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THE MOTION OF CENSURE - JURISPRUDENTIAL ASPECTS AND THE PARLIAMENTARY PRACTICE

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Abstract:
The motion of censure is the main tool of parliamentary control, this control being exercised only within the limits of the constitutional[1] and regulatory provisions and respecting the jurisprudence of the Constitutional Court [2]. The Government is invested in the vote of confidence of the Parliament, and when the Parliament adopts a motion of censure, the confidence granted is withdrawn and the Government is dismissed. The institution of the motion of censure is regulated, in general, in Article 113 of the Romanian Constitution, but references to this institution and its effects can be found in other articles, such as Articles 110 and 114. Given that its purpose, after adoption, is the dismissal of the Government, the motion of censure was notified before the Constitutional Court by the subjects of law interested in blocking such an approach or in obtaining clarifications regarding the meaning of certain constitutional or regulatory provisions. This article makes an analysis of this institution and captures aspects of jurisprudence and parliamentary practice.
Key words*: motion of censure, parliamentary control, Government, Constitutional Court, Parliament*

Introduction

The parliamentary control function is performed by the Romanian Parliament with the help of various instruments provided by the fundamental act, the definition and use of which are largely regulated by parliamentary procedures. In the category of parliamentary control tools we include informing the Parliament by the Government and other public administration authorities, parliamentary inquiry, questions, interpellations, simple motions and the motion of censure. To these can be added, according to the jurisprudence [3] of the Constitutional Court, the commitment of the Government and the legislative delegation. The most important instrument of parliamentary control is the motion of censure, qualified in the doctrine [4] as a traditional institution of modern public law. If the motion has a political character until its submission before the Parliament, once submitted, it also acquires a legal capacity. The official submission of the motion is the moment when an act of the initiators' will becomes an act of will of the Parliament, the Parliament entering a specific rapport of constitutional law with the Government [5]. The motion of censure may be the result of the parliamentarians' will, according to the

provisions of Article 113 of the Constitution or may be a motion of censure activated by the Government, pursuant to Article 114, the moment it assumes responsibility for a program, a general politics statement or a bill before the Parliament.

Even if, at first sight, it can be concluded that there are two categories of censure motions, one regulated by Article 113 and the other by Article 114, as a legal institution, the motion of censure is a sole one, with the same legal nature and the same purpose pursued in both hypotheses, as the Constitutional Court emphasizes in Decision no. 1525 [6] of 24 November 2010. By adopting a motion of censure, the political responsibility of the Government is involved, regulated in Article 109 paragraph 1 of the Constitution, the Parliament applying the most severe sanction to the Government, namely the dismissal by withdrawing the trust granted. The Constitutional Court emphasizes in its jurisprudence [7] that the only tool of parliamentary control that has a legal sanction attached is the motion of censure, as the parliamentary control, in general, does not involve a legal sanction. Basically, the motion of censure is symmetrically opposed to the vote of confidence given to the Government by the Parliament, falling into the category of relations between the Parliament and the Government [8]. In both cases it is necessary for the two Chambers (Senate and Chamber of Deputies) to meet in a joint sitting. The parliamentary control through the motion of censure is exercised by complying with certain conditions of constitutional validity related to the number of holders of the initiative, communication of the approach, presentation, debate and adoption, but also conditions established by regulatory rules of a procedural nature, by Decision no. 64/1994 [9], the Constitutional Court ruled that “the regulatory norms are constitutional if they ensure the normal, responsible and reasonable conduct of parliamentary life”. According to Article 113 of the Constitution, the motion of censure can be initiated by at least a quarter of the total number of deputies and senators, the condition being imposed by the need to ensure the representativeness of the approach and stop those initiatives aimed at harassing the executive and discrediting it [10]. After its submission to the Parliament, the motion of censure is communicated to the Government in order to allow this public authority to come into contact with its content and prepare its defense[11], and the Government demonstrating that the confidence given by the investiture vote has not been misappropriated [12]. The motion is debated in the joint sitting of the two Chambers of

Parliament, three days after it was tabled in the joint sitting, and requires the vote of a majority of Deputies and Senators to be adopted. The analysis of the constitutional provisions reveals the following steps involved in the motion of censure: initiation, submission, communication, presentation, debate and voting.

The provisions of Article 113 paragraph 4 establish the rule of submitting a single motion of censure in the same parliamentary session by the subjects of law who initiated the parliamentary control through the motion of censure, unless the Government assumes responsibility. As the doctrine [13] points out, we find this constitutional solution enshrined in the Spanish and French constitutions. After the adoption of the motion of censure, the Parliament takes note of the decision, which is sent to the President of Romania, in order to initiate the procedure of forming a new Government [14]. The Government dismissed by motion of censure continues its activity until the investiture of a new Government, having a limited competence, namely to fulfill the acts necessary for the administration of public affairs, according to Article 110 paragraph 4 of the Constitution.

The motion of censure in the jurisprudence of the Constitutional Court and in recent parliamentary practice

The recent parliamentary practice has faced the situation where two motions of censure were tabled in the same parliamentary session for the dismissal of the Government. The first motion filed was challenged by the Government in the Constitutional Court on the grounds that there was a legal conflict of a constitutional nature between the Government and the Parliament, alleging violation by the legislature of its constitutional obligations regarding the exercise of parliamentary control through the motion of censure, which led to the affectation of the constitutional relations between the two fundamental authorities of the Romanian state. This motion did not enter the debate procedure and vote in the Parliament, because the Government concerned was dismissed by another motion of censure initiated by other parliamentarians during the period when the first motion was under consideration in the court of constitutional contentious. The first motion, entitled “The dismissal of the Cîţu Government, the only chance for Romania to live! Florin Cîţu must leave!” was submitted to the Parliament on 3 September 2021, and the second one entitled “Stop poverty, prices on the rise and

criminals. Down with the Cîţu Government!" was filed on 28 September 2021, on the same day that the Constitutional Court ruled on the legal conflict of a constitutional nature with which it was notified in the case of the first motion.

In its capacity as the sole constitutional court in Romania [15], the Constitutional Court examined the institution of the motion of censure both on the occasion of this referral regarding the settlement of the legal conflict of a constitutional nature, and on other occasions, in which it stressed the importance of this Parliament action in its relations with the Government [16].

In Decision no. 1525/2010, the Constitutional Court states that the motion of censure "constitutes a real instrument of a constitutional nature made available to the Parliament in order to achieve parliamentary control over the activity of the Government". The parliamentary control exercised over the Government by means of the motion of censure aims, once initiated, at its dismissal, so that from the moment of its submission it creates a state of uncertainty and instability in the relations between the Parliament and Government by questioning the trust rapport granted by the investiture vote, as the Court points out in another decision [17]. The motion of censure is generated by the "crisis of confidence" emerging in the relationship between the Parliament and Government. Once tabled in Parliament, the motion of censure must be presented, debated and voted on, otherwise "the impediment to the presentation and the refusal to debate a motion of censure already tabled are unconstitutional" [18]. Filing a motion involves a procedure, in which case the Parliament's action must, in the view of the Court [19], be consistent, rigorous and coherent. With regard to the moment when a motion of censure is tabled, the Constitutional Court has stated that the constitutional text does not contain any provision prohibiting the tabling of a motion outside the ordinary sessions of Parliament. Given that the function of parliamentary scrutiny is exercised on a permanent basis, not only in the ordinary sessions of Parliament, a motion of censure may also be tabled in an extraordinary session, provided that the two Houses of Parliament meet, work and operate simultaneously in separate meetings and separate special sessions, regardless of their agenda [20]. However, the court of constitutional contention emphasizes that the filing of a motion of censure in the special session must be done in good faith, in the spirit of the rules of constitutional loyalty, so as not to expose this legal institution [21]. Also

related to the timing of the tabling, presentation, discussion and voting of the motion of censure, the Court was called upon to rule on the possibility of a motion of censure being tabled in one session and presented, discussed and voted on in another session. Following the analysis of the constitutional conditions, the court of constitutional contention concludes [22] that there are no rules for the submission/presentation/debate and voting of the motion of censure to take place in the same session or in sessions of the same nature. This means that a motion can be tabled in one session and if that session ends, it can be presented/discussed and voted on in the next session. For example, if a motion of censure is tabled on the last day of an ordinary session, it may be presented/debated/voted in a special session following the ordinary session. At the same time, if a motion of censure is tabled on the last day of a special session, it shall be presented/debated/voted in accordance with the time limits laid down in the Rules of Procedure of the joint sittings and in the Constitution, even in ordinary session, provided the Parliament is in session, that is, to be assembled, and to work in a joint meeting.

Another feature of the motion highlighted by the Constitutional Court is related to the rapidity of the procedure, specific to parliamentary control, in the sense that, after submission, the motion of censure must be debated after at least 3 days following the submission, but within an appropriate time interval [23] meant to avoid legal uncertainty in relation to its purpose [24].

As for the initiators of the motion of censure, the court of constitutional contention ruled that, in order to be legally initiated, it must be signed by at least a quarter of the total number of deputies and senators, and regarding the signature of the parliamentarians it states that “the signature of the deputy/senator expresses their unequivocal will to initiate a motion of censure” [25]. Because technical-formal issues were brought to the attention of the Constitutional Court, namely the issue of how the handwritten signatures of the motion initiators must be submitted, the constitutional court ruled that as long as there are no express constitutional and regulatory provisions regarding the manner in which the signatures must be submitted (original or copy), what matters “is the will of the deputy or senator who signed the motion of censure in the sense of initiating it and the owning/assumption of the signature by each initiating deputy/senator” [26]. In the Court’s view, a signature inscribed on the list in support of the motion of censure is presumed to

be true in the sense that it expresses the reality of the will and intention of the deputy/senator to initiate a motion of censure, and this presumption can be overturned only by parliamentary means.

An interesting aspect resulting from the jurisprudence of the constitutional contentious court is the one related to the status of the two authorities involved in the parliamentary control activity through the motion of censure. The Court considers that the Parliament must not show a dominant and subordinating tendency in the relationship with the Government, because otherwise it would destabilize the balance of power between the two authorities and, in this way, violate the principle of balance of powers enshrined in Article 1 paragraph 4 of the Constitution, a principle also valid in the case of exercising the function of parliamentary control over the activity of the executive [27].

Conclusions

The directive of a legal institution's constitutional and regulatory level does not always allow to capture of all aspects that may arise in parliamentary practice related to that institution, which leads to the need for further clarification of constitutional and regulatory provisions by the Constitutional Court. It can be seen from the analysis of the jurisprudence of the Constitutional Court regarding the motion of censure that the constitutional court manages to clarify the meaning of the provisions subject to its analysis and to give the institutional actors involved in the parliamentary control procedure through the motion of censure a much clearer picture of this important institution. The analyzed decisions capture the different dimensions of the legal institution and manage to highlight the way in which both the Parliament and the Government must behave, so that the conduct of the two fundamental authorities respect the principle of loyal cooperation and that of balance of powers.

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THE INSOLVENCY OF THE NATURAL PERSON - FORGOTTEN REALM IN ROMANIA? NEW TRENDS IN APPROACHING CONSUMER OVER-INDEBTEDNESS-COMPARATIVE LAW

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Abstract:
The justification for the choice of this research topic lies in the recurrence of the increasingly dramatic financial situations in which natural persons find themselves in their capacity as simple individuals against the background of the Covid-19 pandemic, situations amplified by the lack of interest of the Romanian legislator that presently provided an almost non-existent answer and a remedy not valued and not accessed by the over-indebted consumer. The period we are going through has generated an economic and social collapse, and the insolvency of professional traders has created chain reactions through restructuring and layoffs, with many people losing their jobs and accumulating debt. In such a fragile context, an opportunity for reset and social revitalization would be to access the insolvency proceedings of the individual under Law no. 151/2015, entered into force in 2018. The reality is that this legal instrument is still in its infancy, so far only 25 people have actually accessed it. And yes, unfortunately, we can say that it is a legal instrument "covered in dust", left in the shadows and almost non-existent, "not stormed" even in terms of doctrine, especially in terms of promotion and social awareness of the benefit resulting in following the access to such mechanisms that allow the so-called fresh start. Why this slow evolution in the application of the treatment of over-indebtedness of simple individuals? Perhaps the enactment of this special law does not meet expectations and is inadequate to the demands of a developed society, perhaps we are not prepared at the cultural level to assimilate it and we are dependent on the stigma of insolvency deeply rooted in our guide of values, perhaps the successive postponement of this normative act triggered a kind of uncertainty, the insolvency procedure becoming a tricky, difficult "realm", difficult to access and especially to navigate, with a much too long time horizon that the debtor must assume in order to improving its economic situation and especially in order to achieve the ultimate goal, namely the discharge of debts and the benefit of a fresh start in society.
Beyond the limits of strictly legal multidisciplinarity and the true analysis of legislation intended strictly for the over-indebted and bona fide consumer, insolvency seen from a psychological, social perspective, from the perspective of people who go through such an experience, whether they are debtors individuals, whether they are administrators of debtors legal entities, whether they are employees, raises many questions. What would be the psychological impact on them and what would be the effects of the financial and economic crisis on human behavior? How do the effects of a gradually unbalanced economy affect society and those who have directly experienced the consequences, those who have lost their jobs? How

is a person who has come into contact with the insolvency procedure seen and what will be their status in society? Is the current law a failure? What would be the foundations of an "ideal" model in regulating the insolvency of simple individuals?
Starting from the premise that the insolvency of the individual is a very delicate subject, with certain nuances and depths of interpretation, we proposed that our research reach an interdisciplinary area, without limiting ourselves to the classic research of analysis-commentary of the legislation of insolvency of the natural person. To achieve this goal, we set ourselves the goal of cutting this research topic in a cascade, starting from the intrinsic and extrinsic springs that can cause an individual to consume irresponsibly, from the idea of changing consumer behavior relative to periods of economic crisis, the need to increase social responsibility and consumer protection, as real social security programs, to identify mechanisms to prevent and treat over-indebtedness, the psychological impact of accessing them, but also to identify solutions for legislative reform, through the creation of a common legislative corpus achieved through the absorption of Law no. 151/2015 by the current Insolvency Code - Law no. 85/2014, an idea already outlined in many countries such as Singapore, Austria, but also India and the United Arab Emirates, which we approached as reference systems in our research.
Keywords: *insolvency, consumer, over-indebtedness, Law no. 151/2015 on Insolvency of Individuals, a Unified Insolvency Code, Comparative Law - Austria, United Arab Emirates, India, Singapore*.

Over-indebtedness - a multidisciplinary perspective. New consumer protection mechanisms under the social responsibility principle

Out of the desire to avoid a classic, disciplinary research, characterized by "scientific rigidity", we set out to paint this topic in a different way, trying to carefully select the key issues and landmarks lost in such a discouraging normative thicket, all the more so we relate to a research topic with reverberations on multiple levels at social, psychological and legal level. In fact, this is the beauty of research, "*the noble purpose of the professor and the scientific researcher being to discover the meaning and reason of the legal rules, to understand them, to expose them, to analyze and explain them, related to ideas springing from the author's personality, to which are added values and principles specific to the time in which they expressed them"* [1].

Any economic crisis has a long-term impact on consumer behavior. For example, the global financial crisis of 2008 has left a huge mark on the economy, on the financial markets, and some would even say on people's behavior. Although the economy seemed to be reborn, unfortunately we faced a new global crisis, this time much more aggressive and with very long-term prospects. The year 2020 was only the beginning of an economic and social decline, with the declaration of the Covid-19 virus pandemic by the World Health Organization. Thus, going through a crisis in a certain market, let's say a real estate market crisis or a stock market crisis, this will affect the willingness of people to take risks in that specific market in the coming decades. People are less willing to invest

due to a negative impact on income, especially in a context where economic security is becoming a hazard across all sectors. At the same time, research shows that there is a predilection of people to be more reluctant to become homeowners, more reluctant to increase the net worth of their homes than we have noticed before. For example, people between the ages of 30 and 40 are less likely to own a home than in previous decades. Also, if we take the stock market as an example, research and statistics suggest that a person who was about 30 years old when the financial crisis hit in 2008 has drastically reduced his or her propensity to be a stockbroker and will last about 30 years until this effect is no longer detectable in the data.

Maybe we should look at this kind of caution as a positive thing, but society needs people willing to take risks for the economy to grow. On the other hand, there may have been too much risk not taken and perhaps a little caution means taking smarter risks. Therefore, let's say that contact with insolvency can make us more cautious in taking risks in the future, but maybe less optimistic as entrepreneurs, as professionals, as consumers, a context in which the effect of decline will be felt on all levels.

Worryingly, we still face the stigma of bankruptcy, which is ubiquitous in modern societies, from China to Europe and the United States, and the stigma-recovery ratio must "balance" in equilibrium to work the second chance philosophy given to the natural person as a simple individual. [2]

We must admit that the new vision is somewhat detached from the purely economic dimension of insolvency, as it has been configured in the past, by integrating the social dimension into its structure and gradually eliminating that personal stigma attributed to honest or not bankrupt. At both Union and international level, priority is given to measures and procedures for rescuing the financially distressed debtors and reintegrating them into the economic circuit, when it can contribute to "healing" the economy through honesty and innovation, since, in addition to being an instrument for saving the indebted debtor, it also becomes the realm where the law intersects very strongly with the economic phenomenon. In fact, we enjoy a legislative "effervescence" in the area of giving the debtor a second chance, this becoming a won principle, an integral part of the genetic code of insolvency proceedings, which is reflected in the judicial reorganization regulated by Law no. 85/2014 on insolvency prevention and

insolvency proceedings, financial recovery under the rules of Government Emergency Ordinance no. 46/2013 on the financial crisis and the insolvency of administrative-territorial units, approved by Law no. 35/2016, as well as the well-deserved fresh-start granted to individuals as regulated by Law no. 151/2015 on the insolvency of individuals.

Over-indebtedness is characterized by excessive debt, which results in the fact that: the debtor's assets, even higher than the liabilities, are not immediately liquidable, while the debts are already due; the debtor's assets suffer a significant erosion of the liquidity value, which has become insufficient for the payment of the due debts; the debtor';s income decreases or acquires fluctuating values, insufficient to pay the debts; even if the value of the assets and the level of income are maintained, the debts accumulate, in a rate that is impossible to follow and in an amount that is impossible to cover [3].

In our domestic law, simple individuals struggle with an unlimited liability towards any creditor, with all their assets, whether present or future. Regardless of the financial situation and even if the assets of the individual debtor are insufficient to cover all his debts, he remains obliged *ad infinitum*.

We must point out that in the doctrine we find a difference between *active over-indebtedness*, generated by irrational, reckless consumer behavior through excessive borrowing, beyond the limits of its sources of income and its collateralised payment assets, and *passive over-indebtedness*, which characterizes the honest consumer, in good faith, who, faced with unforeseen circumstances, such as unemployment, the onset of an illness, the sharp decline in the value of the mortgage, etc., is unable to pay his debts. Access to insolvency proceedings but also to other social protection mechanisms is conditioned by the consumer's lack of fault, his good faith and honesty.

However, we note a constant concern of the legislator in regulating instruments, important mechanisms for the protection of over-indebted consumers, which complement the law on insolvency of natural persons, namely: Government Ordinance no. 38/2015 on alternative dispute resolution between consumers and traders, which aims to establish an alternative dispute resolution procedure for individual disputes brought voluntarily by consumers against traders in order to ensure a high level of consumer protection and the proper functioning of the market, and Law No. 77/2016 on the giving in payment of some

real estate in order to settle the obligations assumed through loans, offering the consumer the right to pay off the debts arising from credit agreements by paying the mortgaged property in favor of the creditor. These legal mechanisms offer individual debtors the opportunity to discharge their debts by cooperating in good faith, mechanisms that of course contribute to shaping a system of consumer protection.

Interestingly, we are in the presence of a regulatory competition in the field of consumer protection, with the recent regulations on the Law on giving in payment and the Law on the insolvency procedure of natural persons becoming, why not, extended remedies of unforeseen circumstances, in a context deeply marked by the field of social responsibility. The shaping of these legal rules that intersect for the benefit of the consumer becomes the result of interdisciplinary analyzes between law, economics, ethics and sociology. Moreover, in a deeply ethical spirit, the evolution of common law has focused on the development of consumer protection, by setting up modern legal institutions such as unpredictability. The new concept is based on principles that visualize the contract in the sense of a more flexible connection between the contracting parties, principles designed to govern the new theory of contract law: *the principle of contractual equality, the principle of contractual equilibrium, the principle of contractual fraternity, the principle of social utility, as well as the principles deduced: the principle of legal certainty, the principle of freedom and responsibility and the demonstrative principle of contractual solidarity* [4]. This concept of breach of principle *pacta sunt servanda* we also find it in the modern insolvency laws of the individual, which have a double purpose, in addition to the protection of creditors, that of saving the debtor in good faith, giving him a second chance, respectively that well-deserved fresh start. Thus, we find few countries that still maintain the concept of *pacta sunt servanda* and gives absolute priority to the fulfillment of consumer contractual obligations. This option is reflected in the way they implement in their systems the idea of *moral hazard* to allow the cancellation of part or all of your personal debts without payment. Therefore, like legal persons debtors, natural person debtors may face problems that are beyond their control, which may bring the debtor beyond the limits of affordability, which entitles him to resort to insolvency as a safeguard [5].

The relationship of interdependence of the legal mechanisms mentioned above with the insolvency law of the individuals is obvious and extremely close, given that the institution of payment may be a means of partial exemption of debts of the natural person debtor, a means of avoiding special insolvency proceedings. Thus, the foundations of the Law on the insolvency of individuals were laid even during the height of the financial difficulties triggered by the constant and remarkable depreciation of the Swiss franc against the national currency, respectively 2015, in the public space being discussed the disastrous effect on the balance between parts of the bank loan agreement granted in foreign currency, especially in CHF. Indeed, the existence of delays in the payment of credit rates of individuals in Romania is a reality that emerges from the official statistics, but the over-indebtedness of debtors was a trigger of this phenomenon and not a lack of discipline in lending. Although the Law on giving in payment was challenged by the banking entities in about 2000 cases, this being the most contested normative act in the history of the Romanian Constitutional Court, by CCR Decision no. 431 of 17 June 2021, recently published in the Official Gazette, respectively 27 October 2021, the new law on giving in payment was validated, thus establishing a clear definition of impredictibility in the application of this law. The Constitutional Court pointed out that rebalancing contracts is paramount, virtually removing all defenses of credit institutions that led to the loss of lawsuits through misinterpretation of imoredictibility. Here is a protection tool that is becoming more and more contoured and becomes a shield for those who will suffer from the current economic crisis, as they have the right to notify the bank in order to rebalance the contract in case the rate increased by more than 50% compared to the time of signing the contract or the exchange rate increased by more than 52.6%.

Here, too, it is necessary to mention Regulation (EU) no. 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) no. 648/2012, which establishes a series of uniform rules on the general prudential requirements that credit institutions must implement for good credit risk management, assessing at the time of granting the loan the real capacity of the debtor to repay the debt. Moreover, Directive 36/2013/EU of the European Parliament and of the Council on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms seeks accountability and “interweaving” so necessary between the

protection of consumers of banking products and services and the social responsibility of banks. Therefore, banks, and not only economic operators in general, should insist on the integration and adoption of social responsibility policies, firstly because they have the means to respect human rights, and secondly because in this way participates in social progress, as a moral responsibility regarding the interaction of the activity of an economic operator with its customers, its consumers, its own employees but also the community as a whole. This social responsibility of economic operators, including banks, reflects a complex attitude that combines legal responsibility, economic responsibility, ethical responsibility and philanthropic responsibility.

Therefore, the solution lies in a transparency of society in general, in a responsible assumption of all the factors involved and a common effort of fair "sharing" of risks. On the one hand, we invoke, in this sense, the Consumption Code, according to which consumers have the right to be informed, fully, correctly and precisely, of the essential characteristics of products and services, including financial services provided by operators, so as to be able to make a rational choice between the products and services offered, in accordance with their economic and other interests and to be able to use them, according to their destination, in full safety and security", as it complements the regulation of banking products and services offered by GEO no. 50/2010 on consumer credit agreements, and on the other hand, the Regulation of the National Bank of Romania no. 5/2013 on prudential requirements for credit institutions, as subsequently amended and supplemented, according to which credit institutions must have a risk management framework in place.

Although the giving in payment procedure may seem more accessible and faster, it should only be used *in extremis*, in our view, however, the insolvency of natural persons procedure being a more advantageous choice, in the context of a "debt discharge system based on good practice at European level and on the timing of forced execution which offers increased benefits to consumers, dealing with the complex issue of over-indebtedness competitively and failry" [6].

In any case, the pandemic has accelerated changes and changed consumer priorities, activating the risk of over-indebtedness, which implies a final cost of lending that exceeds the financial possibilities of the debtor consumer. The pandemic, of course,

is due to a decrease in consumer purchasing power due to inflation, with the risk of default being a direct result of events such as job losses, declining incomes and more. [7]. Here is a whole “chain of weaknesses” that can lead to over-indebtedness and insolvency of the consumer.

The natural person - between the quality of consumer and that of entrepreneur (professional). Reflections on the recovery of the financial situation of the natural person debtor under Law no. 151/2015 on the insolvency of natural persons

Until recently, only traders were those who enjoyed the protection of the court by virtue of insolvency - Law no. 85/2014, depriving creditors of the possibility to initiate forced executions by “freezing” the receivables, thus benefiting from a series of important favorable effects, including the discharge of debts - *discharge*, as a result of the excusable bankruptcy. On the other hand, simple individuals “benefited” instead from an unlimited liability to any creditor, developing a real “anxiety” about debts and carrying “on their shoulders” the social stigma. Against the background of real social protection needs, the insolvency law of the natural person was outlined, which would offer to the bona fide natural persons in financial difficulty, a possibility of safeguarding, by voluntarily submitting the opening of the insolvency procedure.

Initially, Law no. 151/2015 on the insolvency procedure of natural persons, published in the Official Gazette of Romania, Part I, no. 464 of 26 June 2015, should have entered into force on 26 December 2015. The first postponement was made through the Government Emergency Ordinance no. 61/2015 for 31 December 2016, followed by Government Emergency Ordinance no. 98/2016, which extended the deadline for entry into force until 1 August 2017, meanwhile being approved the Methodological Norms for the application of Law no. 151/2015. However, the application of the Insolvency Law on natural persons faced a new and final extension of the deadline for entry into force, respectively 1 January 2018, according to Government Ordinance no. 6/2017, published in the Official Gazette of Romania no. 614 of 28 July 2017, invoking the complexity of the field regulated by this law, as well as the point of view of the Superior Council of Magistrates which signaled the need for rigorous preparation of the administrative capacity of courts called to apply insolvency proceedings of natural persons.

"Giving a second chance" has become a basic principle of insolvency, pursuing the idea of reintegration into the economic and social circuit, both of professionals and individuals not only as entrepreneurs, but also as of consumers. The beginning of this "rescue culture" was triggered by *Recommendation no. 135/2014 of the European Commission on a new approach to business failure*, Recommendation aimed only at honest professionals. Later, this culture took shape in the spirit of the *Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt*, and amending Directive (EU) 2017/1132 (*Directive on restructuring and insolvency*) [8], an European legal instrument of the type *hard-law* which covers two important levels, namely: harmonization/standardization of legislation at EU level in the field of insolvency and the development of a rescue culture that can be achieved, on the one hand, through sound insolvency prevention procedures, and on the other hand, by promoting and accessing the judicial reorganization procedure in the insolvency phase [9]. And because the countdown has begun in order to transpose Directive (EU) 2019/1023 at national level, we are already enjoying a draft law to amend and supplement Law no. 85/2014 on insolvency prevention and insolvency proceedings, which is on the "table" of the Parliament.

Although our research concerns the insolvency of the natural person, we cannot look separately at the normative acts that regulate insolvency, on the one hand, Law no. 85/2014 intended for professionals, and on the other hand, Law no. 151/2015 intended for simple individuals, and we cannot disregard their common points, at least in terms of the purpose for which they were adopted and the legal effects which these legislative acts produce, an analogy that allows the improvement of the last normative act that is still in the period of "pioneering" at national level and that tends to follow the same genetic code of the principles and insolvency procedures intended for entrepreneurs.

In fact, we must point out that through the draft law amending the current Insolvency Code - Law no. 85/2014 and the transposition of EU Directive 1023/2019, the legislator tends towards a compatibility of insolvency proceedings specific to professionals, with that of natural persons, given that most often the delimitation of civil

obligations from those assumed in the operation of an enterprise it turns out to be difficult or even impossible to achieve. In this regard, we enjoy a new approach to professional traders-natural persons, but also to the liberal professions, which currently have only the simplified insolvency procedure involving only bankruptcy, being excluded from any insolvency prevention procedure or of judicial reorganization, but also from the application of Law no. 151/2015. [10] The new draft law gives a second chance to these categories as well, together with the proposal to repeal art. 38 paragraph 2 of Law no. 85/2014 also absorbing the category of liberal professions, a category that the doctrine has tried over time to include in the content of Law 151/2015.

The reality is that corporate insolvency can lead to personal insolvency once a business fails, even when the business is a separate legal entity, which is why the design of personal insolvency regimes is also very important. For example, an effective personal insolvency regime should take into account debtors' prospects and incentives for future revenue generation to allow entrepreneurs a second chance after insolvency.

Moreover, the new Directive 1023/2019 provides that entrepreneurs would not actually benefit from a second chance if they had to go through separate procedures with different access conditions in order to remit the professional debt and any personal debt incurred outside the exercise of their profession. Therefore, Member States must ensure that, in cases where the professional debts of entrepreneurs cannot be reasonably separated from personal debts, both categories of debt will be remitted in the same procedure. Where these categories of debt can be separated, Member States may provide that they are remitted in the same or separate but coordinated procedures. Following the line of this vision, the draft law on amending the Insolvency Code proposes to complete art. 3 with new paragraphs, thus - „*If a professional natural person in insolvency has both personal debts and professional debts, which either cannot be separated in a reasonable way, or are in divisions of the patrimony constituted according to art. 2324 (3) of the Civil Code, they are dealt with, in the present insolvency proceedings, in order to obtain the final discharge of obligations*". We consider that these provisions do nothing but strengthen the idea of unifying the legislation on insolvency in a common corpus, which would represent a real Insolvency Code.

