the freezing of funds, financial assets or economic benefits belonging to natural or legal persons, groups or non-State entities.

The text creates the legal framework for the adoption of urgent measures necessary for capital movements and payments.

As long as no such measures have been taken, a Member State may, for serious political and emergency measures, take unilateral measures against a third country in respect of capital movements and payments.

The Council, on a proposal from the Commission, shall adopt measures for the implementation of the legal framework established by the Treaty.

d) Other provisions concerning restrictive measures with regard to the liberalization of capital in relations between a Member State and third countries are laid down in Article 215 TFEU (replacing Article 301 TEC) and Article 346 TFEU.

- In accordance with the provisions of Article 215 (1) TFEU, where a decision provides for the interruption or restriction, in whole or in part, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from High Representative Representative of the Union and of the Commission shall take the necessary measures. The Council shall inform the European Parliament thereof.

- By virtue of Article 366 (b) TFEU, the right of any Member State to take the measures it deems necessary to protect the essential interests of its security in relation to the production of or trade in arms, ammunition or war material is established; those measures must not distort the conditions of competition in the common market in respect of products which are not intended for specifically military purposes.

Unilateral measures taken by a state must not violate the provisions of Art. 347 TFEU requiring Member States to consult with a view to jointly adopting the necessary provisions to prevent the functioning of the common market from being affected by measures which a Member State may be required to take in the event of internal disturbances serious damage to public order in the event of war or serious international tension constituting a threat of war or to meet the commitments made to maintain international peace and security.

With regard to the Community provisions governing the free movement of capital, the Court of Justice has ruled that they have direct unconditional effect, being immediately applicable throughout the Union, without the need for any national implementing measures. [10]

4. Relationship between free movement of capital, taxation and prevention of money laundering

Article 65 (1) TFEU provides that the free movement of capital is without prejudice to the right of Member States:

(a) to apply the relevant provisions of their tax legislation which distinguish between taxpayers who are not in the same situation as regards their place of residence or the place where their capital is invested;

(b) take all necessary measures to combat offenses against their laws and regulations, in particular in the area of taxation or prudential supervision of financial institutions, to provide for procedures for the declaration of capital movements for the purpose of administrative or statistical information, or to take measures justified on grounds of public policy or public security.

The measures in question must not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments.

Community law regulated differently the subject matter of indirect taxes in relation to direct taxes.

In the case of indirect taxes, a number of directives have been adopted to lift tax obstacles that hinder productive investment[11] . These Directives include measures on:

- the cancellation of the stamp duty levied by certain States on the issue or circulation of foreign securities on their territory;

- the harmonization of national legislation on the tax on the formation of capital companies or the execution of assimilated operations. Harmonization aims at defining capital companies, determining the tax base, tax reductions or exemptions, designation of the competent State to levy the tax.

Unlike indirect taxes, in the field of direct taxation regulation is less significant. The directives adopted in this area aim in particular at avoiding double taxation.[12]

In the field of money laundering prevention, directives have been adopted which are particularly important:

 Council Directive 91/308 / EEC[13] on the prevention of the use of the financial system for the purpose of money laundering of 10 June 1991;

The 1991 directive contains measures to combat money-laundering operations, in particular by imposing an obligation on banks to verify the identity of customers performing operations with amounts exceeding certain thresholds. Under the directive's

regulations, Member States are required to carry out inspections and controls to ensure that banks implement the established measures.

 Directive 2001/97/EC[14] of the European Parliament and of the Council of 4 December 2001 amending Directive 91/300 / EEC contains provisions on:

- Defining the notion of money laundering;

- detailing the obligations on Member States for the purpose of controlling financial and credit institutions in identifying clients for whom they provide services;

- Obligation of obligatory banks to identify customers performing banking operations exceeding the minimum threshold of EUR 15,000.

 Directive 2005/60 / EC of the European Parliament and of the Council of 26 October 2005[15] on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Text with EEA relevance)

The directive seeks to prevent the use of the financial sector and certain non-financial sectors for the purposes of money laundering and terrorist financing. The Act provides for measures to establish the real identity of clients, to report suspicious transactions and to set up preventative systems within organizations in these sectors.[16]

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CONSIDERATIONS REGARDING THE LABOR MARKET

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Abstract:
The labor market as a system of social structures and processes which evaluates mediates and then sells and buys economical services of technical, informational, organizational nature or evaluated and rented services by individuals as the labor force.
The labor market has also can be defined as the confrontation between supply and demand of labor force during a certain period and within a certain space which is finalized by buying and selling labor force in exchange for the salary.
Keywords: *labor market, labor force, supply and demand of labor, labor relations.*

The Notion and Specifics of Labor Market

Labor is a general condition of every economic activity. Considering the existence of the economy on the market, for the most part of these activities the labor factor is ensured by the labor market, labor being, at the same time, the object of supply and demand only when it is remunerated.

A market is a place where supply and demand meet. By the meaning given by economic theory, this term does not designate a physical place but a mechanism for the exchange of produce (goods and services). Societies that have market economy are the ones who make this mechanism the basic principle of economic life. [1, 227]

There are several markets: the market of goods and services, the capital market, the natural resources market, the labor market. They act simultaneously ensuring the well functioning of the economic and social mechanism, efficiently adjusting the processes and phenomena.

The labor market is considered a system of social structures and processes which, in a first sense, evaluates, mediates and then sells and buys economical services of technical, informational, organizational nature, and in another sense, services are evaluated and rented by individuals as the labor force. [2, 33]

The labor market has also been defined as the confrontation between supply and demand of labor force during a certain period and within a certain space which is finalized by buying and selling labor force in exchange for a salary. [3, 251]

The labor market has two components:

- the supply and demand of labor force;
- the confrontation between these two is the labor market.

The demand for labor force is the necessary remunerated work at a certain moment for the development of the activity of employers, judicial persons or individuals. [4, 56]

The offer of the labor force is the total of people that are apt for work, available to become employees.

Unlike the other markets, which have as object different categories of material goods or different values, the labor market has at its core the human as an intellectually and physically apt individual which are key components of his labor potential. He is, above all, a social being, not only a production factor, who, besides his existential needs, has a certain value and personality, is aware of his role within family and society, passionate by his profession.[5, 237]

The labor market shows the relations between the suppliers and demanders of the labor force that develop in accordance with the existent regulations which establish the employment conditions and the amount of the salary which are agreed upon through an official act generally named labor agreement.[6, 12]

The fact that there is a labor agreement attests a certain mutual interest between the suppliers and demanders, all this also being freely expressed by both parties through some specific aspects. For the labor market, the functioning is different, by many aspects, from a country to another, depending on the internal or regional legislation, all being compulsory respected, and just because of this the labor market must not be considered as being unique. On the contrary, it should be analyzed in relation to time, place, activity or other such aspects. [6, 20]

Some labor markets, like the ones where the suppliers of the labor force are represented by a union or another alliance, function based on a formal set that encompasses rules that partially govern the relation between supply and demand. In

countries where the union movement is strong, firms are bound to employ at the union's headquarters, from the lists that the union makes available. If there is a formal set of rules and procedures that govern and bring certain restrictions for the labor force transactions within a certain firm, then there can be said that there is an internal labor market. [7, 34]

The labor market is mixed because of its diversity. There is a wide diversity of the labor market based on certain criteria such as industrial branch, geographical area, occupation, age, and the conditions of the transaction. Amongst all there are correlations and their separations are impossible. [7, 34]

Concepts

The labor market operates based on certain concepts that are necessary for defining, characterizing and evaluating it.

The employed population encompasses people of legal age for work, people apt for work, civil employees, employers, single or family workers, apprentices, army personnel (M) and paid interns.

According to Law 76/2002, article 5, section IV, regarding the insurance system for unemployment and the stimulation of employment, the individual searching for employment is the one who takes steps towards finding a job within the territorial area of his home or residence, or at another supplier of employment services, legally accredited.

Unemployed people are, according to article 5, section IV of Law no. 76/2002, people who fulfill the following conditions:

- is looking for employment from the minimum age of 16 years until the pensioning age;
- health state and physical and psychical capacities make the person apt for work;
- does not have a job, does not earn income, or earns smaller income than the basic minimum wage guaranteed by the state from authorized activities;
- Is available to immediately start work provided he finds a job.

A registered unemployed person is the individual who fulfills all the conditions above and who registers at the Agency for Employment from his area of residence or at another employment supplier that functions in accordance to law, to obtain a job.

The active population is the employed population along with the unemployed; this structure supplies the available labor force for the production of certain goods and services, structure which encompasses people of legal labor age, people available for work.

Employers are judicial persons or individuals who employ.

The workplace is the environment where the remunerated activity takes place and where the judicial labor relations are materialized.

The individual in search for a workplace is the person who takes steps towards finding a workplace, by his own methods or by registering with the Agency of Employment from his area of residence or with another employment supplier lawfully accredited.

The measures for stimulating employment are the measures which are purposed to aid people in their search for a job, especially unemployed people so they can become employed. [8, 153 – 159]

The activity rate (PGA) is calculated as the percentage ratio between the active and total population of 15 or more (P) based on which the employment rate is calculated;

The employment rate – is calculated as the percentage ratio between the employed population and the population of 15 or above, evidently, the activity rate is higher than the employment rate because the active population is made of employed and unemployed people.

The unemployment rate – the percentage ratio between the number of unemployed people and the active population or, according to the National Statistics Institute of Romania, the unemployment rate can also be calculated as the percentage ratio between the number of unemployed people that are registered with the Employment Agencies and the civil active population.

The gender structure of the active population refers to the percentage of women and men within the total of the active population;

The age structure of the active population – based on such indicators the average age of the active population can be calculated as well as the median and modal intervals;

The structure of activity branches – the active population can be grouped by fields of activity such as agriculture, forestry, the economy of hunting and fishing being the

primary field, the industry and construction is the secondary field and services are the third field.

The Characteristics of the Labor Market of Romania

The labor market of Romania has been reinvented since 1990; some researchers say that it functions within an economy that is transitioning to capitalism, therefore being the main criterion of appreciating the differences occurring in this regard. Presently there are several important characteristics of the labor force, as follows:

- founding and functioning according to the European model, the purpose is to match the internal labor market to the one of the European Union;
- the labor resources that are supplied on the labor market are constant but the demand is remarked to be diminishing;
- the percentage of remunerated people within the whole employed population is significantly smaller than in 1990, there being many causes such as the poor politics that were adopted in this regard or the issues that have occurred internationally;
- unusual occurrences compared to the European model, which has the tendency to remain the same, exercising certain negative influences on the economy such as: the increased payment of small salaries that are unrelated to the productivity dynamics, lower salaries in the private field than the public, the lack of transparency when employing or the pretence of it, delaying payment of social insurance from a great number of public or private firms;
- the inclusion in the education of people of appropriate age has diminished and the dropout rate has alarmingly increased;
- the inadequate protection of employees;
- the improvement of the professional structure of employees;
- the steadily increasing labor force migration.[9, 20 – 45]

The Supply and Demand of Labor

The labor market is founded upon the meeting and confrontation of supply and demands, it is existent in every country.

In what concerns the total work volume that is necessary to a country during a certain period, it is represented by any type of activity that is begun or already exists within society which generates the need for labor. However, it is not holly a demand that is

manifested on the labor market. The general condition of the need for labor to take the form of a demand is remuneration. Thus, within the labor demand, there are not included activities that can be carried through by housewives, the military in a term, students or other unemployed people. [10, 512]

Thus, the labor demand is the need for remunerated work which occurs at a certain moment within a market economy. It is expressed by the number of workplaces available.

The fulfillment of the need to work is done through the volume of work that the population apt for work of that country is willing to do.

The labor supply is represented by the labor that the members of the society can do in exchange for a salary. Therefore, within the labor supply housewives, students, militaries in term and other people doing unplayable activities are not included.

