Petroleum-Gas University of Ploiesti

The Centre for Studies and Legal and Socio-Administrative Research

JOURNAL OF LAW AND ADMINISTRATIVE SCIENCES

No.19/2023
ISSN 2392-8298
ISSN-L 2392-8298

The Journal is indexed in the international data bases

Petroleum and Gas University Publishing House of Ploieşti

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CONTEMPORARY PUBLIC EDUCATION POLICIES IN ROMANIA AND EUROPEAN UNION

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Abstract :
In the last three weeks, Romania has been "shaken" by a general strike of pre-university teachers, which has proved to be the largest of its kind in Romania since 1990. This large-scale protest is intended to warn the Romanian government about certain phenomena that have weakened the educational system in our country in recent years: poor teacher pay, logistical problems, the weak concern of state institutions to ensure the security of teachers in schools or to make sufficient investment to reduce dropout or attract people dedicated to teaching. This article aims to highlight what efforts have been made in the last two to three years both in Romania and in other European countries to reduce school dropout, in particular, - a phenomenon increasingly present in many European societies, what were the amounts invested in this regard and to what extent such investments have had practical effect.
Keywords: *education, investments, school dropout, teaching.*

Introduction

The public sector has a huge impact on all of us: it is a daily and unmistakable presence. Just think of some of the goods it provides as a priority: education (basic education, first and foremost), health care, national defence and public order or public television and radio" [2].

The creation of new jobs and increased employment, especially among young people, so that they can lead fulfilling professional and personal lives, can only be achieved through education that is anchored in the realities of the labour market. It is absolutely necessary to increase budget allocations, commensurate with the importance of the fields of education and scientific research for the development of modern Romania, so that the proposed objectives can be achieved [3].

Regarding education, Romania, having numerous systemic problems in this sphere (dropout, poor results in national and international tests - e.g. PISA-, low participation rate in higher education, high rate of functional illiteracy, etc.) is obliged to engage in a deep reform [4].

Current problems of school drop-out and financing of school-based activities in Romania in recent years

The most important effect of future social and economic changes is the need to build new models of organization of the educational system, a quality education, which is also addressed by the Educated Romania Project, which, in its content, has also included some targets of benefit to society, such as: higher incomes for those involved in the educational process (teachers, students, administrative staff in education, social cohesion and increased capacity for social involvement [5].

The project mentioned above also pursues other goals that are useful in the current context of Romanian society and education, namely: increasing the quality of teaching, but also the flexibility of all those involved, the professionalization of managers of educational institutions, adapting funding (education) to real needs, reforming the funding system in the area of early education, reviewing standards for infrastructure and facilities, [6].

Youth policies, which implicitly include policies on university activity, have always been a priority of the European Union, which in recent years, amid the emphasis placed on the idea of good governance, has given greater importance to the process of involving young people in decisions that concern them.

In Romania, education expenditure is low compared to other European countries, despite the fact that the school dropout rate in this country is worryingly on the rise, especially in rural areas and for Roma children, who have very limited access to education.

In Europe, in 2018 only four countries were worse than Romania in terms of early school leaving, namely Turkey (38.3%), Spain (21.9%), Malta (20.4%) and Iceland (19%). In Austria only 7% of young people left school, in Greece 9%, in Hungary 11.4% and in Bulgaria the rate was 12.5%. Even lower dropout figures are in the Czech Republic and Poland, only 5.5%, respectively 5.4% [7].

In Romania, the highest dropout rate is at the beginning and at the end of the education cycle, in preparatory and 5th grades, in primary and secondary school, and the

most intense dropout phenomenon is in rural areas, where more than 23% of students who entered school by 2012 had dropped out by the end of secondary school [8]

According to data obtained from the National Institute of Statistics in a current study conducted by Mihai Petricila, school dropout has increased at all levels of education, from primary school to university. Ministry of Education: [9] shows us that, for the whole of primary and secondary education, the dropout rate (indicator calculated on the basis of the "entry-exit" method in 2018/2019 was 2.1% (percentage representing 35.3 thousand students.

The official analysis also notes a decrease in the difference between the dropout rate in primary and secondary education in urban and rural areas, with rural areas still at a disadvantage (1.8% in urban areas and 2.6% in rural areas). "As regards dropout by gender, a higher frequency of dropout situations is noted in the male school population (in the 2018/2019 school year, 2.3% boys and 2% girls - an increase of 0.5 percentage points for both boys and girls)," according to the report.