It remains to be seen to what extent the overlap of a commercial insolvency proceeding with a personal insolvency proceeding will be effectively applied, being a rather delicate matter, which should be more precisely regulated, especially as regards the classification of professional debt as compared to personal debt. From the brief analysis, it is obvious that the draft law on amending the Insolvency Code for professionals also brings implicit amendments to Law no. 151/2015 on the insolvency of natural persons. At the border of the two categories of debts, which should be "treated" in a single procedure based on the Insolvency Law, certain uncertainties remain "in order to obtain the discharge of obligations". On the one hand, it is not clear to what extent Law no. 151/2015, which provides for other procedures but also different functional competencies, the insolvency commission and the court having other competencies than the syndic judge, and on the other hand, to what extent is suspended or terminated a personal insolvency procedure, pending at the date of initiation of the restructuring mechanisms based on the Commercial Insolvency Law. [11].

Returning *stricto sensu* to the core of our research, we must point out that the insolvency of simple individuals is indeed a progressive approach, but an insufficient approach. In order to unravel the secrets of an ideal legislative model, we consider it important not to fall into the trap of the misconception in the sphere of society at the beginning of the 21st century, namely that the simple individual is a consumer rather than a citizen. The victim of society is this vulnerable consumer before the "monsters" of unfair competition, the "collectors" of claims, where the focus is on debt and not on the rights and freedoms of the citizen to allow the right to subsistence, keeping the family home and freeing the honest, bona fide debtor from debt for the chance of a fresh start. And from this we deduce, in fact, the *key elements* of this special law, namely: good faith, over-indebtedness and discharge of debts. In fact, there are two internationally recognized models of insolvency of the natural person: on the one hand, the Anglo-American model, called "*fresh start*" and the European model, known as "*deserved fresh start*". The European model requires access to such a debt relief procedure only to the honest, bona fide debtor natural person who, independently of his will, is in a situation of over-indebtedness, unlike the Anglo-American model, which allows access to the procedure of insolvency of any debtor, regardless of the condition of the manifestation of good faith.

This “tradition” of conditioning the restructuring and giving it a second chance is also found in nuances regarding the professional debtor, Recommendation no. 135/2014 of the European Commission on a new approach to business failure outlining the idea of adopting different liquidation measures for honest entrepreneurs compared to dishonest entrepreneurs, as well as the need for expedited procedures for companies that have honestly gone bankrupt. Consequently, the tendency of some consumers to access the procedure only to be forgiven for certain debts is reversed by the need to meet mandatory requirements for the release of residual debts. Also the Roman legislator grants this opportunity only to bona fide natural person debtors, although proof to the contrary can be made quite difficult, which is why in the case of professional traders the legislator opted for the use of the simple term debtor, and not honest debtor.

And because we do not want an exhaustive analysis of the normative act itself, we continue to point out the essential elements of the insolvency of the natural person, and we will also make comparative law digressions, without overestimating foreign jurisprudence and legislation, reaching only extensive research possibilities and regulatory vision.

If until the moment of the appearance of this normative act we were talking only about a possible insolvency of the natural person not subject to the procedure regulated by Law no. 85/2014, Law no. 151/2015 introduces the concept of insolvency for this category as well, defining it at point 12 of art. 3 as representing *„that status of the debtor's patrimony which is characterized by the insufficiency of the funds available for the payment of debts, as they become due. The insolvency of the debtor is presumed when, after a period of 90 days from the due date, he has not paid his debt to one or more creditors. The presumption is relative*”.

The normative act begins by regulating the purpose of the insolvency procedure of the natural person, the legislator emphasizing that ,,*it is a collective procedure for the recovery of the financial situation of the natural person debtor, in good faith, the coverage as much as possible of his liabilities and the discharge of debts“.* First of all, we find that we are facing a regulation similar to the insolvency procedure provided by Law no. 85/2014, in the sense of a collective procedure that will involve all creditors of a debtor and which will have three objectives: recovery of the financial situation of the natural

person, coverage of liabilities in a higher percentage and release of debts remaining as a result of the procedure. However, we note that the primary purpose pursued by the legislator in the content of Law no. 151/2015 is the financial recovery of the debtor in economic difficulty, over-indebted, unlike Law no. 85/2014 on insolvency prevention and insolvency proceedings, the main purpose of which is to cover the debtor' liabilities by maximizing his assets, giving the debtor a chance to recover, when possible, being provided here as a subsidiary purpose. We consider that such a difference is justified by the fact that a professional debtor can be dissolved, deregistered in the situation where economic reintegration becomes impossible, while the individual debtor continues to exist regardless of the outcome of such procedures to regulate the financial situation. Precisely by virtue of this last aspect, the procedure regulated by Law no. 151/2015 supports consumers in the sense of creating a legal context that allows them to enjoy a decent living by capitalizing on goods in an organized setting, as opposed to individual forced executions, which in addition to depriving the individual of the goods necessary can have negative consequences for the whole family. Consequently, the purpose of this procedure is not only economic but also social.

As in the case of Law no. 85/2014, the debtor enjoys the effects of insolvency regarding the exemption from penalties, interest on arrears, the suspension of individual forced executions against him and, as we mentioned, the release of certain debts under the law. The advantage also manifests itself over the creditors who will be able to recover the receivables, or at least a part of the receivables, in an organized framework, with lower procedural expenses than those involved in an individual enforcement procedure.

We also identify similarities with the insolvency of the professionals regarding the principles regulated by art. 2 of Law 151/2015, respectively: giving bona fide debtors a chance to recover their financial situation through a debt repayment plan, supporting the exit from insolvency, including by discharging the debtor in a systematic and rational manner, so that the debtor is motivated to make efforts to carry out income-generating activities, facilitating his reintegration into the social environment and his contribution to the economic life of the community, according to the level of professional training and experience gained. We note that the legislator wanted to give priority to the insolvency procedure based on a debt repayment plan by placing this principle at point 1 of art. 2,

the procedure by liquidation of assets occupying a subsidiary place. We note that the law seeks to support the natural person debtor to get out of insolvency by appropriate means such as negotiating claims with creditors, leading to the development of a viable debt repayment plan, a procedure in which creditors enjoy fair, transparent and predictable treatment. [12]

It should be noted, however, that since 2018, the time of entry into force of the law, and until now, the National Authority for Consumer Protection (ANPC) has admitted about 47% of requests for protection through insolvency proceedings of natural persons, noting that fewest requests have been submitted in the last year, which is due to the aid measures granted by the Government but also to the moratoriums granted by the financial-banking institutions during the pandemic. According to the same source, the number of people who have so far filed for insolvency of natural persons is in the order of hundreds, but the number of cases that actually go into insolvency is very small. [13] And here's the question mark. Is this law a failure? What should be changed? What reforms are needed? Aren't the access conditions too restrictive? Definitely the statistics demonstrates that this legal mechanism does not help the over-indebted.

With regard to this scope of application of the insolvency of natural persons, the legislator has stipulated a number of exceptions, which is why, in our opinion, the conditions for a natural person debtor to access the provisions of Law no. 151/2015 become particularly restrictive. Thus, parapraphs (3) and (4) of art. 4 regulates the interdictions of access to the procedure on reasons imputable to the debtor, aiming mainly at his good faith, the doctrine mentioning that by these are established "a number of eight genuine exceptions of inadmissibility of a punitive nature in respect of possible misconduct prior to filing" [14], respectively: (3) The insolvency proceedings on the basis of a debt repayment plan, a judicial insolvency procedure by liquidation of assets or a simplified insolvency procedure may not benefit the debtor who was the subject of such a procedure, completed with the release of residual debts, less than 5 years before the submission of a new request to open insolvency proceedings. (4) The procedures provided by this law are not applicable to the debtor: a) in case an insolvency procedure based on a debt repayment plan has been closed, for reasons attributable to him, a judicial insolvency procedure by liquidation of assets or a simplified insolvency procedure

less than 5 years before a new request for the opening of insolvency proceedings is submitted; b) who has been definitively convicted for a tax evasion, a forgery or an intentional offense against property by disregarding trust; c) who has been dismissed in the last 2 years for reasons attributable to him; d) who, although fit for work and without a job or other source of income, has not made the reasonable diligence necessary to find a job or who has unjustifiably refused a proposed job or another income-generating activity; e) who has accumulated new debts, through unnecessary expenses while he knew or should have known that he is in a state of insolvency; f) which determined or facilitated the arrival in a status of insolvency, intentionally or through serious fault. It is presumed to have had this effect: 1. contracting, in the last 6 months prior to the submission of the request for opening the insolvency procedure, debts that represent at least 25% of the total value of the obligations, except for the excluded obligations; 2. assuming, in the last 3 years prior to the submission of the request, excessive obligations in relation to his patrimonial status, to the advantages he obtains from the contract or to all the circumstances that significantly contributed to the debtor';s inability to pay his debts, other than those owed by him to the persons with whom he has so contracted; 3. making, in the last 3 years prior to the application, preferential payments, which have significantly contributed to the reduction of the amount available for payment of other debts; 4. the transfer, in the last 3 years prior to the submission of the request, of goods or values from his patrimony into the patrimony of another natural or legal person while he knew or should have known that through these transfers he will reach a state of insolvency; 5. termination of an employment contract by agreement of the parties or by resignation in the last 6 months prior to the submission of the request to open the procedure; g) which, at the date of the request for the opening of an insolvency procedure, according to the present law, has already opened another insolvency procedure".

Pursuant to art. 3 of the law, a consumer can access the insolvency procedure in Romania if he has his domicile, residence or habitual residence for at least 6 months, prior to submitting the request, in the country. At the same time, the debtor must be in a state of insolvency and there must be no reasonable probability of becoming able to perform his obligations again. From this perspective, the notion of ,,*reasonable probability*" will be assessed by comparing the total amount of obligations to the income

realized or forecast to be realized, depending on the level of professional training, the traceable assets held by the debtor, the possibility of a salary increase in the future, etc. The last requirement for entering insolvency concerns the total amount of due debts which must be at least equal to the threshold value, respectively 15 minimum wages per economy, amount that fluctuates according to the minimum gross salary in the country established by Government decision and analyzed at opening procedure by the insolvency commission.

An important aspect that we remember in this procedure is the fact that it can be triggered exclusively by the debtor, as opposed to the insolvency procedure regulated by Law no. 85/2014.

The law regulates three forms of personal insolvency proceedings, respectively *administrative insolvency proceedings on the basis of a debt repayment plan, insolvency proceedings by liquidation of the debtor's assets, and simplified insolvency proceedings*. We mention that the first two forms, real insolvency proceedings, are addressed to all debtors who, of course, meet the legal conditions, while the third procedure is a form of social protection for a limited category of debtors.

According to ANPC, the requests regarding the opening of the procedure based on the repayment plan are the ones that predominate, in a percentage of 90%, unlike the requests for opening the insolvency by liquidating assets, where we are talking about approximately 4 files at the level of courts. This becomes an additional reason to focus strictly on the outline of the administrative insolvency procedure based on a debt repayment plan.

Defined by art. 3 point 17, the insolvency proceedings on the basis of a repayment plan benefit from the allocation of the entire Chapter III entitled "*Administrative procedure based on debt repayment plan*", which also includes the largest number of articles. Unfortunately, in addition to restrictive procedural deadlines and conditions, this procedure also involves many stages that make it difficult to access, even more so, the discharge of debts, which can at any time turn into an insolvency procedure by liquidation of assets.

Analyzing schematically, we find that at a preliminary stage the debtor has the obligation to notify his intention to access the insolvency proceedings of all known

creditors, having the right according to art. 13 (4) to notify the insolvency commission after a minimum period of 30 days from the notification, during which the creditors may initiate individual proceedings against the debtor. Here is a first impediment in the concretization of the procedure. There is, of course, a legislative “loophole” for the escape and cessation of these forced executions, and the debtor may appeal to the temporary suspension by way of the presidential ordinance to advance to the next step. The next step is the administrative procedure that takes place before the insolvency commission, by filing a request for debt repayment based on the plan. If the commission accepts the debtor’s request for repayment in principle, forced execution shall be temporarily and provisionally suspended for a maximum period of 3 months, during which time the debtor’s proposed plan shall be confirmed or not. The conditions of admissibility are the good faith of the debtor and his situation of over-indebtedness. In the event that the debtor is in an irreparably compromised situation, the commission will ask the court to order the opening of the proceedings by liquidation of assets. As a critique of the text of the law, we point out that the debtor himself cannot request liquidation in case of rejection of his insolvency request based on repayment plan, only having the possibility to request another repayment based on plan, but after passing a period of 6 months. Step two involves opening the insolvency proceedings by a decision which will also contain the order appointing the administrator of the proceedings, a stage which is quite difficult given the complexity of the procedure but also the “labyrinth” of remedies (insolvency commission decisions can be challenged in court and subsequently appealed to the court) in order to outline and demonstrate good faith and the situation of over-indebtedness at the fine border with the situation irreparably compromised.

As in the case of the reorganization procedure within the insolvency of the professionals, the administrator of the procedure has an essential role in its development, monitoring, support and supervision, but which in turn is controlled by the insolvency commission, as the judicial administrator is controlled by the syndic judge according to Law no. 85/2014. The repayment plan can be designed for a maximum period of 5 years, even with the possibility of extension for another year, depending on the amount of debts, the expected income or the value of the goods to be capitalized. [15]

The debt repayment plan is also a complex one, as well as the judicial reorganization plan related to the professional debtor based on the Insolvency Code - Law no. 85/2014, art. 16 (2) of Law no. 151/2015 establishing its content. For the approval of the plan by the creditors, the vote of the creditor is required, which represents 55% of the value of the receivables and at least 30% of the value of the preferential claims, in accordance with art. 28 of the law.

The last step of the procedure, materialized as a result of the successful implementation of a repayment plan, is that of debt relief, as in the case of judicial reorganization of professionals. Unfortunately, the discharge is not an automatic one, but must be ordered separately by the court. It is bizarre that despite the decision of the commission to establish the termination of the procedure without incidents regarding the payment schedule, the discharge can be refused by the court pursuant to art. 75 of the law, for reasons such as intentional or negligent violation by the debtor of any obligations under the law, including after the closure of the proceedings, but also the commission of fraud to the detriment of creditors committed within three years of the closure of the proceedings. And the circle of uncertainties does not end here. All the effort made by the debtor can be deleted once the request for discharge of debts is rejected, in the sense that it returns to the principle of unlimited liability regulated by art. 2324 (1) of the Civil Code, the debtor being bound by all historical or current obligations, being calculated including interest and penalties on them. However, does not the completion of a repayment plan and implicitly the finding of this by decision by the insolvency commission not automatically imply the fulfillment of the obligations by the debtor? It seems like a contradiction of the legislator the possibility of the court to refuse the discharge of debts, lacking in effect one of the essential purposes of the insolvency law, an effect that remains a simple desideratum. Here's how these promoted legislative ideal and *fresh start* become a system that is far too slow but also cautious towards the debtor, which in reality requires an immediate response from society.

That is why the Law on Insolvency of natural persons has received much criticism, including non-compliance with the standard set out in the guidelines of the European Commission Recommendation on a new approach to business failure and insolvency, which we mentioned above, namely the standardization of the period set for discharge of

debts up to a maximum of 3 years, the law violating this standard as deadlines of 1, 3 and even 5 years are prescribed, also the time from which these deadlines are counted, deadlines that are calculated from the date of closing the procedure and not from the date of the opening of the procedure, as calculated in other Member States' legislation, as well as in the mode of operation, in the sense that the discharge of debts is not an automatic effect but is carried out only at the request of the debtor. For example, in the French legal system, natural persons debtors in an irreparably compromised situation can obtain full and immediate debt discharge from the evaluation commissions, with the liquidation of assets and without going through a revaluation program, the debtors without assets, benefiting even from the faster forgiveness of debts [16]. For all these reasons, we could say that the law makes it difficult to revitalize the debtor's situation, through the excess of regulations and conditions, contributing to shaping the image of bankruptcy, the stigma still used in our society.

The reality is that, although four years have passed since the entry into force of this law, which was intended to be a starting point in helping over-indebted Romanians, very few people have resorted to its procedures. Worryingly, the law is far from having the impact that the legislator would have expected.

The perspective of a unified insolvency code. Comparative look: Singapore, India, Austria and The United Arab Emirates

The doctrine speaks more and more about the need to rethink consumer protection legislation, by drafting a genuine *Consumer protection code* to absorb Law no. 151/2015 on the insolvency of the natural person, such as GO no. 38/2015 on the alternative settlement of disputes between consumers and traders or Law no. 77/2016 on the giving in payment of real estate in order to settle the obligations assumed through loans but also the competition law, a code that will also apply the consumerist *vortex*, especially over-indebtedness but also the prevention of over-indebtedness. Such a legislative attempt existed a few years ago with regard to the drawing of an *Economic Code of Romania*, which absorbs the insolvency of professional traders.

On the other hand, why not look at another form of regulation. There is the possibility of integrating this special law of insolvency of simple individuals in the

Insolvency Code - Law no. 85/2014, all the more so as we observed during our research that the insolvency procedure of natural persons actually complies with the genetic code of insolvency proceedings aimed at professionals, a code modeled on common Union and international principles and which can only be interpreted unitary, in a logic of legislative harmonization. *Consequently, wouldn't it be much more useful to create a unified Insolvency Code?* We consider that, in terms of insolvency law, we are already talking about a solid legal construction, which tends towards an independent law, the insolvency law, which is required to preserve its identity and the evolution outlined *in globo*. [17]

If we take a panoramic look, we will find that the states oscillate between the regulation of a unitary law, common in the matter of the institution of insolvency, reuniting in a *common corpus* both the insolvency of natural persons, in their capacity as simple individuals, but also the insolvency of professionals, and, separate legislation, an option adopted by the Romanian legislator.

For example, *Singapore* benefits from a unified law for both consumers and companies. In addition to the USA, which remain a pioneer in reorganisation and the development of a "debtor rescue culture" in financial distress, and which enjoys a unified insolvency code, we look at the legal regime developed by Singapore, which stands out as having become, in a relatively short time, the leading Asian centre for debt restructuring and one of the leading centres worldwide, alongside London and New York. As such, 2019 marks the field of restructuring and insolvency in Singapore, given the long-awaited Insolvency, Restructuring and Dissolution Act - IRDA, passed in Parliament in October 2018 and which came into force in 2019, an act that consolidates personal and corporate insolvency laws, linking both personal and corporate debt restructuring into a single legislative corpus. [18].

Here we also mention *India*, which recently enjoyed major changes to the Insolvency and Bankruptcy Code 2016 (IBC), bringing all insolvency proceedings in India under one "umbrella", namely the insolvency framework applicable to limited liability companies (Insolvency and Bankruptcy Council Rules of India - IBC Rules) and that applicable to inatural persons (Insolvency resolution for natural persons 2016). [19]

In Austria [20], the idea of dividing insolvency regulations has been abandoned since 2010, with the introduction of the Austrian Law on Insolvency (Insolvenzordnung, hereinafter IO) creating a unified insolvency procedure for both natural persons, regardless of their status as entrepreneurs or consumers, as well as legal persons. For consumers, Austrian law regulates two additional debt cancellation instruments: the payment plan (Zahlungsplan) and the revenue collection procedure (Abschöpfungsverfahren). These tools are open to all natural persons, whether or not they run a business. However, distinctions are made between entrepreneurs and non-entrepreneurs in terms of the structure of the procedure.

Moreover, the recent legislative initiative becomes very interesting, in that the Austrian legislator has simplified the transition between individual forced execution, governed by the Law on forced execution (Exekutionsordnung, hereinafter EO) and collective forced execution under insolvency law. According to the EO, forced execution proceedings should be suspended if the so-called “obvious insolvency” (offenkundige Zahlungsunfähigkeit) is detected and in such cases, creditors should request the opening of insolvency proceedings in order to recover claims.

We also find in Austrian insolvency law the key element of good faith, the main reasons behind this change being the social issues, namely the fact that people who are in a hopeless economic situation must be discharged from debt in a relatively short time. Therefore, the purpose of this “consumer insolvency” (Privatkonkurs) is, *inter alia*, to enable the debtor to have a fresh start. Individual debt discharge has been the focus of attention because it is assumed that every bona fide debtor is exempt from debt after a certain period of time, even if the creditors do not receive any payment during this time. The most recent amendment to the provisions on insolvency proceedings entered into force in July 2021, precisely to align the IO with the European Directiveon restructuring and insolvency (EU 2019/1023). Obviously, the effects of the Directive will be much more uniform, without “short circuits” of interpretation, given that Austria has a unified Insolvency Code, unlike Romania, which has so far created a draft law transposing the EU Directive intended for professionals and not correlated with related laws such as Law no.151/2015 on the insolvency of the natural person, as we analyzed in the second section.

Under Austrian insolvency law, natural persons as consumers have three different options for debt discharge, as in our legal system, namely: (a) on the basis of a reorganization plan (Sanierungsplan, art.140 et seq. of IO); (b) on the basis of a payment plan (Zahlungsplan, art. 193 et seq. IO); and (c) the absorption procedure (Abschöpfungsverfahren, Art.199 et seq. IO).

We must mention that in Austrian law, the opening of insolvency proceedings is not an option for the consumer as in Romanian law, where the legislator stipulated this obligation only for professionals under certain conditions expressly regulated by law. Thus, in Austria the insolvency proceedings can be initiated only on the basis of a request, which can be lodged by a creditor or the debtor, the latter being obliged to apply for insolvency under art. 69 (2) of the IO. The initiation of insolvency proceedings requires the insolvency of the debtor (Zahlungsunfähigkeit), as well as assets to cover the costs (kostendeckendes Vermögen), a kind of over-indebtedness stipulated in our law, over-indebtedness which is not assimilated to an irreparably compromised institution the procedure can be accessed on the basis of a repayment plan but only on the basis of liquidation of assets as we analyzed in the second section).

Even more interesting is the next point made by the Austrian legislator, namely that if the undertaking was completely closed at the time of the request, the debtor is considered a consumer. The origin of debts becomes irrelevant, they can come even from entrepreneurial activity. The procedures are cascading, in reality achieving continuity, simplification and access of debtors to insolvency mechanisms, which can be transformed in the same process, depending on the specifics of the debt and the activity of the company, which is facilitated by legislative unification.

As a final important aspect of Austrian insolvency law, we note that in 2020, 54,688 people received support from one of the 10 recognized debt counseling agencies in Austria. Of the 7,296 insolvency proceedings opened, 67% of all debtors were accompanied by a recognized debt counseling agency. Practice shows that debtors with no income or below average income are mainly represented by a debt counseling agency. At the same time, the number of people seeking advice from a debt counseling agency is growing. This is how counseling plays a key role in promoting and accessing this procedure, which is still viewed reluctantly by our consumers. Free counseling is

essential, as recourse to the services of a lawyer involves high costs and hence the waiver of insolvency proceedings. At the same time, in addition to the direct support given to debtors in insolvency proceedings, emphasis is also placed on the long-term stabilization of the debtor's financial situation. Debt counseling agencies are also active in the field of financial education through special provisions for children, young people and adults. The goal is to provide timely financial education and prevent over-indebtedness later. Debt counseling agencies therefore perform not only legal but also economic and social activities.

As a comparative law perspective, we also dwell for a moment on the insolvency of the natural person regulated in the United Arab Emirates (UAE),[21] an analysis that we found interesting primarily because of the diametrically opposed culture of our culture. In contrast to Austria, Singapore or India, the Emirates, as well as Romania, have separately regulated the insolvency of the natural person. EAU Insolvency Law no. 9 of 2019 is still in the process of "groping in the dark", creating a basis for practice that will give consumers the courage to access these rules.

Unlike our law, which gives the possibility to approach one of the three procedures, the EUA law provides only two procedures, similar to the insolvency law dedicated to traders, respectively the implementation of a settlement plan or bankruptcy. What is essentially different from our law is that the procedure followed will be different depending on the number of working days in which the debtor has not paid the debts and not depending on the possibility of recovery, as in our system. We thus discover a completely different vision. In this sense, in case of non-payment of debts within maximum 50 working days from the due date, a settlement plan will be applied, and exceeding this threshold of 50 working days will automatically involve the liquidation procedure. Basically, the regime is much more severe.

Settlement plans are under the supervision of the courts of the United Arab Emirates and only the debtor can apply for a settlement plan. Thus, a solvent debtor may request recovery on the basis of this financial liability settlement plan, provided that he has not suspended the payment of debts for a period of more than 50 consecutive working days. Upon submission of the request, the debtor must provide the court with details of his financial situation, information on income from the United Arab Emirates or offshore,

cash flow forecast and sources of cash flow for the next 12 months, details of all assets inside or outside United Arab Emirates and the approximate value of each asset, as well as details of all money transfers during the 12 months prior to the request. If the request is accepted by the Court, an expert will be appointed, as in our case an administrator of the proceedings, who will publish a summary of the Court's decision and invite all creditors to present their debts and claims against it. In the same way as our regulation, if the Court accepts the debtor's request, all legal proceedings against him and all enforcement proceedings against his assets are suspended until the completion or expiration of the settlement plan, while secured creditors can secure their guarantee only with the consent the court.

It is important to point out that in the case of bankruptcy proceedings, it can be initiated either at the request of the insolvent debtor or at the request of a creditor or group of creditors to whom the debtor owes more than AED 200,000, unlike our law which stipulates that only the debtor may apply for insolvency proceedings. The debtor will be rehabilitated immediately if he pays all his debts. At the level of the United Arab Emirates, the Insolvency Law is considered to be an evolution that has been anticipated for many years and will be a welcome development for many people living there.

However, in relation to the insolvency of natural persons regulated at EU or US level, we notice that the law is much stricter and more severe in the UAE, insolvency is no longer a consumer option given that UAE law also gives creditors the opportunity to apply directly for bankruptcy. Under these conditions, the insolvency law will certainly make its presence felt in the UAE and perhaps an organized execution of the individual debtor is much more advantageous as opposed to a chaotic forced execution that could result in our case from the application of the provisions of Civil Code and Civil Procedure Code without regard to the debtor's state of difficulty.

Conclusions

Invoking the idea of the title of our research, an idea from which we started and which resides in the urgent need to reform the insolvency law of the natural person, a law "covered in dust", artificial, intangible, we will try to summarize some conclusions that can reset the law in certain key issues. First of all, we consider it appropriate to establish

concrete measures to rehabilitate bona fide debtors, who face problems beyond their control, in order to ensure the effective revitalization of their situation, through access to finance, credit, reintegration into the labor market, professional reconversions, specialized counseling in areas of interest, etc.

It is also necessary to discuss as soon as possible the regulation of the prevention of insolvency of natural persons, with an emphasis on counseling, prevention being a key element of EU Directive 1023/2019 to be transposed at national level and which should not be strictly limit yourself to professionals. Moreover, the prevention of over-indebtedness should not be treated as a utopia, the duties of information, counseling and warning being even obligations derived from the requirement of good faith of the professional, that is why we speak of a consumer-professional interdependence in regulating over-indebtedness and maintaining good faith, as key elements in accessing a reorganization, restructuring and second chance procedure.

It is interesting to consider the legislative model adopted by Belgium, where any resident natural person can apply for an *arrangement* if they are unable to pay their debts and have not indicated their intention to apply for insolvency proceedings. Moreover, with regard to debt discharge deadlines and the facilitation of these mechanisms and regulations, one could follow the model outlined by England and Wales, which are currently enjoying the fastest debt discharge processes at European level in favor of over-indebted debtors, offering a complex system that tries to quickly reintegrate into the economic circuit, in some cases even in one year. This system prioritizes efforts to prevent indebtedness through regulation, counseling and education, with alternative, non-judicial procedures for the automatic discharge of debts in certain situations and conditions through insolvency agreements under the coordination and monitoring of an insolvency service specially constituted. Such measures are also heavily promoted in the United States, allowing the debtor a fresh start in economic relations.

These aspects of comparative law once again reinforce the idea of the need to shape social responsibility in regulating economic processes at the national level, supervised rehabilitation, financial education and social assistance becoming pillars of balance in the current socio-economic context.

We must accept the effort to provide support to the National Authority for Consumer Protection, which provides advice and guidance to people with unpaid debts for at least 90 days when they want to open an insolvency procedure, both regarding the preparation of the insolvency file and and the procedure itself which should contribute to their financial recovery. At the same time, the Authority offers free advice to consumers who have debts higher than the value of all goods they own (at least 15 gross minimum wages per economy) or who have an irreparably compromised financial situation, and to facilitate access to information, ANPC has also created a *Guide of natural person insolvency* [22]. In addition, we can "cling" to a new hope of legislative reform of the insolvency of the natural person, given that ANPC recently announced the preparation of a new project in the field of insolvency of natural persons, for which it will apply for a grant from the European Union, so as to provide real support to the indebted consumer and to manage in the most efficient and responsible way the economic crisis generated by the medical one, which has occurred in the last two years. [23]

Finally, since we did not intend to make a complete analysis of this normative act, we cannot fail to note that the Law on insolvency of natural persons, although not a perfect one, is intended to be quite complex and comprehensive, but all changes necessary will appear together with the sedimentation of the matter in practice, followed by the necessary corrections made by the legislator.

Last but not least, we believe that educating consumers, investors, business participants about the benefits of insolvency proceedings, second chance policies and restructuring laws, which today target both individuals and professionals, as well as the administrative-territorial units, represent an essential and imperative aspect necessary in our society.