The labor offer is represented by the number of people that are apt for work from which the number of housewives, students and people that do not wish to engage in any activity because they have other resources or other occupation is subtracted. [5, 145]

The supply and demand of labor must not be considered simple and direct extensions of the supply and demand of economic goods on another market, but as specific categories with unique content. In this regard, the following aspects have to be taken into account: [8, 165]

- On the short term, labor demand is fairly invariable because the development of existent activities as well as the creation of new ones that could generate workplaces require a certain period of time;
- The labor demand is formed over an extended period of time in which every generation is raised and educated until the employment age;
- The possessors of the labor force have a relatively limited mobility, people do not move from a city to another nor do they change their job easier, but they are attached to the socio-economical environment even though they do not have economic advantages. In addition, labor supply depends on age, gender, health state, physiological aspects, labor conditions etc., aspects that are not necessarily economical;
- The labor supply is perishable and has a relatively rigid character. The supplier must live, he cannot wait an undetermined period of time for one job;

- The youth generation is not raised as merchandise or only to become employees but as human beings. That is why the labor supply is not exclusively formed based on the principles of the market economy;
- The supply and demand are not unitary; they are made of anticompetitive or little competitive fragments and groups which either cannot substitute each other or can very limitedly do so. [10, 513]

In what regards the labor market as an expression of the supply and demand rapport, it has two phases. [3, 255]

- The first phase manifests itself on large fragments of supply and demand determined by the technical-economical features of activities. Through this phase the general conditions of employment are outlined, the principles of salary establishments are formed and a certain tendency to set the salary on a higher or lower level.
- The second phase is a continuation of the first. This is represented by the meeting of supply and demand of labor, according to the firm's and its employees' conditions.

The demand is outlined as a volume in accordance with the agreements and other responsibilities of the firm.

The supply is represented by the work schedule, the amount of overtime which the employees consent to or not, depending on their needs and desires, their economic and social status.

The amount and dynamics of the nominal salary are determined by the confrontation between supply and demand. Thus, the insufficiency of supply manifests itself through an additional demand in the first phase and the insufficiency of demand translates to an additional offer within the same phase. [11, 156]

Therefore it can be said that this confrontation between supply and demand takes the form of a conflict which results in a relatively fragile balance. By comparison to other markets, the supply-demand rapport on the labor market is objectified through agreements that have a continuity and periodicity that are most times determined by the work-capital relation.

This characteristic occurs because the labor market is governed by demographic, psychological and moral laws aside from the economic ones, although the interest of the economic units is to keep their staff being bound to ensure salary. [12, 253]

Therefore, it can be said that the supply and demand of labor is the main condition for creating a balance within the labor market. This significant role goes to the relation between the offered of a workplace (the employer) and the one requesting the specified workplace (the employee), the relation that focuses on the basic activity (labor) and its value (salary) in order to satisfy both parties' needs.

Connections between State and the Labor Market

The labor force is constituted within a market, within a free economy. The state oscillates between giving full liberty to the labor market and adopting an action to limitedly correct people and activities. [10, 515]

What needs to be underlined is that the offer of workplaces meets the demand through different channels and the state needs to intervene in favor or detriment of one of the parts.

If the state intervenes in the labor market, it is done by general and established laws, the state taking responsibility because its intervention may cause a certain imbalance.

Thus, it can be said that the state plays an active part in sustaining and promoting workplaces.

The state is not the only one that can intervene on the labor market, it is also influenced by a series of factors such as economic, education and social insurances policy, and less the policy of workplaces.

The state interferes with work relations through judicial norms, thus establishing the general environment for collective negotiation, stimulation of economic development and employment of graduates.

The state's role, through its specialized authorities, is to distribute labor and issue work permits, to control the manner in which the labor legislation is kept, employers' obligations and employees' salaries. The role of the state in labor relations is manifested through legal activity.

Another aspect of the state's interference on the labor market is the one of professional training. Professional training is the activity which is usually developed in an organized manner during a certain period, in view of exercising a profession or occupation.

Therefore, as is it also stated by academic literature, professional training is made of two parts: initial professional training and continuous professional training, professional training being an important element which founds the development and improvement of the activities of the employed people.

Through its functions, the labor market is involved in the transition [13, 160] process especially through the continuous professional training fragment which makes the mediation of the supply, the adjustment of supply and demand.

The Regulation of the State's Intervention in Labor Market and in Labor Relations

In what concerns the state's intervention in the labor market, it is regulated by a series of constitutional dispositions.

Thus, according to article 135 of the Fundamental Law, Romania's economy is a market economy based on free initiative and competition and the state must ensure: the liberty of commerce, the protection of loyal competition, a favorable environment for valuing all production factors.

In the same way, article 47, align 1 of the Constitution institutes the state's obligation to take measures of economic development and social protection to ensure the citizens a decent lifestyle.

Also, article 41 refers to the fact that the right to work cannot be restricted. Choosing a profession and a workplace is a free act.

Article 45 provides the free access of the individual to economic activity, free initiative and exercising these within law conditions is guaranteed.

The Areas of Activity of the State on the Labor Market and Within Labor Relations

The state mainly interferes with labor relations through judicial norms. This way, there are generally established the general environment of the activity of the social partners, the development of collective negotiation, professional training, the stimulation of economic development etc.

The state, through its specialized authorities, distributes labor, ensures the protection of Romanian citizens who have their residence in Romania but work abroad, issues labor permits to foreigners etc. Another responsibility of the state is to control the way in which the labor legislation, the rights of employees and obligations of employers are kept. [14, 5]

The legislative activity of the state within labor relations

A significant role of the state within labor relations is manifested through the legislative activity.

The norms regarding labor legislation are divided into several categories:

- Judicial norms that regulate the collective labor relations;
- Judicial norms that regulate the individual labor relations.

Apart from these, there are also the dispositions regarding labor administration but also others such as the tripartite dialogue organs. [15, 130 – 131]

Labor legislation is protection legislation. The legislative intervention of the state in the labor market has materialized in numerous normative acts, the most important being the Labor Code.

The legislative activity of the state within the economic domain

The state is an important factor for the well functioning of the national economy. Because of the legislative intervention of the state as well as due to the encouragement of economic development, the state is granted new means of interference in the economic activity.

Because of the development of market economy, the state has a series of functions that act in the following directions: the efficient value of resources, ensuring their correct distribution, establishing the macroeconomy as well as correcting the macro economical imperfections of the economy market.

The state can create jobs by creating public functions or encouraging local collectivities.

Practically, the state's role in regards to workplaces is not well defined because there has to be delimitation between the tendency to stimulate investments and the help granted to the troubled economic agents.

Investments are not necessarily creating new jobs and the loans and grants of the state can prolong the life of economic agents but what must be underlined is that they cannot survive without a deduction of employees.

Limits of the Role of the State

Due to the fact that the role of the state on the labor market and labor relations is not sufficiently delimited by the academic literature, the state oscillates between given liberty to the labor market and adopts a form of action that is limited to certain people and activities.

In what concerns the first tendency, meaning the state's absence from the labor market, it must be stated that within a free economy the labor force is constituted on a market like any other. The ones desiring a job can benefit from one without the interference of the state.

Regarding the second tendency, meaning the intervention of the state in the labor market, it can imply certain risks, meaning that the state's intervention can cause an imbalance in the market. However, it must not be forgotten that the labor market functions based on set rules for which the state takes responsibility.

Otherwise, it can be said that the active role of the state is to sustain and promote the labor force.

The state of the labor market results less from employment policy, especially from economic policy, education or social security.

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CONSIDERATIONS ON THE RELATIONSHIP BETWEEN MORALITY AND LAW

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Abstract
The connection between law and morality seems at first glance to be simple and comprehensible. The reality of contemporary democratic societies illustrates the fact that the two notions have major differences from the point of view of the constituent elements, but above all the realm of responsibilities and forms of responsibility.
Of course, the question is whether the natural moral law is sufficient and whether other laws are needed in a society. Normative systems, whether legal, moral or religious, impose command lines that prescribe a certain type of behavior. On the other hand, the company has the obligation to provide appropriate training and education.
Keywords: *law, moral, legal rule, justice, moral source*

The connection between law and morality seems at first glance to be simple and comprehensible. The reality of contemporary democratic societies illustrates the fact that the two notions have major differences from the point of view of the constituent elements, but above all the realm of responsibilities and forms of responsibility.

In the analysis of the following subject, it is of great help to define the two notions, true normative systems, as follows:

The law represents the total legal norms developed or recognized by the state power, which aim at organizing and disciplining the behavior of the subjects of law in the most important relations of the society, according to the social values of the respective society, establishing legal rights and obligations whose observance is ensured, if necessary, by the coercive force of the state. [1]

Morality is a set of rules of conduct by which people can establish what is right and wrong, just and unjust, and it involves self-respect, respect for our fellows and helping those in need.

Regarding these three components, we ask whether the law should raise these moral elements to the legal rule? The answer is a positive one.

We note that the first element refers to individual morality and the third refers to the idea of charity. At first glance, modern law is not supposed to sanction acts or inactions that might violate self-esteem and inaction of not helping the person in need.

By way of example, the current Romanian legislation requires self-respect, and we specify that the positive right establishes that the persons participating in court hearings are required to have a decent attitude and behavior in the courtroom, otherwise the magistrate may take punitive measures against them. Of course, this attitude also concerns respect for others. On the other hand, the leaving without help of a person in need represents, in the opinion of the Romanian legislator, a crime with deep moral connotations, being regulated by art. 203 criminal code, even if it does not necessarily refer to the idea of charity. The offense involves a civic obligation that pulls itself out of morality. Regarding the moral principle of respect for our fellow men, it is obvious that any violation of this moral rule also entails a legal sanction. The question is whether the natural moral law is sufficient and whether other laws are needed in a society. Positive laws are justified by several considerations: the moral law merely summarizes the primary principles, of a general nature, which gives it universality; the prescriptions of the moral law are again of utmost generality (for example, we will not encounter in the natural moral law how the judges should be elected, how the judgment should proceed ...). [2]

As stated in the Romanian doctrine, in distant epochs, morals are confused with the law and with religion, most often considering that norms originated in the divine will. Pythagoras affirmed that all rules of behavior come from the gods, and those who do not respect them offend the divinity and are punished by it. [3]

By observing the two definitions we conclude that law and morality are two inextricably linked sciences without which social order cannot be secured.

According to Professor S. Popescu, morality is made up of common ideas about good and evil that are found in individual consciousness and form, can be said, the consciousness of a people at a time of its evolution. [4] Also, ideas of good and justice are in close connection with ensuring equality and non-discrimination between the subjects of law. [5]

Trying to highlight the importance of morality in the interaction with law, Eugeniu Sperantia shows that: the main force, the fundamental force of law is its logical validity and moral obligation. [6]

In the same vein, Guy Durand's opinion that "morality has always served as a social proto-legislation" is also worth noting.[6]

An incursion into the history of law compels us to stop in ancient Rome, noting that the Romans defined the right as the art of good and equity. Ideas of good and justice are a creation of the moral person and the right itself is a moral-religious creation.

Current Romanian legislation uses the term "good morals". Good morals are the rules of good practice and show the subject of law what must be done and what is forbidden.

Since law and morality are normative, it is obvious that there are similarities and differences between them.

Similarities:

- both law and morality are logical and rational;
- both law and morality protect the ideas of justice, freedom, equality;
- both prescribe a behavior to follow,
- both protect the concept of justice.

With regard to this last aspect, the explanatory dictionary of the Romanian language defines justice as the moral legal principle, which demands to give to each one what he owes and to respect his rights.[7] We conclude that justice is a moral principle, which acquires a binding character with the support of positive legal norms. The right man is the man who respects the law in force, and the right and moral person is the one who obeys both the legal rules and the other social norms. Last but not least, the right and moral man should also obey the religious norms, insofar as we are not talking about an atheist. A controversy could arise here from the perspective of different religious views, different procedures, but especially from the perspective of different beliefs. In reality, I think that only in appearance we could speak of a controversy, because above all religion, there is absolute justice, a universal divine justice. In addition, all religions have a common trunk and all urge man to justice, kindness, and truth.