According to the same reports given by INS, in our country, in the school year 2019-2020 the school population in Romania registered 3, 5 million people, 18, 5 percent less than a decade ago, the decrease being more pronounced in the female school population - 18, 8 percent, compared to the male - 18, 2 percent [10].

In 2021, “the share of early leavers from education and training was lower for young women than for young men in all EU Member States except Bulgaria and Romania. In 2021, the Member States reporting the lowest proportions of early school leavers were Croatia (2%), Slovenia, Greece and Ireland (all 3%) and Lithuania and the Netherlands (5%). In contrast, the highest proportions were recorded in Romania (15%), Spain and Italy (both 13%), as well as Bulgaria, Hungary and Germany (12%)” [11].

A small rebound is felt in 2022, in the sense that in the school/academic year 2021-2022, the school population in the national education system was3495.8 thousand pupils and students, up by 1.2 thousand compared to the previous school/academic year. The school population increased compared to the previous school/academic year in pre-primary and pre-school education (+3.3%) and in primary and secondary education (+1.3%). However, the number of graduates in the school/academic year 2020-2021 was

476.6 thousand pupils and students, down by 7.5% compared to the previous school/academic year * [12].

According to a UNICEF report, the Romanian government must double the funds invested in education as soon as possible (10 th of December 2020) the Romanian government invests 38,000 million lei annually in education, representing 3.4% of Romania's total annual budget.

Regarding the authorities' efforts to mitigate this phenomenon, the NSI also states that in 2019, for example, the financial resources necessary for the education process, allocated for the operation of educational units/institutions included in the national education system were provided to the greatest extent (96, 7%) from public funds (from the state budget and local budgets), the rest being from other sources of the educational units/institutions' own, as well as from household income [13].

Moreover, investment in educational infrastructure must be linked to investment in human capital. The Human Capital Operational Programme (HCOP) for the implementation of the European Structural and Investment Funds (ESIF) in the period 2014-2020 mentions the priorities and objectives for investments of around 5 billion euros (of which 4.3 billion from European funds) to help the Romanian population, including young people, to find a job and improve their education and skills, reducing poverty and social exclusion [14].

“Overall public spending on education increased significantly in 2019, but remained among the lowest in the EU In 2019, spending on education increased in real terms by almost 21%, marking the strongest percentage increase in the EU that year, well above the average increase of 1.9%. The increase was largely driven by the increase in teachers' salaries in 2019. Although Romania's overall public expenditure on education increased to 3.6% of GDP in 2019, it remains well below the EU average of 4.7% of GDP. However, Romania's education expenditure was slightly above the EU average as a percentage of total public expenditure (10.1%, compared to EU-27: 10%), indicating a relatively low level” [15].

The former romanian Minister of Education, S. Cimpeanu, stated near the end of his term that "Investment in education, although insufficient, is almost double in 2022 compared to 2016 (41 billion lei compared to 21.7 billion lei). Thus, in 2022, education

expenditure will have a share of 7.92% in the General Consolidated Budget, the share in relation to GDP being 3.11%, according to a press release. According to Cîmpeanu, in relation to the Education Ministry's budget, 2022 has brought, compared to 2021, a budget increase of more than 2 billion lei "at this stage" [16].

A brief European perspective

At European level, the Education and Training Monitor presents the European Commission's annual analysis of how education and training systems are developing across the EU [17].

Even at European level, structural problems persist. For example, 3.1 million early school leavers are currently not in education and there is a worrying stagnation in the rate of underachievement in basic skills [18].

In addition, the shortage of teachers, caused largely by the ageing of the teaching workforce (as almost 40% of teachers in the EU are over 50) and the low attractiveness of the profession, is worsening across the Union, which poses a serious risk to quality and equity in education, even in some of the best performing countries [19].

In countries neighbouring Romania, such as Hungary, Poland, the Czech Republic, etc., the situation is similar to the one described by us in the above-mentioned reports - high dropout rates, old age of teachers, low salaries - especially in former communist countries, low financing of the education system, in general (e.g. in Romania in recent years the financing for the education segment has been about 2.4-2.5% of the country's GDP, which is totally out of balance with what is happening in other European countries and even with regard to the real needs in the education segment.