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THE ISSUE OF ASYLUM IN THE EU

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Abstract:
It is a well-known fact that the core of European identity is the protection of fundamental rights. Achieving this goal has led EU member states to set up a Common European Asylum System (CEAS) in order to cope with the growing problems at European level. To this end, the European Union has adopted a number of important legislative measures aimed at harmonizing the different asylum systems of the member states. Despite directives and regulations aimed at harmonizing the European Union, there are still significant differences between member states in terms of protection, chances and rates of recognition of the refugee status, as well as the reception conditions. A European Refugee Fund has also been set up to provide financial support to member states to enable their asylum systems to work effectively.
Keywords: *migration, asylum, asylum seeker, European asylum system, international protection*

The involvement of EU institutions in managing the migration crisis. The New Pact on Migration and Asylum

For the past ten years, Europe has struggled to cope with the most serious migration challenge since World War II. The European Union's management of migration is scattered across numerous legal and political instruments. This migration challenge has highlighted certain shortcomings in the existing asylum system at Union level.

As a complex issue, migration needs to take into account several issues [1]: the safety of people seeking international protection or wanting a better life; the concerns of countries at the EU's external borders, concerned that the pressures of migration will exceed their capacity and the need for solidarity from other countries; the concerns [2] of other EU member states that, in the event of non-compliance with external border procedures, their asylum, integration or return national systems will not be able to cope with significant migratory flows.

The reform of the Common European Asylum System [3] aims to:

• establish a common framework of contributing to a comprehensive approach to asylum and migration management;

• improve the efficiency and resilience of the system to the pressure of migration;

• eliminate attraction factors, as well as secondary movements;

• combat abuse and improve support for the most affected member states.

Given that there have been no significant developments in this regard, the European Commission proposed in September 2020 a *new Pact on Migration and Asylum* [4], which establishes faster procedures throughout the EU's migration and asylum system, includes a revision of the Dublin Regulation [5] and offers new options for the member states to show solidarity. The pact is the result of long-term consultations with the European Parliament, all member states, civil society, the social partners and the business community and ensures an appropriate balance, which integrates their perspectives.

The Parliament has been involved in preparing the new measures to deal with illegal immigration, laying down rules regarding stricter border controls, and developing this system, which is considered to be more efficient in collecting and storing information about the people entering the EU [6].

In the 2014-2019 legislature, the European Parliament was involved in establishing clear European rules for the distinction between legal migrants and refugees and a fair and equal treatment for asylum seekers [7].

In order to combat this problem, the European Parliament has proposed reforms to the Dublin Regulation. The Dublin III Regulation establishes the EU member state responsible for examining an asylum application. The European document gives applicants greater protection until their status is decided; the regulation also creates a new system for the early detection of problems related to national asylum or reception systems and for addressing the root causes before they give rise to large-scale crises.

The currently applicable Dublin system was originally set up in 1990 and was subsequently updated in 2003 and 2013. Its purpose was to identify a single EU member state responsible for processing an asylum application. The procedure was based on several criteria, including *the first country of entry criterion*. In practice, this means that a small number of member states are responsible for examining most asylum applications. The migration crisis has highlighted the limitations of the Dublin System, which has created particular difficulties for frontline member states.

Following extensive consultations and a fair and comprehensive assessment of the situation, the Commission has proposed improving the whole system, including exploring ways to improve cooperation with countries of origin and transit, ensuring effective procedures, successfully integrating refugees and returning people without a right to reside in the EU. The 2020 legislative proposal aimed to replace the Dublin Regulation with a new regulation on asylum and migration management, which should:

- establish comprehensive governance at EU level for better policy management and implementation;
- more effectively establish a single member state responsible for examining asylum applications;
- ensure a fair sharing of responsibilities between member states through a new solidarity mechanism;
- discourage abuse and prevent the secondary movement of asylum seekers within the EU.

On 29 September 2021 (one year after the adoption of the proposal for the New Pact), the Commission presented *a* report on migration and asylum. The European Pact has gathered a number of question marks around it, with the European Commission itself stressing in the report that, although technical progress has been made, political agreement on key elements of the pact is still a long way off. The report covers all aspects of migration management, including the current state of migratory movements, an assessment of the impact of the pandemic, the actions of EU border and asylum management agencies, the Commission's ongoing support to member states facing the pressure of migration, funding and unauthorized travel within the EU. The report details the progress made in strengthening the legislative framework and provides a comprehensive overview of cooperation with partner countries, based on the new approach set out in the pact.

The Regulation establishing the European Union Agency for Asylum (EUAA)

As early as June 2017, the Council and Parliament reached a comprehensive political agreement *ad referendum* on all 12 chapters of the Regulation on the European Union Agency for Asylum. The technical work on the proposal was completed before the end of 2017, but its adoption has been suspended pending progress on the rest of the Common European Asylum System (CEAS) package.

The European Commission maintained its 2016 proposal on the EU Asylum Agency Regulation in September 2020, when discussions on the Migration and Asylum Pact were relaunched.

In June 2021, EU member states agreed [8] upon extending the Council's mandate for negotiations on the EU Asylum Agency Regulation.

The Council adopted on 9 December 2021 the *Regulation establishing the European Union Agency for Asylum* [9], which seeks to improve the implementation of the asylum policy in the EU. In addition, it envisages to transform the European Asylum Support Office (EASO) into a "real agency" responsible for improving the functioning of the Common European Asylum System by providing increased operational and technical assistance to member states and contributing to a greater convergence in the assessment of applications for international protection.

Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and revoking Regulation (EU) No. 439/2010 [10] establishes *a* predictable and reliable migration management system.

The new Crisis Regulation provides for appropriate procedural rules, derogations and a rapid activation of solidarity mechanisms to respond to crisis situations (e.g. the 2015 migration crisis).

The new instrument covers exceptional situations of massive influx of third-country nationals or stateless persons arriving illegally in an EU country of such magnitude and nature that it would:

• render a member state's asylum, reception or return system dysfunctional;

• most likely have serious consequences for the functioning of the Common European Asylum System and the EU Migration Management System;

• make it impossible to apply the Common European Asylum System and the EU Migration Management System.

In addition, the proposed regulation addresses force majeure situations, such as the COVID-19 pandemic, which could arise in the field of asylum and migration management in the EU. It provides for adaptation to EU rules on asylum and return procedures, as well as to the solidarity mechanisms provided for in the new Asylum and Migration Management Regulation.

The proposed crisis instrument also provides for a new status of immediate protection for people fleeing armed conflict during a crisis.

Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and revoking Regulation (EU) no. 439/2010 [11] strengthens EASO's current mandate and facilitates the secondment of experts to member states that have requested operational support. The Agency will be able to facilitate cooperation between member states and third countries, thus also contributing to solidarity between the member states and to the global external dimension of the EU.

In summary, this agency will be responsible for:

• ensuring convergence in the assessment of applications for international protection,

• providing operational and technical assistance to member states.

The European Union Agency for Asylum (EUAA) was set up by relaunching the European Asylum Support Office (EASO) [12], launched in 2011 to coordinate cooperation between EU countries on asylum issues. The purpose of the EUAA is to make the communitary block's asylum system more effective by being able to help governments relocate and transfer migrants within the EU.

The Agency shall contribute to ensuring the effective and uniform application in the member states of the Union law regarding asylum, with full respect to fundamental rights. In addition, it facilitates and supports the activities of the member states with regard to the implementation of the Common European Asylum System (CEAS), by ensuring convergence in the examination of applications for international protection throughout the Union and by coordinating and strengthening practical cooperation and information exchange [13].

In each member state, the Agency shall enjoy the extensive legal capacity granted to legal persons under their laws. Its registered office is in Malta and Regulation no. 1 of the Council [14] is applied. Cooperation between the Agency and national authorities responsible for asylum and immigration matters and other relevant services shall be based on the principle of good faith. The Agency may be considered a center for the collection of relevant, reliable, objective, accurate and up-to-date information on relevant third countries in a transparent and impartial manner, using relevant information.

In close cooperation with the Commission, the Agency *shall set up a monitoring mechanism* to observe the operational and technical implementation of the CEAS, to prevent or identify possible deficiencies in member states' asylum and reception systems and to assess the capacity and their level of readiness to deal with situations of disproportionate pressure so as to enhance the efficiency of those systems.

Through the monitoring mechanism, the Agency will improve the functioning of the Common European Asylum System. Specifically, where the member states' asylum and reception systems are under disproportionate pressure, the EUAA can provide them with operational and technical assistance; for example, as many as 500 experts - interpreters or case managers - may be sent to support the member states under pressure.

Each year, the Agency shall draw up a report [15] outlining the asylum situation throughout the Union, which shall be submitted to its Management Board, the European Parliament, the Council and the Commission, and the Executive Director of the Agency shall present this annual report to the European Parliament. This annual report on the asylum situation in the Union shall be published.

Conclusions

The challenges facing the EU, due to unprecedented levels of migration flows to Europe since 2015, have highlighted a number of shortcomings and differences between EU policies regarding asylum, external borders and migration. This fact has put pressure on the EU asylum system and highlighted the need to reconfigure a legal framework covering all aspects of the asylum process.

Migration remains an issue that needs to be addressed on a global scale. EU foreign policy on migration is part of the EU's overall approach to migration and is

complementary to European foreign policy and development cooperation. It is based on common objectives set by the member states and is reflected in the Common European Asylum System (CEAS). Cooperation with third countries is included in the Global Approach to Migration and Mobility, through which the EU has initiated a political dialogue and established partnerships with third countries.

According to a series of Eurobarometer surveys conducted for the European Parliament on "perceptions and expectations", the support of EU citizens for an even stronger involvement in migration has decreased from 74% (in 2016) to 72% (in 2018) [16], following the same decreasing trend.

The Union's action in this area must be aimed at implementing immediate and longer-term measures focusing on the internal and external dimension of the migration policy and its external borders [17]. The EU details common standards in several regulations and directives, but it is up to the member states to effectively implement the asylum and migration policy, and must ensure that their national legislation complies with both Union law and international agreements.

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SOME CONSIDERATIONS ON THE TRIAL PERIOD IN THE EMPLOYMENT AGREEMENT

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Abstract:
This paper aims to provide an analysis of the legal framework of the trial period stated in the employment agreement. In the light of the provisions of the Labor Code and the relevant case law, the paper highlights the issues that need clarification, that raise difficulties in implementation or that may lead to an unbalanced legal regime between the two parties to the employment agreement.
Keywords: *trial period, employment, employment agreement*

The trial period is a way of validating the employee's skills, a proof that takes place after the date from which the individual employment agreement takes effect. The analysis of Articles 20-31 of the Labor Code shows that the employer is entitled to validate the professional and personal skills of the employee at two distinct and cumulative times, respectively before concluding the individual employment agreement, duirng the selection process, and after starting work, throughout the trial period.

The existence of two distinct and cumulative stages in which the employee's skills are proved has also been validated by the relevant case law. Thus, it was noted that "it is found that the trial period, as a clause inserted in an individual employment agreement, is not incompatible with the conclusion of an employment agreement of indefinite duration with an employee employed after passing an examination or competition, whereas the Labor Code regulates the examination or selection contest as a means of verifying the employee's skills, optional or compulsory, as the case may be, and as a general rule the trial period is optional and subsidiary to the competition or examination, being useful to both contracting parties - to the employer, who can directly appreciate the competence and skills of the employee at work, as well as the employee, who in the event that he finds that the work entrusted to him does not suit him, will be able to decide unilaterally, unconditionally, the termination of his agreement. Therefore, the trial clause is in

accordance to the law, and may be included in an employment agreement concluded for an indefinite period, regardless of the occupation (with or without selection contest), being provided for the purpose of verification by the employer of professional skills. of the employee (art. 31 paragraph 1 of the Labor Code), beyond the theoretical and practical evaluations of the selection contest" [1].

Regarding the first moment of the proof of the employee's skills, respectively in relation to the selection, the Labor Code distinguishes between the rules applicable to private enterprises and those applicable to budgetary institutions and companies, as well as to public authorities.

In the case of private undertakings, the arrangements for conducting the selection proof shall be laid down by the decision-makers in that undertaking, in the applicable collective bargaining agreement, in the Staff Regulations - professional or disciplinary - and in the rules of procedure, to the extent that the law does not provide otherwise. In the case of public institutions and authorities and other budgetary bodies, the selection may be made only by competition or examination. A series of normative acts imperatively regulate the way in which the selection procedure must be carried out. As an example, we mention Government Decision no. 286 of March 23, 2011 for the approval of the Framework Regulation on establishing the general principles for filling a vacant or temporary vacancy corresponding to contractual positions and the criteria for promotion to immediately higher professional grades or ranks agreement in the budgetary sector paid from public funds [2] and Government Decision no.611 of 4 June 2008 approving the rules on the organization and career development of civil servants [3].

After the selection and only after the conclusion of the individual employment agreement, the proof of the employees' skills is carried out during the trial period. The Labor Code sets only the maximum duration of the trial period, leaving the parties free to determine, at the time of negotiating the agreement, its actual duration. From the analysis of the provisions of art.17 par.3 letter n of the Labor Code it results that the duration of the trial period is one of the essential elements of the individual employment agreement. It should be noted, however, that the enumeration of the trial period between the essential clauses of the employment agreement cannot entail the obligation to establish a trial period for all employment agreements. As has been established by doctrine [4] and case

law, the trial clause cannot be more than an optional clause. As an exception, the trial period is a mandatory and exclusive clause in the case of persons with disabilities, in which case the law provides that the proof of professional aptitudes for employment of persons with disabilities is carried out exclusively through the trial period of maximum 30 calendar days (art. .31 para.2 Labor Code). This provision creates, according to the jurisprudence of the Constitutional Court, “a way adapted to their situation, which takes into account both professional training and physical and mental capacity to respond concretely to the requirements of the job and which excludes comparison with persons who do not have a disability” [5].

The maximum duration of the trial period differs depending on the type of position - performance or management, the type of individual employment agreement - for an indefinite or fixed-term period and the employee's state of disability. Thus, in the case of an agreement of indefinite duration, the maximum trial period is 90 calendar days for executive positions and 120 calendar days for management positions. In the case of a fixed-term agreement, the maximum duration of the trial period is set according to the duration of the employment agreement, as follows:

a) 5 working days for a duration of the individual employment agreement of less than 3 months;

b) 15 working days for a duration of the individual employment agreement between 3 and 6 months;

c) 30 working days for a duration of the individual employment agreement longer than 6 months;

d) 45 working days in the case of employees employed in management positions, for a duration of the individual employment agreement longer than 6 months.

Due to a legislative inconsistency, the duration of the trial period is set and calculated on calendar days, in the case of an agreement of indefinite duration, and on working days, in the case of a fixed-term agreement. Along with the doctrine [6], we consider that it is necessary to unify the legal regime, in the sense of establishing the trial period on working days, the proof of the employee's skills taking place during the effective exercise of the duties.

During the execution of the individual employment agreement, only one trial period can be established. As an exception, the employee may be subjected to a new trial period if he / she starts with the same employer in a new position or profession or if he / she is to perform the activity in a job with difficult, harmful or dangerous conditions.

A special case of trial period is the internship period. Regulated by a special law [7], the internship is mandatory for higher education graduates who have a bachelor's degree or equivalent and, at the beginning of the profession, is employed with an individual employment agreement for a position according to the graduated specialization. Higher education graduates who prove that prior to graduation they have carried out, according to the law, for a period of 6 months, a professional activity in the same occupational field for which the internship is carried out, as well as those for whom the exercise is regulated by special laws.

The internship is carried out on the basis of a program of activities approved by the employer, which also includes the quantifiable objectives and performance indicators on the basis of which the evaluation of the graduate is performed. The evaluation is managed by a commission that draws up, with 5 working days before the end of the internship period, a report that includes the following elements:

a) description of the activity carried out by the trainee;

b) the degree of achievement of the objectives and performance indicators established in the program of activities carried out during the internship period;

c) the competencies and skills acquired by the trainee, the manner of fulfilling the attributions corresponding to the position occupied and the clauses of the internship agreement;

d) the conduct and the degree of involvement of the trainee during the internship;

e) conclusions regarding the development of the internship period;

f) other mentions (art. 8 paragraph 1 of Law 335/2013).

During the trial period, the employee benefits from all the rights and has all the obligations provided in the labor legislation, in the applicable collective labor agreement, in the internal regulation, as well as in the individual labor agreement. In the same sense, the Labor Code stipulates that the trial period constitutes seniority (art. 32 Paragraph 4 of the Labor Code). However, the employment agreement is not consolidated until after

the end of the trial period and only if the employee professionally corresponds to the position in which he is employed. "The assessment by the employer of the skills and professional training of the employee during the trial period cannot be censored by the court, the employer being the one able to assess the needs in relation to the specifics of the position, the requirements and efficiency imposed by him [8].

Therefore, although the legal provision uses the phrase “all rights”, it should not be ignored that the employee does not benefit from any of the guarantees related to the termination of the employment agreement at the initiative of the employer. Thus, after performing the trial period, the dismissal of the employee can intervene only for the causes provided by art. 61 and 65 of the Labor Code. Moreover, dismissal ordered in violation of the procedure provided by law is struck by absolute nullity (art. 78 of the Labor Code), the employer not having the right, in case of a labor dispute, to invoke before the court other reasons of fact or than those specified in the dismissal decision (art. 79 of the Labor Code).

However, during or at the end of the trial period, the individual employment agreement may be terminated exclusively by written notice, without notice, without the need to state reasons. This right is an exception to the principles of the effects of synallagmatic agreements - *pacta sunt servanda* and *mutuus consesus, mutuus dissensus* and brings an element of instability in the legal employment relationship. The Constitutional Court found that “the legal regime applicable to employment during the trial period was expressly regulated by the legislator as a special one compared to those for which no such period is established. Therefore, in order to verify the professional skills of the employee, the legislator also introduced a special condition, applicable to the employment relationship thus concluded, namely the notification provided in art. 31 para. (3) of the Labor Code, notification that does not need to be motivated and which is equivalent to the fact that the professional skills of the employee do not correspond to the requirements of the job. It is a discretionary decision made by the employer, who holds a position that also involves making such a decision. Moreover, the criticized contractual clause encourages the continuous professional development of the employees, being agreed and agreed by both parties at the conclusion of the agreement” [9].

Regarding the legal nature of the probation clause, both the doctrine and the case law have shown that we are in the presence of a cancellation clause [10], which can be invoked by either party to the individual employment agreement, regardless of the existence of sanctions. The effect of the exercise of the right of cancellation is that of the termination of the agreement, without the other party being able to oppose it.

Consequently, being a case of termination of the individual employment agreement, the employee does not benefit from any provision of protection provided by law in case of dismissal. Thus, it has been established by jurisprudence that the employer can apply the provisions of Art. 31 Para. 3 even if the employee is pregnant, as it is not "a dismissal, but a distinct legal institution, respectively the termination of the employment agreement during the trial period, based on the notification issued by the employer. Therefore, the provisions of Art. 60 Paragraph 1 Letter c of the Labor Code on the protection of pregnant women referring strictly to the measure of dismissal, cannot to be extended to other situations, being special provisions, of strict interpretation " [11].

In the same sense, it was established that the termination of the employment agreement pursuant to art. 31 para. 3 of the Labor Code may intervene despite the provisions of Art. 60 Para. 1 Lett. a of the Labor Code, which prohibits dismissal during temporary incapacity for work, established by medical certificate, according to law. The court held that "what is important in the present case is that at the end of the 90-day trial period the employer opted for the termination of the agreement in the manner conferred by the special rule (art. 31) and the employee's position in a situation of temporary incapacity for work, subject to the provisions of art. 50 lit. b The Labor Code, during or even near the end of the trial period, does not oblige the employer to postpone the measure adopted, or to extend the duration of the trial period by a number of days corresponding to the legal suspension of the agreement.

As indicated, the law is of strict interpretation and application, and if in the case of dismissal the employer is obliged to take into account the timing of the unilateral termination of the agreement, until the end of the period in which employment is suspended by law (regulating and the notice period), because in the latter case the employee must have the effective possibility to challenge the measure, not to be placed

in the position of requesting the who may lose the term of appeal, but also to benefit correctly from the notice necessary to identify another job.

This is the meaning of the interdiction established by art. 60 of the Labor Code, which allows the judge of the case to find without any other evidence that the employee has been denied this legal right to be in the period of performance of the employment agreement when the employer communicates the measure of dismissal. However, this is not the case with the situation regulated in art. 31, text found in Chapter I regarding the "conclusion of the individual employment agreement" of Title II of the Labor Code, therefore distinct from art. 58 et seq. Labor Code on dismissal and which are found in Chapter V on "termination of the individual employment agreement" [12].

A special case is the termination of the agreement when the employee is on probation due to the fact that he is starting with the same employer in a new position or profession. In this case, the question may be asked whether professional incapacity for the new position should not lead to the transfer to the previous position and not the termination of the individual employment agreement. This approach is influenced by French doctrine and case law, which distinguishes between the two types of trial periods (*période d'essai* - for the trial period established at the conclusion of the individual employment agreement and *clause probatoire* - for the trial period established at the beginning of a new function or activity) [13]. Despite the lack of express legal provisions in Romanian law, the Pitești Court of Appeal ordered "the reinstatement of the applicant in the position held prior to the issuance of the two dispositions, with the payment of salary rights with increases, indexations, recalculations from which the plaintiff benefited until the date of effective reintegration" [14]. Such a solution, briefly motivated, is likely to produce legal uncertainty, as long as it adds to the provisions of the Labor Code and contradicts the reasoning that the Constitutional Court had in the decisions rejecting the exceptions of unconstitutionality of Article 31 para. 3 of the Labor Code.

The analysis of the legal provisions as well as the jurisprudence shows that clarifications and amendments of the legal regime applicable to the trial period are necessary. This is all the more necessary as, being a cancellation clause, the legal status of the employee during the trial period is a precarious one, the individual employment agreement being legally consolidated only at the expiration of this period.

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CONCEPT AND CONCLUSION OF CONTRACT ON TRADE OF GOODS WITH FOREIGN ELEMENT

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Abstract:
International exchange of goods is performed through a contract on trade of goods with a foreign element. The conclusion of a contract on the international sale of goods is based primarily on the autonomy of the will of the parties, unless that autonomy of the will is limited by the compulsory regulations of the states. All sources of law cited in the article, such as international conventions, autonomous sources of law and even customs, can be changed by the disposition of the will, because they are of a dispositive character. The contracting parties most often agree on the application of the United Nations Convention on Contracts for the International Sale of Goods, the so-called Vienna Conventions. The offer and acceptance of the offer are necessary for the conclusion of the contract. The offer is a final act, and the acceptance of the offer is a statement of the offeree agreeing with the offer.
Key words: *contract on trade of goods with foreign element, Vienna Convention, offer for the conclusion of a contract, acceptance of an offer, conclusion of a contract*

Introduction

In order to consider the conclusion of a contract on the international sale of goods, it is necessary to indicate the sources of law that regulate this contract. This will be presented through a comparative overview of national legislation and international sources, and within them both offers and acceptance of the offers. These sources of law can be divided into international conventions, autonomous sources of law and customs. The main aspect of this article will be directed towards the offer and the conclusion of the contract on the international sale of goods. The acceptance of the offer will be presented as a whole through an analytical consideration of the notion of acceptance of the offer, time and place of concluding the contract, and as a form of international sales contract.

Within the conclusion of the article, the conclusions reached during the study and research of this topic will be summarized. For the elaboration of this article, the methodologies used will be historical method, method of comparative law, comparative-theoretical method and other legal methods used in the analysis of the topics such as this one. Analytical-descriptive and synthetic methods will be used as the basic approach.

This application of the methods should enable a systematic presentation of the existing conceptual and empirical knowledge.

1. Sources of international trade law

1.1. Division of sources of international trade law

Sources of international trade law can be divided into international conventions (so-called *hard law*), autonomous sources (so-called *soft law*) and customs.

a) international conventions

The need for unification of the law was imposed very early, with the establishment of the International Institute for the Unification of Private Law in Rome in 1926. UNIDROIT. Its significant result was the drafting of the Uniform Hague Law in 1964. The necessity for the unification of the law was imposed in order to create modern and harmonized rules of private law that would be widely accepted and understood.

In order to overcome different views on some key issues between the two major European civil law systems of that time, the one based on the French Civil Code and the other based on the German Civil Code, it was concluded that the English law, as well as the law of the United States of America should be considered, because the Uniform Commercial Code of the United States was adopted in that country. Based on a comprehensive view of these legal systems, the Hague Convention was adopted in 1964, and more specifically, two Hague Conventions: a) the Convention enacting the Uniform Law on the International Sale of Movable Goods and b) the Uniform Law on Formation the Contracts for the International Sale of Movable Goods.

The efforts of the international community have led to the establishment of the United Nations Commission on International Trade Law in 1966 (UNCITRAL). The commission is headquartered in New York, while the secretariat is located in Vienna. Namely, the need had been arisen to revise the already adopted Convention on the Uniform Law on the International Sale of Goods, which has been ratified by a number of countries. The UNCITRAL Commission, after obtaining the opinion of the states on the Hague Uniform Laws, at its second meeting in Geneva in 1968, formed a working group

whose task was to draft a new text, which in practice signified a revision of the Hague Uniform Laws. After the task was done, the UN General Assembly, with its resolution 33/93 in 1978., made a decision to convene a conference in Vienna. At that conference, the United Nations Convention on the International Sale of Goods was adopted - the so-called **Vienna Convention** [1]. The conference was attended by 62 countries, including the SFRY.

In the following text, the author opted for the abbreviated name of the Vienna Convention, the VC.

b) autonomous sources

These sources are named autonomous owing to the common characteristic of all autonomous sources because they originate outside the states. These sources are created by economic entities, international organizations, etc. Autonomous international trade law usually signifies formal, standardized contracts and general terms and conditions.

Formal contracts and general business conditions coincide in time with the emergence of standardization of contracts in the economy. Namely, on the basis of a large number of similar and the same situations, it was possible to compile a form to be used in the same or somewhat modified form when concluding the contract. These contracts, which were based on the autonomy of the will of the contracting parties, gained their full significance only in international trade. Namely, they represent codified customs that govern certain markets. Formal contracts and general conditions in the international trade of goods were initially drawn up by private trade associations, and later by international organizations.

The efforts of international organizations led to the formation of the United Nations Economic Commission for Europe in 1947. This commission passed a number of formal contracts in international trade. Among others, some of the contracts are the Geneva general conditions and standard form contracts. Typical international sales contracts are intended for the sale of industrial goods, etc. Also, standard form contracts are used for the sale of cereals, coffee, sugar, wool, leather, soft and hard-cut materials, etc., but there is no obligation to apply them, unless the contracting parties agree on their application.

In 1994, the International Institute for the Unification of Private Law adopted the UNIDROIT principles of international trade contracts. In the following period, these principles underwent significant changes and amendments.

UNIDROIT principles must be applied if the contracting parties explicitly agree on their application. Also, arbitration or court may apply them when the parties determine the *lex mercatoria* - the law of trade, general legal principles or introduce another clause of similar meaning as the applicable law for their contract. Their application is also possible when the parties of the contract have not determined the applicable law [2]. These principles can fill in the gaps in international legal instruments and can also be used for the same purposes in national legal systems.

In addition to the formal agreements, it is important to note that the work of the International Chamber of Commerce, founded in Paris in 1919, also contributed to the codification of legal rules intended for international trade. Namely, the Chamber of Commerce, among other basic activities, has adopted a large number of INCOTERMS clauses to date. The first clauses were passed in 1936, and to this day they have undergone several amendments. The last edition of the INCOTERMS clauses is the one for 2020. These clauses are contracted for the sale of goods and their aim is to facilitate international sales by using certain provisions of the clauses to regulate the issues of importance to the trade.

Along with the autonomous sources of law, the principles of European Contract Law should be noted, which are currently in a draft form, having not entered into force to date. These principles are the result of the European Parliament of the European Union, which adopted two resolutions of 26 June 1989 and 25 July 1994 emphasizing the need to adopt the European Civil Code as the most effective method of harmonization in order to establish a single market without borders within the EU. The long-term work of the Commission on European Contract Law has resulted in the Principles of European Contract Law, which are the result of the convergence of different legal systems of the EU countries. There is no obligation to apply these principles - in order for it to enter into force and to be applied by the EU countries - it is necessary for all EU members to accept the application of these principles.

c) Customs

Customs are defined as a commercial practice that is so widely used that traders expect the contracting parties to act according to that practice. The contracting parties do not have to refer to customs because they are applied as such. However, customs take precedence over dispositive regulations governing a particular matter [3].

2. Conclusion of the contract

2.1. The offer to conclude a contract

A contract is, by definition, an agreement of the contracting parties, and this presupposes the consent of the will. Concluding contracts in domestic, and particularly in international legal trade of goods is usually a difficult and complex task. In international trade, these difficulties arise because there are different understandings about the legal significance of the offer and acceptance of the offer, the moment of concluding the contract, the deadlines by which the offer is binding and whether it is binding at all. Most often, once the offer has been made, the conclusion of the contract has gone through the phases of nonobligatory contacts and reached the stage in which certain legal actions occur.

The main obligation of the offeror is to maintain the offer, and the acceptor, on the other hand, to conclude the contract with consent. In order to define the offer in general, it must be clearly differentiated in relation to other proposals for concluding a contract.

Any initiative to conclude a contract is not an offer. In order for a proposal, i.e. the initiative, to produce a certain legal effect - it must contain certain elements that distinguish it from other forms of initiative. A call for tenders should be distinguished from a proposal for concluding a contract, which is usually sent to an indefinite number of persons.

The offer for negotiations aims only at establishing contact between two or more persons and it, in its essence, represents only the will which is subject to changes in order to reach the essential elements of the contract, but also, possibly, less important elements of the contract. The concept of the invitation for negotiations determined in this way differs from the offer because at that stage there are no conditions for concluding a contract. In other words - there is no possibility of acceptance. The invitation for the offer is, therefore, only a contractual initiative. It is, thus, imprecise, while the offer for the conclusion of the

contract leaves the offeree only a limited choice between rejecting and accepting the invitation for the offer and leaves a certain space for negotiation.