Differences:

- morality is based on religious perceptions or individual or collective commandments, while right is a static creation;

- the purpose of law is social organization, whereas the purpose of morality is to improve human virtues;

- the highest distinction is found in the sanctioning regime, since the violations of the norms of law are sanctioned according to the written laws, with the help of the state constraint force, violations of moral norms are sanctioned by the intervention of public reluctance, disregard, marginalization etc.

Prof. Ion Craiovan emphasizes that the "territory" of morality is wider and deeper than the sphere of legal regulations ... legal norms promote and guarantee moral values, but we must point out that not all legal norms are susceptible to moral significance, examples of various procedures, land publicity, technical, organizational rules, etc.. [8]

Regarding the relations between law and morality and especially with regard to the differences between the two normative systems, Prof. Al. Vallimarascu [9] identifies several theories and groups them into four distinct categories:

- Theories that distinguish the moral right as discipline,
- Theories that distinguish them from the point of view of their nature, essence or content,
- Theories that distinguish them as to their purpose,
- Finally, the theories that distinguish them from the point of view of the sanction.

In the interwar Romanian doctrine, Professor I. Găvănescul [10] pointed out that the sanction of the law hits hard, degrading. Unfortunately, the pain of public opinion disapproval is terrible, sometimes formidable; but it is in the power of man that has been hit by it, to detract from its effects ... the pain of legal sanction, with its physically accented character, finds it more difficult to be circumvented by sophistication and dialectics ... yes, of course, the laws, when applied, stop social disintegration. It is the last refuge for total anarchy, which begins in the form of moral disorientation.

Both law and morality urge the individual to behave in a manner that is responsible for nature does not cause harm to society, not to harm others.

The Austrian philosopher F.Hayeck [11] quoted by author Lucian-Sorin Stănescu in his doctoral thesis in October 2017, mentions that society if it is democratic "advertises, perhaps more acutely than anything else, that people's action be guided by a sense of responsibility that goes beyond the duties imposed by law and that the general opinion approves the consideration of individuals as lawyers and that the general opinion approves the consideration of individuals as responsible both for the success and the failure of their own enterprises. When people are allowed to act as they think fit, they must respond to the outcome of these actions."

Social responsibility does not have an abstract dimension, but it acquires a concrete character depending on the type of actions or inactions that strike the relationships between the subjects of law. Thus, at social level, besides legal and moral responsibility, human relations also imply other types of responsibility such as political, religious, professional responsibility, etc.

Normative systems, whether legal, moral or religious, impose command lines that prescribe a certain type of behavior and a certain type of responsibility. On the other hand, the company has the obligation to provide appropriate training and education.

The concept of accountability is a social constant, indissolubly linked to our actions or inactions, and obviously to the social results of our deeds. As a consequence, responsibility arises from the perspective of injured society as a sanction against the author of the act by which the values protected by society are violated [12]. On this point, Hans Kelsen, which excludes from the scope of law any reference to moral values, shows that responsibility is not the same as duty, representing "the relationship of the individual against whom the sanction is directed, with the offense committed by him or by another"[13].

Is legal liability based on a moral source? The answer can only be positive for several reasons. First of all, even the legal phenomenon enshrines the thesis that anyone who causes damage is obliged to fix it. This provision is a moral one and human society responds to the author of the antisocial deed in the sense that the established social values will be protected. Here is a principle of life transposed into a legal norm. The law does not distinguish between material damage and moral damage but enshrines the obligation to repair damage regardless of its nature. Moral damages are of a non-

patrimonial nature and may consist in causing psychic suffering, damages to honor, reputation, damaging the right to name, etc.

In the field of civil law, it is considered that ... tort liability is the common law in matters of liability and contractual liability is only an exception [14]. In essence, the constituent elements of civil liability, and so on. the existence of an unlawful act, an injury as well as the causal link between the deed and the damage, attests that the liability can be activated under strict conditions, beyond arbitrariness. It is appropriate that the sanction, if the conditions of liability are met, be fair and proportionate to the consequences and damages incurred. Thus, we can see here the moral character of the sanction, as long as the righteousness that is closely related to impartiality and fairness is an element of morality.

The concept of morality also impinges on criminal liability that is closely related to the principle of humanism in criminal law, the principle which, according to the doctrine, implies that no punishment, the punishments being the most severe category of criminal sanctions, should cause physical suffering or torture or detract from the convicted person whether inhuman or degrading. Humanitarian law of criminal law is also found on the way of calculating punishments and preventive measures ... [15]

Eugeniu Safta-Romano points out that the monetary reparation of moral prejudice is not a creation of modern law, as some are tempted to believe. A thorough historical analysis of civil liability in general, reported to the great civilizations of the world, would highlight that moral damage has always attracted money repairs. [15] By way of example, the author makes reference to the Old Testament by which the one who has acknowledged his guilt is obliged to accompany the recognition with material reparation. The author also exemplifies the provision in the Bible, Deuteronomy 22:19, that the man who has spread slander to a woman must pay her father the sum of 100 shekels of silver.

On the other hand, modern human society has understood to defend by law the good morals that are practically a set of rules of conduct that strike social consciousness and their observance has become a necessity through constant, uniform and long-lasting application.

In this respect, we mention by way of example the provisions of art. 11 Civil Code stating that "It cannot be derogated from by unilateral conventions or legal acts from the

laws that concern the public order or the good morals", but also the provisions of art.375 penal code that criminalizes and sanctions the offense of extermination against good morals, in meaning "the act of the person who, in public, expose or distribute without right images expressing sexual activity other than that referred to in art. 374, or perform acts of exhibitionism or other explicit sexual acts shall be punished by imprisonment from 3 months to 2 years or by fine. "

Regarding the moral character of liability in law, we need to recall the opinion of Hans Kelsen, a prominent personality of law, the creator of the pure theory of law, and who excluded from the sphere of the legal phenomenon any moral aspect.

Conclusions

We notice that modern law is more severe than common morals. It is also natural because modern law operates with the facts and sanctions provided by the laws in force, the final goal of the law being social organization. While the jurist in general, but especially the law practitioner, seeks to attain perfect justice, the moralist remains detached from the space-time relationship, being satisfied with the idea of wider justice, perhaps a little permissive from the perspective of the legal phenomenon, but dominated by the idea of equitability. The moralist has at his fingertips his analysis, the experience of past generations, and the fact that all moral concepts have a universal character.

The idea of separating the morality from law is a bad idea, erroneous by the nature of dehumanizing the law. The two systems work together with common goals, mainly education of social behavior. Often, social norms of coexistence contain both moral and legal elements.

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THE NATIONAL STATE IN THE CONTEXT OF EUROPEANIZATION AND GLOBALIZATION

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Abstract
Today's national state must respond to the contemporary and future needs, and at the same time must transform and perfect. National sovereignty, being the main feature of state power, is an important component of the state.
At EU level and on the international arena, states are each sovereign, and the EU is a juxtaposition of the sovereignty of the Member States, so in the context of Europeanization, the concept of sovereignty needs to be rethought. Globalization processes are the focus of researchers and politicians, representing certain changes in the place and role of contemporary states in the political and economic structure of the world community.
***Keywords**: state, sovereignty, European Union, Europeanization, globalization*

Introduction

There is no definition of globalization in a form that is universally accepted because it includes a multitude of complex processes with variable dynamics reaching different areas of a society. Globalization is the modern term used today to describe the changes in societies and the world economy resulting from the extremely high international trade and cultural exchanges. At international level, globalization creates the necessary conditions for the manifestation of entities that erode the traditional role of the state as the only international actor.[1] In fact, this means that globalization is associated with a new sovereignty regime as a result of the emergence of new and powerful non-territorial forms of economic and political organization in the global sphere.[2]

As distinguished specialists and researchers in the field think, the contemporary state seems to be at the intersection of the vectors of globalization which, on the one hand, come to alter the status on the international arena and, on the other, the forces that diminish its internal power.

After the end of the Cold War, globalization has become the preferred term to describe international reality, and most of those who analyze it refer to an evolutionary process[3] , a historical transformation, or a multidimensional reality.[4]

Globalization involves complex processes that internationalize domestic politics, but it also shapes foreign policy according to internal pressures. National states have learned to share their sovereignty with regional and global institutions and to open up their economies to the regional and global dimension. In the pragmatic formula of liberalization, globalization produces, of course, a series of changes in the state's internal functioning

Analyzing globalization from the point of view of current developments, it can be seen that it has several aspects:

- Economical – highlighted by the current global economic crisis;

- Institutional – emerged on the background of the perpetuation of international institutions established after the Second World War;

- Geographical – generated by the effect of moving the center of gravity of the contemporary world toward the East, toward Asia;

- Hierarchical – caused by the redistribution of the roles played by the main actors on the scene of international relations.[5]

Joseph E. Stiglitz, in his work Globalization Mechanisms, identifies the following aspects of globalization:

- The international flow of ideas and information;

- Common cultural experiences;

- Global civil society;

- More intensive cooperation among the world's states through increased circulation of goods and services, capital and people.[6]

Reality has shown that only a few countries have benefited from globalization in the direction of increasing Gross Domestic Product, but in these situations globalization has not had a major advantage for the population of those countries.[7] There are also reasons of concern, in addition to the advantages of globalization, which, if not adequately managed, could turn into elements of risk to security.[8]

Globalization dimensions

Globalization is not just a simple process of increasing the unity degree of the world; it involves a reconsideration of time and space in social life.

Globalization began to take place two to three centuries ago, with the regional and universal scale of the acquisitions of science and technology. Globalization of social and economic relations has been associated with inequalities between different parts of the world. Today, however, a new struggle takes place in the competitive process, namely that of mastering information.[9] There have also been new relations between state and economic institutions, between the state and the market as well as between the public and the private. In many ways the world becomes more united, and some conflicts between states - nations or regions tend to disappear. Homogenizing the world is a first dimension of globalization. Under today's conditions, trying to identify the dimensions of globalization, we find that they are about to be individualized and seeking their way and means of realization and consolidation.

Globalization is today marked by the means of communication via the internet, due to which the geographic criterion has disappeared, these being measured according to technological, economic criteria, etc., which imposes a new world order. We can mention that cybernetics, electronics, the Internet have abolished borders in some areas such as communications and transport, trade and banking. The world we live in today is a world of globalized communications in which information is standardized, dematerialized, symbolic, direct, uncontroversial, a world in which information circulates with great intensity and speed, transmitting both positive and negative effects at a great distance as a result of the complexity, complementarity and connections in which all national-state markets are involved, with or without permission (e.g. e-commerce accompanied by new financial and banking instruments, also electronic, for payment, credit, settlement, etc., which melt down commercial circulation and trade facilitating remote transactions without travel). As dimensions of globalization, we enumerate the political, economic, social, cultural, and ecological dimension, etc.

Another dimension of globalization consists in the tendency to unify space and time, moving from local, private space to the unique global space, and so also local times unite into a global time by overcoming temporal discontinuities.[10]

In historical terms, we can say that globalization induces a new stage in the civilization of global society, of a society diversified into the universal.[11]

Globalization is achieved independently of the will of states, governments, markets and civilizations, liberalizing and unifying through the force of combining the achievements of science and technology (information networks, financial-banking networks, communication networks and technologies, etc.).

Thus, globalization is not limited to the economy and its means of moving it in a superior form; it looks at the elements of civilization as a whole and in all dimensions starting from the political one, then the global and the economic, the social, and even the military ones.

Given that through globalization the markets economies, the capital, etc., will not have borders, in which competitiveness, competition and efficiency become reference factors, it increases the role of man, education, professionalism and pragmatism, but also of intelligence and its ingenuity, its power to adapt to an increasingly mobile world.[12]

Regionalization and regional integration are the main gateway to global society, and the UE is a regionalization model for the whole of European space, and why not for globalization.