For example in Hungary in 2021-2022, “teacher salaries were the lowest among the EU countries that are OECD members. They are equivalent to only 58-66% of the salaries of other tertiary graduates, depending on educational level. In December 2021, a government decree was published by which teachers would receive a 20% wage supplement from 2022”.

Hungary also “has the largest urban-rural gap in education outcomes, before accounting for socio-economic status, of all OECD countries (OECD, 2019). There is

evidence that tracking policies, either between tracks (academic, vocational) or between schools, reduce education equity, and they have mixed effects on efficiency [20].

"Poland has been implementing projects on inclusive education supported by EU funds at all levels, but evaluation of the quality of support provided is essential for optimal policymaking. In this country poor social communication in education, curriculum overload and an insufficient focus on key competences were identified by the Supreme Audit as the education system's general weaknesses" [21].

Bulgaria- as emphasised by a World Bank Survey, "learning outcomes in Bulgaria have not changed much over the past 14 years. Underachievement in basic skills, as measured by PISA, is twice as high as the European average (47% in reading, 44% in mathematics and 47% in sciences), with these percentages above 60% among disadvantaged students. Compared to other EU countries, students in Bulgaria performed 67 points lower in reading, which corresponds roughly to more than one-and-a-half years of schooling" [22].

Like in Hungary or Romania, in this country almost half of school teachers are aged 50 and above. From April 2021, the average teacher salary rose by about 12% and reached 125% of the national average. This is already a second rise in teachers' salaries in the past 3 years. It should contribute to the overall effort of increasing the attractiveness of the teaching profession [23].

Compared to 2010, almost all EU Member States reported a lower percentage of early school leavers in 2020, with the exception of Slovakia, the Czech Republic, Hungary, Sweden, Luxembourg and Bulgaria, which all reported slight increases (below three percentage points) [24].

Unfortunately, Romania is on the first place in this point of view, so it was found that in 2022 the share of young people who left the education system was 16% while the EU average was 10%. Compared to our country, other European states reported percentages of 5% (Poland or Lithuania), while Hungary, Germany or Italy reported a percentage of 12% [25].

Conclusions:

Following this analysis, we are sad to note that Romania is in the lowest places in terms of investment in the educational process or performance in terms of attracting students in the final grades, especially those from rural areas in schools. If we were also to take into account the rate of functional illiterates - about 40% of students - we would conclude that Romanian education will have to be seriously reformed, which can only take place after massive investments, not only in terms of digitalization, but also in terms of human resources, a decisive factor in terms of performance and assimilation of specialized knowledge by pupils or students.

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THE COOPERATION/ASSOCIATION OF ADMINISTRATIVE-TERRITORIAL UNITS – A POSSIBLE ANSWER TO THE PROBLEM OF ADMINISTRATIVE FRAGMENTATION AND REDUCED ADMINISTRATIVE CAPACITY

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Abstract:
The subject of administrative-territorial reorganization reappeared on the public agenda and, naturally, a series of scenarios thought up by different state or non-state actors were presented. The high number of administrative-territorial units in Romania and the public expenses that are implied by their existence, the tendency of European decision-makers to support, through the programs they approve, more numerous communities located on a wider territory, and also the fact that the current administrative-territorial organization of our country is carried out on the basis of a normative act [1] adopted during the communist period and thus, in many respects, no longer corresponds to the current socio-economic reality, turns this topic into a current one. Despite the identification of the need to reduce public expenses and increase the administrative capacity of administrative-territorial units, the public decision-maker failed to implement measures to reduce the number of administrative-territorial units, the merger of localities remaining at a desired stage. If we refer to the period after 1990, it can be observed that the trend in this field was, rather, to establish new administrative-territorial units, rather than to merge them, many politicians who sought to increase their electoral chances acted in the sense of creating new administrative-territorial units by dividing the existing ones [2]. The alternative solution is the association of administrative-territorial units, a process that seems more attractive for the authorities at the base of the public administration system in Romania, and also for the national political actors, who do not want to jeopardize their political support from the territory. The present paper aims to present the different forms of cooperation of administrative-territorial units recognized by the legislator and the possible implications on the problem of administrative fragmentation and the administrative capacity of administrative-territorial units.
Keywords: *association, administrative-territorial reorganization, administrative-territorial units, authorities*