Almost all national legislations recognize the difference between an offer that becomes a contract through negotiations and other initiatives that create the possibility of acceptance. When a proposal is reached, the proposal must be specific, detailed and final. The finality of the proposal makes it possible to reach an offer for the contract. Achieving the proposal in all its essential elements that the contract should contain is an offer to conclude a contract, which represents the result of both parties in the negotiation. Whether the contract will be concluded is usually uncertain because the contracting parties consider this text of the proposal as an offer, since the contracting party that sent the offer expects that the offeree will accept the offer with an unambiguous statement that is sent in the agreed or customary way. It is understood that the offeree may, instead of accepting, declare about the offer, or may submit a counteroffer in order for the original offeror to declare about it. Only when the contracting parties accept the offer in the customary or specially designed manner - the contract is created.

An invitation to conclude a contract, sent to one or more specific persons, represents the offer if it is sufficiently specified and if it indicates the intention of the offeror to commit in case of acceptance of the offer. A proposal is sufficiently specific if it indicates the goods, explicitly or tacitly, determines the quantity and price or contains the elements for their determination. A proposal sent to an indefinite number of persons will be considered only as an invitation to make offers, unless the person making such a proposal clearly indicates otherwise. “If we attempted to analyze the definition of the offer more comprehensively, we would come to the conclusion that it does not actually contain a personal element of the offer” [4]. The reason for this is, presumably, the fact that the offer is usually made by the seller, but the offer for concluding the contract can be made by the future buyer because, for example, after the negotiations, the seller took a certain position regarding the goods, price and other elements, and in some cases obtained data on goods on the basis of a catalog or otherwise. “The element of the offer, the intention of the offeror to commit, is a proposal made by the offeror in order to commit in case of its acceptance. Consequently, there must be an intention to conclude a contract (*animus contrahendi*)” [5].

Intention is observed objectively, which means it must be known. Objective behavior, observed from the aspect of the offeror's intention, is interpreted by the offeror's behavior - whether the offeror knew about that intention or that intention could not remain unknown to him. If the offeree did not know about the offeror's intention - then the intention is observed from the point of view of a reasonable person of the same characteristics, i.e. in what manner the other party would understand that intention in the same circumstances.

Given that, in legal theory, there are different understandings as for the acceptance of the offer, such as the theories of sending, reception and finding, it seems necessary to indicate towards which of the mentioned theories the international rules, that are interpreted as additional elements in the contract on the acceptance of the offer, are directed, and what is the attitude towards the revocation of the offer.

Thus, for example, the time when the offer is considered accepted in comparative law in the countries with *common law* legal system is considered to be the time when the offeree sent the response on the acceptance of the offer, while in most countries with *civil law* legal system it is considered to be the time when the offeror receives a response from the offeree about the acceptance of the offer. International sources of law, such as the VC and most Geneva standard form contracts, have approved the theory of reception because it corresponds to the security of international trade of goods.

In order to conclude a contract based on the offer - it is necessary for the offer to be accepted. Often in practice, before the offer, which is the basis for concluding the contract, the possible contracting parties, which is most frequently the buyer, and possibly the seller, send an invitation for negotiations, in order to reach a final agreement on the possible conclusion of the contract. The purpose of the negotiations is to reach an agreement primarily on the essential, but also on the possibly irrelevant components of the contract. Therefore, the invitation for negotiation does not contain all the essential elements of the contract. It has yet to lead to an offer that will include those elements.

Of course, there is a possibility that the offeree received the offer and did not accept it, but started negotiations with the offeror on the modification of the offer. However, even in such cases, after the negotiations are over, they will formulate a new offer (definitive offer), which from the legal aspect is the same as if the negotiations were

not preceded by an offer. Negotiations for concluding a contract do not bind the participants in negotiations. Negotiations will be binding only if the contract is concluded, and on the basis of negotiations, i.e. they will be contained in the concluded contract. Negotiations do not bind any of the persons in the negotiations because each of them can withdraw from the negotiations at any time.

It is expected that one of the contracting parties can make the offer on the basis of negotiations, and that is, most often, the offeror. The person who initiated the negotiations may simultaneously negotiate with another person or with several persons. In case of the offer, however, the situation is different, because it is sent only to one person or to certain persons. If one of the participants in the negotiations submits an offer - this offer, regardless of previous negotiations, is considered as the offer, although it may contain new elements that were not the subject of negotiations. Based on the negotiations, if the contracting parties concur with the agreed, the day and time when the contract will be concluded is scheduled.

In certain cases, regardless of the fact that negotiations do not produce any legal effect, i.e. that no legal obligations arise for the negotiators, the party that conducted the negotiations without the intention to conclude the contract will be liable for the damage caused by the negotiations. The party who suffered this damage may claim compensation from the other party, and if the other contracting party does not accept the compensation or does not reach an agreement on compensation for the damage - a claim for damages must be submitted to the court to exercise the subjective right.

If one of the contracting parties sends a letter of intent to negotiate the contract, this letter of intent which represents the intention to conclude the contract will not be considered an offer, even though it contains certain elements of the offer, but the negotiations, if they yield concrete results, will be followed by the immediate conclusion of the contract. About possible details, such as the time of concluding the contract, if all other elements of the contract have been agreed on, whether they are important or irrelevant elements – are scheduled on the day and hour when the contract will be concluded.

It should be particularly noted that most contracts applied in trade practice (and this is often the case with standard form contracts) contain the offer of the text of the

contract, and as such are not considered to be the offer of the offeror, and therefore do not oblige to conclude the contract. Namely, there is no contract yet, but it is necessary for the offeror to accept this text of the contract in order for the contract to be concluded.

Under the general conditions of the UN Economic Commission for Europe (in almost all areas of buying and selling), the case of a *firm offer* is foreseen first, and only then, if the offer is not indicated as firm, it is pointed out that it is not binding. "In the case of a firm offer with an indication of the deadline for acceptance, the contract is considered concluded at the moment when the seller receives the buyer's notice of acceptance of the offer by a registered letter. In the event that a firm offer does not provide for a period within which the contract is to be confirmed, it shall be deemed concluded at the time when the seller receives notice of acceptance of the offer in a safe manner within a reasonable time which may not exceed 15 calendar days [6].

In modern foreign trade, given that modern internet-based communication is increasingly used, most offers, acceptances of the offer or sending the text of the contract are considered credible correspondence that does not need to be proven unless the other party claims that it did not receive the offer, the acceptance of the offer or the standard form contract that is considered an offer. The pandemic of the COVID-19 virus has shown how the world trade is fragile and subject to unforeseen events that can significantly slow it down and even stop it at times. Restricting physical contact between people has led to a very large increase in online transactions. These transactions are not only transactions of consumer goods for everyday use, but also goods necessary for the functioning of complex business systems, companies, corporations and even the state. Therefore, it is certain that in the future, modern trade will increasingly be conducted via the internet (e-mail, specialized sites for the sale of goods, etc.). This will require a revision of the existing legal rules of international trade and most likely creating new ones.

2.2. The effect of the offer

The bid is, by its legal nature, a unilateral declaration of will that binds the offeror. It is a causal statement of will. It reflects the importance of the cause as an economic effect that is to be achieved in economic turnover. A declaration of will establishes a certain legal business. In the case of the subject of our analysis, the acceptance of the declaration

of will creates a contract. According to the VC, the offer produces legal effect when it reaches the offeree. "It is considered that the offer has reached the offeree if it was communicated to him orally or in another way and delivered to his headquarters or to a postal address, or if he does not have a registered office or a postal address, to his regular residence" (Vienna Convention, Article 24).

It remains questionable until what point the offer produces legal effect. The offer produces legal effect until the moment when the offeree rejects it, while the statement of rejection must be clear and sent or communicated to the offeror in a safe manner. The so-called conclusive actions, i.e. actions that are indicated by signs or in general by the behavior of the authorized representative of the economic entity that received the offer, cannot be interpreted as rejection of the offer. If the offer has a deadline for the acceptance - it ends when the deadline expires. In those cases where there is no deadline for acceptance of the offer, situations when the contract is concluded between the present and the absent persons are regulated differently. If the offeror has not left a deadline for the offeree, in which the offeree will state whether he accepts the offer or not, the offeree is obliged to immediately state whether he accepts the offer. Of course, the offer ceases to be valid after the expiration of a reasonable period, and it is determined taking into account the circumstances of the business and the communication used by the offeror.

The acceptance of the offer, therefore, takes effect from the moment the statement of consent reaches the offeror, unless it arrives after the deadline specified in the offer. If the deadline is not determined, and the offer has arrived to the offeree, then it produces effect within a reasonable time, taking into account the circumstances of the business and the speed of the means of communication used by the offeror.

An oral offer must be accepted immediately, unless circumstances indicate otherwise (Vienna Convention article 24).

3. Time and place of concluding the contract

Since the conclusion of the contract is preceded by a series of factual actions, the contract is considered concluded when the last act leading to the consent of the will is made. According to the VC, the contract on sales was concluded at the time of

acceptance of the offer in accordance with the provisions of this Convention. The time of concluding the contract depends primarily on whether the contract is concluded between present or between absent persons.

If the contract is concluded between the present persons - the offeree is obliged to declare himself about the offer immediately. If the offeror leaves him a deadline - then the contract is created if the offeree accepts the offer within the deadline.

Conclusion of the contract between the absent persons, in national legal systems, depends on the time of the conclusion of the contract (surely, if the provisions of the VC do not apply.)

The VC applies to contracts on the sale of goods concluded between parties having their registered offices in the territories of the states, while it is necessary that alternatively one of the following conditions is met:

a) that those states are the contracting states

b) that the rules of private international law refer to the application of the law of one of the contracting states.

Article 1 of the VC appears to be particularly important because it resolves the issue of the time when a transaction can be considered international. In theory, one starts from a subjective criterion, an objective criterion or a mixed criterion.

The subjective criterion is determined by the citizenship or domicile of the contracting parties. The objective criterion, on the other hand, starts from the fact that the transfer of goods takes place from one state to another. The mixed criterion, in the end, contains both subjective and objective criteria in itself.

The provisions of the Convention shall always apply if both contracting parties have their seats in the countries that are parties to the Convention. An exception is the case where the nationality of a contracting party shall not be taken into account where the rules of private international law refer to the application of the law of a contracting country. However, if the contracting parties have their seats in the countries that are not signatories to the Convention - the application of the VC will be taken into account if the contracting parties have provided for it in the contract or it can be determined on the basis of their previous business.

It is worth noting that the provisions of the Convention will not apply to goods purchased for personal or family use or for household purposes. Exceptionally, a different solution is provided in the event that the seller at any time before, or at the time of concluding the contract, did not know, nor could he have known that the goods were being purchased for such use. The provisions of the Convention shall not apply to the sale of goods carried out at public auction or to seizures of property or executions carried out by the judicial authorities, to securities and money, to ships, hydrofoils and aircraft, and to electricity.

There are four different theories in national law: the theory of statement, the theory of transmission, the theory of reception, and the theory of finding. According to the theory of the statement, the contract arises at the moment when the acceptance of the offer is declared. In international sales, the acceptance of the offer is also considered when it is tacitly accepted, and that is the case when the offered person performs certain actions, such as paying the price or accepting the delivery of goods. The transmission theory states that the contract is concluded the moment the acceptance is sent. According to the theory of reception, the contract arises when the offeror receives the acceptance.

As already mentioned, the VC accepts the theory of reception, which is dominant in most legal systems of European countries.

The place of conclusion of the contract is important when concluding a contract on international sale because the place of conclusion is taken as a point of attachment and serves to determine the applicable law. The Convention does not regulate the place of concluding the contract, but since the theory of reception is accepted, the place of concluding the contract is considered to be the place where the acceptance of the offer was received, and that is the place of the offeror's business.

4. Form of the contract for the international sale

Starting from the principle of autonomy of the will of the parties, the will of the parties regarding the method i.e. the form in which the contract will be concluded is decisive in concluding the contract. Of course, in most cases, in order to avoid proving that the contract has been concluded, the parties will apply a written form and a rule on informality, i.e. the freedom of autonomy of the will, which also refers to amendments to

the contract. Autonomy of the will is encompassed by the VC. The contract on the sale of goods does not have to be concluded or confirmed in writing nor is it subject to any other requirements regarding the form of the contract.

In the case of most conventions, which represent a compromise solution of different legal systems, certain reservations could be made to this one as well. These reservations may also relate to the form of the contract. The reservation implies that certain provisions of the Convention will not apply, but the provisions of the national legislation of the countries that have made that reservation will apply. The VC stipulates that no reservations other than those expressly permitted by this Convention are permitted.

Conclusion

International exchange of goods is performed through a contract on trade of goods with a foreign element. The basis for concluding the contract is based on the sources that regulate it. These sources can be divided into conventions, autonomous sources of law and customs.

In order to conclude the contract on international sales, the offer and the acceptance of the offer are necessary. Form and type, on the other hand, contain the text of the contract, so that the buyer has the flexibility to accept or not to accept the text of the contract, and if he accepts it - the obligations of the contracting parties arise. The offer for concluding the contract, whether given orally or in writing, directly or through a representative, or through means of communication, is a unilateral declaration of will and contains important elements, and possibly some of the irrelevant elements on the basis of which the contract would be concluded. An invitation to negotiations is not an offer at the same time. If the offeree accepts the invitation for negotiations - the result of the negotiations could be an offer to conclude a contract.

Acceptance of the offer in the case of the contract on international purchase and sale must correspond to the offer in all respects. In other words, it must be in accordance with all the elements of the offer. The essential elements of the offer are the object (goods) and the price. The offer can be accepted under certain conditions, withdrawn and revoked.

The time of concluding the contract appears to be particularly important because the time of concluding the contract depends primarily on whether the contract is concluded between the present or absent persons. The place of conclusion of the contract is also important because it is determined by the seat of the contracting parties and it represents a point of attachment that serves to determine the applicable law that will be applied. The VC defines in which cases it will be applied on the basis of the point of attachment, unless it is a matter of the standard form contracts.

The contracting parties determine the form of the contract on international sales. It is usually a written form in order to avoid later proving the content of the contract and its legal validity.

References:

[1] The United Nations Convention on Contracts for the International Sale of Goods (CISG), sometimes known as the Vienna Convention, is a multilateral treaty that establishes a uniform framework for international commerce. As of 2021, it has been ratified by 94 countries, representing two-thirds of world trade.
[2] Drago Divljak, Vladimir Marijanski & Sandra Fišer Šobot, International Commercial Law, Novi Sad 2019
[3] Jelena Vilus, Slavko Carić & Stevan Šogorov, International Commercial Law, Beograd 1988, p.54
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[5] Drago Divljak, Vladimir Marjanski & Sandra Fišer Šobt, International Commercial Law, Novi Sad, 2019, p. 136
[6] Dr Radomir Đurović, International Commercial Law, 1986, Beograd, p. 205.

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LEGAL REGULATIONS REGARDING TESTAMENTARY INHERITANCE IN THE UNITED STATES OF AMERICA

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Abstract:
In recent years, the approached issues in legal sciences have varied greatly, with a tendency to highlight some aspects regarding contracts' signing. A somewhat smaller number of research have addressed the issue of succession and exponentially less, that of testamentary inheritance. This topic is of particular importance both socially and economically, as the way in which goods and financial means are distributed determine social, as well as legal outcomes altogether. The present paper highlights the legal framework that binds testamentary inheritance in the United States of America, and this approach is deemed as important both for the contextualization of the Romanian legal realities, and for a genuine, empirical definition of the testamentary inheritance today.
Keywords: *testamentary inheritance; wills in the USA; legal regulations of wills*

Introduction

The issue of testamentary inheritances somehow goes unnoticed in comparison with the generous body of literature dedicated to many issues such as the signing and object of contracts. In the issue of successions in particular, the dominant tendency is to highlight the rights of the surviving spouse and the various shares of inheritance. However, the subject itself is much more complex than these aspects. The notion of testamentary freedom is implicit to a concept of family and social relations' democratization, as a whole, and as such, it should be respected and not be expressed in terms of countless limitations that may run counter to the will of the testator. Otherwise, we can no longer speak of testamentary freedom, but of a simple possibility to testate. The aim of this study is to understand how testamentary freedom is currently understood and respected in the United States, as here we will find a very strong testamentary tradition, as well as a very precise institutionalization of wills.

Particularities of wills in the USA

The practice of will- making in the U.S.A. is largely tributary to Anglo-Saxon law. Here, too, we find the establishment of administrators or executors for the management of the inheritance, the payment of credits and the distribution of the estate. However, the status of these individuals is not a result of their potential belonging to a class of inheritors, as in most cases they may not be in any way the beneficiaries of the estate. The administrators are appointed by the court, at the proposal of the family members [1].

The legislative basis from which the laws of some American states start consists in the Wills Act (1837), while others are based on the Statute of Frauds and some combine the landmarks given by both laws. There is a contradiction in the literature regarding the acceptance of oral wills: Ronald J. Scalise Jr. states that they are not accepted in America [1], although judicial practice in 18 states (including New York and Washington) shows that oral wills are still considered valid, but within certain limitations and conditions, as we will show below. Ronald J. Scalise Jr.'s assertion can only be true in the sense that this type of will may not be applicable to all audiences and not in any state. Equally, holographic wills - those written by the testator, with or without witnesses - are not recognized throughout the United States, but their presence is found in several states (in 28 out of 50 existing), although in the United Kingdom they are no longer considered valid.

In most circumstances, US law prohibits the total exclusion of a spouse from the will. As a general rule, in states with community ownership, each spouse will automatically own half of all that the couple earned during their marriage. This means that half will automatically go to the husband, and the remaining part of the estate can be distributed according to the wishes of the testator. The latter can choose to give the rest of the surviving spouse, or share the inheritance of children, grandchildren, friends and other relatives [1].

If the deceased wishes to grant less to the other spouse, there must be a written agreement emphasizing this provision. This automatic right of the surviving spouse to automatically inherit half can also be denied by a prenuptial agreement. In order to avoid confusion and contestation of wills by spouses and family members, it is recommended to expressly specify the testamentary wishes regarding the distribution of the estate.

Theodore Hughes and David Klein make a summary of US law on wills, including oral ones, the conditions of which are set out in the table below [2]:

State	Minimum age for will - making	Required number of witnesses for the will	Recognition of holographic wills	Recognition of oral wills	Conditions for oral wills (if applicable)
Alaska	18	2	No	Yes	• inheritance is limited to personal property • the testator works in the military service • the oral will must be summarized in writing within 30 days of death • apply for probation within 6 months of death
Alabama	18	2	Yes	No	
Arizona	18	2	Yes	No	
Arkansas	18	2	Yes	No	
California	18	2	Yes	No	
Colorado	18	2	Yes	No	
Connecticut	18	2	No	No	
Delaware	18	2	No	No	
District of Columbia	18	2	No	Yes	• inheritance is limited to personal property

State	Minimum age for will - making	Required number of witnesses for the will	Recognition of holographic wills	Recognition of oral wills	Conditions for oral wills (if applicable)
					• the oral will is applicable only in case of terminal illnesses or • the testator works in the military service • the will involves the presence of 2 witnesses • the will must be drafted within 10 days of death
Florida	18	2	No	No	
Georgia	14	2	No	No	
Hawaii	18	2	Yes	No	
Idaho	18	2	Yes	No	
Indiana	18	2	No	Yes	• refers to property worth up to $ 10,000, and personal property • the testator works in the military, but in time of war • the testator awaits his death for objective reasons • The will involves the presence of 2 witnesses • The will must be drawn up within 30 days of the testator's death

State	Minimum age for will - making	Required number of witnesses for the will	Recognition of holographic wills	Recognition of oral wills	Conditions for oral wills (if applicable)
					• apply for probation within 6 months of death • the oral will cannot be used to revoke an existing written will
Iowa	18	2	No	No	
Kansas	18	2	No	Yes	• refers only to the personal properties of the testator • the oral will is applicable only in the case of terminal illnesses • involves the presence of 2 witnesses • The will must be drawn up within 30 days of the testator's death
Kentucky	18	2	Yes	No	
Louisiana	16	2	Yes	No	
Maine	18	2	Yes	No	
Maryland	18	2	No	No	
Massachusetts	18	2	No	Yes	• refers only to the personal properties of the testator • the testator works in the military service
Michigan	18	2	Yes	No	

State	Minimum age for will - making	Required number of witnesses for the will	Recognition of holographic wills	Recognition of oral wills	Conditions for oral wills (if applicable)
Minnesota	18	2	No	No	
Mississippi	18	2	Yes	Yes	• the oral will is applicable only in case of terminal illnesses • involves the presence of 2 witnesses • apply for probation within 6 months of death • the testator dies at home or elsewhere
Missouri	18	2	No	Yes	• refers to goods worth up to $ 500, and personal property • the testator awaits his death for objective reasons • the will presupposes the existence of 2 witnesses • The will must be drawn up within 30 days of the testator's death • The oral will is no longer valid 1 n after the testator is released from office • It cannot be used to revoke an existing written will

State	Minimum age for will - making	Required number of witnesses for the will	Recognition of holographic wills	Recognition of oral wills	Conditions for oral wills (if applicable)
Montana	18	2	Yes	No	
Nebraska	18	2	Yes	No	
Nevada	18	2	Yes	No	
New Hampshire	18	2	No	Yes	• refers to goods worth up to $ 500, and personal property • the testator awaits his death for objective reasons • the will presupposes the existence of 2 witnesses • The will must be drawn up within 30 days of the testator's death • The oral will is no longer valid 1 year after the testator is released from the service • It cannot be used to revoke an existing written will
New Jersey	18	2	Yes	No	
New Mexico	18	2	No	No	
New York	18	2	Yes	Yes	• the testator works in the military, but in time of war

State	Minimum age for will - making	Required number of witnesses for the will	Recognition of holographic wills	Recognition of oral wills	Conditions for oral wills (if applicable)
					• The oral will is no longer valid 1 year after the testator is released from office
North Carolina	18	2	Yes	Yes	• the oral will is applicable only in the case of terminal illnesses • assumes the existence of 2 witnesses
Dakota de Nord	18	2	Yes	No	
Ohio	18	2	No	Yes	• the oral will is only applicable in the case of terminal illnesses • assumes the existence of 2 witnesses • witnesses must not be beneficiaries of the will • the will must be drawn up within 10 days of the death • applies for probation within 6 months of death
Oklahoma	18	2	Yes	Yes	• refers to goods worth up to $ 1,000 • the testator works in the military

State	Minimum age for will - making	Required number of witnesses for the will	Recognition of holographic wills	Recognition of oral wills	Conditions for oral wills (if applicable)
					• the testator awaits his death for objective reasons • the testamentary act implies the presence of 2 witnesses
Oregon	18	2	No	No	
Pennsylvania	18	2	Yes	No	
Rhode Island	18	2	No	No	
South Carolina	18	2	No	No	
South Dakota	18	2	Yes	No	
Tennessee	18	2	Yes	Yes	• the will is applicable to property worth up to $ 1,000, and personal property • the testamentary act implies the presence of 2 witnesses • The will must be drawn up within 30 days of the testator's death • applies for probation within 6 months of death

State	Minimum age for will - making	Required number of witnesses for the will	Recognition of holographic wills	Recognition of oral wills	Conditions for oral wills (if applicable)
Texas	18	2	Yes	Yes	• the oral will is only applicable in the case of terminal illnesses • assumes the existence of 3 witnesses • the testator dies at home or elsewhere • it is no longer valid 1 year after the testator is released from service
Utah	18	2	Yes	No	
Vermont	18	3	No	Yes	• refers to property worth up to $ 100, and to the personal property of the deceased • must be drafted within 6 days of death • applies for probation within 6 months of death
Virginia	18	2	Yes	Yes	• refers to the personal property of the deceased • the testator works in the military
Washington	18	2	No	Yes	• refers to goods worth up to $ 10,000

State	Minimum age for will - making	Required number of witnesses for the will	Recognition of holographic wills	Recognition of oral wills	Conditions for oral wills (if applicable)
					• does not set limits on the value of the inheritance if the testator works in the military, so it also refers to the personal property of the deceased • is applicable only in the case of terminal illnesses • involves the presence of 2 witnesses • must be drafted within 30 days of the testator's death • applies for probation within 6 months of death
West Virginia	18	2	Yes	Yes	• refers to the personal property of the deceased • the testator works in the military
Wisconsin	18	2	No	No	
Wyoming	18	2	Yes	No [2]	

Trust institutions are common in the American area, and there is a common practice among families with a prosperous material status of the summer mandate of these institutions for testamentary beneficiaries.

The rules of intestate inheritance vary widely from state to state, are constantly changing, and considerable efforts have been made to harmonize U.S. federal law in the

form of Uniform Probate Code [2]. For example, Florida Statutes allows the surviving spouse's heirs access to the inheritance mass, if the deceased has no other heirs- a fact which is not found in the laws of other states.

In the United States there has been a trend towards liberalization in terms of formal requirements for the validity of a will. The tendency is to accept wills that do not meet the standard requirements, if the testator's intent can be established and no fraudulent activity is suspected. The approaches adopted by courts and legislators for nonconforming wills range from the use of the idea of harmless error in wills - giving courts the power to dispense of nonconformities - to the doctrine of substantial compliance and the imposition of a constructive trust [2].

This trend did not exist before 1990. Most courts insisted on strict compliance with the necessary formalities for wills, which included a signed document attesting to the testamentary intent attested by witnesses or, if no witnesses were present, a handwritten will signed by testator. Since then, legislatures in several states (Hawaii, Michigan, Montana, New Jersey, South Dakota and Utah) have given courts a "dispensation" power to excuse errors in the execution of wills, if the proponent of the document can establish the harmless nature of the error by clear and convincing evidence [2].

Montana courts applied this power by validating a will signed by the deceased and notarized by his lawyer. Despite the absence of witnesses, the court received clear and convincing evidence that the deceased had the necessary testamentary intent. The lack of witnesses was considered a harmless error. Similarly, the courts excused the absence of the signature of a witness when the will was signed and attested by another witness and a notary. The exact placement of the signature of the notary, the witnesses and even the testator is also an area that no longer requires strict compliance. Many judges also have the opportunity to mobilize the principle of harmless error in revoking, amending, or reinstating a will [2].

Some US courts have allowed the signatures of the testator and of the witnesses to appear on separate pages: the testator's signature to appear at the top of the page, that of a witness in the body of the will, and all witnesses' signatures to appear in a separate affidavit, separate and attached [4].

On the other hand, most states consider that both the requirements of the writing and the signature of the testator are sacrosanct, because, unlike the others, they serve to prove both the testamentary intent and the insurance against fraud. For example, a Louisiana court in the Eddy Succession invalidated a will in which the testamentary dispositions were on one side of a sheet of paper and the signature and attestation on the back. The court held that this approach violated the statutory requirement that a testator should sign every page of his will [4].

In addition to the flexible ways in which testators can express their intentions for succession, it is believed that US states give people almost unlimited power to dispose of all their property and property. However, in recent decades, some researchers have considered a restriction on probate, which provides for the protection and insurance of a testator's children. However, America has generated a type of testamentary freedom, which is wider than almost any other country. One of the hallmarks of American probate is that while parents maintain their child support obligations to support their children while they are alive, the same duties, even if recognized by the courts in providing financial assistance to children, cannot be imposed. succession after the death of the parents than in certain special situations [4].

In this sense, one of the concepts of succession in the US is that of "forced heir", to which many legislatures and courts have had negative reactions [4].

In 1996, Louisiana, the only state in the United States that recognized this concept, chose to move away from its traditional history and take a step toward a certain type of American testamentary freedom. Prior to 1996, all children were considered forced heirs of a deceased parent and, as a result, were entitled to a certain share or part of the fortune and could only be disinherited in very rare cases [5].

Since 1996, however, the Louisiana version of forced inheritance guarantees a mandatory quota only to those children up to the age of 23 (including those of this age) and those who are permanently unable to care for or manage their children wealth [4].

Even outside of Louisiana, a number of courts and legislatures have adopted means to advance the cause of probate, such as the recognition of negative wills [6].

Negative wills are testamentary dispositions that explicitly exclude certain individuals from the estate. Although succession laws in the United States have generally

allowed testators total authority to disinherit any person, legal issues arise when the excluded person is a legal heir - a situation that occurs when the will does not approach the entire estate. In such a situation, the courts have traditionally held that the part of the inheritance that was not mentioned in the will passes to the legal heirs, including the disinherited person [6].

Courts have recently begun to accept and respect the use of negative wills, excluding the disinherited individual. Since the 1990s, thirteen states have adopted statutes that allow the use of the negative will. However, by limiting the doctrine, the courts have interpreted negative wills to allow the disinheritance of individuals only if there are other heirs available. Although the recognition of this doctrine is growing, some states have recently addressed this issue in court decisions and have explicitly rejected it [4].

In response to the growing emphasis on testamentary freedom, US law has begun to give rise to a growing number of testamentary appeals and claims for undue influence. Based on the principle of unlimited probate, appeals and claims of undue influence are the only effective ways to ensure competent testamentary intent, to fulfill family obligations, and to protect against the weak judgment of a testator. As one researcher pointed out, although courts strongly proclaim their adherence to the concept of probate, their reasoning often betrays a primary loyalty to other competing principles: first, testators have a moral obligation to distribute their family members' wealth; second, testators need protection against their own immoral instincts [7].

One way in which heirs can be protected by the unlimited power of a testator is by the ability to initiate the challenge of a will, sometimes even in the presence of a testamentary provision prohibiting such measures. That is, despite the existence of a clause in terrorem, many courts have allowed maximum flexibility to potential beneficiaries and have often interpreted the scope and force of these clauses very restrictively. An increasing number of states allow beneficiaries to challenge wills if there is a probable reason to believe that the will is not invalid and the appellant is acting in "good faith". Any attempt by a testator to rule out such objections is usually ineffective [7].