Globalization as a process of transition to a global society implies a material basis with a diffusion able to ensure promoting democratic, political, economic, social, technical, etc. concepts, to ensure the rule of law and the competitive market, to hinder the entry of those market elements that perversely and brutally disturb the process of globalization.[13]

Globalization should be viewed as a new historical threshold that must be understood by its meanings and implications, as it prefigures a new political, economic and social order in which ideologies must adapt to the system, its institutionalization, leadership, organization and functionality and where global fundamental issues (institutional, economic, legal, environmental, and security, etc.) are solved in common.
Reconstruction of public institutions and confidence in their functioning is a top priority of contemporary society. The government and state power must adapt to the requirements of the globalization era, with the changes it brings to sovereignty.[14] Also, governance requirements need to be adapted to new risk situations. Government and state self-reform

should not only achieve the objective of efficiency but also respond to the apathy of voters, of which suffer the most recognized democratic states. In many countries, the level of trust in political leaders but also in other forms of authority and also decreased the number of voters participating in elections. As A. Giddens points out, a second wave of democratization - or what he calls democratization of democracy,[15] which will require a differentiation of policies according to country history and the previous level of democracy. The second wave of democratization must reveal the influence of globalization; this normally implies the devolution of power towards realities and regions as well as the transfer of democratic power from the bottom up, beyond the level of the national state. In Europe, the further democratization of the European Union is the most obvious way to achieve it. The States - nation are the most important actors on the international stage.[16] Developing the future democracy of the states could be greatly strengthened by building transnational forms of democracy. The Constitution of the European Union is such a process.

Conclusions

1. A society must find the balance between the government, the markets and the social order.

2. An active policy to develop education is essential.

3. It has to increase the investment in human capital.

4. Among the most important issues to be solved globally an important role is played by the problems of resources, consumption, diminishing the differences between rich and poor countries, otherwise the planet would paradoxically face a phenomenon of underdevelopment that would coexist with an overdevelopment one.

5. The complexity of the problems of international collaboration - both in the field of material and spiritual life, determines today the development of relations between countries on the basis of principles, respecting essential norms of law and morality.

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THE CONSTITUTIONALISATION OF LAW THROUGH THE PRINCIPLE OF LEGALITY

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Abstract:
After the Revolution of December 1989, Romania experienced a series of rapid changes and perspectives related to the development of the rule of law and to the transition towards a democratic and pluralist society, based on the separation and balance of State powers. But, for the proper functioning of a democratic society and for an actual constitutionalisation, certain conditions must be met, of which the most important one is the adoption of a Constitution, which, in turn, must include the constitutional principles related to State organisation and functioning, separation of State powers, the mechanisms of the rule of law, political pluralism, the regulation of fundamental rights, freedoms and duties, public authorities, which must be transposed into legal order.
Thus, after the adoption of the Romanian Constitution, the infraconstitutional legislator engaged in a real marathon of law-making, which saw an ascending legislative dynamic, by adopting different regulatory acts in all the fields including or underlying the organisation and functioning of the society. However, it does not suffice to make laws in whatever manner, but certain criteria related to the quality of the law must be taken into consideration; this notion of quality of the law has been significantly developed at jurisdictional level.
The purpose of this paper is to present a series of aspects related to the constitutionalisation of the law from the perspective of the principle of legality, as developed through case-law.
Keywords: *constitutionalisation, quality of the law, legal order, pyramidal hierarchy, principle of legality, supremacy of the Constitution.*

Starting from the concept of Hans Kelsen[1], the first author of a Pure Theory of Law, according to which legal order is a system of norms organised in a pyramidal hierarchy, we can infer that, at the base of this organisation, we have the individual legal acts, on top of which we have different regulatory acts, including laws, and, at the top of the pyramid, the Basic Law. All subordinate acts must be drawn up and enforced in full compliance with and by reference to the same supreme act, which is the Constitution of any democratic State [2].

Considering this pyramidal construction, the Basic Law, which is at the top of the hierarchy of all regulatory acts, sets the obligation that all laws, emergency ordinances, ordinances, Government decisions and other regulatory acts be fully compliant with the

provisions of the supreme law, according to the Kelsenian theory, i.e. “The Constitution, which produces general norms, can also determine the content of subsequent laws” [3].

By following this Kelsenian line, in practice, the constitutionalisation of the law stems from the principle of supremacy of the Constitution, according to which the norms set by the Basic Law have a higher legal force in relation to any other legal norm within this hierarchy, which regulate the entire legal, political and social life and activity, etc., in line, of course, with the trend aimed at a Europeanisation and even a globalisation of the law.

Thus, the Romanian legal system includes all the legal norms adopted by the Romanian State, which must observe the principle of supremacy of the Constitution and the principle of legality, which are at the heart of the requirements of the rule of law [4], principles enshrined in Article 1 (5) of the Constitution, according to which “In Romania, the observance of the Constitution, of its supremacy and that of the laws shall be mandatory”. According to Article 1 (4) of the Basic Law, the State is organised in compliance with the principle of separation and balance of State powers – legislative, executive and judicial – within the framework of constitutional democracy, the Parliament being the sole legislative authority of the country and the supreme representative body of the Romanian people, as enshrined in Article 61 (1) of the Constitution.

By giving effectiveness to the supremacy of the Constitution, the framers have also established the institution aimed at ensuring the supremacy thereof, i.e. the Constitutional Court, which is the guarantor for the supremacy of the Constitution [5] and the sole authority of constitutional jurisdiction in Romania [6].

In this context, the constitutional court played a particularly important role in developing the principle of legality, including as concerns the legislative technique norms for drawing up regulatory acts. The Court held that, although the legislative technique norms have no constitutional value, by regulating them, the legislator set a series of mandatory criteria for the adoption of any regulatory act, whose observance is necessary to ensure the systematisation, unification and coordination of the legislation, as well as the appropriate content and legal form of every regulatory act.[7]

Thus, according to the provisions of Article 1 (2) of Law no. 24/2000 on the legislative technique norms for drawing up regulatory acts [8], regulatory acts are initiated,

prepared, adopted and implemented in compliance with the provisions of the Romanian Constitution, with the provisions of this law, as well as with the principles of the rule of law, and, according to Article 3 (1) of the same law, the legislative technique norms are mandatory when preparing draft laws by the Government and legislative proposals belonging to MPs or to citizens, while exercising the right of legislative initiative.

The constitutional ground for using legislative technique norms within the constitutional review stems from the provisions of Article 1 (3), according to which "Romania is […] governed by the rule of law […]", and the fact that such legal provisions are mandatory results from the provisions of Article 1 (5) of the Constitution, according to which, "In Romania, the observance of the Constitution, of its supremacy and that of the laws shall be mandatory" [9].

The correlation between the two norms in Article 1 of the Constitution is done by the Constitutional Court through the fact that "the principle of legality is a constitutional one" [10], so that any violation of the law shall forthwith lead to a violation of Article 1 (5) of the Constitution, according to which the observance of the laws is mandatory. Breach of this constitutional obligation implicitly affects the constitutional principle of the rule of law, enshrined in Article 1 (3) of the Constitution. [11]

By developing the considerations of principle, the Court has held that the essential feature of the rule of law is the supremacy of the Constitution and the obligation to comply with the law [12], and the rule of law ensures the supremacy of the Constitution, the correlation of all laws and all regulatory acts with it. [13]

All this implies, as a matter of priority, the compliance with the law, and the rule of law is by excellence a state in which the rule of law holds way [14] and, therefore, the compliance with the provisions of Law No 24/2000 on the legislative technique norms for drawing up regulatory acts is a true criterion of constitutionality in through the application of Article 1 (5) of the Constitution [15]

As such, the Court has held, in its case-law, that any regulatory act must fulfil certain qualitative conditions, including predictability, which implies that it must be sufficiently precise and clear in order to be applied [16].

Furthermore, a law meets the qualitative conditions imposed by both the Constitution only if the norm is set out with sufficient precision to enable the citizen to

adjust his conduct accordingly so that, calling if needed for appropriate expert advice, he is able to foresee, to a reasonable degree, as to the circumstances of the case, the consequences which could result from a certain fact and to correct his conduct [17].

With regard to the accessibility of the law, the Court has held that, from a formal point of view, it has in view the disclosure to the public of infraconstitutional regulatory acts and their entry into force, which is realized pursuant to Article 78 of the Constitution, respectively the law is published in the Official Gazette of Romania, Part I, and shall enter into force 3 days after the date of its publication or at a later date provided in its text. However, to meet the requirement of accessibility of the law, it is not sufficient for a law to be brought to public knowledge, but a logical connection must exist between the regulatory acts governing a given area in order to enable the addressees to determine the content of the field regulated.

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Furthermore, it has been held that, in accordance with Article 44 of Law No 24/2000, the operative part of the regulatory act is the actual content of the regulation,

composed of all the legal norms established for the social relationships covered by it, and according to Article 16 (1) second sentence of Law No 24/2000, the norm of reference is used to highlight certain legislative connections.

Distinct from the considerations of principle mentioned above, we must state that the requirements of assuring the supremacy of the Constitution require, inter alia, that the case-law of the Constitutional Court is governed by the requirement of legal stability and security, so that, according to the constitutional provisions, "its decisions are generally binding and take effect only for the future".

Moreover, as the Constitutional Court also held in its case-law[18], an important component of the Romanian State is constitutional justice, achieved by the Constitutional Court, a public politico-jurisdictional authority which falls outside the scope of the legislative, executive or judicial power, its role being to assure the supremacy of the Constitution, as fundamental law of the rule of law, according to Article 142 (1) of the Constitution of Romania.

The decision of the Constitutional Court finding the unconstitutionality of a law is part of the legal normative order, by its effect the unconstitutional legislative provision ceasing to be applied for the future[19]. Both the operative part and the recitals of the decisions are generally binding, according to the provisions of Article 147 (4) of the Constitution, and shall be imposed with the same vigour to all subjects of law[20]. The Constitutional Court has repeatedly stressed the need to comply with the Constitution and its supremacy, as well as the binding nature of the constitutional court's decisions in terms of both the operative part and the recitals on which it is based. Thus, by ignoring the legal effects of the Constitutional Court's decisions, conferred by Article 147 of the Constitution, the requirements of the democratic rule of law are infringed [21].

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ON LEGAL NORMS AND THEIR CULTURAL CONTEXT : SOME OBSERVATIONS REGARDING LEGAL TRANSPLANTS

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Abstract

The evolution of legal rules is placed in relation of direct dependency with the mechanism of *legal transplant*. The transfer of legal rules describes a complex demarche with profound extra-juridical implications. Amongst these, cultural implications are obvious especially if we take into consideration the main dilemma that hovers over the study of legal transplants : with concern to the problem of transfering a legal norm, we can analyse the success of this operation in the hypothesis of assuming de plano the content of the norm or in the hypothesis of divorcing the content from the context that relate to the legal system of origin. In the present paper we aim to underline the difficulties that are connected to the processes of defining the *conceptual* sphere of legal transplants by means of various attempts of contextualization; from these, we assess as being particulary special the comparative method.

Key words : legal transplant, legal culture, universal legal values, comparative method.

Legal transplants – conceptualization and contextualization endeavours

The correct understanding of the law is a challenge that may be optimally exploited by reference to *legal transplants.* Given that legal representations appear in multiple socio-political-juridical dimensions, the observation of the manner in which rules of law are transfered from a system to another, from a legal family to another is an epistemological exigency. In relation to the subject of *legal transplant*, epistemology is a necessity in the sense that, in the uncertain coordinates of the conceptualization of *legal transplant,* the elements that are linked to its characterization become *auxiliary tools in the process of fulfiling knowledge within science*. It bears no lesser truth the fact that, inside the theoretical approach of legal transplant, the pretenses of scientific characterization of the term are almost as dimmed as any attemps of rigorous conceptual delimitation.