Introduction

The decrease in the number of inhabitants, determined by the accentuation of the phenomenon of population aging and fluctuation, the precarious state of the economy and infrastructure at local level have a negative impact on the administrative capacity of the administrative-territorial units [3]. Even if one of the rules of the decentralization process required that the transfer of power from the central level to the administrative-territorial units should be done only if the latter had administrative capacity, in many cases this legal requirement was ignored and we ended up in the current situation in which many

administrative-territorial units cannot support their own operating expenses by themselves, let alone the issue of development expenses, of those that must be directed towards investments. The administrative capacity has become a problem in the case of some administrative-territorial units and the cause of poor management of public affairs by the local public administration authorities, a fact that has led to an accentuation of the discrepancy between the different local communities [4]. Administrative fragmentation and the reduced administrative capacity of administrative-territorial units are two topics that have constantly concerned both the political factor and the academic environment. Fragmentation refers to the existence of a large number of administrative-territorial units with a small number of inhabitants, many of which having less than 1,000 inhabitants [5]. Administrative capacity means, according to Article 5, letter o) from the Administrative Code "*the set of material, financial, institutional and human resources available to an administrative-territorial unit, the legal framework that regulates the field of activity, as well as the way in which they are capitalized in their own activity according to the competence established by law*". This legal definition reveals, as the doctrine emphasizes [6], the economic and legal potential available for local public authorities to effectively resolve problems of local interest.

Because the objective of reducing the number of administrative-territorial units could not be achieved, a measure that would have allowed the reduction of public expenses, the increase of population in an administrative-territorial unit and its surface, as well as the socio-economic potential, the legislator sought to develop the legal framework in the matter of the cooperation of administrative-territorial units, out of the desire to generate an alternative to the lack of concrete results regarding the merging of administrative-territorial units and, implicitly, the reduction of their number. We must mention the fact that administrative fragmentation is not only a Romanian problem, because other European states [7] have also faced such a problem.

The Romanian state tries, through legislative and financial mechanisms, to stimulate the association of administrative-territorial units. The aim of the various associative forms that are established is to attract as many financial resources as possible from the European level, to simplify the decision-making mechanism at local level, to achieve and jointly manage a public service or an infrastructure that benefits several local

communities, at the same quality standards, reducing investment costs and increasing the number of beneficiaries [8]. We find such mechanisms regulated, mainly, in the Administrative Code, but also in other normative acts that come to amend and complete the legal framework in the matter. Such a normative act is Government Ordinance no. 26/2000 regarding associations and foundations, with subsequent amendments and additions. The aforementioned act includes general rules regarding the association of legal persons without a patrimonial purpose. To this regulation we must add Law no. 246/2022 regarding metropolitan areas, Law no. 375/2022 [9] for the amendment and completion of the Government Emergency Ordinance no. 57/2019 regarding the Administrative Code, Law no. 273/2006 on local public finances, Law no. 350/2001 regarding territorial development and urban planning, Law on community services of public utilities no. 51/2006 etc. [10] The modes of association of administrative-territorial units are intercommunity development associations, metropolitan areas, as species of intercommunity development associations, administrative consortia. In the previous regulation, urban agglomeration was also stipulated, as a way of association of administrative-territorial units, but with the entry into force of Law no. 246/2022 on metropolitan areas [11], this type of association was removed from the legislation [12].

Intercommunity development associations

Considered as the strongest and most important [13] associative form of administrative-territorial units in Romania, the intercommunity development association was introduced into Romanian legislation with the adoption of Law no. 286/2006, a regulation that brought numerous changes and additions to the old framework law of local public administration, Law no. 215/2001, the complexity of the legislative intervention requiring its republication [14]. The legal definition of the intercommunity development association can be found in Article 5 letter i) from the Administrative Code. It is regarded as a cooperation structure with legal personality, of private law and of public utility, established, under the law, by administrative-territorial units for the purpose of jointly realizing some development projects of zonal or regional interest or for providing, in common, some services. Article 89 paragraph 1 of the Code recognizes the right of administrative-territorial units to cooperate and associate, taking into account the

competence of the deliberative and executive authorities in each administrative-territorial unit, by establishing inter-community development associations. Even if the subjects of the association are legal entities under public law, the product of their association is an associative entity of private law and of public utility intended to support the public administration of each administrative-territorial unit component, to develop the infrastructure and increase the quality of public services provided for local communities from each administrative-territorial unit involved in the association.