Another way of protection for excluded heirs is the ability to claim the existence of unjustified or inappropriate influence. Unjustified influence is generally defined as the exercise of such influence over the testator, in order to violate his free will and to cause

him to carry out an action that he would not otherwise have done. Some courts consider that unjustified influence may be implicit in certain confidential relationships and may be ruled out only on the basis of evidence that the influencing party acted in good faith and the testator acted freely, voluntarily and knowingly. Recently, a small number of courts have also found that when the circumstances surrounding the enforcement of a will are suspicious, a presumption of unjustified influence arises. If a testator had a weak intellect or the testator maintained a confidential relationship with the beneficiary who receives a significant part of the estate, the burden of claiming unjustified influence falls, of course, on those who consider themselves unjust and want to apply for probation [8].

In recent years, there has been a demographic trend that allows children born as a result of assisted reproduction techniques to inherit in accordance with the laws of state succession. Thanks to new technological reproduction techniques, such as surrogacy, egg and sperm donation, new circumstances arise in which children can be born from mothers who may or may not be genetically related to the child and even from parents who died before conception. Although artificial insemination techniques have existed for a long time, there is recent pressure on the old laws, which allowed a child to inherit from a deceased person only if it existed at the time of death or was born within 300 days of the father's death [8].

States such as Texas, Delaware, Washington, Wyoming and Colorado have moved away from the traditional limitations of inheritance and now allow individuals conceived after the death of their biological parents to inherit from deceased parents as long as the deceased has consented in writing to the use of his or her genetic material.

Louisiana stipulates that the birth must take place within three years of the deceased's death. Idaho has slightly stricter rules, specifying that the birth of the child must take place within ten months of the biological parent's death in order for that child to be considered an heir [8].

However, not all US states have taken technological advances into account to give this new category of heirs a chance. Florida, Georgia and North Dakota have refused to extend their ab intestate inheritance laws. Courts in Arizona, New Jersey and Massachusetts have refused to create special exceptions for heirs conceived after the death of their parents and denied applications for social security benefits for children

conceived posthumously because they did not meet the legal requirements to be "pending birth" at the time of their parents' death [8].

As regards the role of the descendants in general in the intestate succession, in general, the share granted to the surviving spouse has in some cases become to the detriment of the children of the deceased. All states uniformly present children as a primary class in their offspring and distribution tables in the absence of a surviving spouse [9].

However, when there is a surviving spouse and the children are his and the deceased spouse's, a large number of states give the surviving spouse one hundred percent of the estate. The shift from direct to indirect granting of property and property to children through the surviving spouse was partly driven by the idea that passing on the inheritance directly to minor children would involve unnecessary administrative costs involving the appointment of a guardian to manage the interests and assets. In the case of a surviving spouse whose children are also those of the deceased, these expenses can be avoided by granting the inheritance only to the surviving spouse [9].

On the other hand, when the deceased has children who are not the surviving spouse's, the share given to the surviving spouse decreases considerably to almost half of the fortune, plus $ 100,000. Consequently, the remaining share (approximately half of the fortune) is given directly to the children, and the cost of appointing a guardian is considered necessary to ensure the protection of the children [9].

Another scenario involves family situations in which there are both children from the family of the deceased and the surviving spouse, as well as children only of the surviving spouse, but not of the deceased. In these situations, states are reluctant to give the entire estate to the surviving spouse, and the tendency is to give $ 150,000 and a half of the fortune to the surviving spouse, and the other half of the fortune is distributed to the children of the deceased. The reason behind this distribution is that the surviving spouse can use the inheritance to unfairly favor his own children to the detriment of the children with the deceased and, therefore, the direct transmission of the inheritance to the latter can prevent this. Again, the cost of administration by a guardian for children is considered necessary and implicit in this case [9].

As of January 1, 2018, 32 states have ceased to levy inheritance taxes: Alabama, Alaska, Arizona, Arkansas California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Michigan, Mississippi, Missouri, Montana , Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Wisconsin, Wyoming [10].

Conclusions

The American space enshrines different understandings of testamentary inheritance depending on the legislatures and the courts. While some go beyond certain formal elements of making a will, others emphasize them, but in any case there is a dominant tendency to protect descendants who may be omitted or excluded from the will. As a novelty, some of the American states recognize the status of posthumous heirs - conceived after the testator's death. It is also worth noting the institution of the trust, an institution that could be successfully implemented in the Romanian legislation and succession practices.

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LEGISLATIVE TECHNIQUE OR FORMAL LEGISTICS - ELEMENTS OF COMPARATIVE CONSTITUTIONAL LAW

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Abstract:
The legislative technique, also called formal legistics, is the art of drafting laws and is part of the legislative science that has as its object, the use for the purpose of application, the options of legislative policy and consists not only in drafting the law or more generally, in its organization, but also in the choice and coordination of the ways of enunciating the norm of law and of the technical procedures of realization. In order to translate political and administrative imperatives into feasible, efficient, clear regulations with appropriate legal terminology and notions, in accordance with the drafting conventions on the structure, form and style of laws, specialized legal skills are required, which should be the responsibility of lawmakers. who are, as a rule, officials with legal education and experience.
Keywords*:* *legislative technique; formal legistics; the rule of law; legislative policy; legislative bodies.*

Elements of comparative constitutional law

The legislative initiatives of the members of Parliament are transformed into bills drafted by the specialists of the legislative departments of Parliament.

For the legislative practice, some countries have adopted directives for all drafters of legislative acts that they must comply with. Such a situation is seen in France, Belgium, Canada, the Ukraine.

Regarding the examination and approval of bills, they concern in particular: harmonization with the legislation of the European Union; compliance with the provisions of the Constitution and the laws in force; compliance with international treaties, in particular the European Convention on Human Rights; rules for implementation, delegations on terms of legislation, legal form, clarity and accuracy. [1]

Thus, in France, when a text is to be deliberated in the Council of Ministers - bill of a law, of an ordinance, of a legislative decree, the Prime Minister, through the General Secretariat of the Government, is the only one authorized to notify the Council of State and to monitor compliance with the procedure. Sending the text to the Council of State

cannot take place if the mandatory prior approvals have not been obtained - from the Economic and Social Council for economic and social projects, except for the financial ones, from the joint technical commissions, etc.

In Belgium, certain formalities must be completed before submitting bills to Parliament: the opinion of the Council of State, consultation of trade unions in various forms of cooperation. Failure to comply with these formalities entails the annulment of the approved act, and the Council of State may refuse to examine the texts for which the cited formalities have not been fulfilled.

In Slovakia, the Government has created the Legislative Council, an advisory body guaranteeing the quality of the texts of legislative acts drafted by the executive; it examines each legislative act bill submitted to it. The members of the Legislative Council are appointed and revoked by the Government, at the proposal of the Deputy Prime Minister. They are specialists from ministries, law schools, representatives of companies, trade unions, financial institutions, as well as the Supreme Court of Justice and the General Prosecutor's Office.

In Slovenia, drafters of a bill within a ministry are responsible for this law, until its adoption in Parliament, following the course of the bill. Thus, the bill must receive visas of conformity with the provisions of the Constitution and the legal system from the Secretariat responsible for legislation and legal issues within Parliament.

In France, bills for legislative acts are accompanied by a statement of reasons or a presentation report, depending on the type of act.

Bills are always preceded by a statement of reasons indicating the reasons why the bill is presented to Parliament and the objectives it sets. This statement includes a brief explanation, on articles; it is traditionally attached to the bill when it is submitted to the Council of State.

Bills for decrees as well as bills for Government decisions are always accompanied by a presentation report setting out the reasons the proposed text is submitted, the nature of the enacting part and, where appropriate, explaining the reasons which for the basis for amending the rules in force.

In Lithuania, the bill must be accompanied by an explanatory document which must show: the objectives of the bill; the current regulation regarding the subject treated in the

bill; the new provisions created by the bill; the positive results that should result from the regulation in question; the evaluations and conclusions of the specialists participating in the drafting process; the names of the authors of the bill; the keywords of the bill for it to be included in the computerized search system. [2]

In Romania, the bills for legislative acts must be accompanied by the following motivating documents: explanatory documents, in the case of bills for laws and legislative proposals; substantiation notes, in the case of Government ordinances and decisions; approval reports, for the other legislative acts.

The motivation of legislative acts refers mainly to: the requirements that require legislative intervention, the existence of legislative discrepancies or a legislative vacuum; the basic principles and purpose of the proposed regulation with highlighting new elements, the implications on internal law, in case of ratification or approval of international treaties or agreements, as well as the necessary adoption measures; the phases completed in the preparation of the bill and the results obtained, highlighting the studies, research, artistic evaluations, specialists consulted, the preoccupations of legislative harmonization. For emergency ordinances, the objective and stringent circumstances that determined the exceptional case that justifies this legislative procedure will be presented separately. [3]

In the countries of the Romano-Germanic law system, the style and the way of writing differ from one state to another, depending on the syntactic and lexical particularities, there are, however, a number of widely accepted common principles such as: avoiding long sentences; stating the rules in a prescriptive form and not in a narrative way; formulating the rules directly, avoiding periphrases and stating only the rules that perform a necessary legal function; observing normal syntax; using common language, using legal terminology, the text must be concise, etc. [4]

It can be said that this elaborate process of drafting legislative acts (norms) includes both: choosing the category of legislative acts in order to regulate social relations, drafting technique, legislative language, legislative codification, publicity and entry into force of legal norms, republishing and rectifying legislative acts. [5]

In France, the drafting of a bill for a legislative act and the accompanying document, namely the explanatory statement or presentation report, must be clear and

grammatically correct; it is requested that only terms belonging to the French language be used, the use of foreign terms or phrases being prohibited, if there is a phrase or an equivalent term in French. It is recommended to avoid the use of new words, unknown through usage or dictionaries. The written text must be clear, the articles shall be short. Each sentence must express only one idea. Definitions are a legislative technique seldom used in France, unlike Anglo-Saxon law, which systematically uses general definitions at the beginning of each law. This technique is often used in Community law as well to ensure unity regarding the content of a concept in different languages.

In Luxembourg, legislative acts are drafted in French, except for the provisions that may be applied in the field of international conventions. [6]

In Romania, the specific legislation clearly states that legislative acts must be drafted in a concise, sober, clear and precise style, which excludes any ambiguity, with strict observance of grammatical and spelling rules. [7]

With regard to the references, amendments and completions of a legislative act, they must be made clearly, concisely, and when it comes to amendments, they must contain the text concerned in full, contained in the article, paragraph or in the marked element of an enumeration. The provisions amending and supplementing shall be incorporated in the basic act on the date of their entry into force, identifying themselves with it.

Legislative language does not indicate the feminization of generic terms that apply indefinitely to men and women, and it is recommended to write dignities and functions in the traditional way.

Cardinal and ordinal numbers are written in letters with a few exceptions. When it comes to terms of days, months or years in prison, they are written in digits. The name of the institutions, services, public establishments is written in full. Dates and times are generally written in digits, except for the name of the month.

It is also recommended to avoid abbreviations as much as possible. Regarding the use of capital letters, they follow the rules of writing the language in which the act is written.

Compared to national drafting rules, Community rules also include the so-called protocol rules on the order of citation of different bodies or countries.

The order of citation of the treaties that form the communities is the historical order. The order of citation of the Member States is the alphabetical order of the countries of origin (e.g. Albania, Bulgaria, Czechia, etc.).

Regarding the structure of the legislative act, it is traditionally the following: title, introductory formula, preamble, operative part, annexes.

As for the title, which is the main identifying element of the legislative act, it must be precise, complete and concise and must not be misleading as to the content of the operative part.

The article is the basic structural element of the operative part.

In Canada, the Quebec Legislative Drafting Guide states that the title of a law must indicate its essential purpose and allow the publisher to easily identify it. It must be as precise and short as possible.

In Romania, the title of the legislative act includes the generic name of the act, depending on its legal category and the issuing authority, as well as the object of the regulation expressed synthetically. It is forbidden for the name of the bill of a legislative act to be the same as that of another legislative act in force. In the case of legislative acts amending or supplementing another legislative act, the title of the act shall express the operation of amending or supplementing the legislative act in question.

As for the introductory formula, it is represented by a phrase that sets out the legal basis on which the respective legislative act was issued and also highlights the competence of the issuing body.

In Romania, according to the incident legislative provisions, the introductory formula consists of a sentence that includes the name of the issuing authority and the expression of the decision-making process regarding the decision for the issuance or adoption of the respective legislative act. [8]

The preamble is an introduction to the law which usually explains the reasons for adopting the law and sets out the political, social or economic motivation.

In Belgium, all decisions have a preamble, but laws, decrees and ordinances do not have a preamble. [9]

The preamble may include: the legal basis, references to any provisions amended or repealed by this act, any justification of opportunity, a statement of the completion of

the required formalities.

In Romania, the preamble precedes the introductory formula and summarizes the purpose of the regulation, and cannot contain any directives or rules of interpretation. In the case of legislative acts of the specialized central public administration or of the local public administration, the preamble also mentions the mandatory approvals according to the law. As regards the operative part, it represents the contents of the regulation and is made up of all the legal rules created.

The basic unit of a legislative act is the article. Grouping articles into larger units is similar from country to country: subsections, sections, chapters, titles, books, parts. Differences are found in the division into items and paragraphs or sub-paragraphs. Thus, according to the drafting rules in the Ukraine, Luxembourg, Belgium and many other countries, it is considered that the paragraph contains several items, while in France it is provided that the article is divided into items and the division into paragraphs is not recommended, while in Canada it is accepted that the article is divided into items, which contain several paragraphs and sub-paragraphs. In Belgium, according to the Code of formal legistics, the operative part is the part of a legislative act that establishes the will of the author of the text, containing both the formulation of new rules, as well as provisions to ensure the compliance of new rules with existing legislation and regulations (amending, repealing, transitional provisions, etc.).

The normal grouping of articles is done in chapters, which can be divided into sections, possibly divided into subsections. The chapters are grouped into titles, these into books, and the books into parts. Each group can have its own title.

In Romania as well, the basic structural element of the operative part is the article, which usually includes a single legislative provision, applicable to a given situation, the structure of the article must be balanced, addressing only the legal aspects necessary for the regulatory context. The article is expressed in the text of the law by the abbreviation "art." The articles are further numbered in the order of the text, from the beginning to the end of the legislative act, in Arabic numerals. There may be a situation when the legislative act contains a single article, this being defined by the expression "Single article".

The item represents a subdivision of the article, being usually made up of a single

sentence or clause that regulates a legal hypothesis specific to the whole article.
Articles may be grouped into chapters, which may be divided into sections and, where appropriate, into paragraphs. In codes and other laws of great extension, the chapters may be grouped in ascending order, in titles and, as the case may be, in parts which, in turn, may be organised in books. Chapters, titles, parts and books are numbered with Roman numerals, in the sequence they have in the structure of which they are part.

Regarding the "systematization" of the legislative content we have the following order of presentation of ideas: general provisions; regulatory provisions, transitional provisions and final provisions.

In the U.S.A., the purpose of a law is to create a new law, amend an existing law, or repeal an existing law. Usually, bills have the following structure: title, short title or citation, statement of reasons or legislative purpose - if used, definitions - if used, basic divisions, special provisions, interpretative clause, divisibility or indivisibility clause, prohibition or non-prohibition clause, bills for financial laws, repeals, etc.
With regard to the legislative language, the wording of laws requires special legal skills, which are based on a special understanding of legislative methodology and extensive experience in drafting techniques. The main task of editors is to transpose a particular policy into a coherent set of rules; also, the bill of a law must be correlated with the other legislative texts, the methods it uses must be easy to use and, from a legal point of view, effective, and the legal wording must be pertinent and intelligible. The final text of the bill must clearly and accurately reflect the legislative imperatives, the social order.

Conclusions

In conclusion, it should be noted that the law does not have to regulate in the smallest detail the field in question, but it is enough to limit it to determining the principles and the most important regulations, leaving the legislation subordinate to the law - government decisions, orders, instructions, etc. - the task of carrying out the detailed regulation.

Regarding the distinction between organic law and ordinary law, it can be considered that the main argument is that organic law intervenes in the areas indicated

in the Constitution at the level of regulation having a general character or principles, and ordinary law intervenes to detail the regulation in a more specific area or another.

Research must be carried out on ensuring the correlation between legislation and social relations, legislative activity and legislative technique, the legislative program, the relationship between law and technical-scientific and social progress leading to a better harmonization of legislation with the needs of the litigant having as aim his faith in the legislative system and, by extension, in justice.

However, a pure theory of legislative technique in terms of the effectiveness of the law loses much of its rational or logical value and is fundamentally indifferent. The legislative technique must be a practical work, with the precisely limited purpose of achieving an effective legislative work that judges, pragmatically, to produce its effect: the law to be successful. If the law is not successful, surely the legislative technique was defective or aimless and the technical element of this creation is the contribution of the specialist lawyer to the spontaneous drafting of law within the legal system having as final recipient all legal subjects. The legal creation must be a work of reason that evaluates actions, relationships and, in general, all realities that concern the social order, the security of human relations, public welfare as the sum of individual welfare.

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LEGAL ORDER OF HUMAN RESOURCES IN THE ORGANIZATIONAL STRUCTURE OF THE BUSINESS OF THE COMPANY

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Abstract:
The importance and priority of the choice of human resources is extremely important in the organizational structure of the company. The legal order of human resources in a particular business entity allows to perform tasks that provide conditions for smooth functioning of organizational units based on management, competencies and skills of employees. Within the legal order of human resources, a strategy and policy for the development of human resources are developed and implemented within the given organizational design of the company, and legal business norms, general and organizational acts are taken into account.
Keywords*: human resources, legal order, organizational structure, job design, legal norms.*

Introduction

Identification of the legal order of human resources, business structure and organizational design take place in order to perform business activities of the company and enable the realization of plans, and are directly related to the business strategy of a particular business entity. The importance and priority of establishing the legal order of human resources within the organizational structure of the company implies the development, monitoring, coordination and supervision of human resources, which arose in response to changes and demands of the modern market environment. When determining organizational acts in the organization of human resources business, general business acts are taken into account and based on them, organizational acts are determined which have their own conditions, procedures, drafts and rules.

1. The concept and role of human resources

Human resources are a set of physical and mental characteristics and abilities of a person that he possesses and uses in the production of material goods. When using human resources as goods or factors of production, it is necessary for the worker to become the sole owner of his working ability and to dispose of it freely.

In previous historical periods, human resources were treated as commodities, which enabled capitalists to develop their production. Guided by material reasons, factory owners and landowners exploited workers to the maximum in order to achieve their own goals and maximum profit. Human resources were equated with goods based on the introduction of personal freedom of producers and observation of the concept and significance of human resources separately from the means of production (means of labor and objects of labor) [1].

Human resources, as one of the basic factors of production, its development and the process of improvement are of crucial importance for the further course of development of the productive forces of a certain social community. The properties of human resources are reflected in their use value. The use value of human resources is made by human work itself, ie qualified human resources with all their knowledge, skills and abilities that employees possess when performing a certain work task.

The role of human resources is reflected in their value, which is defined by the quantity or value of goods and services needed for the reproduction of workers who have labor. The amount of necessary means of subsistence for workers is influenced by many factors, such as [2]:

a) the level of socio - historical development of a particular social community;

b) the quantity of material goods necessary for the basic physiological needs of the worker and his family members, and

c) the quantity of material goods necessary for the education and vocational training of workers.

The value and use value of human resources are formed on the market of human resources, which by their specifics and with the help of competent institutions influence the formation of the price of human resources and the course of their movement [3]. The human resources market, unlike other commodity markets, is strongly influenced by institutional and legal norms.

Through the rules, norms and the Law, the formation of the price of human resources is influenced and the minimum, legally determined price of human resources is determined. The price of labor, which is received by the employed workers, is called the salary or personal income. Wage formation is not directly influenced by supply and

demand, which are crucial for price formation in commodity markets. If the laws regulating the movement of prices on commodity markets were applied on the human resources market, in periods of higher supply of human resources in relation to demand, there would be a reduction in wages and greater engagement of human resources by employers [4].

This process would lead to an increase in the employment rate by employers and a decrease in total unemployment. In the real world, wage cuts occur independently of the process of increasing human resource supply, and workers' rights are most often protected by collective bargaining agreements that guarantee them basic rights and wages. On the other hand, natural population growth affects the constant influx of newly skilled workers by increasing the real unemployment rate and reducing the real value of personal income [5].

1.1. The importance of the legal order of human resources

The adoption of the Law and legal acts in a certain economic entity determines the system of hierarchy of activities on which the organizational structure of the company is formed.

The organizational structure of the company is managed by the President of the Management Board, the General Manager of the business entity or an appropriate equivalent who has the authority for the managerial function.

When establishing the legal order in a certain organizational structure, it is necessary to establish a proper hierarchy and systematization of work by the sector in charge of human resources in a particular business entity. When establishing the legal order, it is necessary for the human resources sector to have [6]:

a) consent and entrusted powers by the governing body of the company,

b) the budget approved for the performance of tasks, grades and privileges for employees (basic salary plus bonuses and allowances),

c) the supervisory body in charge of conducting the audit procedure,

d) public powers and responsibilities related to human resource management within ministries and federal entities that are in accordance with the regulation on human resources within a given economic entity.

The competent sector for human resources within a specific organizational structure in the company is responsible for studying and proposing policies and laws

related to the rule of law and human resources in a particular company, proper application of human resources and legislation, insurance, respecting the provisions of adopted Law and bylaws of the same, consider possible complaints and appeals against the work of the human resources sector within a particular company. The Sector for Human Resources in a specific economic entity is responsible for the implementation and application of the rules established by the Law on Human Resources.

Organizational units in charge of human resources in each business entity are obliged to adhere to the principles of business policy contained and apply them consistently among all employees, in order to create an efficient work environment based on the achieved performance. Human resource planning within the legal order within the organizational structure of the company is a process that includes a number of activities and should help the organization to assess the current number of human resources in its organization in preparation for future needs.

Human Resource Planning (HRP) is a responsible job and includes job analysis, role analysis, and competency profiling as tools that provide a starting point for HRP. Human resource planning (HRP) is usually presented as a five- or six-step process that is broadly defined “as an effort to anticipate an organization’s future business and environmental requirements and to provide qualified people to meet and meet those requirements”. The HRP process begins with organizational goals and plans, as well as relevant environmental factors and analyzes that have been previously discussed as forces of change. This is based on an analysis of current human resources, which includes a list of talents and various sub-analyzes that complete the picture of current human resources [5].

Human resource needs for a given planning period are characterized by a gap between current and projected needs, which is the goal for action plans that follow in the implementation phase. These plans relate to the recruitment and selection, training and development of young staff, their replacement and relocation, promotion and eventual dismissal of staff. If necessary, this process needs to be redesigned. Strategic human resource planning usually takes place at three levels, long-term, medium-term and short-term. Long-term strategic planning is performed by top management by setting strategic directions for the company that reflect the philosophy, and goals of that company.

Medium-term planning includes program development and business plans that operationalize strategic plans for business units and departments. Short-term planning aims to make short-term decisions of an everyday nature that are routine and that are constantly repeated.

1.2. The role of human resources in the organizational structure of the company

Qualifications of human resources are a basic professional document that describes the work performed by workers in their workplace. The job description should include and identify the basic tasks and tasks that are necessary to perform at a certain early place, as well as the necessary resources for work.

The need to develop a new or improve an existing scheme of educational profiles (standards) of occupations arises during changes in technology and / or in the organization of work [7]. The request to change the occupation profile arises when taking the initiative, assessing the needs of the human resources market and in accordance with the possibilities for acquiring the same or similar classification. Human resource management (HRM) is a very complex subsystem of the organization system in which a large number of entities from the internal and external environment participate. These are: the management of the organization, the union of the organization, the human resources unit, the employment service, educational institutions, etc. All these entities perform their activities on the basis of organizational and legal acts. On the basis of general legal acts, the rights, obligations and responsibilities of human resources in the organization are determined. instructions as organizational tools that encourage the quality of achieving goals and making decisions about human resources.

Decisions on the description and needs for new educational profiles are made in competent institutions, such as the Ministry of Education, the Ministry of Labor, Employment and Social Policy, chambers of commerce, trade unions, etc. The methods used in defining existing or new educational profiles (occupations) and their characteristics that describe in more detail the process, methods and procedures for performing specific tasks are [1]:

a) brainstorming;

b) interview;

c) survey i

e) method of observation at the workplace.

Brainstorming is one of the techniques that requires the active participation of the participants themselves and thus contributes to higher productivity of business training or working meeting. This technique encourages group creativity and generates a large number of different ideas that represent a solution to the problem. This technique contributes to greater participant satisfaction, makes teamwork more interesting and helps build a business team. The brainstorming process requires compliance with four basic rules that contribute to greater activity of participants and stimulates the presentation of new proposals and ideas. This technique is aimed at supporting the process of proposing new ideas, without burdening their quality levels, and the whole process takes place under the assumption that the more different ideas are presented, the greater the chance to reach the right solution.

Another important feature of the brainstorming technique is the condition that the entire process of proposing and adopting new ideas takes place without the possibility of criticizing the proposals presented at the beginning of the presentation. The goal to be achieved by this condition is to create an atmosphere in which the participants will feel accepted and free to present whatever comes to their mind, no matter how unusual it may be. The brainstorming technique implies creativity, and all unusual and unexpected ideas are very desirable because such ideas can move participants to a completely new way of thinking and looking at things.

Thanks to new ideas, unexpected and radical solutions can be reached. Combining and improving already presented ideas is a combination of several different ideas that can generate a completely new idea that can be further improved.

Interview and survey are two interrelated statistical methods. They can be performed by examining a certain number of respondents in writing or orally, selected on the basis of a random sample in order to adequately represent their statistical set or population. The survey process can be conducted directly (verbal survey) and by questionnaire (indirect or written survey). During the process of interviewing and / or filling in the questionnaire, numerically coded pre-defined questions are answered, which enable the surveyed subject to precisely formulate his / her answer [2].

The method of observation at the workplace enables the definition of all jobs, duties, responsibilities and work tasks that are performed at a specific workplace. Direct observation of individuals in the workplace provides a written description of the work tasks, duties and responsibilities of employees who are in a particular workplace. What jobs and tasks the employee performs, how, why and under what conditions he works are information that is crucial when formulating the job specification. The job specification shows a list of all the qualifications needed to do the job successfully.

2. Job design in the function of the legal order of human resources

Observing business design as a sociological and economic phenomenon, it can be noticed that, from the aspect of observation and study, its roots go back to the time of Adam Smith, ie related to the thoughts that appeared in Great Britain during the First Industrial Revolution. Adam Smith was the first to devise the division of labor or the so-called dividing the complicated and complex task into more complex tasks in order to specialize activities aimed at higher employee productivity [8].

After Adam Smith, Charles Babig emphasized the importance of simplifying work to simpler tasks that would require hiring cheaper labor, and Frederick Taylor and Henry Ford made a major contribution to the development of labor specialization. Frederic Taylor's idea, presented in Scientific Management in 1911, emphasized the most efficient way to perform tasks. Taylor's contemporary, Henry Ford, used this idea to control the work of employees, which was conditioned by the appearance of the conveyor belt in the Henry Ford car factory in 1914 in Michigan, USA [4].

It achieved its first beginnings in the specialization of jobs and tasks in industry, primarily in the sphere of production, but soon, in addition to the advantages in the specialization of tasks, certain negative characteristics of the specialization itself appeared, which slowed down the process. Experts from Great Britain and the United States have come to the conclusion that a certain specialization of jobs over time leads to fatigue, boredom and dissatisfaction among workers. But a solution was soon reached in the form of rotation of workers from certain jobs and tasks to other jobs and tasks after a certain time, in order to reduce tension and dissatisfaction with the hired workforce. Also, over time, the horizontal expansion of the business began to be applied. These limitations had their rise and high application in the world of industry in the period from

1950-1980. yr. when three very influential theoretical discoveries emerged, as well as proposals for business enrichment. The first most significant theoretical discovery relates to Frederick Herzberg and his colleagues. Frederick Herzberg introduced a two-factor theory that distinguished between two types of factors [8]:

1. motivational factors - are factors that affect the level of interest in the job;
2. hygienic factors that include hygienic conditions.

According to Frederick Herzberg's theory, motivational factors have a very strong influence on employee satisfaction within a certain organizational structure, but they have a very small influence on dissatisfaction. In the case of hygienic factors, the influence or action is completely opposite in relation to the motivational ones.

Hygienic conditions create and have a strong feeling of dissatisfaction, and have very little effect on satisfaction. This theory did not last long in practice because new ideas emerged that were advocated by Paul and Robertson in the 1970s. The two-factor theory was advanced by Huckman and Oldman in 1976 by presenting the Job Characteristics model. In addition to the previous two, a third theoretical direction emerged from the Tawisckok Institute in London in the early 1950s. This approach is based on the following assumptions [7]:

1. minimum specified methods of work;
2. at the beginning, ie at the beginning of the process, differences in jobs are presented;
3. the application of the theory is focused on groups of workers;
4. the idea of creating self-governing working groups or teams was encouraged.

The model of job characteristics and the socio-technical system of thinking have remained the most significant research approaches to this day. According to Karasek's request-control model, the psychological stress of employees that arises as a result is emphasized [8]:

a) combining the effects of high demands, ie workload, and
b) low controls, ie possibilities of autonomy.

According to the model of job characteristics, the perception that employees have about the job most directly determines their attitudes and behaviors in a particular workplace. The perception of the worker is influenced by the social and objective work characteristics of the work he performs, and the primary influence is exerted by the

persons or employees and their experience of the work itself in relation to the secondary significance of the visual effect of the work.