As a juridical reality, a legal transplant is more easy to observe in its concrete applicability by comparison to the endeavour of understanding its conceptual essence. Thus, the expression *legal transplant* behaves, from a terminology perspective, as the *appearence* of a self-explained content. When demonstrating the practical applicability of the concept, its characteristics appear. From this results *the mainly descriptive*

perspective of the concept and *its conceptualization difficulty stricto sensu.* On the grounds of common sense, the term *transplant* signifies both the action of *moving from one place to another* and also the action of *acclimate to the conditions of another region.* The junction of the two significations under the aegis of a sole conceptual envelope leads to various ambiguities –that, once identified within the process of enforcement –will compose the features of the notion of *legal transplant.*

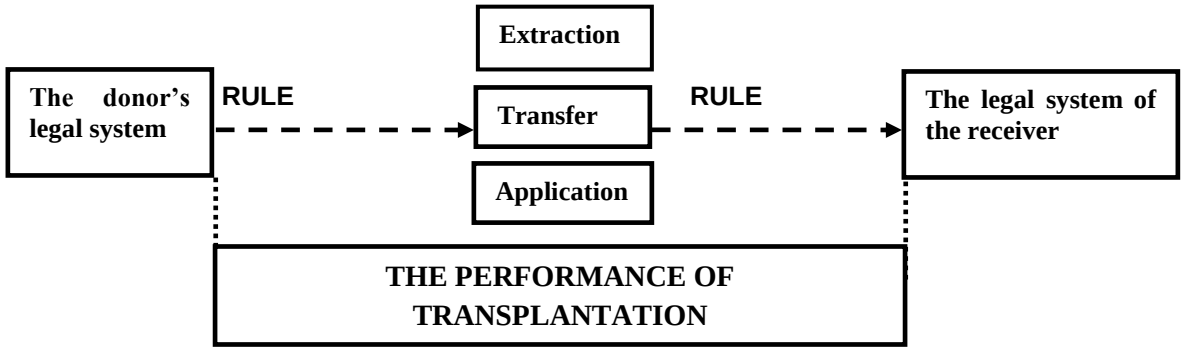

Figure no. 1 Legal transplant- conceptualization attempts and the illustration of its function

The conceptual passage from common sense to the juridical paradigm by means of imposing the notion of *legal transplant* pertains to Alan Watson who defines the notion as *moving a rule from one country to another, from one People to another.* [1] By accepting the conceptualization advanced by Watson as working hyptothesis, it is just to underline some observations : (1) the operation of *moving* logically implies the *the extraction of a norm (rule) from the original system and implementing it within a foreign system;* (2) as a consequent of the undertaken operation, the rule of law that is subjected to the transplant subsists in both the original law system and also within the legal system where it was implemented; thus, the rule still exists in the law system from where it was extracted and, at the same time, it becomes an active part of the juridical system where it was transfered; (3) the definition does not offer any signs concerning *the modifications produced in the original law system* and *in the receiving law system* in the post-transplant period. Watson's conceptualization creates the pretense for some possible theoretical problems

: *what is the status of the transplanted juridical rule in the original juridical system? What is the manner of action of the transplanted juridical rule in the new legal system? Is there the de plano possibility of action or is there the necessity of accommodating the transplanted juridical rule?*

The theoretical observations addressed to the working definition have allowed to associate the notion of *legal transplant* and its theoretical content with other notions that, from our point of view, are adjacent to *legal transplant.* In doctrinaire studies [2], was signaled an abusive utilisation of the notion of *legal transplant* – as it is associated to other notions like *legal diffusion, convergence, mimesis, legal borrowing.* We feel that the association of legal transplant with the enumerated notions determines both a defective understanding and a defective interpretation. In light of the aspectes (ennunciated and derived from the definition advanced by Watson) *legal transplant* evokes an organized action that is rationally accomplished by means of identifying, extracting and transfering the legal rule unlike *legal diffusion – a* notion that implies a process of propagation and dispersion that does not have an intrinsical logic of deployment.

Likewise, *legal transplant will not be confused with the notion of legal convergence* taking into account that the latter expresses *a result and not a process.* [3] In the same token, *legal transplant* does not equate to the *mimesis* notion because legal transplant involves a preliminary dialogue between the two legal systems (the original and the one where the transplanted rule lies) even if the manner of fulfiling the transplant is, at the end, of unilateral nature (not autocratic!) Mimesis implies *the assumption* and not the *accommodation* of a legal rule; on the other hand, legal transplant describes a process that, ultimately, entails effects by means of accommodating the transplanted rule to the legal receiving system. In the words of Alan Watson, in order for the transplantation to be successfully completed, it is not mandatory for the transfered rule of law to produce the same effects in the receiving State as the effects produced in the donor State. [1]

The scientific references comprized in the lines above demonstrate that *legal transplant is not a self-explained concept.* If we admit that descriptive aspects are enclosed in the attempt of conceptualizing legal transplant then we reach the conclusion according to which *context* is a factor that must be taken into consideration. In the analysis of legal transplant, the conceptualization cannot be separated from context. The context

that will be deemed in our analysis has cultural origin. The transfer of legal rules from a juridical system to another constitutes the essence of the legal transplant introduced by Alan Watson. The „export" and „import" of legal norms between different legal systems is possible amid accepting the *thesis of law-culture separation.* Legal transplant is a determiner of legal change produced within the juridical system and *the main premise that makes possible legal transplant resides in the independence between the law and the socio-cultural climate within which it is born.* [4] Being totally detached from the cultural reality that society expresses in a certain point of its evolution, the rule can be extracted and implemented in another legal context and, consequently, in another cultural context. Once suppressed the cultural dimension, legal transplant is feasible. In opposition to Watson's thesis- that associates the success of legal transplant to the suppression of the cultural factor-, is situated the thesis of Pierre Legrand- who introduces the cultural factor within the analytic sphere of the legal transplant. According to Legrand, legal transplant is feasible if we refer to the *exterior form* expressed by the legal rule; *the content of the rule* will always have a cultural determiner that will not allow a *de plano* accommodation of the respective rule in another cultural-juridical context. The content of the rule is not self-explanatory as it must be extracted from its original cultural context. [5]

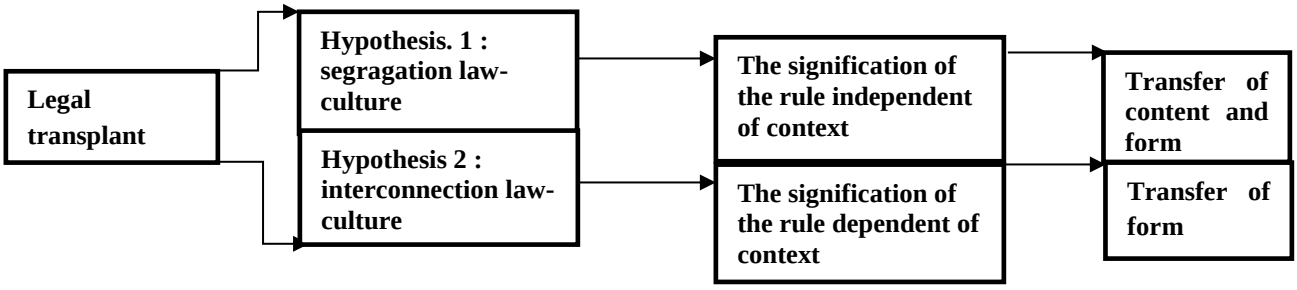

Figure no. 2 Legal transplant –radical conceptualization attempts

Both representations highlighted in the lines above constitutes *radical forms of contextualizing legal transplants.* We deem that-, as we cannot *de plano* transfer a rule that has an obvious attachment to the cultural rules that are peculiar to a certain society within the juridical system of a State that does not recognize those cultural rules-, we cannot deny the possibility of *de plano* transfer of a legal rule that is the bearer of recognized universal cultural values. For instance, the rules that protect fundamental

social values-acknowledged as universal moral values- may be easily transfered; the rules that bear *suis generis* cultural values either cannot be transfered (on account of the rejection attitude adopted by the donor State), either will be transfered through relevant adjustment made within the system of the receiver State. Returning to Watson's thesis, legal transplant is valid *even in the absence of the accommodations achieved by the receiver State with the purpose of implementing the rule that is subjected to legal transplant.*

The question of legal transplant becomes obvious : can we discuss about the legitimacy of the transplant of a rule of law in the absence of a mechanism of adapting the rule that is the object of transplantation to the requirements of the receiver juridical system? In other words, can we discuss about the transfer *of a given norm if, for lack of an adequate accommodation with the cultural requirements of the receiver State, the rule transfered produces other effects than the effects substantiated in the legal system of the donor's State?* We deem that there is a connection of direct proportionality between rules and culture and cultural differences between the donor State and receiver State : the more there is a stronger connection between the rules and the culture of a State, the more the cultural and juridical differences between the donor State and the receiver State will become clear. Thus, the legal transplant will take place only in the context of the flexibility of the juridical system of the receiver State. *Exempli gratia,* the juridical institution of *mahr* – that expresses the price that the husband must pay when celebrating the marriage-has known different experiences when transplanted to Western law systems. Taking into consideration the religious nature of mahr, Western States have attempted legal transplant through *inaction* (accepting and assuming mahr as a religious norm) and through specific *actions* – of identifying rules and juridical institutions able to accommodate the essence of mahr. Consequently, in the cause *Nathoo vs. Nathoo* the Supreme Court of British Columbia has assessed *mahr as a juridical-religious institution (according to the pattern of Islamic law)* whereas in the cause *Amlani vs. Hirani* the Supreme Court of British Columbia evaluates *mahr as a laic institution, detached of any religious signification*. [6] The lack of coherence in achieving legal transplant of *mahr* consists, in the given case, in two variables : (1) the cohesion between *mahr* rule of law

and Islamic religious precepts; (2) obvious cultural differences between traditional-religious system of Islamic law and laic legal system, of Western nature.

The feasibility of legal transplant resides in the prior assessment of *legal values comprized in the legal rule subjected to transplant.* Although different by means of the sanction they provide, legal and moral norms derive from the culture of the origin State. Culture operates at the level of individual mental representations, constituting a source of interpretation. It also refers the individual-receiver of a certain cultural norm to the social enviroment. Relating to the manner of cognition through culture, doctrinaire studies [7] assess that superior mental functions are, by definition, cultural mediated. Within the legal paradigm, culture acquires identity valencies, prescribing a desirable human behaviour. Legal culture expresses a pattern of stable behaviour and attitudes socially manifested and assessed as desirable by inoculating those behaviours and attitudes in the content of a legal norm. [8] In the hypothesis in which transplanted legal norms enshrine moral values *universally validated* then legal transplant may be fulfiled even if the respective legal values are impregnated by legal culture (in the field of human rights, the most representative application consists in jus cogens norms). If the transplanted legal norms are the bearers of moral norms resulted from local culture, that are not universally represented, legal transplant will have succes only in the hypothesis in which between the donor's-State legal system and the legal system of the receiver-State is a convergence of moral-cultural values. In the hypotheis of a cultural divergence, legal transplant may be fulfiled by means of the receptivity of the legal system of the receiver State.

By admiting the idea according to which *the degree of achieving legal transplant directly depends on the universal-cultural nature or on the relativ-cultural nature of the moral norm enshrined in the legal norm subjected to legal transplant,* we take a median position between the thesis of denying the influence of legal culture upon legal transplant and the thesis of absolute connection between legal transplant and the convergence between the legal cultures of the donor's and the receiver's State. By including the cultural factor in the analysis of legal transplant we advance the following peculiarities : (1) moral norms derive from the existing cultural norms; (2) although moral norms derive from cultural peculiarities, they can be ranked in moral norms of universal

ackowledgement and moral norms of regional or local applicability; (3) norms (either moral or legal) cannot be completly free from social pressure because the reverse hypothesis would implicitly lead to denying *the law-configuration factors;* (4) the latter ensure the connection between legal norms and State peculiarities nevertheless, unlike the cultural element that is transplated through an ideological, spiritual dimension, law-configurating factors imply also material circumstances; (5) in the case of rules of law based on universally recognized moral rules, legal transplant is *a given* whereas for legal transplant regarding moral rules subjected to cultural relativism, legal transplant is *a construct;* (6) legal transplant is understood in terms of a *construct* by means of creating cultural convergence; (7) cultural convergence between the system of the donor State and the system of the receiver State derive either from (a) the openess of the latter towards the cultural norms advanced by the rules of the donor system, either (b) through unilaterally imposing the norms of the donor system through prestige and through emulation cultivated by inter-system relations.

The utilitarian dimension of legal transplants : the comparative method of research

The introduction of the cultural factor within the analysis of legal transplants constitutes the essential premise of instrumenting *the comparative method of research.* Taking into consideration that the cultural factor highlights the duality of moral norms contained within the transplanted rules : the latter may regulate some conducts that are universally assessed as desirable or that it may establish patterns of social interactions having distinctive cultural pressures. Thus, although cultural differences cannot be denied, rules of law express rules of conduct having universal recognition because, in the opposite sense, we would discuss either *exclusively about the legal elements that are common to all analysed member States*, either *exclusively about their cultural peculiarities*. In both cases, the comparison is impossible, as it does not have any efficiency in the endeavour of finding the contrast between ressemblances nor in the endeavour of finding common points between differences. The analysis of legal rules through the lenses of ressemblances and differences is achieved by virtue of *cultural peculiarities* that, in their turn, determine the notions of *legal families* and *legal cultures.*

As mentioned in the lines above, culture is recognisable at the ideal level, comprizing attitudes, values, opinions about norms and society. [9] Consequently, legal families (under their official denomination of legal systems) represent juridical infrastructures reunited under *a structural unity of the mind.*

In interpreting the works of Lawrence Friedman undertaken by Tom Ginsburg, legal systems are identified with epistemologies that *orient legal decisions*. Although it responds to some peculiar social needs, the legal decision is independent from the social framework within which it manifests thus assuming from society, only the problem that needs to be addressed and its context. Society offers the pretense and the context of questions without being a source of solutions for legal decision-makers. [9]

The comparative method of research is, by its nature, *heuristic.* The act of comparing undertakes correlations that are placed within a given context. It is restrictive to construe the comparison as an analysis act that is addressed to rules or juridical institutions; the underlining of similarities and differences is an act that is placed inside specific cultural and mental patterns. [10] The rapprochement of juridical norms and institutions pursues the improvement of the general understanding of human prerogatives, that have the vocation of being finally transformed in norms that would respond to various situations. From this point of view, the essential utility of the comparative method is noticeable in the context of transfering norms of private law. [11] In reverse, public law norms are assessed as being closer to State peculiarities, not being liable of transplantation in the same degree. Studying the possibility of applying the method of comparative law to the analysis of constitutional law, the hypothesis sustained by judge Antonin Scalia in the cause Printz vs. United States consists in the fact that there is a situation where the invocation of foreign legal rules in the context of construing constitutional norms represents a situation that reveals the lack of legitimacy. In Scalia's judgement, constitutional rules cannot be interpreted by means of imported legal norms nor can they be subjected to a severe separation from the cultural context of birth.

In order for the interpretation of constitutional rules to be functional it is necessary that the sense of interpretation leads towards maintaining the original signification of the constitutional rule. The process of interpretation is ought to be undertaken under the awarness of the importance of maintaining the paramount

signification of constitutional norms given the fact that those rules are the main legal surety of the People's sovereignity and of the citizens' rights and freedoms. Placing the process of interpretation under the cupola of present times and also under the severe segregation between the process of interpretation and the context of adopting the norms, leads to a lack of coherence and stability in the field of constitutional law. [12] Even if we admit the fact that external law may be only in restrictive conditions a source of guidance for the rules of public law of another State (we mainly refer to the convergence between legal cultural values), we cannot adhere to the thesis according to which *the interpretation of rules of law (either if they are comprized or not in the sphere of public law) entail a static process thus undertaken with the purpose of ensuring the stability of the legal system.* The impossibility of denying the connection between culture and rules brings us in front of the following reasoning : (1) cultural norms are dynamic as they adapt to the degree of State-evolution; (2) legal norms derive from and are influenced by cultural rules –hence, the necessity of subjecting them to a dynamic hermeneutics, according to the cultural epistemology to which they owe their formation.

The convergence between the values contained in the legal cultures of States is, undoubtedly, a favorizing factor of legal transplant. The scientific sustenation of this resides in *the theory of legal origins* that describes the process of legal transplant from the perspective of assuming the law of colonizing powers by the colonized States. The theory of legal origins sustains the idea of innovating the transfer of rules between those States that recognize the same legal values. [13] It is reiterated the connection between the rule of law and legal tradition, underlining the possibility of legal transplant only in the hypothesis of the convergence between legal traditions. The transplant fails if the transplanted rule is implemented within a receiver State that is in dissonance with the donor State in the field of the transfered legal values. The comparative methodology fails amid the segregation of legal values but also in the hypothesis of a perfect identity between legal cultures. The *sine qua non* premise of applying the legal transplant and the utility of comparative methodology resides in the existence *of minimum two juridical systems that relate to a set of common values.* As we take into discussion *at least two independent legal systems,* common cultural values must not find themselves in relations of identity neither can their relation describe a void mass.

Colonial relations mainly describe a state of insubordination in parameters according to which the right to self-determination of colonized Peoples is breached and the decisional factor (including in legal matters) becomes the colonizing State. The transfer of legal rules from the colonizing State to the colonized State is achieved by the integration of the following factors : (1) formal powers exerted by the colonizing State; (2) the prestige of the legal system of the colonizing State and the authoritative enforcement of its norms within the legal system of the colonized State; (3) the pressures derived from change and necessity; (4) the hold status regarding the expediency of the transplanted law; (5) the financial and political recompenses granted to the colonizing State. [14]

Concluding, legal transplant does not imply a perfect (normative) compatibility between the analysed juridical systems. Within State-imposed conditions is allowed the withdrawal of a given rule and it is imposed the accommodation of the latter within the receiver State. Legal transplant is a mainly heuristic phenomenon whose scope may be segregated in two senses : (1) the modernization of the receiver State through the acknowledgement and assimilation of new standards in the field that is subjected to transplantation; (2) the study of the standards assimilated by the receiver State and the advancement of methods that will ensure the performance of adopted standards.

Conclusions

Legal transplant is possible by transfering the signification of the rule and by adapting it to context. The latter is, mainly, a context of cultural source. First of all, we take into consideration legal culture and its original determiner -social culture; social culture is understood as an aggregation of law-configurating factors. In the matters concerning legal transplants, the cultural factor is not (necessarily!) a limit as it is an indicator of the degree in which legal transplant may be achieved in concreto. Beyond the opposition between the universality and the relativity of cultural standards, it is clear that there is an assembly of common moral values that may be applied with the purpose of implementing legal transplants and, implicitly, with the purpose of demonstarting the utility of the comparative method of research.

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EVOLUTIONS AND PARTICULARITIES OF MORTALITY INDICATORS IN ROMANIA AND COMPARISON WITH THE EUROPEAN UNION IN THE LAST DECADE

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Abstract

The evolution of the number and structure of any population is directly influenced by the mortality phenomenon. The paper aims to highlight the evolution and particularities of mortality in Romania during 2007-2016 as well as a comparative analysis with the level of the European Union.
The statistical data analyzed highlight some important aspects and particularities. Firstly, must be mentioned the still high level and a slight increase of the crude death rate registered in Romania during the analyzed period, above the level recorded for the EU. Secondly, there are substantial differences regarding the rate of mortality by sex and especially by residence areas.
The paper also analyzes the evolution of an important indicator of the level of social development, determined on the basis of the life table, namely the life expectancy at birth. The indicator is largely influenced by the mortality rates and age structure of the population. Even though during 2007-2016 the level of this indicator registered a slight increase in Romania, yet it is well below the level of the European Union.

Keywords: mortality, life expectancy at birth, crude death rate, specific mortality rates

Introduction

Mortality is a demographic phenomenon that refers to the frequency of deaths in a given population and for a limited time. Unlike fertility, mortality is the negative component of the natural change of the population. Mortality determines the numerical increase or decrease of the population as well as its structure by age groups and influences the life expectancy of the population. Also, mortality is the most sensitive indicator influenced of socio-economic and biological factors (the environment, lifestyle), as well as health services [1].

Under the influence of the factors mentioned above, mortality in Romania has experienced different evolutions in the last 7-8 decades. Thus, before and immediately after the Second World War in Romania there was a crude death rate of about 22.0 ‰. Improvement of health care and access of the population to sanitary services led to a sudden drop of the crude death rate from 22.0 ‰ to 10.0 ‰ in the period 1947-1959. After

1960, the crude death rate continued downward, ranging from 8.1 ‰ to 9.2 ‰, slightly increasing in the 1980s to 10.5 ‰ [2]. As a global phenomenon, the decline of the mortality has been determinate by factors such as: improving nutrition, increasing accessibility to public health services, urbanization, better medicines, etc. [3].

Since 1990, the crude death rates have returned to the values recorded in 1953-1954 (11.6 - 11.5 deaths per 1000 persons), then increased gradually, having many fluctuations and having two peaks in 1996-1997 and 2002-2003.

Although the crude death rates have stabilized around 12 deaths per 1000 inhabitants between 2010 and 2016, Romania is among the European countries with a high crude death rate.

The evolution of the mortality in Romania, during 2007-2016

Based on the statistical data taken from the National Institute of Statistics and EUROSTAT, we will make a brief analysis of the evolution of mortality in Romania during 2007-2016, using three demographic indicators: crude death rate, mortality rate by sex and mortality rate by area. The crude death rate is an indicator of maximum generality that measures the intensity or frequency of deaths within a population or subpopulation; is determined by reporting the number of deaths from a period to the average number of the resident population (permanent or usual) in that period and is expressed per 1000 persons [4].

The mortality rate by sex is based on the reported deaths of male and female, over a certain period of time, of the average male and female population (expressed per 1000 persons).Similarly, the mortality rate by area implies the reporting of deaths among urban and rural population over a period of time to the average population of urban and rural area (also expressed per 1000 persons).

For the period 2007-2016, the number of deaths and the crude death rate in Romania, presented in Table 1, highlights the slight increase trend. Thus, the crude death rate in Romania increases from 11.2 ‰ in 2007 to 11.6 ‰ in 2016.

During 2007-2016, the crude death rate experienced small oscillations from one year to the other, the highest level being recorded in 2015, respectively 11.8 ‰.

The evolution of the number of death and crude death rate, in Romania, during 2007 – 2016

Table 1

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Number of deaths (thousand)	252.0	253.2	257.2	259.7	251.4	255.5	250.5	254.8	261.7	257.2
Crude death rate* (‰)	11,2	11,2	11,4	11,5	11,2	11,4	11,2	11,5	11,8	11,6

Data sources: Information from Data base TEMPO-on line, NIS Bucharest [5].
*Rates base on permanent resident population

This evolution of the crude death rate was largely determined by the dynamics of the number of deaths, which increased from 252.0 thousand in 2007 to 257.2 thousand in 2016 (+ 2.1%). Thus, we can see not only a rather high level of the crude death rate in Romania (over 11 ‰) but also a growth trend. The dynamics of the crude death rate is influenced by the variation of two factors: specific mortality rate by sex and structure of the population by sex [6]. Regarding the evolution of the mortality rate by sex, we find that throughout the analyzed period the mortality rate for male was higher compared to that recorded for female (Table 2).