The second approach, in addition to Mitch Hezberg's, represents the interdisciplinary approach of Champion and his colleagues who emphasized the biological and perceptual approach, as an additional approach to conceptualizing job design [9]. The characteristics of the job design process are [10]:

1) design of business flows;

2) configuration of working groups and nature of individual jobs;

3) the existence of a range of possible forms of job design;

4) non-existence of the best way of designing a job (cognitive understanding of job design).

Job design should enable employees to use the various skills they possess in order to perform tasks that have a significant impact on other employees in a particular company. Traditionally, design work was based on shaping individual tasks and roles. Due to the growing uncertainty and complexity, interdependence and the growing need for coordination and integration of employees has emerged.

2.1. Defining a strategy within the legal order of human resources

Organizational design affects and limits the possible choices of job design forms, and different factors can affect different dimensions of job design differently. Defining strategy, organizational structure and business processes precedes decision-making on job design, and the relationship between organizational design and individual behavior can be observed as follows [6]:

a) organizational solutions can encourage and motivate individuals to accept certain patterns of behavior;

b) organizational solutions may limit behavior;

c) organizational solutions can be viewed as playground and game strategies.

Changes are effective if they change the way people think, and it is very important to accept all elements of organization or organizational design [8]. Changes in behavior, beliefs, and values cannot be formally prescribed because they occur through employee interaction and experience. Job design is the process of determining the content of a job,

its functions and social relations at work in order to achieve organizational goals and meet the individual needs of its executors.

2.2. Job forecasting approaches

Among the many divisions, two approaches stand out, specialist and motivational. These two approaches have different starting points related to the motivation of those who do the work and human resources and their use value.

The advantages of the specialization approach are reflected in less need for training, easier replacement of workers, fewer mistakes, less dependence on people, lower costs, etc. [3]. The specialization approach in the traditional sense, which reduces work activity to the smallest possible number of operations (ideally one), shows that its connection with greater efficiency is limited by the negative consequences it has on the individual, psychological level, producing disinterest, apathy, boredom, demotivation and others. negative effects.

Due to the psychological consequences after a certain period, the costs start to rise. That is why many world companies have reconstructed the technology of the tape and the work on the tape in such a way as to increase the meaningfulness of the work.

Job rotation is the periodic movement of people from one specialized job to another, thus preventing stagnation of people, monotony and boredom. The advantages of the motivational approach are reflected in less absenteeism and fluctuations, more ideas and suggestions, more flexibility, higher quality of products and services, greater job satisfaction. Job expansion is the process of combining and combining several similar specialized tasks into one job that is assigned to one executor.

Work enrichment is defined as a process that vertically expands the business to include more diverse tasks and skills, responsibilities and autonomy in a way that increases the possibility of applying and realizing various personal abilities and knowledge and enables full development and use of individual possibilities and potentials [6].

Conclusion

An efficiently established legal order in the organizational structure of the company enables the maximum use of human resources and their engagement in the business process. The legal order with an effectively implemented business strategy requires

certain characteristics of the organizational structure that is fully aligned with the organizational design of the company and the work performed by hired workers.

Modern market tendencies imply certain forms of organizational structure that are fully harmonized with the unit of organizational action. Job design should enable employees to use the various skills they possess and perform tasks that have a significant impact on others. The legal order of human resources, design and management of jobs implies interdependence and the growing need for their coordination and integration.

Every decision on human resources and field management in the organization is made on the basis of legal acts and norms of the environment (laws and bylaws) in accordance with the applicable internal norms of the organization. Since the process of drafting and adopting general acts is standardized in most organizations, decision-making and adoption of solutions can be given alternatively, and after their adoption, the formulation of legal provisions is approached. For the best results, it is necessary to determine the advantages and disadvantages of the adopted solution, risks and consequences. The goals to be achieved and the ways to achieve them are determined. In order to achieve the goals and achieve the desired results, it is necessary to draft general legal acts that contain guidelines and indicators, as well as provisions that are monitored towards the realization of the set goals. These goals depend on the type of general act that is passed and the ability of the organization to achieve them. Organizational acts should be distinguished from general legal acts. Because, the degree of achievement of goals depends on organizational acts, and that includes procedures and instructions. The degree of achievement of goals in the organization also depends on the knowledge, ability and competence of human resources to respond to organizational acts. For that reason, the degree of drafting of an organizational act differs from the drafting of a general legal act. The process of drafting a general act is more complex, because it is based on the legal and organizational bases and activities of different entities. The result should be the adoption of a general act whose implementation should lead to the achievement of the goals of the organization.

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SYNERGY EFFECT OF PUBLIC AUTHORITIES IN THE EXERCISE OF SOVEREIGNTY IN A RULE OF LAW

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Abstract:
The rule of law, democratic and social, is the type of state in which the rights and freedoms of citizens, the free development of the human personality, justice and political pluralism are supreme values, in the spirit of democratic traditions of peoples. The idea of the rule of law is even older than its own name, for it is not at all difficult to find the various individual elements of the modern rule of law in the various stages of development of history. Public authorities in a state governed by the rule of law are dependent, directly or indirectly, on the political court, they are structures invested with the right to exercise power. Public authorities generally perform all the functions of the state and perform the political function of the rule of law. In the rule of law, public authorities vested with the exercise of power are subject to the laws adopted by a parliament legitimized by the supreme will of the people.
Keywords: *state, law, public authorities, sovereignty, democracy*

General notions regarding the rule of law

The rule of law is an ideal form of state organization in which the rule of law is ensured, even over the legislature, and in which all subjects of law, including political factors, are subordinate to the law. what expresses the sovereign will of the nation is a social retort to the abuse of power.

The rule of law is defined by the French jurist Jacques Chevallier as "the type of political regime in which the power of the state is framed and limited by law". [1]

The corresponding expression, "rule of law" is "Rechtsstaat" in German, "Etat de droit" in French, "Stato di diritto" in Italian, "Estrado de dereche" in Spanish, "State Law" in English. We must point out that if in English the correspondent of the expression rule of law is "State Law", the Anglo-Saxons do not use this expression but that of "Rule of Law" which means the rule of law and is the equivalent of the expression rule of law. [2]

Professor Boboş Gheorghe shows that the name of the theory of the rule of law wants to suggest the idea that the state is not absolutely independent in its activity, but is restricted by the authority of law. [3] It also shows that the theory of the rule of law is outlined during the period of liberalism in the nineteenth century, being closely related to the theory of separation of powers in the state. In the absence of an international authority to guarantee human rights, the state itself must do the same and it can achieve this by separating its powers into its three powers: the legislature, the executive and the judiciary, which control each other so as not to abuse can occur. [4]

The main role of the judiciary would be to protect the rights of the individual, but the position of power is not the same in different states. For example: England created a great authority of law, subjecting both state bodies and citizens to the same authority: customary law applied by the courts.

In Western European countries, the principle of separation of powers has led to the development of a theory of the subjective rights of individuals in their relationship with the state, through the "public law" system. It is designed as a set of rules that aim to protect the individual against the arbitrariness of administrative bodies. [5]

Regarding the theoretical substantiation of the rule of law, Professor Boboş points out that, as the German jurist Jellinek argues, it starts from the theory of the authority of state power according to which the state grants subjective rights to citizens, rights that sometimes go against it, and in foreign relations must comply with the rules of international law. [6]

The rule of law opposes any legality established otherwise than through a parliament elected by universal suffrage and acting in full accordance with constitutional principles. [7]

The characterization of a rule of law is also dependent on the manifestation of the responsibility of the members of the government, on the independence of the courts and on the observance of the rights and freedoms of the citizens. [8]

The symbiosis of the rule of law is particularly important in terms of the rule of law, a particularly current concept especially for societies in transition to democracy, as is the case of Romania and the states of Eastern Europe.

The rule of law is the result of the historical development of the coexistence of the two social phenomena - the state and the law, inextricably and organically linked to each other, both having to perform essential functions in the organization and governance of society. The rule of law reflects the coexistence of the two distinct but inseparable social entities that are the state and the law, of their mutual relations manifested as relations between power and normativity - the first with a tendency towards domination and obedience, the other with that of braking and ordering. [9]

Noting this interdependence, L Duguit said: "Law without force is powerless, but force without law is barbaric." [10]

Right from its inception, the rule of law is at several different levels between which interference and slippage are constant.

First of all, the rule of law refers to a certain conception of the state order: by subjecting the rulers to the law, correlated with the guarantee of a possible appeal before the independent judge, what constitutes the principle of hierarchy of norms is established. the higher the norms and the rule of law, the better developed this dependency will be. [11]

Secondly, the issue of the rule of law can be raised to the deepest level, namely the submission of the state to the rule of law.

Thirdly, the rule of law, as stated by Petru Miculescu and whose opinion we share, is characterized by a content of the law in force, characterized by a set of values and principles aimed at providing citizens with effective guarantees against the state. [12] Thus, in the rule of law are integrated: the fundamental guarantee of public liberties, the protection of the democratic-liberal order, the legal ordering, the control of the constitutionality of laws, finding their principle, purpose and determination in the concrete individual.

The rule of law is not reducible to a simple technical device for organizing the legal order and any progress in the defense and protection of human rights must be assimilated to a strengthening of the rule of law. [13] The three dimensions of the rule of law: the principle of the hierarchy of norms, the principle of subjecting the state to the rule of law and the principle of the content of the rule of law in force. That is, the set of values and

principles defended led to the insertion of the rule of law in a social and political dynamic to which the rule of law is closely linked. [14]

According to the theory of the rule of law, the rule of law is the unit of a system of legal norms, the personification of the rule of law, including the constitutional one.

The French author Claude Emeri considers that the origins of the rule of law must be sought in constitutionalism [15] and Professor Ion Deleanu shows that constitutional law is at the junction of law with politics and addressing the issue of determinations, the rule of law, shows that it belongs to normativity and ideology. [16]

In terms of ideology, the concept of the rule of law demonstrates its fecundity, being a tool to convey values that give the state legitimacy. Here the concept finds its element that in some societies or in some periods it has lost: the legitimation of power and its limitation. Thus the rule of law acquires multiple meanings, especially the increase of the reliability of the state which no longer appears only as a possible agent of oppression but also as an instrument of collective and individual security.

The term rule of law was established by use, it being used in constitutions such as: in art. l, paragraph 3 of the Romanian Constitution, in art. 28 of the Constitution of the Federal Republic of Germany, in art. 11, of the Spanish Constitution, in art. l of the Constitution of the Republic of Moldova, etc.

On closer analysis we find that the problem of the rule of law appears much more complicated due to the fact that the state as an institutionalized organization, endowed as sovereignty of the population of a given territory, never acts as such in internal and external relations, but through its various bodies. [17]

In the case of modern representative democracies, these bodies are usually the following: [18]

a. parliament

b. executive bodies

c. the courts

The executive and judicial bodies can be not only elected but also appointed (examples: appointment of the prefect by the Government according to art.123 of the Romanian Constitution, appointment of judges by the President of Romania according to art.125 of the Constitution, etc.)

This overall structure of the state is encountered even when the representative democracy is integrated with some institutions specific to direct democracy such as the referendum, the popular initiative, etc.

This being the basic structure that takes the form of representative democracy, we consider it important to remember that in order to be a state governed by the rule of law in the event of such a democracy, none of these bodies will be able to operate according to the good please, but only in accordance with the norms established by law (as provided in art. 16 of the Romanian Constitution "no one is above the law").

The rule of law protects and guarantees human rights. From the point of view of positive law, the rights and freedoms that developed into what we now call "human rights" emerged in the struggle of various social categories against feudal absolutism. [19]
The whole complex European construction, from the basic local level to the supranational union level, forming a complex "public bloc", is centered on the idea of asserting and guaranteeing human rights.

Public authorities in the exercise of sovereignty

Public authorities in a state governed by the rule of law are directly or indirectly dependent on the absolute political, legal and moral court: the people.

Genoveva Vrabie considers that in a broad sense the category of public authority is synonymous with that of state body, understood as an organizational form, consisting of deputies, dignitaries or officials through which state power is exercised. [20]

We agree with the opinion of Prof. V Popa, who takes into account the fact that not every state body is also a public authority. The registry office is a state body but it is not a public authority or public power which proves that a state body is an element, an integral part of a system that contains several elements, and all together constitute the authority. For example, the authority or executive power has a well-defined structure: the head of state and the government and these in turn are composed of a number of bodies (ministries, commissions, sections, departments, etc.) that perform various functions as a whole. of the state. [21]

Given these situations, we can define public authority as a political institution [22] constituted directly or indirectly by the people, invested by the constitution with a certain

competence to fulfill certain functions of governing the country and which enjoys a certain authority and prestige in society.

These institutions are also called political because they exercise political power; the constitution nominates them public authorities and endows them with a certain competence.

The classification of public authorities is necessary in order to establish the proper place in the constitutional order of all public authorities by virtue of the fact that they are all in a close correlation and interaction.

In the Romanian Constitution, Title III is called Public Authorities and nominates these authorities in an order corresponding to the principle of separation of powers in: the legislature (Parliament), the executive (the President and the Government) and the judiciary (Courts, Superior Council of Magistracy and the Ministry Public).

Chapter V of the Romanian Constitution is called Public Administration and is divided into two sections, namely: specialized central public administration, nominating in this regard the ministries as specialized bodies of the state that translate into life the policy of the Government and local public administration (local councils and mayors), some being appointed by the constitution public authorities (Government and President), others public administration authorities (councils, mayors).

We point out that there is a considerable difference between the notions of public administration and public authority.

Authority is in a way synonymous with power. Authorities are those structures that are invested with the right to exercise power. The public administration can be defined as a professional body destined for the permanent realization of the services and public order placed under the authority of the executive power. The government also says that public administration is a public service activity entrusted to a set of special purpose bodies. They blend harmoniously into a public administration system focused on two levels: central and local. [23] Some bodies in the public administration system have the quality of authorities because they are invested with attributions through which they participate in the exercise of state power (Government, President of the Republic, Local Councils, City Halls) enjoy a certain authority and prestige by virtue of investing directly or indirectly. by the people.

Public authorities generally perform all the functions of the state, and separately, each public authority - a well-defined function. [24]

The political function of the rule of law is directly performed primarily by the representative public authorities. Art. 2 of the Romanian Constitution establishes that national sovereignty belongs to the people who exercise it through its representative bodies, constituted by free, periodic and fair elections as well as by referendum.

We mention that the representative regime includes the Parliament, the President and the local public authorities, all being elected through direct, secret and freely expressed universal suffrage.

The realization of the political function is not limited only to the activity of the mentioned institutions. The President of the Republic being the head of state together with the Government constitutes the executive power which is also a function of the state. Therefore, the Government also participates in the fulfillment of the political function.

The activity of the jurisdictional authorities exercising their functions established by the Constitution contributes to the exercise of political power. The courts being independent of any other power, administering justice on behalf of the state are the depositories of a part of the public authorities.

The Parliament, the President and the Government directly participate in the realization of the socio-economic function of the rule of law, and the jurisdictional authorities ensure the legality of all actions undertaken through special jurisdictional activities.

The legal functions of the rule of law are performed by each authority separately, based on the principle of separation of powers in the state. Thus the Parliament, as the only legislative authority, performs the legislative function which is the most important function among the legal functions, because the executive and the judicial function are directly related to the first function.

The executive function is performed by the head of state and the Government. Although the Constitution does not call these political institutions executive powers, it is understood from the text of the constitutional regulations, from the attributions with which they are invested.

The jurisdictional function is performed by a whole set of authorities such as: the High Court of Cassation and Justice (Supreme Court of Justice), the other courts established by law (Court of Appeal, Courts and Tribunals) and the Constitutional Court as a specialized authority of jurisdiction constitutional, which is the guarantor of the supremacy of the Constitution (art. 142 para. 1).

Since the Constitution classifies public authorities into central and local authorities by naming them public administration bodies at the level at which they operate, some specific functions named by the administration are outlined.

Prof. A. Iorgovan qualifies the public administration as an activity called to execute the law or within the limits of the law, to provide public services, using for this purpose prerogatives specific to public power. [25]

From this definition we deduce that the public administration authorities, in a broad sense, have only one function, that of public domain administration.

At the head of the public administration authorities are the President of the Republic, then the Government, the Ministries and the departments and the local public administration authorities, the councils of all levels and the mayors elected in accordance with the law. Each authority at the level at which it operates exercises powers of administration of the public domain.

The government exercises the general management of the public administration, the ministries being central specialized bodies of the state, it administers a concrete field (education, health protection, protection of public order, national security, agriculture, environment, industry). Local public authorities administer the local public domain on the basis of local autonomy and administrative decentralization, which means that they are not in subordination relations with the central administration authorities.

Contemporary states (not only the post-communist ones) are characterized by a sharpening of existing social tensions within each, by increasing the material and spiritual needs and requirements of the people, generating themselves the imperative for the Government to meet the legitimate demands of citizens by free economic development and market diversification. [26]

The new problems created by the transition period force our state to adapt public institutions to the new economic-social, political-diplomatic, military, domestic and

international relations. These new circumstances dictate changes at the level of state functions, imply the modification of some prerogatives, attributions and working methods of the supreme powers in the state. These circumstances require the improvement and efficiency of the Romanian state governance system.

The new general tendency of the contemporary societies to pass through the transition period consists in entrusting to the Government, the care to take the great political decisions that are translated in laws and executive measures, the activity of the Parliament being transferred on another plane. It should be noted that the real division is not between the power to make the law and to enforce it, but between the power of the executive bodies to direct the national political power using the administrative apparatus at its disposal on the one hand, and on the other the freedom of the legislative bodies to control the governmental activity.

According to the principle of separation of powers in the state in: legislative, executive and judicial, each of them is invested with certain prerogatives, none of the powers having the possibility to usurp the attributions of the other. It is true that between the bodies that exercise the prerogatives of a certain type of power there is a functional interpenetration and even a collaboration meant to ensure the harmony of the governing process and the involvement of the excess of power.

We mention that governments are mainly bodies of impetus and action, able to develop a policy and materialize it. They are the driving force and dynamic element of any political system, which must be seen as true actors and implementers of national policy, having a primary role. In most regimes, most of the laws passed are prepared by the government.

In democratic regimes the role of governments is growing and their powers are developing in many ways. [27]

In many countries, parliaments see their legislative scope circumscribed and limited by the Constitution while the government enjoys general normative competence. Another important moment is that we must take into account the rapid growth of some sectors of activity such as those on state defense, foreign affairs, economic issues that obviously fall into the administration of the executive and implicitly its importance is growing.

Another problem is that in most countries, except for those that practice a genuine presidential regime, there is a system of legislative delegation that allows Parliaments to empower the Government to intervene regularly in matters that normally belong to them. Precisely because the evolution of constitutional life in some countries has led to the emergence of such hybrid systems, which breaking the traditional patterns of both the parliamentary and presidential regimes have tried to reach compromise solutions and created what some authors in Western literature I call them semi-presidential regimes. [28]

From the above we observe that there are some similarities between the French political system, regulated by the Constitution of the Fifth Republic and the political system of Romania.

It should be noted that some Constitutions recognize not only the legislative delegation, such as the Constitution of Romania, Portugal or the Constitution of Italy, etc., but also its own regulatory power, the Government of France (art. 37 of the Constitution), the Government of Spain (art. 97 of the Constitution).

Due to these constitutional provisions, the executive power can replace the legislative power, and through the possibility recognized to the Government to engage its responsibility before the Parliament on a draft law, provided in several political systems (art. 196 of the Portuguese Constitution, art.49 of the Constitution of France, Article 112 of the Constitution of Spain, Article 115 of the Constitution of Romania) the Government is recognized a preponderance over the Parliament because through such a procedure the government imposes a certain decision in areas that are not subject to organic laws. Building a rule of law presupposes the existence of a constitutional regime, through which democratic institutions must regulate the fundamental aspects of organization and social activity, based on the separation and balance of powers.

Any public authority has the obligation to fulfill its tasks and prerogatives with which it has been invested. [29]

In our opinion, the separation of powers in the state is dictated by the following objectives:

1. the strict definition of the competent functions and the obligations of each state body;
2. it is necessary to carry out a strict control over the activity of the state bodies;

3. in order to avoid abuse of power, it is necessary to create a system of "brakes and balances";

4. The institutionalized powers in the state must respect the law, the principles of democracy, human rights and fundamental freedoms.

The three powers of the rule of law, namely the legislature, the executive and the judiciary, must work together, but each must fulfill its prerogatives without obstructing the other powers.

Western democracies, through their experience, prove that it is necessary to separate the powers in such a way that each of them can effectively carry out its powers and at the same time collaborate with the other powers for the prosperity of society.

The state power protects and controls the society it organizes through these three powers. It ensures the protection and control by legislation in the service of the general and private interest. In resolving conflicts and disputes, the courts must be competent, fair and efficient.

Therefore, the rule of law is not above its own established laws, and each of its bodies carries out its activity in accordance with the attributions incumbent on it by law.

It is known that from the moment of his investiture by the vote of confidence given by the Parliament and his proposal by the President, the Government assumes a direct responsibility for the way it ensures the accomplishment of the country's internal and foreign policy and exercises the general management of public administration.

The social, economic and political crisis affecting Romania was generated by the irresponsibility of the government in the state, by the blocking of the economic, administrative and other reforms, meant to eliminate or alleviate some difficulties inherent in the transition to market economy.

Productive economic activity must be more than making a profit and personal benefits. It is arguably the most important activity for creating values for the benefit of society as a whole and for raising the standard of living.

In order to change the state of affairs for the better, in states like Romania, the Republic of Moldova and other former communist states, decisive actions are required, the implementation of constitutional and administrative reform, as well as the strengthening of state power. It must be responsible and professional to serve the people and be under

their control, respecting the principles of the rule of law. The responsibility of the executive branch is an essential condition of democracy, of the rule of law. Given the fact that ministers have full freedom of decision, we consider it right that they should be held accountable for the abusive or illegal acts they commit. The system of ministerial accountability has become one of the democratic principles in most states. It is the foundation of democratic systems of government in all three aspects: criminal and civil political responsibility to which we must add moral responsibility. [30]

In Romania, the collective responsibility of the members of the Government is expressly stated: “The Government is politically accountable only to the Parliament for its entire activity. Each member is politically responsible, in solidarity with the other members for the activity of the Government and for its acts." (art. 109 paragraph 1 of the Constitution)

In the rule of law, the limitation of power is done by distributing it to distinct institutions that exercise it specialized and within the limits expressly provided by the Constitution and by the control exercised by the civil society over the rulers. In the rule of law, the public authorities invested with the exercise of power are subordinated to the laws adopted by a Parliament legitimized by the sovereign will of the electoral body. Therefore, the rulers, regardless of which power they belong to, are subordinated to the law and legally bear the consequences of its non-observance. In the rule of law, the law forms the essential element from which it derives its existence, and it must be respected by all public authorities: the Parliament, the Head of State and the Government, as well as the central and local public administration in general and the courts.

Conclusions

In order to ensure a climate of social order of legality and good functioning of the state power, we consider that it is necessary to adapt or modify some laws. Thus, in order to ensure the supremacy of the Constitution and the efficiency of the Constitutional Court, to be provided the possibility to notify ex officio the authority of constitutional justice on the constitutionality of the laws before their promulgation.

In order to ensure the supremacy of the Constitution and in fulfilling the role of the Parliament as the only legislative authority of the country, a deadline should be

established within which the Chambers of the Romanian Parliament should re-examine the law declared unconstitutional by the Constitutional Court.

As the control of the constitutionality of the laws is exercised only at the notification of some subjects expressly and limitingly shown, we propose that the scope of these subjects be widened by including the Court of Accounts and the county councils.

Respect for citizens' rights and political pluralism become natural consequences of the establishment of the entire Romanian political life based on the principles of law. In order to change the state of affairs for the better, in the former communist states like Romania, decisive actions are required for the implementation of the constitutional, administrative reform as well as for the strengthening of the state power.

The system of accountability of public authorities is one of the democratic principles in most states. It is the foundation of democratic systems of government in its three aspects: political, criminal and civil responsibility, to which we must add moral responsibility.

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THE EVOLUTION OF THE DIGITAL ECONOMY IN ROMANIA IN THE CONTEXT OF THE EU DIGITAL SINGLE MARKET

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Abstract:
Digital transformation or digitisation is one of the global megatrends leading to structural and organisational reforms in the public and private sector by adopting information and communication technology (ICT) solutions to optimise operations and provide improved services to customers or citizens. The first and last parts of the paper present the content and strategic objectives of the European and Romanian Digital Single Market as well as the risks involved in the development of the digital economy. The measures adopted by the European Commission to support digitisation in the Member States are also presented, as well as those to reduce the risks generated by cyber-attacks. The paper also includes a quantitative analysis of the evolution of digitisation in Romania compared to the EU 27 average. This analysis highlights the significant gap between Romania and the majority of Member States in the field of digital services.
Keywords: *Digital economy*, *Digitalization, Digital Single Market, cybersecurity, cybercrime*

Introduction

In recent decades, in the context of profound technological transformations, the digitisation of services has become one of the essential conditions for adapting the public and private environment to changes in the consumption behaviour of the population and businesses in the Member States of the European Union.

Technological transformations affect all areas of modern life, from education and jobs to the social security system. Changes are happening at a rapid pace. At the moment, in some job categories, 90% of positions require digital skills. Consequently, Europe has to do these changes in order to protect its citizens and to allow them to take advantage of new opportunities. On the other hand, the advantages are also of an economic and financial nature, the digitization of production being estimated to bring to EU, 1.25 trillion euros, by 2025 [1].

Thus, digitalization is becoming more and more important, becoming a strategy issue that must be managed responsibly.

Digital transformation or digitization is one of the global megatrends leading to structural and organizational reforms in the public and private sectors through the

adoption of information and communication technology (ICT) solutions in order to optimize operations and provide improved services to customers or citizens.

In the first part of the paper we presented some aspects of the Digital Single Market concept and the need to achieve the EU Digital Single Market.

Some of the objectives of the EU and Romania's Digital Market Strategy are also presented. The second part of the paper includes a quantitative analysis of the progress made by Romania's digital economy in the context of the European Digital Single Market, as well as comparisons with the average level of the EU 27. At the end of the paper we highlight some of the risks involved in the development of the digital economy as well as some measures taken at EU and Romanian level to reduce them.

The European Union Digital Single Market

The technological progress made by Member States and the changes in services brought about by digitisation have led the European Union to introduce the concept of the *Digital Single Marke**t*** (DSM) to ensure that the economy, industry and society take full advantage of the new digital era [2].

The digital single market is based on the concept of a common market, aimed at removing trade barriers between Member States, in order to increase economic prosperity and contribute to a deeper union between the peoples of Europe, which later developed into an internal market concept, defined as an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured [3].

The Digital Single Market means that all connected devices - phones, computers, sensors - will be able to communicate without compatibility problems, regardless of manufacturer, technical details or country of origin.

Since 2015, the European Commission developed a Digital Single Market strategy (DSM strategy) which aims at uniting individual digital markets across the Union. “For the member states, DSM is an opportunity to transform and adapt to the new economic and social context that characterizes the informational era and an opportunity to reduce the economic and social disparities for states whose European integration needs to be deepened, as is the case with Romania. The involvement of Romania in the digital single market should not only be an objective in itself, but a way of developing the national digital

economy, especially in the context in which the DSM is being under construction rather than finding itself at a decisive stage" [4].

For Romania, the creation and development of the Digital Single Market is of particular importance, but at the same time it is also an opportunity.

The DSM is indeed a major opportunity for Romania, but it involves certain economic and technical risks, strict regulations on intellectual property protection, cybersecurity, identity protection, electronic payments, e-commerce, e-services, quality assurance, consumer protection etc.

Romania has not yet made sustainable progress related to society, economy, education and digital services, but is difficult to predict exactly where the digital single market is heading and how Romania's digital economy will look like in the coming years. For Romania, these issues are very important, because these significant disparities shall be recovered [5].

Quantitative analysis of Romania's digital progress in the European context

Romania's progress in the digital economy will be analysed on the basis of indicators calculated by EUROSTAT but also by reference to a more complex index (DESI) through which the European Commission has been monitoring the evolution of digitisation in the Member States since 2014.

Among the indicators calculated by EUROSTAT we considered the following more representative:

- share of households with internet access
- share of people accessing the internet daily
- share of people who used the internet in their interaction with public authorities
- share of ICT sector in GDP

A very suggestive indicator of digital progress is the share of households with internet access. Table 1 shows the evolution of this indicator for Romania, compared to the EU27 level.

The widespread expansion of the use of information and communication technology, through easier access due to the growth and diversification of IT devices and means,

more affordable prices, has contributed to an increase in the number of users and in the population, i.e. people with access to the Internet.

The data in the table and graph no.1 clearly show a much more pronounced dynamic in the share of households with internet access in Romania compared to the European Union in the period 2011-2020.