The evolution of the mortality rate by sex, in Romania, during 2007 – 2016 (‰)

Table 2

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total	**11,2**	**11,2**	**11,4**	**11,5**	**11,2**	**11,4**	**11,2**	**11,5**	**11,8**	**11,6**
Male	**12,1**	**12,3**	**12,5**	**12,6**	**12,1**	12,2	**12**	**12,3**	12,5	12,4
Female	**10,3**	**10,2**	**10,4**	**10,6**	**10,4**	10,6	**10,4**	**10,7**	11,0	10,8

Data sources: Information from Data base TEMPO-on line, NIS Bucharest, [5].

The data from Table 2 as well as from Figure 1 highlight the existence of the phenomenon of male supramortality during the whole period 2007-2016. The differences between the male mortality rate and the female mortality rate are between 1.5 ‰ in 2015 and 2.1 ‰ in 2008.

Mortality in males is primarily due to genetic explanations, the chances of survival of the women being higher at all ages. Secondly, behavioral factors should be mentioned, men

generally having a risky life (participation in armed conflicts, accidents, and alcohol consumption), more difficult jobs, etc.

The evolution of the mortality rate by sex, in Romania, during 2007 – 2016 (‰)

Figure 1

Data sources: Information from Data base TEMPO-on line, NIS Bucharest, [5].

Greater differences exist between mortality rate in urban and rural areas, both as level and as a direction of evolution.

The evolution on the mortality rate by area, in Romania, during 2007 – 2016

Table 3

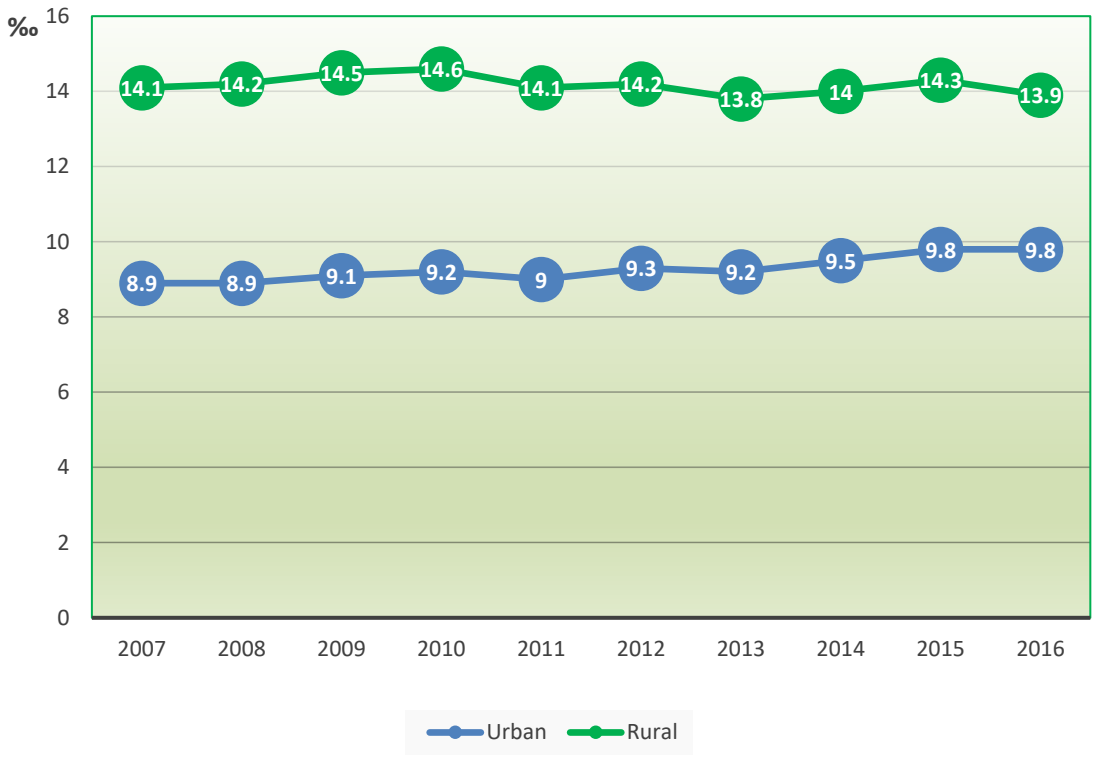
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Total	**11,2**	**11,2**	**11,4**	**11,5**	**11,2**	**11,4**	**11,2**	**11,5**	**11,8**	**11,6**
Urban	8,9	8,9	9,1	9,2	9,0	9,3	9,2	9,5	9,8	9,8
Rural	14,1	14,2	14,5	14,6	14,1	14,2	13,8	14,0	14,3	13,9

Data sources: Information from Data base TEMPO-on line, NIS Bucharest, [5].

It can be seen from the data presented in Table 3 and Figure 2, that the mortality rate in the rural area substantially exceeds the rural mortality rate during the whole 2007-2016 period, the biggest difference (+ 4,6 ‰) being recorded in 2013. We also note that while the urban mortality rate registered a slight downward trend over the period under review, the mortality rate in the rural area increased from 8.9 ‰ in 2007 to 9.8 ‰ in 2016.

The evolution of the mortality rate by area, in Romania, during 2007 – 2016 (‰)

Figure 2



Data sources: Information from Data base TEMPO-on line, NIS Bucharest, [5].

The higher level of mortality in rural areas is explained by a different aging of the population, higher in this case, but also due to the lower accessibility of health care [7].

The high level of general mortality in Romania also results from the comparison with the average level recorded in the European Union and other member countries.

During 2007-2016, the crude death rate in Romania, as compared to the one recorded at the EU28 level, evolved according to the data in Table 4.

The evolution of the crude death rate* in Romania and EU28, during 2007 – 2016 (‰)

Table 4

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
EU28	9.7	9.8	9.8	9.7	9.7	9.9	9.9	9.7	10.2	10.0
Romania	12.1	12.3	12.6	12.8	12.5	12.7	12.4	12.8	13.2	13.1

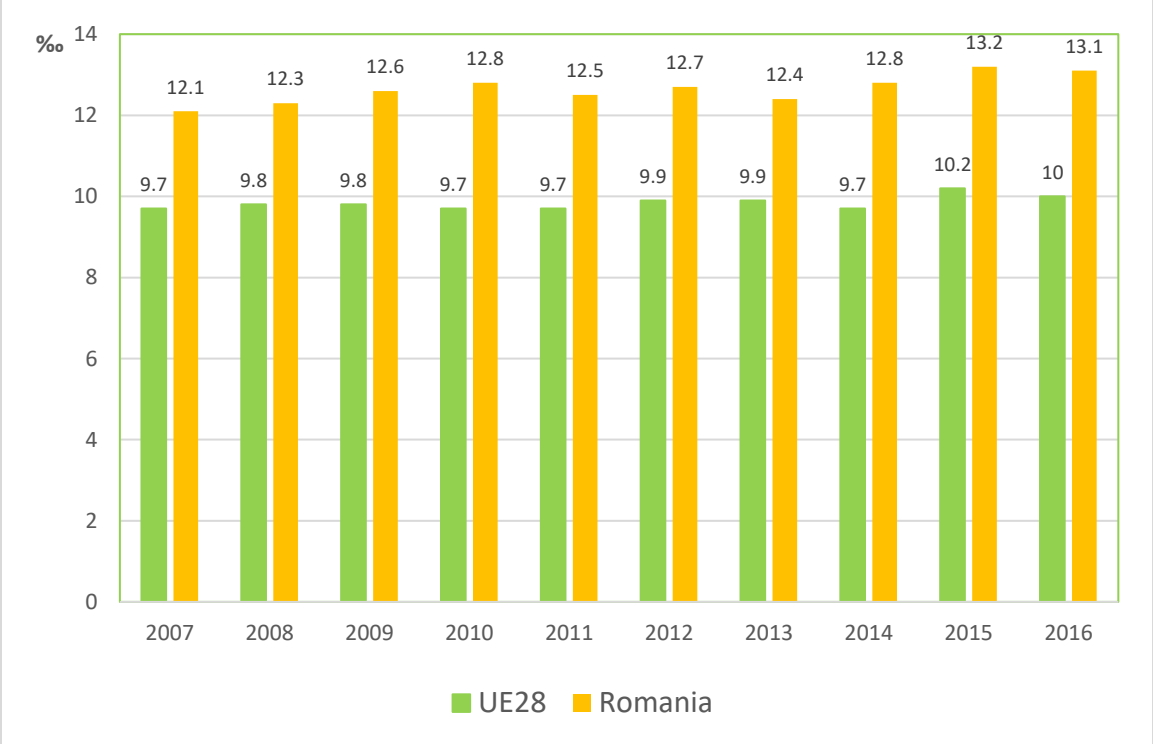
Data sources: Based on the information retrieved on May 27, 2018, from EUROSTAT, [8].
*Rates based on usual resident population

The data from Table 4 as well as in Figure 3 highlight a process of increasing of the mortality rate for both Romania (more pronounced) and the EU28.

Secondly, the crude death rate is much higher for Romania than for the EU27.

The evolution of crude death rate in Romania and EU 28, during 2007 - 2016 (‰)

Figure 3



Data sources: Based on the information retrieved on May 27, 2018, from EUROSTAT, [8].

The lower level of economic and social development, more difficult accessibility to medical services, higher levels of pollution and other factors have affected this unfavorable situation of Romania compared to the EU in terms of mortality rates.

Life expectancy at birth – an important indicator of mortality

Life expectancy at birth or average life duration is an important demographic indicator that expresses the average number of years that a person has to live if they live the rest of their lives under the conditions of age-related mortality from the reference period.

The level of the life expectancy at birth is the result of a set of economic, social, health and cultural factors that, directly or indirectly, with a greater or lesser intensity, act on mortality and thus constitute an excellent indicator of the degree of development reached by a population.

In the case of Romania, life expectancy at birth registered significant changes over the last hundred years.

Life expectancy at birth in Romania, was only 36.4 years old at the beginning of the 20th century, reflecting particularly the very high level of mortality expressed by the crude death rate (over 26 ‰). Analyzed in the European context, this level of life expectancy at birth indicates a gap of 10-15 years, compared to the more developed countries at that time [2].

In the following period there was a slight increase in life expectancy, reaching a life expectancy of 42.0 years, around the World War II (1930-1932), according to the mortality table developed for that period.

After World War II, raising the standard of living, wider accessibility of health care of the population, preventive health care programs and general increasing of the level of population education led to a rapid decline in mortality.

In only ten years (1946-1955) the crude death rate went from 19 ‰ to less than 10 ‰, which led to an accelerated increase of the life expectancy, which reached 63.2 years in 1956.

And after 1956, life expectancy in Romania, continued to grow but with a lower intensity, reaching 67.1 years between 1974 and 1975 [2], and 69.8 years during 1989 -1991.

The changes in the economic and social development of Romania after 1990 with the change of the political regime influenced favorably the evolution of the life expectancy that reached in 2006 at a level of 72.2 years.

Between 2007 and 2016, the life expectancy in Romania and the other EU Member States evolved according to Table 5.

The evolution of the life expectancy at birth in Romania and the EU28 member states, during 2007 – 2016 (years)

Table 5

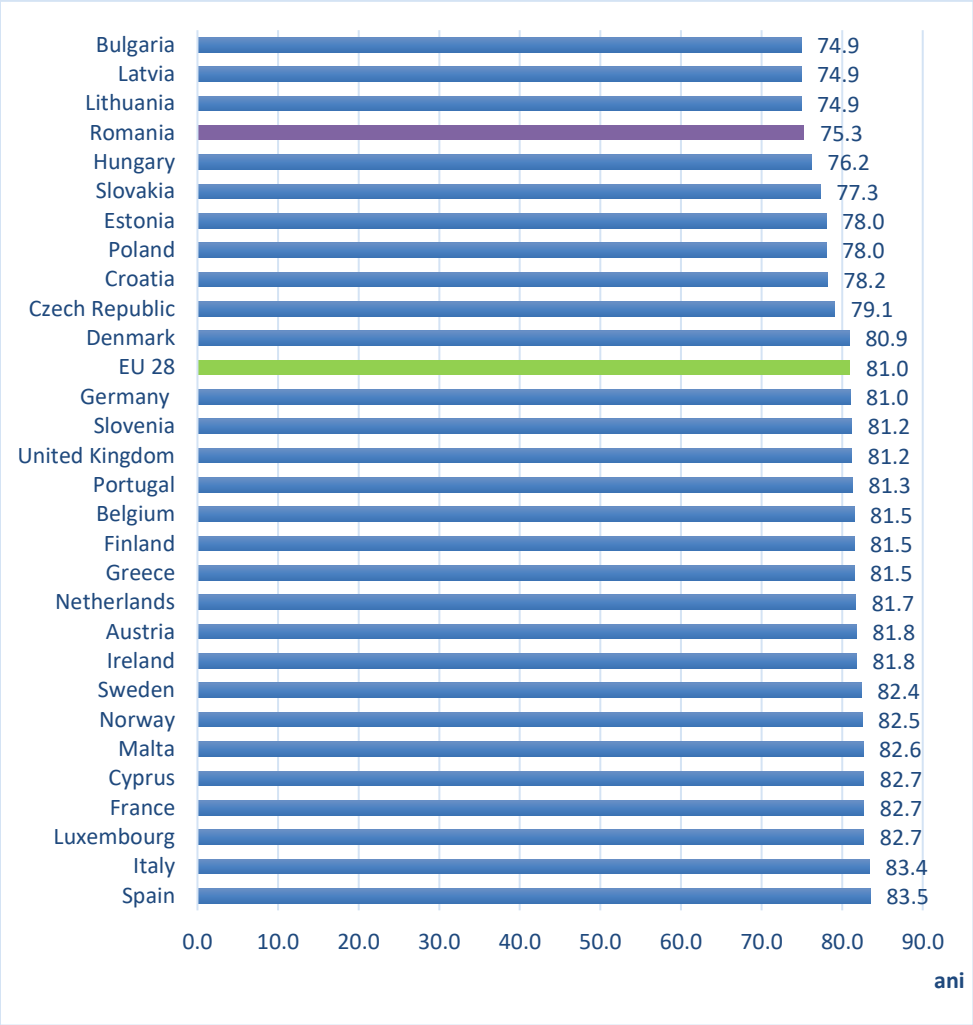
GEO/TIME	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
European Union 28	79.1	79.4	79.6	79.9	80.2	80.3	80.5	80.9	80.6	81.0
Austria	80.3	80.6	80.5	80.7	81.1	81.1	81.3	81.6	81.3	81.8
Belgium	79.9	79.8	80.2	80.3	80.7	80.5	80.7	81.4	81.1	81.5
Bulgaria	73.0	73.3	73.7	73.8	74.2	74.4	74.9	74.5	74.7	74.9
Croatia	75.8	76.0	76.3	76.7	77.2	77.3	77.8	77.9	77.5	78.2
Cyprus	79.8	80.6	81.0	81.5	81.2	81.1	82.5	82.3	81.8	82.7
Czech Republic	77.0	77.3	77.4	77.7	78.0	78.1	78.3	78.9	78.7	79.1
Denmark	78.4	78.8	79.0	79.3	79.9	80.2	80.4	80.7	80.8	80.9
Estonia	73.2	74.4	75.3	76.0	76.6	76.7	77.5	77.4	78.0	78.0
Finland	79.6	79.9	80.1	80.2	80.6	80.7	81.1	81.3	81.6	81.5
France	81.3	81.4	81.5	81.8	82.3	82.1	82.4	82.8	82.4	82.7
Germany	80.1	80.2	80.3	80.5	80.6	80.7	80.6	81.2	80.7	81.0
Greece	79.7	80.2	80.4	80.6	80.8	80.7	81.4	81.5	81.1	81.5
Hungary	73.6	74.2	74.4	74.7	75.1	75.3	75.8	76.0	75.7	76.2
Ireland	79.7	80.2	80.2	80.8	80.9	80.9	81.0	81.4	81.5	81.8
Italy	81.6	81.7	81.8	82.2	82.4	82.4	82.9	83.2	82.7	83.4
Latvia	70.8	72.1	72.8	73.1	73.9	74.1	74.3	74.5	74.8	74.9
Lithuania	70.7	71.7	72.9	73.3	73.7	74.1	74.1	74.7	74.6	74.9
Luxembourg	79.5	80.7	80.8	80.8	81.1	81.5	81.9	82.3	82.4	82.7
Malta	79.9	79.7	80.4	81.5	80.9	80.9	81.9	82.1	82.0	82.6
Netherlands	80.4	80.5	80.9	81.0	81.3	81.2	81.4	81.8	81.6	81.7
Norway	80.6	80.8	81.0	81.2	81.4	81.5	81.8	82.2	82.4	82.5
Poland	75.4	75.6	75.9	76.4	76.8	76.9	77.1	77.8	77.5	78.0
Portugal	79.3	79.5	79.7	80.1	80.7	80.6	80.9	81.3	81.3	81.3
Romania	**73.1**	**73.5**	**73.7**	**73.7**	**74.4**	**74.4**	**75.1**	**75.0**	**75.0**	**75.3**
Slovakia	74.6	74.9	75.3	75.6	76.1	76.3	76.6	77.0	76.7	77.3
Slovenia	78.4	79.1	79.4	79.8	80.1	80.3	80.5	81.2	80.9	81.2
Spain	81.1	81.5	81.9	82.4	82.6	82.5	83.2	83.3	83.0	83.5
Sweden	81.1	81.3	81.5	81.6	81.9	81.8	82.0	82.3	82.2	82.4
United Kingdom	79.7	79.8	80.4	80.6	81.0	81.0	81.1	81.4	81.0	81.2

Data sources: Based on the information retrieved on May 27, 2018, from EUROSTAT, [9].

The data from this table highlights the clear trend of increasing of the life expectancy in Romania, which from a level of 73.1 years in 2007 increase to 75.3 years in 2016. Despite all these positive developments in Romania's life expectancy, however, the level recorded in our country was constantly below the EU28 average (79.1 years in 2007 and 81.0 years in 2016).

Life expectancy at birth in the EU 28 member states, in 2016 (years)

Figure 4



Data sources: Based on the information retrieved on May 27, 2018, from EUROSTAT, [9].

Among the countries of the European Union with a higher life expectancy in 2016 (Figure 4), which also contributed to the higher level of the EU28, are Spain (83.5 years), Italy (83.4 years), France (82.7 years), Cyprus (82.7 years), Luxembourg (82.7 years).

An interesting aspect to be highlighted is that of the different growth between the EU Member States in the last decade. Thus, the highest increase in life expectancy at birth, over four years, in just 10 years, was recorded in Estonia (+4.8 years), Lithuania (+4.2 years) and Latvia (+4.1 years). The smallest increase (under one year) was recorded in Germany (+0.9 years). Life expectancy in Romania in the last decade has increased by 2.2 years.

From the point of view of the place that Romania occupies within the EU28, regarding the life expectancy at birth, the situation is highlighted also in figure 4. Compared to Romania, only 3 countries had a lower life expectancy in 2016: Latvia (74.9 years), Lithuania (74.9 years) and Bulgaria (74.9 years). Of course, the ranking itself is not the most relevant in this comparative analysis but the worse situation in which Romania is in the European context and which requires urgent intervention measures to improve it. Increasing life expectancy is an important objective for public policies, especially in the areas of health care, education, and other social services, to contribute to improving the quality of life of the population and achieving more favorable lifetime values.

Analyzing the Eurostat data on life expectancy at birth, by sex, in the EU member countries (Table 6), we find that in all cases, women have a higher life expectancy than men, in average with 5.4 years (in 2016).

Discrepancies regarding the life expectancy at birth by sex, in Romania and the EU28 Member States, in 2016 (years)

Table 6

GEO/TIME	2016			
	Total	Males	Females	Differences between females and males
European Union 28	81.0	78.2	83.6	5.4
Austria	81.8	79.3	84.1	4.8
Belgium	81.5	79.0	84.0	5.0
Bulgaria	74.9	71.3	78.5	7.2
Croatia	78.2	75.0	81.3	6.3
Cyprus	82.7	80.5	84.9	4.4
Czech Republic	79.1	76.1	82.1	6.0
Denmark	80.9	79.0	82.8	3.8
Estonia	78.0	73.3	82.2	8.9
Finland	81.5	78.6	84.4	5.8
France	82.7	79.5	85.7	6.2

Germany	81.0	78.6	83.5	4.9
Greece	81.5	78.9	84.0	5.1
Hungary	76.2	72.6	79.7	7.1
Iceland	82.2	80.4	84.1	3.7
Ireland	81.8	79.9	83.6	3.7
Italy	83.4	81.0	85.6	4.6
Latvia	74.9	69.8	79.6	9.8
Lithuania	74.9	69.5	80.1	10.6
Luxembourg	82.7	80.1	85.4	5.3
Malta	82.6	80.6	84.4	3.8
Netherlands	81.7	80.0	83.2	3.2
Norway	82.5	80.7	84.2	3.5
Poland	78.0	73.9	82.0	8.1
Portugal	81.3	78.1	84.3	6.2
Romania	75.3	71.7	79.1	7.4
Slovakia	77.3	73.8	80.7	6.9
Slovenia	81.2	78.2	84.3	6.1
Spain	83.5	80.5	86.3	5.8
Sweden	82.4	80.6	84.1	3.5
Switzerland	83.7	81.7	85.6	3.9
United Kingdom	81.2	79.4	83.0	3.6

Data sources: Based on the information retrieved on May 27, 2018, from EUROSTAT, [9].

What we have noticed when discussing about specific mortality rates be sex, for Romania, is valid for all EU28 states. Differences in life expectancy between women and men are determined by both biological and behavioral factors. As a rule, men tend to adopt more risk behaviors, which is highlighted by higher mortality rates for men for causes of death due to accidents, alcohol or tobacco use. Gender inequalities in life expectancy at birth are very different depending on countries.

In 2016, the largest differences (over 10 years) were registered in the Baltic countries and in the countries of south-east and central Europe (6-9 years). The smallest differences are found in Cyprus, Sweden and the Netherlands (under 4 years). In the case of Romania, the life expectancy was in 2016, 71.7 years for men and 79.1 years for women, thus greater with 7.4 years.

Conclusions

The mortality phenomenon in Romania, expressed by the crude death rate, has recorded in the last decades between 11 and 12 deaths per 1000 persons, with a slight increase in the period 2007-2016.

The analysis of the mortality by sex revealed the phenomenon of male supramortality, the male mortality rate surpassing, on average, the female mortality rate of 1.8 ‰.

By residence area, differences in mortality rates are even higher, the level of the mortality rate in rural being higher by an average of 4.0 ‰. More serious is the fact that in the case of the rural area the mortality rate registered a trend of growth during 2007-2016.

From the point of view of the crude death rate, Romania is in an unfavorable situation, this level being on average by 3.0 ‰ higher compared to the level recorded for the EU28.

The progress registered in Romania in terms of quality of life, health care and changes in age structure of the population, contributed to the increase of the life expectancy at birth, which reached 2016 at 75.3 years compared to 73.1 years in 2007.

Given the important role of mortality in population growth or decline, as well as its influence on age structure and life expectancy of the population, measures are needed to reduce the mortality rate. An important factor, with a direct influence on the reduction of mortality, is the increase in the employment rate of the population and the increase of its income. Acting in these two directions allows the raising of the educational level of the population, increased access to health services, the possibility of adopting a healthy diet from the food point of view.

Another direction of action, in order to reduce the mortality of the population, is to increase the share of expenditures for education and health in the state budget, to adopt measures for the reduction of pollution, etc.

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