Table 1 The evolution of the share of Households with internet access, in Romania compared to European Union, between 2011 and 2020

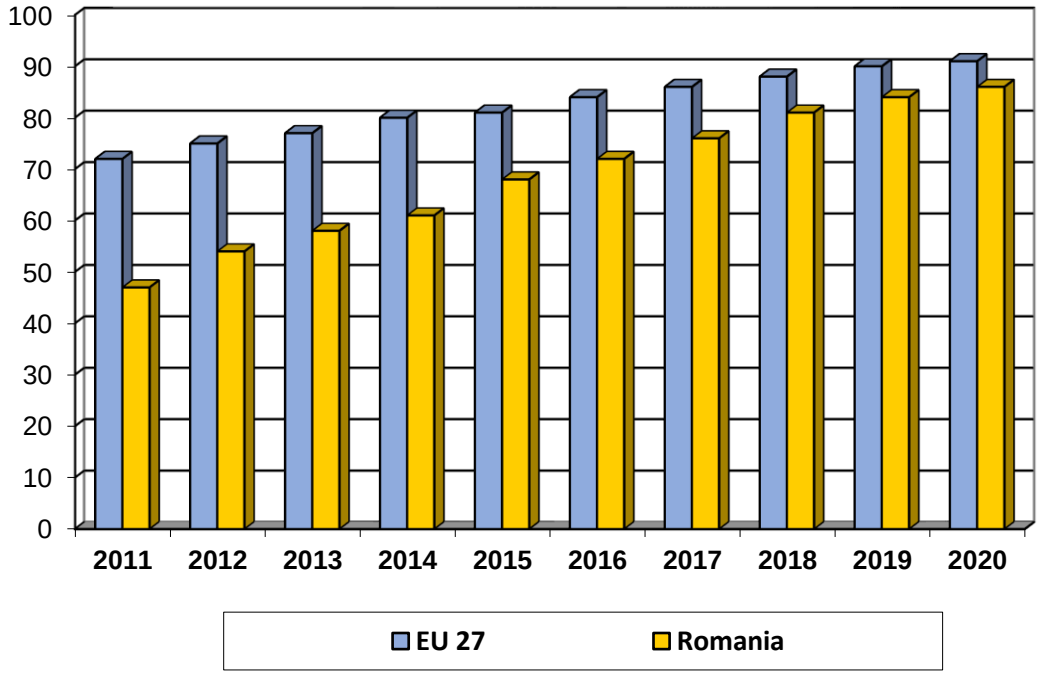
%

Years	Percentage of households with internet access		Dynamic index (2011=100)	
	Romania	UE 27	Romania	UE 27
2011	47	72	100.0	100.0
2012	54	75	114.9	104.2
2013	58	77	123.4	106.9
2014	61	80	129.8	111.1
2015	68	81	144.7	112.5
2016	72	84	153.2	116.7
2017	76	86	161.7	119.4
2018	81	88	172.3	122.2
2019	84	90	178.7	125.0
2020	86	91	183.0	126.4

Data source: processed data from EUROSTAT, available at *Statistics* | *Eurostat (europa.eu)* [accessed on November, 18, 2021] [6].

It can be seen that in the case of Romania this indicator recorded an increase of 83.0% in 2020 compared to 2011, compared to only 26.4% in the case of the EU 27.

Figure 1 The evolution of the share of Households with internet access, in Romania compared to European Union, between 2011 and 2020 (%)



Data source: processed data from EUROSTAT, available at Statistics | Eurostat (europa.eu) [accessed on November, 18, 2021] [6].

In assessing the degree of digitisation, it is important not only the number and proportion of people with access to the Internet but also the frequency of its use, which is expressed by the share of individuals who accessed the Internet daily.

Table 2 shows the evolution of this indicator in Romania in comparison with the EU 27 for the period 2011-2020. This indicator highlights not only the skills of people but also their interest in using the internet.

Table 2 The evolution of the share of individuals who accessed the internet daily, in Romania compared to European Union, between 2011 and 2020

%

Years	Percentage of individuals who accessed the internet daily		Dynamic index (2011=100)	
	Romania	UE 27	Romania	UE 27
2011	24	54	100.0	100.0
2012	29	56	120.8	103.7
2013	32	60	133.3	111.1
2014	32	63	133.3	116.7
2015	37	65	154.2	120.4

2016	42	69	175.0	127.8
2017	47	71	195.8	131.5
2018	53	74	220.8	137.0
2019	57	77	237.5	142.6
2020	62	80	258.3	148.1

Data source: processed data from EUROSTAT, available at Statistics | Eurostat (europa.eu) [accessed on November, 18, 2021] [6].

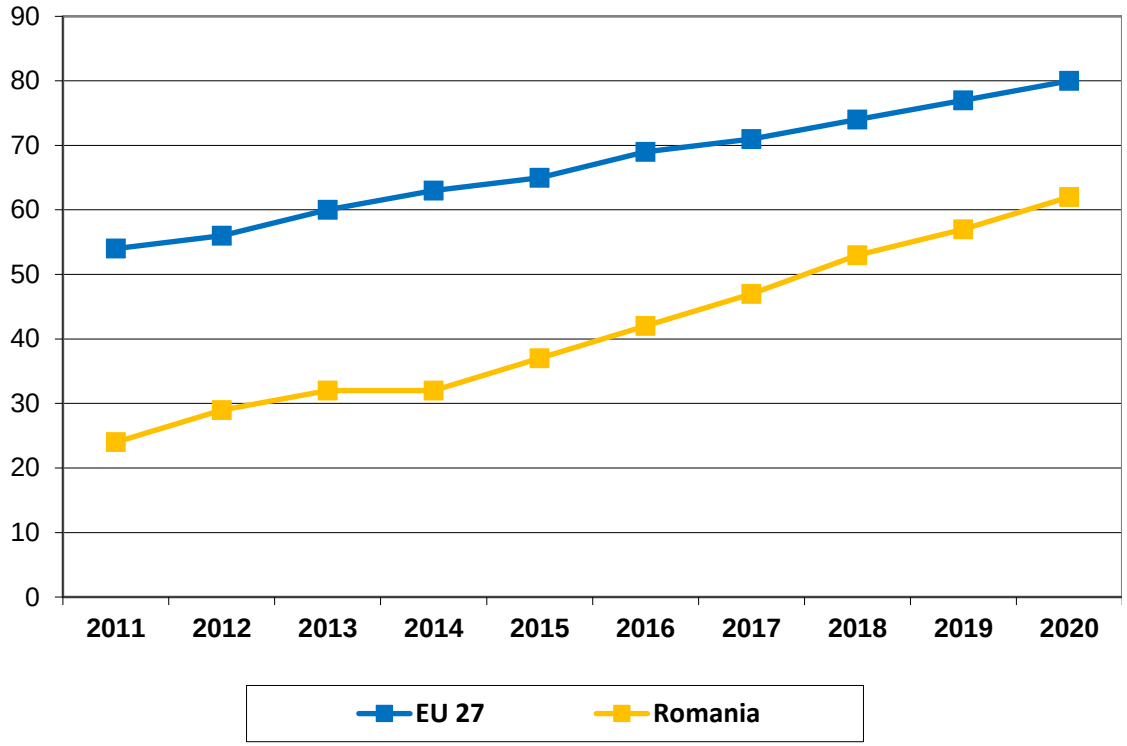
The data in Table 2 highlights several issues. First, the indicator shows a much faster growth in Romania, with the share of individuals who accessed the internet daily increasing by 158.3% in 2020 compared to 2011, while in the EU27 it increased by 48.1%. This much more pronounced dynamic in the case of Romania is explained by the basis of comparison (in 2011 in Romania 24% and in the EU 27 54%). Secondly, although the gap between Romania and the EU 27 has narrowed, it is still there

Thus, in 2020 in Romania the share of individuals who accessed the internet daily, reached 62% while in the EU 27 it was 80%.

Figure 2 shows the tendency of increasing the share of individuals who access the Internet daily, both in the EU 27 and in Romania.

It also highlights very clearly the faster growth rate of this indicator, recorded in the analysis period, compared to that of the EU 27.

Figure 2 The evolution of the share of individuals who accessed the internet daily, in Romania compared to European Union, between 2011 and 2020 (%)



Data source: processed data from EUROSTAT, available at Statistics | Eurostat (europa.eu) [accessed on November, 18, 2021] [6].

Among the main objectives of digitization in Romania, are:

- developing digital public services for both citizens and businesses;
- increasing the capacity of public bodies to operate in an advanced digital environment and provide mature electronic public services;
- strengthening the general digital skills of public sector employees;
- increasing the motivation and skill levels of public sector ICT staff.

A suggestive indicator for assessing these aspects is the share of individuals who used the Internet in their interaction with public authorities (Table 3).

This indicator is extremely relevant both in terms of the level of digitalization and functionality of public administration and in terms of public confidence in this type of interaction with public bodies and the ability of the population to use the Internet for this purpose.

Table 3 The evolution of the share of individuals who accessed the internet in interaction with public authorities, in Romania compared to European Union, between 2011 and 2020.

%

Years	Percentage of individuals who used the internet in interaction with public authorities (last 12 months)		Dynamic index (2011=100)	
	Romania	UE 27	Romania	**UE 27**
2011	7	41	100.0	100.0
2012	31	44	442.9	107.3
2013	5	42	71.4	102.4
2014	10	46	142.9	112.2
2015	11	46	157.1	112.2
2016	9	48	128.6	117.1
2017	9	49	128.6	119.5
2018	9	51	128.6	124.4
2019	12	53	171.4	129.3
2020	13	57	185.7	139.0

Data source: processed data from EUROSTAT, available at Statistics | Eurostat (europa.eu) [accessed on November, 18, 2021] [6].

The evolution of the digital economy in Romania can also be assessed by means of the ICT sector's share of GDP indicator, which reflects on the one hand the contribution of this sector to GDP and on the other hand the investments made by the state for its development.

Table 4 shows the evolution of the ICT share and dynamics in the period 2011-2018. The data shows a slight upward trend in the share of ICT in GDP over the period under review, from 3.1% in 2011 to 3.74% in 2018.

Table 4 The evolution of the share of ICT sector in GDP, in Romania, between 2011 and 2020 (%)

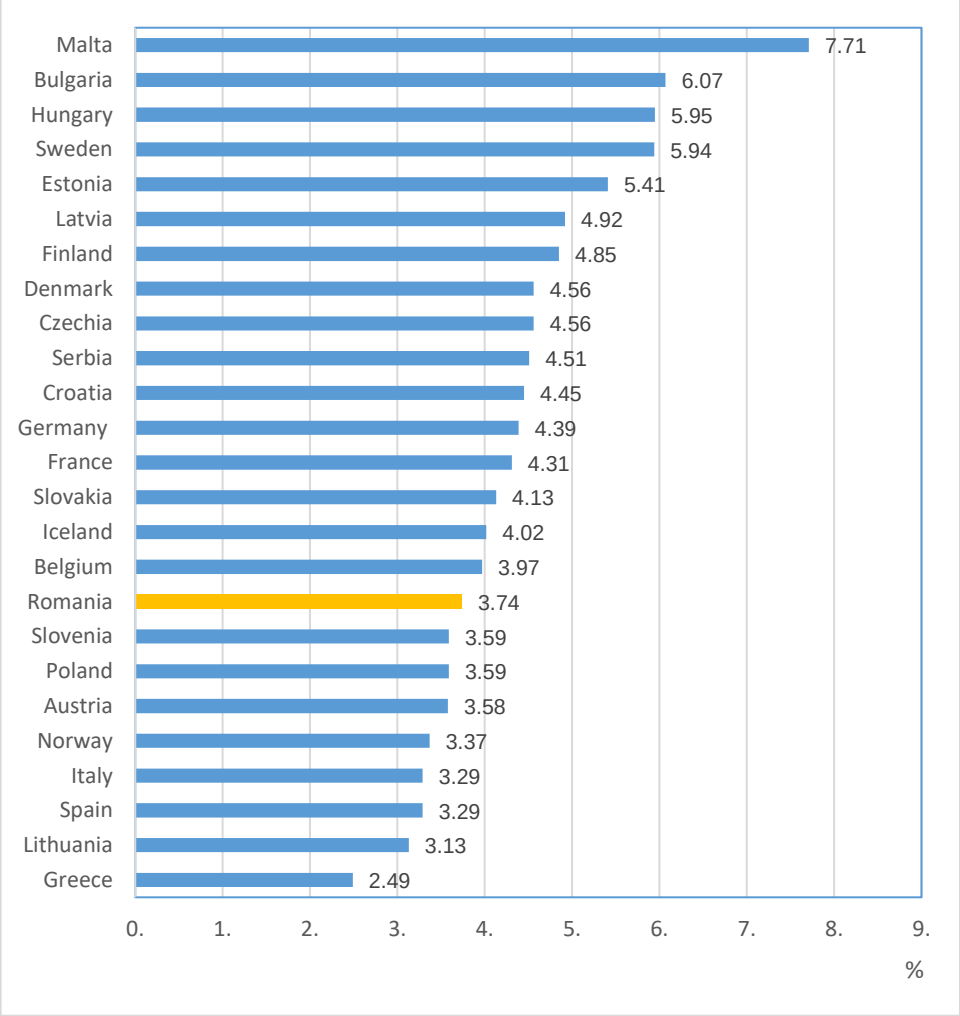
Years	Percentage of the ICT sector in GDP	Dynamic index (2011=100)
2011	3.10	100.0
2012	3.19	102.9
2013	3.14	101.3
2014	3.31	106.8
2015	3.36	108.4
2016	3.56	114.8

2017	3.53	113.9
2018	3.74	120.6

Data source: processed data from EUROSTAT, available at Statistics | Eurostat (europa.eu) [accessed on November, 18, 2021] [6].
Note:Last avaliable data are for 2018

Figure 3 shows that Romania is among the countries with the lowest share of the ICT sector in GDP in 2018 (3.74%), lagging behind countries such as: Malta (7.71%), Bulgaria (6.07%), Hungary (5.95%), Sweden (5.94%), Estonia (5.45%). Among the countries with a lower share compared to Romania I mention: Greece (2.49%), Lithuania (3.13%), Spain (3.29%) and Italy (3.29%).

Figure 3 The share of ICT sector in GDP, in EU countries in 2018



Data source: processed data from EUROSTAT, available at Statistics | Eurostat (europa.eu) [accessed on November, 18, 2021] [6].
Note:Last avaliable data are for 2018 and for the others countries data are not available

Regarding the 4 indicators analysed above, we can conclude that they had a very good dynamic but the fact that they started from a rather low level (in 2011) compared to the EU 27 and most of the member countries, determines an unfavourable situation for our country, which, overall occupies one of the last places in the digital economy.

This is evidenced by a comprehensive indicator called the Digital Economy and Society Index (DESI), calculated by the European Commission to monitor progress in digitisation by Member States since 2014.

In the 2021 edition of DESI, Romania ranks 27th out of 27 EU Member States.

The following table shows the value of DESI - 2021 for Romania compared to EU 27 and the position of our country.

Table 5 DESI Indicators by its components, for Romania and EU 27 – edition 2021

	Romania -rank	Romania -score	EU 27 -score
DESI	27	32,9	50,7
1.Human capital	26	33,1	47,1
2.Connectivity	10	53,2	50,2
3.Integration of digital technology	25	23,8	37,6
4.Digital public services	27	21,5	68,1

Data source: https://digital-strategy.ec.europa.eu/en/policies/desi [accessed on November, 25, 2021] [7]

Analysing the 4 DESI's indicators, it can be seen that the indicator where Romania has the worst situation is Digital public services.

To improve this situation, The Authority for the Digitalization of Romania (ADR) has developed a Public Policy on e-Government13 (adopted on 3 June 2021). Its main objective is to increase the number and quality of electronic public services in Romania.

Additionally, the ADR launched in December 2020 a large project, creating a strategic national framework for the adoption of innovative technologies in the public administration for the period 2021-2027. The areas covered include artificial intelligence, block chain, open science cloud and high performance computing [7].

Cybersecurity issues in the context of the advancing digital economy

In addition to the many benefits that the progress of the digital economy registered by the Member States generates, the risks generated by the use of information systems and the Internet must be taken into account, as well as the measures to manage the risks. All these aspects are related to the concept of cyber security.

"Protecting IT&C (Information Technology and Communications) systems and their content has been well known as cybersecurity, an extended concept which implies the assurance of confidentiality, integrity, availability, authenticity and non-repudiation of information, services, resources, or actions. The state of cybersecurity can be achieved by applying proactive security measures and reactive policies, security standards and models, risk management, and deploying solutions for network and information systems protection"[8]. The threats to cybersecurity can come from various attackers, depending on the aims pursued: from simple criminals looking for financial gains and spies who intend to steal classified or proprietary information to cyber terrorists who engage in attacks as a form of war, whether or not supported at governmental level**.**

In the foundation of risk mitigation measures for cyber-attacks, it is important to clarify their content and typology [9]. Depending on the purpose and intensity of cyber-attacks we can distinguish cybercrime, cyber-attack, cyber terrorism and cyber warfare [10].

The risks that arise from the use of computer equipment and the internet cannot be totally eliminated, but steps can be taken to mitigate them.

Managing the risks of cyber-attacks typically involves:

- eliminating the source of the threat (e.g. by shutting down botnets);
- addressing vulnerabilities by hardening ICT assets (through software patches or employee training);
- mitigating impact by mitigating damage and restoring function.

In addition to the purely ICT-related aspects, cyber security also raises many legal issues, in particular with regard to the punishment of cybercrime. The main theory that applies to cybercrime is that of territoriality, a theory proposed by the Council of Europe's Convention on Cybercrime (2015) which focuses on the place where the crime was committed [11].

"European Union has taken some measures to increase resilience and preparedness in cybersecurity. The European Union's cybersecurity strategy, adopted in 2013, sets out strategic objectives and concrete actions aimed at achieving resilience, reducing cybercrime, developing cyber defence capabilities, and establishing an international cyberspace policy" [8].

The recent surge in cyber security threats has prompted a review of this strategy and its alignment with the EU Digital Single Market Strategy. This has resulted in the European Cyber Security Strategy 2016-2020. The strategic objectives contained in this strategy are derived from European regulations, relevant contributions from Member States and communities, including the private sector.

An important aspect of the European cyber security strategy is the development of Member States' national capabilities, including the growth and effective functioning of national/government CSIRTs (Computer Security Incident Response Teams). It is also necessary to establish frameworks at national level to support the upgrading of national incident reporting systems and training to improve skills. The European Union Cyber Security Strategy 2016 - 2020 and the adopted national strategies reflect the need for a unified approach to cyber security, the need for collaboration/disclosure and continuous updating of policies and mechanisms to ensure the security of the European cyberspace.

An important moment in the implementation of this strategy is the adoption on 6 July 2016 by the European Parliament and the Council of the European Union of Directive (EU) 1148/2016 (NIS) on measures for a high common level of network and information security across the Union. This Directive is the first pan-European cyber security legislation and focuses on strengthening national cyber authorities, increasing coordination between them and introducing security requirements for key industry sectors. The Directive aims to ensure a common level of security of networks and information systems in the European Union [12]. It also requires operators, and digital

service providers, to take appropriate measures to prevent cyber-attacks and manage risk, and to report serious security incidents to the relevant national authorities.

Another important aspect of security at EU level is the protection of personal data. In this respect, the European Parliament and the Council adopted on 27 April 2016 Regulation (EU) 2016/679 on the protection of individuals regarding the processing of personal data and the free movement of such data and to repeal Directive 95/46/EC (GDPR - General Data Protection Regulation).

This Regulation [13] brings a number of significant changes by strengthening the rights guaranteed to individuals whose data are processed and simplifying the administrative formalities for controllers who process personal data.

Another novelty is the cooperation between supervisory authorities in the case of data processing involving persons from more than one EU country, giving powers to the authority of the country concerned, together with the authorities of the other countries involved, to ensure that data are processed in accordance with the rules and principles laid down in the Regulation. The application of this Regulation in Romania has led to the need for the adoption of several legal acts to ensure the legal and institutional framework in this field [14].

Regarding the measures taken by the Romanian state to protect against cyber-attacks, it should be noted that it has tried to constantly align itself with those taken at the European Union level. Thus, “Romania adopted the Cyber Security Strategy in 2013, having a common approach at the level of the European Union, in order to provide a prompt response to the attacks in the cyberspace. The objective of Romania's Cyber Security Strategy is to define and maintain a secure cyberspace with a high degree of resilience and trust” [8].

The strategy contains important principles and directions for action to prevent and combat the vulnerabilities and threats to Romania's cybersecurity.

The main objectives that the Strategy [15] had in mind were:

- adapting the regulatory framework to new threats in cyberspace;
- the foundation and application of minimum security requirements to protect national cyber infrastructures;
- ensuring the resilience of cyber infrastructures;

- conducting public information and awareness campaigns on the threats and risks present in cyberspace;
- developing public-private cooperation at national and international level.

Conclusions

The digitisation of services is a global phenomenon and is changing business models, leading to irreversible changes in all areas.

Digitalization is radically interfering and changing the fundamental assumptions of the way of life and organization of work in a postmodern society, which is becoming more globalized and more digitalized than ever before.

For Member States, digital technologies are an opportunity to develop and gain competitive advantages in the development of new innovative products and services. The process of digitisation is already a fact, and EU Member States are now at a point where they need to act through policies to boost people's digital capabilities and encourage the private sector to operate in online markets.

Although the European Commission has declared the Digital Single Market as one of its top priorities, and has set out a number of important policy measures, sustained action is still needed to improve digitisation.

At the same time, the European Union must implement new measures to reduce the risks arising from the development of the digital economy and the strengthening of the Digital Single Market, which are the subject of the European Union's new Cyber Security Strategy.

As regards the evolution of digitisation in Romania, the analysis based on statistical data shows that our country, although it has made significant progress, ranks last among member countries in many of the indicators that measure the level of digitisation. Under these circumstances, it is necessary for the Romanian state to intensify its efforts to support digitisation and to adopt measures to modernise the infrastructure in order to provide citizens with easy interaction with public platforms, both in terms of communication and the use of functions for filling in and uploading forms.

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SUBCULTURAL THEORIES OF DELINQUENCY AND CRIME

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Abstract
Strain theorists explain criminal behaviour as a result of the frustrations suffered by lower-class individuals deprived of legitimate means to reach their goals. Cultural deviance theorists assume that individuals become criminal by learning the criminal values of the groups to which they belong. In conforming to their own group standards, these people break the laws of the dominant culture. These two perspectives are the foundation for subcultural theory, which emerged in the mid-1950s and held criminologists attention for over a decade.
A subculture is a subdivision within the dominant culture that has its own norms, beliefs, and values. Subcultures typically emerge when people in similar circumstances find themselves isolated from the mainstream and band together for mutual support. Subcultures may form among members of racial and ethnic minorities, among prisoners, among occupational groups, among ghetto dwellers. Subcultures exist within a larger society, not apart from it. They therefore share some of its values. Nevertheless, the lifestyles of their members are significantly different from those of individuals in the dominant culture.
Keywords: *subcultural, delinquency, criminal, behaviour.*

Subcultural theories of delinquency and crime

Subcultural theories in criminology have been developed to account for delinquency among lower-class males, especially for one of its most important expressions - the teenage gang. According to subcultural theorists, delinquent subcultures, like all subcultures, emerge in response to special problems that members of the dominant culture do not face. Theories developed by Albert Cohen and by Richard Cloward and Lloyd Ohlin are extensions of the strain, social disorganization, and differential association theories. They explain why delinquent subcultures emerge in the first place (strain), why they take a particular form (social disorganization), and how they are passed on from one generation to the next (differential association). [1]

The explanations of delinquency developed by Marvin Wolfgang and Franco Ferracuti and by Walter Miller are somewhat different from those mentioned above. These

theorists do not suggest that delinquency begins with failure to reach middle-class goals. Their explanations are rooted in culture conflict theory. The subculture of violence thesis argues that the value systems of some subcultures demand the use of violence in certain social situations. This norm, which affects daily behaviour, conflicts with conventional middle-class norms. Along the same lines, Miller suggests that the characteristics of lower-class delinquency reflect the value system of the lower-class culture and that the lower-class values and norms conflict with those of the dominant culture. [2]

Although Millei contends that the lower-class culture as a whole - not a subculture within it - is responsible for criminal behaviour in urban slums, his theory is appropriate to our discussion because it demonstrates how the needs of young urban males are met by membership in a street gang. Miller's street gangs, like those of Cohen and of Cloward and Ohlin, condone violent criminal activity as one of the few means of attaining status in a slum. [3]

The middle-class measuring rod

Albert Cohen was a student of Robert Merton and of Edwin Sutherland, both of whom had made convincing arguments about the causes of delinquency. Sutherland persuaded Cohen that differential association and the cultural transmission of criminal norms led to criminal behaviour. From Merton he learned about structurally induced strain. Cohen combined and expanded these perspectives to explain how the delinquent subculture arises, where it is found within the social structure, and why it has the particular characteristics that it does. [4]

According to Cohen, delinquent subcultures emerge in the slum areas of larger American cities. They are rooted in class differentials in parental aspirations, child-rearing practices, and classroom standards. The relative position of a youngster's family in the social structure determines the problems the child will have to face throughout life.

Lower-class families who have never known a middle-class lifestyle, for example, cannot socialize their children in a way that prepares them to enter the middle class. The children grow up with poor communication skills, lack of commitment to education, and an inability to delay gratification. Schools present a particular problem. There, lower-class children are evaluated by middle-class teachers on the basis of a middleclass measuring

rod. The measures are based on such middle-class values as self-reliance, good manners, respect for property, and long-range planning. By such measures, lower-class children fall far short of the standards they must meet if they are to compete successfully with middleclass children. Cohen argues that they experience status frustration and strain, to which they respond by adopting one of three roles: corner boy, college boy, or delinquent boy.

Corner boy, college boy, delinquent boy

Corner boys try to make the best of a bad situation. The corner boy hangs out in the neighbourhood with his peer group, spending the day in some group activity such as gambling or athletic competition. He receives support from his peers and is very loyal to them. Most lower-class boys become corner boys. Eventually they get menial jobs and live a conventional lifestyle.

There are very few *college boys.* These boys continually strive to live up to middle-class standards, but their chances for success are limited because of academic and social handicaps.

Delinquent boys band together to form a subculture in which they can define status in ways that to them seem attainable. Cohen claims that even though these lower-class youths set up their own norms, they have internalized the norms of the dominant class and they feel anxious when they go against these norms. To deal with this conflict, they resort to reaction formation, a mechanism that relieves anxiety through the process of rejecting with abnormal intensity what one wants but cannot obtain. These boys turn the middle-class norms upside down, thereby making conduct right in their subculture precisely because it is wrong by the norms of the larger culture.

Consequently, their delinquent acts serve no useful purpose. They do not steal things to eat them, wear them, or sell them. In fact, they often discard or destroy what they have stolen. They appear to delight in the discomfort of others and in breaking taboos. Their acts are directed against people and property at random, unlike the goal-oriented activities of many adult criminal groups. The subculture is typically characterized by short-run hedonism, pure pleasure-seeking, with no planning or deliberation about what to do, where, or when. The delinquents hang out on the street corner until someone

gets an idea; then they act impulsively, without considering the consequences. The group's autonomy is all- important. Its members are loyal to each other and resist any attempts on the part of family, school, or community to restrain their behaviour.

Tests of Cohen's theory

Criminological researchers generally agree that Cohen's theory is responsible for major advances in research on delinquency. [5] Among them are researchers who have found a relationship between delinquency and social status in our society. Much evidence also supports Cohen's assumption that lower-class children perform more poorly in school than middle-class children. [6] Teachers often expect them to perform less ably than their middle-class students, and this expectation is one of the components of poor performance.

Researchers have demonstrated that poor performance in school is related to delinquency. When Travis Hirschi studied more than 4000 California schoolchildren, he found that youths who were academically incompetent and performed poorly in school came to dislike school. Disliking it, they rejected its authority; rejecting its authority, they committed delinquent acts. [7] Delbert Elliott and Harwin Voss also investigated the relationship between school and delinquency. They analysed annual school performance and delinquency records of 2000 students in California from ninth grade to 1 year after the expected graduation date. Their findings indicated that those who dropped out of school had higher rates of delinquency than those who graduated. They also found that academic achievement and alienation from school were closely related to dropping out of school. [8]

From analysis of the dropout-delinquency relationship among over 5000 persons nationwide, G. Roger Jarjoura concluded that while dropouts were more likely to engage in delinquent acts than graduates, the reason was not always simply the fact that they had dropped out. Dropping out because of a dislike for school, poor grades, or financial reasons was related to future involvement in delinquency; dropping out because of problems at home was not. Dropping out for personal reasons such as marriage or pregnancy was significantly related to subsequent violent offending. [9] All these findings support Cohen's theory. Other findings, however, do not.

In a study of 12,524 students in Davidson County, Tennessee, Albert Reiss and Albert Rhodes found only a slight relationship between delinquency and status deprivation. [10] This conclusion was supported by the research of Marvin Krohn and his associates. [11] Furthermore, several criminologist's ha e challenged Cohen's claim that delinquent behaviour is purposeless. They contend that much delinquent behaviour is serious and calculated, and often engaged in for profit. [12] John Kitsuse and David Dietrick have also questioned the consistency of the theory: Cohen argues that the behaviour of delinquent boys is a deliberate response to middle-class opinion, yet he also argues that the boys do not care about the opinions of middle-class people. [13]

Evaluation of Cohen's theory

Researchers have praised and criticized Cohen's work. Cohen's theory answers a number of questions left unresolved by the strain and cultural deviance theories. It explains the origin of delinquent behaviour and why some youths raised in the same neighbourhoods and attending the same schools do not become involved in delinquent subcultures. His concepts of status deprivation and the middle-class measuring rod have been useful to researchers. Yet his theory does not explain why most delinquents eventually become law-abiding even though their position in the class structure remains relatively fixed. Some criminologists also question whether youths are driven by some serious motivating force or whether they are simply out on the streets looking for fun. [14] Moreover, if delinquent subcultures result from the practice of measuring lower-class boys by a middle-class measuring rod, how do we account for the growing number of middleclass gangs?

Other questions concern the difficulty of trying to test the concepts of reaction formation, internalization of middle-class values, and status deprivation, among others. To answer some of his critics, Cohen, with his colleague James Short, expanded the idea of delinquent subcultures to include not only lower-class delinquent behaviour but also such variants as middle-class delinquent subcultures and female delinquents. [15] Cohen took Merton's strain theory a step further by elaborating on the development of delinquent behaviour. He described how strain actually creates frustration and status deprivation, which in turn foster the development of an alternative set of values that give lower-class

boys a chance to achieve recognition. Since the mid-1950s Cohen's theory has stimulated not only research but the formulation of new theories.

Delinquency and opportunity

Like Cohen's theory, the theory of differential opportunity developed by Richard Cloward and Lloyd Ohlin combines strain, differential association, and social disorganization concepts. [16] Both theories begin with the assumption that conventional means to conventional success are not equally distributed among the socioeconomic classes, that lack of means causes frustration for lower-class youths, and that criminal behaviour is learned and culturally transmitted. Both theories also agree that the common solution to shared problems leads to the formation of delinquent subcultures. They disagree, however, on the content of these subcultures. As we have noted, norms in Cohen's delinquent subcultures are right precisely because they are wrong in the dominant culture. Delinquent acts are negative and nonutilitarian. Cloward and Ohlin disagree; they suggest that lower-class delinquents remain goal-oriented. The kind of delinquent behaviour they engage in depends on the illegitimate opportunities available to them.

According to Cloward and Ohlin's differential opportunity theory, delinquent subcultures flourish in lower-class areas and take the particular forms they do because opportunities for illegitimate success are no more equitably distributed than those for conventional success. Just as means – opportunities - are unequally distributed in the conventional world, opportunities to reach one's goals are unequally distributed in the criminal world. A person cannot simply decide to join a theft-oriented gang or, for that matter, a violence-oriented one. Cloward and Ohlin maintain that the types of subcultures and of the juvenile gangs that flourish within them depend on the types of neighbourhoods in which they develop.

In areas where conventional and illegitimate values and behaviour are integrated by a close connection of illegitimate and legitimate businesses, *criminal gangs* emerge. Older criminals serve as role models. They teach youngsters whom to exploit, the necessary criminal skills, the importance of loyal relationships with criminal associates, and how to make the right connections with shady lawyers, bail bondsmen, crooked

politicians, and corrupt police officers. Adolescent members of criminal gangs, like adult criminals in the neighbourhood, are involved in extortion, fraud, theft, and other activities that yield illegal income.

This type of neighbourhood was described by one of its members in a classic work published in 1930:

Stealing in the neighbourhood was a common practice among the children and approved by the parents. Whenever the boys got together, they talked about robbing and made more plans for stealing. I hardly knew any boys who did not go robbing. The little fellows went in for petty stealing, breaking into freight cars, and stealing junk. The older guys did big jobs like stick-ups, burglary, and stealing autos. The little fellows admired the "big shots" and longed for the day when they could get into the big racket. Fellows who had "done time" were the big shots and looked up to and gave the little fellows tips on how to get by and pull off big jobs. [17]

Neighbourhoods characterized by transience and instability, Cloward and Ohlin argue, offer few opportunities to get ahead in organized criminal activities. This world gives rise to *conflict gangs,* whose goal is to gain a reputation for toughness and destructive violence. Thus "one particular biker would catch a bird and then bite off its head, allowing the blood to trickle from his mouth as he yelled 'all right!' " [18] It is the world of the warrior: fight, show courage against all odds, defend and maintain the honour of the group. Above all, never show fear.

Violence is the means used to gain status in the conflict gangs. Conventional society's recognition of the "worst" gangs becomes a mark of prestige, perpetuating the high standards of their members. Conflict gangs emerge in lower-class areas where neither criminal nor conventional adult role models exercise much control over youngsters.

A third subcultural response to differential opportunities is the formation of *retreatist gangs.* Cloward and Ohlin describe members of retreatist gangs as double failures because they have not been successful in the legitimate world and have been equally unsuccessful in the illegitimate worlds of organized criminal activity and violence-oriented gangs. This subculture is characterized by a continuous search for getting high through alcohol, atypical sexual experiences, marijuana, hard drugs, or a combination of these.

The retreatist hides in a world of sensual adventure, borrowing, begging, or stealing to support his habit, whatever it may be. He may peddle drugs or work as a pimp or look for some other deviant income-producing activity. But the income is not a primary concern; he is interested only in the next high. Belonging to a retreatist gang offers a sense of superiority and well-being that is otherwise beyond the reach of these least successful dropouts.

Not all lower-class youngsters who are unable to reach society's goals become members of criminal, conflict, or retreatist gangs. Many choose to accept their situation and to live within its constraints. These law-abiding youngsters are Cohen's corner boys.

Tests of opportunity theory

Cloward and Ohlin's differential opportunity theory presented many new ideas, and a variety of studies emerged to test it empirically.

The first of Cloward and Ohlin's assumptions - that blocked opportunities are related to delinquency - has mixed support. Travis Hirschi, for example, demonstrated that "the greater one's acceptance of conventional (or even quasi-conventional) success goals, the less likely one is to be delinquent, regardless of the likelihood these goals will someday be attained." [19] Delbert Elliott and Harwin Voss, too, have found no relationship between actual or anticipated failure to reach occupational success and selfreported delinquency. In other words, the youngsters who stick to hard work and education to get ahead in society are the least likely to become delinquent, no matter what their real chances of reaching their goals.

Judson Landis and Frank Scarpitti disagree. When they compared a group of incarcerated youths and a high school control group, they found that the delinquent boys perceived opportunities to be much more limited than the nondelinquent boys did. There is also evidence that both gang and nongang boys believe the middleclass values of hard work and scholastic achievement to be important. Gang boys, however, are more ready to approve of a wide range of behaviours, including aggressive acts and drug use. [20]

The second assumption of differential opportunity theory - the type of lower-class gang depends on the type of neighbourhood in which it emerges - has also drawn the attention of criminologists. Empirical evidence suggests that gang behaviour is more

versatile and involves a wider range of criminal and noncriminal acts than the patterns outlined by Cloward and Ohlin. Kolin Chin's research on New York gangs in 1993 demonstrates that Chinese gangs are engaged in extortion, alien smuggling, heroin trafficking, and the running of gambling establishments and houses of prostitution. [21] A recent report from the Denver Youth Survey showed that while the most frequent form of illegal activity is fighting with other gangs, gang members are also involved in robberies, joyriding, assaults, stealing, and drug sales. Similarly, Alan Lizotte and James Tesoriero found that among 675 students in the Rochester Youth Development Study, large numbers of boys owned illegal guns, were members of gangs, committed gun crime, and used or sold drugs. [22]

The new subculture that emerged in the 1980s combined violence, which had become much more vicious than in earlier years, with big business m cocaine and crack trafficking. Rival gangs killed for more than simply turf. In cities around the world teenagers began to drive BMWs with UZI submachine guns concealed under the driver's seat and thousands of dollars in their pockets so that they could make bail at any moment.

Evaluation: differential opportunity theory

For three decades criminologists have reviewed, examined, and revised the work of Cloward and Ohlin. One of the main criticisms is that their theory is class-oriented. If, as Cloward and Ohlin claim, delinquency is a response to blocked opportunities, how can we explain middle-class delinquency? Another question arises from contradictory statements. How can delinquent groups be nonutilitarian, negativistic, and malicious (Cohen) - and also goal-oriented and utilitarian? Despite its shortcomings, however, differential opportunity theory has identified some of the reasons why lower-class youngsters may become alienated. Cloward and Ohlin's work has also challenged researchers to study the nature of the subcultures in our society. Marvin Wolfgang and Franco Ferracuti have concentrated on one of them - the subculture of violence.

Conclusions

In the decade between the mid-1950s and mid-1960s, criminologists began to theorize about the development and content of youth subcultures and the gangs that

flourish within them. Some suggested that lower-class males, frustrated by their inability to meet middle-class standards, set up their own norms by which they could gain status. Often these norms clashed with those of the dominant culture. Other investigators have refuted the idea that delinquent behaviour stems from a rejection of middle-class values. They claim that lower-class values are separate and distinct from middle-class values and that it is the lower-class value system that generates delinquent behaviour.

Explanations of female delinquent subcultures and middle-class delinquency are an extension of subcultural explanations of lower-class delinquency. While the theories of reaction formation, the subculture of violence, and differential opportunity differ in some respects, they all share one basic assumption - that delinquent and criminal behaviours are linked to the values and norms of the areas where youngsters grow up.

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SOME CONSIDERATIONS ON FREE MOVEMENT OF CAPITALS

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Abstract:
To the extent necessary for the proper functioning of the common market, the participating States shall gradually eliminate, in their relations, restrictions on the movement of capital belonging to residents of the Member States and discriminatory treatment on grounds of nationality or residence or registered office of the parties, capital. The Maastricht Treaty introduced the free movement of capital as a freedom enshrined in the treaty. This principle has paved the way for cooperation in the field of capital and payments policy at the international level. For citizens, the free movement of capital means the ability to make several operations abroad, namely opening bank accounts, buying shares of foreign companies, investing in areas that provide the best profit and real estate transactions. For companies, this principle gives them the right to invest in foreign companies and take part in their management. The evolution from a common market to a domestic market was determined by the need to delimit a space which could offer the chance of free competitive competitions based on classical economic principles of supply and demand, event space from manifestation freedoms at the union level.
Keywords: *freedoms, capital, movement, states, European Union*

Regulation

The provisions of art. 67 - 73 (ex Article 73b-73g) of the Treaty of Rome (EEC was signed on March 25, 1957, and entered into force in January 1958) were less imperative as regards the free movement of capital than those applicable to the free movement of goods, workers, services and to establish.

Article 67 of the EEC provided as follows:

(1) Member States shall, in the course of the transitional period and to the extent necessary for the proper functioning of the Common Market, progressively abolish as between themselves restrictions on the movement of capital belonging to persons resident in Member States and also any discriminatory treatment based on the nationality or place of residence of the parties or on the place in which such capital is invested.

(2) Current payments connected with movements of capital between Member States shall be freed from all restrictions not later than at the end of the first stage.

Article 71 of the EEC also provided:

Member States shall endeavour to avoid introducing within the Community any new exchange restrictions which affect the movement of capital and current payments connected with such movement, and making existing rules more restrictive.

In the Treaty establishing the European Economic Community, Articles 67-73 have been replaced by Articles 73b-73g.

Article 73b TFEU introduced a ban on traffic restrictions in the following terms:

(1) Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.

(2) Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited.

The prohibition in Article 73b is not absolute, as Article 73c provides:

The provisions of Article 73b shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Union law adopted in respect of the movement of capital to or from third countries involving direct investment – including in real estate – establishment, the provision of financial services or the admission of securities to capital markets.

According to Article 73d:

The provisions of Article 73b shall be without prejudice to the right of Member States:

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

(b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.

Currently, the provisions on the free movement of capital are contained in Chapter IV entitled "Capital and payments" of the TFEU, respectively in Articles 63 to 66. The Treaty separately regulates "current payments" and "movement of capital".

Concepts of "*capital*" and "*payments*"

The two concepts, "*capital movement*" and "*payments*", were not defined by the provisions of those articles in the TFEU. The role of defining these two notions fell to the Court of Justice and doctrine.

In that matter, it is settled case-law that Directive 88/361, together with the nomenclature annexed to it, may be used for the purposes of defining what constitutes a capital movement (Case C-222/97 Trummer and Mayer [1999] ECR I-1661, paragraphs 20 and 21).

Regarding to **capital**, the doctrine considers that this notion means "*scriptural values, whether or not incorporated in securities, as well as metallic coins that have a legal tender at the time of the operation performed*" [1] .

Current payments were defined by the Court of Justice in the case of Luisi et. C. Carbone [2], more by the elements that differentiate them from capital movements.

The case is about two Italian residents, G. Luisi and C. Carbone, who were fined by the competent Italian authority for violating legal regulations, exchanging in foreign currency between 1975 and 1976 an amount exceeding the allowed limit for each resident. Italian during a year. Under Italian law, an Italian resident could not exchange more than 500,000 Italian pounds in foreign currency per year for sightseeing, business, study, or medical care in other countries. The two Italian residents used foreign currency for tourism and health care in other Member States. They challenged the compatibility of the Italian legal provisions which were applied with the Community legal rules on the freedom to provide services and the free movement of payments for services provided, and the competent court in Genoa asked the European Court of Justice to rule on the interpretation of the provisions. relevant Community legislation.

In response, the Court stated:

- transfers corresponding to a payment obligation arising from a transaction in the field of exchange of goods or services cannot be qualified as capital movements;

- payments for travel within the Community, for business, study and tourism, are current payments corresponding to the purchase of goods or services;

- capital transfers do not have as their object the remuneration of a benefit but the investment and investment, for example the payment of the damage or liability insurance premium falls into the category of current payments, while the payment of the life insurance premium or the purpose of raising capital is a capital transfer operation.

In conclusion, the Court held that *current payments* are transfers of foreign exchange which constitute the consideration within the context of an underlying transaction, whilst movements of capital are financial operations essentially concerned with the investment of the funds in question rather than remuneration for a service. For that reason movements of capital may themselves give rise to current payments, as is implied by Articles 67 (2) and 106 (1).

Therefore, the physical transfer of bank notes may not therefore be classified as a movement of capital where the transfer in question corresponds to an obligation to pay arising from a transaction involving the movement of goods or services. (Joined Cases 286/82 and 26/83, Luisi and Carbone v Ministero del Tesoro, § 21-22) [3].

First of all, capital transfers concern direct investments, which are very important for economic development, and second of all, capital accumulations, which provide for the creation of funds to finance investments [4] .

Movements of capital for the purposes of Article 56(1) EC thus include in particular direct investments in the form of participation in an undertaking through the holding of shares which confers the possibility of effectively participating in its management and control (‘direct’ investments) and the acquisition of shares on the capital market solely with the intention of making a financial investment without any intention to influence the management and control of the undertaking (‘portfolio’ investments) (see, to that effect, Case C-222/97 Trummer and Mayer [1999] ECR I-1661, paragraph 21; Commission v France, paragraphs 36 and 37, and Commission v United Kingdom, paragraphs 39 and 40). (C-282/04 - Commission v Netherlands, § 19) [5].

If current payments have been subject to immediate liberalization, depending on the actual liberalization of goods and services, capital transfers have been progressively liberalized.

The free movement of capital was gradually ensured by the appearance of three important directives.

The first Directive is of March 11, 1960, which was slightly amended in 1962. This directive classifies capital movements in an annex, providing for four different degrees of liberalization. Thus, liberalization was unconditional on direct investment in the right of establishment [6] .

The second important **Directive** is of November 17, 1986, namely Council Directive 86/566/EEC of 17 November 1986, which liberalized long-term loans related to non-exchange traded securities. The second directive amended the first directive of 11 March 1960.

The third Directive is Council Directive 88/361/EEC of 24 June 1988 on the complete liberalization of the movement of capital and in particular the liberalization of short-term movements. Directive 88/361 replaced Council Directive 72/156 / EEC of 21 March 1972 on the regulation of international capital flows and the neutralization of their undesirable effects on domestic liquidity.

The Maastricht Treaty, without repealing Directive 88/361, emphasized the liberalization of capital movements. The principle established by the Treaty was that of full liberalization between the Member States, but also vis-à-vis third countries.

Even if the EC Treaty does not define the term "movement of capital", Directive 88/361 / EEC1 and its nomenclature can be used, according to settled case-law, to define a movement of capital.

According to Annex 1 on the Nomenclature of Capital Movements, the areas of capital provided for in the Directive refer to [7]:

- all the operations necessary for the purposes of capital movements: conclusion and performance of the transaction and related transfers. The transaction is generally between residents of different Member States although some capital movements are carried out by a single person for his own account (e.g. transfers of assets belonging to emigrants);

- operations carried out by any natural or legal person (1), including operations in respect of the assets or liabilities of Member States or of other public administrations and agencies, subject to the provisions of Article 68 (3) of the Treaty;

- access for the economic operator to all the financial techniques available on the market approached for the purpose of carrying out the operation in question. For example,

the concept of acquisition of securities and other financial instruments covers not only spot transactions but also all the dealing techniques available: forward transactions, transactions carrying an option or warrant, swaps against other assets, etc. Similarly, the concept of operations in current and deposit accounts with financial institutions, includes not only the opening and placing of funds on accounts but also forward foreign exchange transactions, irrespective of whether these are intended to cover an exchange risk or to take an open foreign exchange position;

- operations to liquidate or assign assets built up, repatriation of the proceeds of liquidation thereof (1) or immediate use of such proceeds within the limits of Community obligations;

- operations to repay credits or loans.

Exceptions to the principle of free movement of capital and payments

Article 65 TFEU moderates, under certain aspects, the regulations provided by art. 63 of the same treaty.

According to the provisions of art. 65 of the TFEU (former art. 58 of the TEC) para. (1), Member States are entitled:

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

(b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security [8] .

Article 65 (1) (a) refers to taxation and is one of the main exceptions to Article 63 of the same Treaty.

The provisions contained in the chapter on capital and payments in the TFEU do not preclude the application of restrictions which are compatible with this Treaty in respect of the right of establishment.

Capital movements themselves involve financial operations that mainly involve investments and investments of a certain amount and not the remuneration of a service.

The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments, as defined in Article 63 [9] .

Conclusions

The free movement of capital has as its starting point the need to invest in the Community market without restrictions, so as to contribute to the achievement of the objective of promoting the harmonious and balanced development of economic activities throughout the Community, sustainable and non-inflationary growth, a high degree of convergence of economic performance, a high level of labor use.

Capital movements themselves involve financial operations that mainly involve investments and investments of a certain amount and not the remuneration of a service.

The free movement of capital was gradually ensured by the appearance of three directives. The Maastricht Treaty, without repealing Directive 88/361, emphasized the liberalization of capital movements. The principle established by the treaty was that of full liberalization between Member States, but also towards third countries.

There are, however, certain exceptions related to the free movement of capital, both within the EU and in third countries, which cover the following areas: taxation, prudential supervision, public policy considerations, money laundering and financial sanctions covered by the Foreign and Security Policy. common. On these issues, the Commission communicates with national monitoring authorities to ensure the correct application of these exceptions, and where there are differences of interpretation the EU seeks the support of the European Court of Justice.

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THE 2030 AGENDA. THE WAY TO GLOBAL SUSTAINABILITY

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Abstract:
In September 2015, on the occasion of the seventieth anniversary of the United Nations in New York, new global sustainable development objectives were adopted. These new objectives have been introduced in the 2030 Agenda, which is intended to be an action plan for people, the planet and prosperity.
All countries and interested parties will implement the 2030 Agenda, acting on a collaborative partnership.
Keywords: *environmental law, sustainable development, human rights, environmental policies.*

International and regional cooperation for environmental protection

There is no easy and fast way to sustainable development. The transition to sustainable development requires collective efforts on the part of policy makers, companies, but also citizens.

Pollution prevention and environmental protection require cooperation between states and the adoption of common rules in this regard. [1]

The European Union has a key role to play in international environmental negotiations. In the fight against pollution and the stabilization of factors with a negative impact on the environment, the states of the world work hard to solve environmental problems.

An important component of the current concept of sustainable development, the environmental protection strategy must be considered today in the formula accepted by all governments of the world, which is dedicated to maintaining the ecological balance globally, regionally and locally. [2]

International cooperation is based on the reason for developing and protecting the environment in a sustainable way.

The main instrument of bilateral, regional and global cooperation of states is international law. The cooperation of the states aims to identify forms and ways that contribute to the prevention of pollution and the protection of the environment.

A component of the concept of sustainable development is the "environmental protection strategy", which focuses on maintaining the ecological balance globally, regionally or locally.

The environmental protection strategy can be defined as a set of action plans drawn up sequentially, sectorally (on various issues), which are coordinated – both in development and in implementation – n a unitary, responsible manner, in order to ensure the growth of individual/collective well-being and prosperity and aiming at sustainable economic development (correct management of resources, a saving of raw materials, materials and energy, a more efficient conservation of the natural and anthropic heritage), so as to ensure an appropriate quality of life for future generations."

The ecological integration of European states within the European Union contributes to the cooperation of the states of the world through the legislation of the European Union, an absolute novelty at the international level.

The common goal of environmental protection at both international and European level is served by numerous laws that apply to the environment.

Following the cooperation and collaboration for the protection of the environment, international, regional and sub-regional organizations and institutions with attributions in the field were created.

Concern for the environment, both for international and regional states, began only in the early 1970s, following aggressive pollution, which took place in the Nordic countries.

The first UN Conference on the Environment (Stockholm, 1972) led to the occupation of states for the environment. States have concluded that adequate institutional support is needed for the development and adoption of legal rules to assist international environmental cooperation.

The environmental statement of the states was achieved through a network of international bodies and organizations of an intergovernmental nature, but also through specialized institutions.

Among the interstate organizations with a global vocation [3] who have concerns for the protection and conservation of the environment we have:

a. The United Nations General Assembly. It is the UN structure with the most activities in the field of creation and development of international environmental law.

b. The United Nations Environment Program (UNEP) – coordinating role at the UN on environmental protection and conservation. UNEP is trying to co-opt other institutions and bodies in the fight against environmental protection.

c. The Food and Agriculture Organization of the United Nations (FAO) – UN agency created in 1945 with a major role in improving food standards and living standards of peoples, but also with a role in conserving the natural resources of the planet.

d. The Intergovernmental Maritime Consultative Organization (IMO), established in 1948 and aims to promote cooperation between states to achieve safe and efficient navigation.

e. The World Health Organization (WHO), established in 1946, based in Geneva, aims to promote international cooperation to ensure an adequate standard of living and health for mankind.

f. The United Nations Educational, Scientific and Cultural Organization (UNESCO), established in 1946 in London, seeks cooperation between nations in the field of education and culture, ensures universal respect for justice, human rights law and fundamental freedoms.

g. The International Labor Organization (ILO)

h. The International Civil Aviation Organization (ICAO)

i. The United Nations Industrial Development Organization (UNIDO).

As there has been institutional support at European level for the development and adoption of legal rules on environmental law, the cooperation of all European states has helped to set the objectives of environmental policy.

The legal basis for EU environmental policy is Articles 174-176 of the EC Treaty, to which Articles 6 and 95 are added.

Article 174 ensures a high level of environmental protection, taking into account situations in different regions of the Union. Article 175 identifies the appropriate legislative procedures for environmental protection and sets out the decisions to be taken in the field of environmental policy. [4]

Article 176 allows Member States to adopt stricter standards. Article 6 promotes sustainable development as a cross-cutting EU policy and emphasizes the need to integrate environmental protection requirements into the definition and implementation of European sectoral policies.

The EC Treaty lays down concrete obligations on European bodies with regard to the protection and sustainable management of the environment. [5]

The European bodies responsible for ensuring the achievement of environmental objectives, both at legislative and implementation level, are:

a. The Economic Commission for Europe (EEC), set up in 1947 to raise the level of continental economic activity as well as international trade.

b. The European Commission (EC) – considered a true ministry of the environment. Exercises responsibilities in this field through the Directorate-General for the Environment. The EC initiates regulations in this field and ensures their implementation at Member State level, in order to protect and conserve the environment. [6]

c. The European Environment Agency (EEA), established in 1995, with a role in ensuring environmental cooperation between EU countries.

d. The Council of Europe carries out environmental tasks related to nature conservation, biodiversity, organizes European networks of protected areas and carries out environmental education actions.

e. The European Parliament, set up in 1950 within the ECSC, is involved in the co-decision process and in EU environmental policy. The European Parliament formulates Community legislation on the environment.

Numerous non-governmental organizations (NGOs) also work in the field of environmental protection and sustainable conservation:

a. Greenpace (1971), the first international organization for environmental protection. Greenpeace is running a permanent campaign to implement resolutions on environmental protection and conservation.

b. The main objective of the International Union for Conservation of Nature (IUCN) is to promote the development and protection of the environment.

c. World Wildlife Fund (WWF) has an important role in nature conservation and in the ecological restoration of the natural environment.

d. The International Green Cross – has responsibilities in promoting accounting actions for the protection and conservation of natural environmental resources.

The 2030 Agenda for Sustainable Development

A historic document was adopted at the 2015 UN General Assembly in New York – the 2030 Agenda for Sustainable Development.

This agenda aims at an action plan for people, planet and prosperity. This plan is being implemented by all countries and all interested parties, who will have a collaborative partnership.

The 2030 Agenda aims, through its 17 objectives and 169 targets, to ensure a better future for the whole world. Structured on the three pillars of sustainable development – the 2030 agenda was also adopted by Romania.

The goals of the Agenda are based on the Millennium Development Goals and aim to ensure respect for human rights for all, the achievement of gender equality and the emancipation of all women and girls.

The objectives and targets will guide the actions taken over the next 9 years in areas of crucial importance to humanity and the planet.

The EU Council conclusions, adopted in June 2017, "A sustainable future for Europe: the EU response to the 2030 Agenda for Sustainable Development" are the policy paper adopted by EU Member States on implementing the 2030 Agenda.

The period in which we live is marked by the process of globalization, by the aggravation of environmental problems. To meet the challenges of the 21st century, we need sustainable development based on the principles and spirit of the 2030 Agenda.

Sustainable development represents, in the Romanian context, the desire to achieve a balance between man and his burning desire becoming accomplished. [7]

The role of the state in the context of sustainable development is to help achieve this balance, not only for the present population, but also for future generations.

By implementing the 2030 Agenda, we want a world without poverty, hunger, disease and deprivation where people thrive; we want a world of universal respect for human rights, the rule of law, justice, equality and non-discrimination; we want a world in which people live in harmony with nature and in which wildlife and other living species are protected.

Global health threats, frequent natural disasters, depletion of natural resources and the effects of environmental degradation, climate change are challenges of our age, and their negative impact undermines the ability of countries to achieve sustainable development.

The survival of many societies, but also of the biological systems that support the planet are in great danger.

However, remarkable progress has been made in addressing many development issues.

The goals of the 2030 Agenda far exceed the Millennium Development Goals. In addition to existing priorities (poverty, health, etc.), the Agenda also sets out a wide range of economic, social and environmental objectives.[8]

The objectives of the Agenda entered into force on 1 January 2016, each country must strive to implement the agenda, as each country faces specific challenges for achieving sustainable development.

Romania, together with 192 other states, has assumed the establishment of the national framework for maintaining the 2030 Agenda.

The global action plan is fully supported by Romania until 2030. This plan aims to strengthen a climate of security and freedom, in which "no one will be left behind." [9]

As already mentioned, the Agenda is structured on three pillars: economic, social and environmental.[10]

Within social equity, developing nations must be able to meet their basic needs in terms of employment, food, energy supply, etc.

Economic growth must be balanced in all countries.

In the field of the environment, there is a need to preserve and improve the available resource base by gradually changing the way technologies must be developed and used.

The 2030 Agenda calls for the involvement of all stakeholders, by democratizing the decision-making process on sustainable development. It takes the younger generations to create sustainable development.

Sustainable Development Goals

1. *Eradicating poverty in all its forms***.** Romania is among the countries that register a high share of people suffering from poverty. By 2030, the aim is to eradicate extreme poverty, halve the number of citizens living in relative poverty and strengthen the national emergency response system.

2. *Eradicating hunger, ensuring food security, improving nutrition and promoting sustainable agriculture.* The targets for 2030 are are elaborated with the goal of eradicating malnutrition and maintaining the obesity rate are 10%, completing the agricultural cadastre, etc.

3. *Ensuring a healthy life***.** By 2030, Romania wants to ensure universal access to information, education and counseling services for adopting a healthy lifestyle. We want the complete digitization of the health system, the increase of vaccine coverage to the minimum level recommended by the WHO for each vaccine.

4. *Guaranteeing a quality education***.** Access to education and participation are essential for the functioning of a sustainable society. By 2030, the drop-out rate must be reduced, and education must focus on skills.

5. *Achieving gender equality***.** By 2030, the aim is to eliminate all forms of violence against women and ensure equal opportunities for leadership.

6. *Ensuring the availability and sustainable management of water for all.* The goal by 2030 is to increase the efficiency of water use in industrial, commercial and agricultural activities and ensure a sustainable process of drinking water, etc.

7. *Ensuring everyone's access to energy in a safe, sustainable and modern way.* By 2030, it is intended to expand transmission and distribution networks for electricity and natural gas in order to ensure consumers' access to secure energy sources at reasonable prices.

8. *Promoting sustained, open and sustainable economic growth, full and productive employment and ensuring decent jobs for all* – achieving higher levels of productivity through diversification, technological modernization and innovation.

9. *Building resilient infrastructure, promoting sustainable industrialization and encouraging innovation*

10. *Reducing inequalities within and between countries* – raising Romania's level to the EU average, in terms of sustainable development indicators

11. *Developing cities and human settlements to be safe, resilient and sustainable*

12. *Ensuring sustainable consumption and production modules* – recycling as much as possible, separate collection of hazardous waste, implementation of sustainable green public procurement practices, in line with European policies.

13. *Taking urgent action to combat climate change and its impact.* – improving education, awareness and human and institutional capacity on climate change mitigation, adaptation, impact reduction and early warning.

14. *Conservation and sustainable use of oceans, seas and marine resources for sustainable development*

15. *Protecting, restoring and promoting the sustainable use of terrestrial ecosystems, sustainable forest management, combating desertification, halting and repairing soil degradation and halting biodiversity loss*

16. *Promoting peaceful and inclusive societies for sustainable development, access to justice for all and the creation of efficient institutions at all levels.*

17. *Strengthen the means of implementation and revitalize the global partnership for sustainable development.*

In June 2021, the EU Council endorsed the reaffirmation of the EU's commitment to the 2030 Agenda for Sustainable Development. The Covid-19 pandemic threatens the progress made towards achieving the SDGs, but communication and awareness-raising campaigns on the 2030 Agenda must continue, in order to increase the shared responsibility of citizens, the private sector and of other interested parties.

Conclusions

The implementation of the SDGs implies a shared responsibility, which requires action at national, sub-national and local level. The European Commission calls for the introduction of a chapter on environmental sustainability in country reports and a specific

annex reporting on each Member State's progress on state performance on the SDGs. Some objectives have been met more quickly than others, so steps need to be taken to address areas where further efforts are needed.

The revision of the June 2021 Agenda aimed to adapt the set of indicators on the SDGs at EU level to the Commission's Green Pact.

A strong environmental dimension is needed to ensure the implementation of the European Green Pact.

The implementation of the 2030 Agenda is a shared responsibility, which requires a society-wide approach, through the continued and strong involvement of all interested parties.

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