Elements of the legal status of these forms of association can also be found in paragraphs 2-5 of Article 89, as well as in Article 90, dedicated to their financing, and in Article 91, which aims at the organization and operation of intercommunity development associations. From the analysis of the mentioned legal provisions and in accordance with the doctrine [15], the following characteristics of intercommunity development associations emerge: they are the result of exercising the right of association and cooperation of administrative-territorial units; they are legal entities of private law with public utility status acquired through the effect of the law, being located on the border between public and private law; this statute allows them access to public financial resources; their purpose is the joint implementation of regional or zonal development projects or of public services. We must also specify the fact that the association of administrative-territorial units in intercommunity development associations does not affect the local autonomy of the local authorities from the associated administrative-territorial units. The status of these associative structures is also supplemented with a feature contained in Law no. 554/2004 of the administrative litigation, more precisely in Article 2 paragraph 1 letter b), which assimilates to public authorities all legal entities under private law that have acquired a public utility status [16].

The intercommunity development association is regarded in the doctrine [17] as an organization, outside the local administrative structure, to which certain powers of local interest are delegated by the local authorities from the administrative units that have been associated. Many of these associative structures were established to manage activities in the sphere of public utility services, especially water supply and sewerage services or the sanitation service. Examples of such associative structures created by administrative-territorial units are the Intercommunity Development Association Partnership for Prahova

Water Management or the Partnership for Prahova Waste Management Intercommunity Development Association. Other associations aim at zonal or regional development.

Metropolitan Areas

A type of intercommunity development association is represented by the metropolitan area. The Administrative Code defines this form of association as an intercommunity development association established on the basis of a partnership between the capital of Romania or the county seat municipalities or municipalities other than the county seat, on the one hand, and administrative-territorial units located in the metropolitan territory, on the other hand. This form of cooperation has benefited, since 2022, from its own regulation, through the entry into force of Law no. 246/2022 regarding metropolitan areas. It can be observed, thus, that the legislator, instead of adopting a separate normative act for intercommunity development associations, as the doctrine [18] insistently demanded, which would bring together rules regarding the establishment, organization, operation, financing, dissolution and liquidation of these associative structures contained in various regulations, it rather focused on bringing into the Romanian legal order a distinct regulation for a form of intercommunity development association, namely the metropolitan area.

If at the beginning of their introduction into the Romanian legal order, metropolitan areas were entities without legal personality, the legislator's conception has changed, and today they are qualified as associative forms with legal personality. The recognized legal personality of the metropolitan area allows this subject of law to enter into legal relations in its own name, provided that it respects the content of the mandate granted by the local public administration authorities that represent the administrative-territorial units that are components of the associative entity. The association process in a metropolitan area does not lead to the emergence of a new administrative-territorial unit. The component localities, through the administrative authorities, delegate or transfer, in compliance with the legal conditions, part of the attributions, in order to jointly manage some services or run some activities and projects dedicated to the members of the local communities that make up the metropolitan area [19].

Administrative consortia

At the end of 2022, the Romanian Parliament adopted Law no. 375/2022 [20], through which a new association mechanism of the administrative-territorial units in Romania was established. It is represented by administrative consortia. Administrative consortia are voluntary forms of cooperation and association of two or more neighboring administrative-territorial units, without legal personality, which aim to increase the efficiency of public services, the effectiveness of the implementation of investments and to efficiently use specialized human resources in order to satisfy the interests of local communities. Through this new cooperation mechanism, the legislator aims to allow more developed administrative-territorial units to support those with reduced administrative capacity, appreciating, at the same time, that such a solution facilitates a transfer of good practices between the administrative-territorial units that are part of the consortium and will stimulate the associative phenomenon at local level.

We can observe that compared to the intercommunity development associations and their particular form, the metropolitan area, which are associative structures of the administrative-territorial units, with legal personality, the administrative consortium does not have legal personality. Conceived as a more flexible association mechanism, the administrative consortium, at the moment, will not find its reflection in the administrative practice due to the numerous regulatory deficiencies of its legal regime [21]. Even if the central authorities will allocate funds, through national programs, to stimulate local communities to associate in administrative consortia, and even if these neighboring local communities want to associate, the deficient regulation of their legal regime will represent a difficult obstacle to overcome. In order not to remain only simple rules contained in a legal act, we invite the legislator to bring improvements to the legal framework in the matter, the association in administrative consortia representing another way to solve the problem of the reduced administrative capacity of administrative-territorial units.

Conclusions

The process of association of administrative-territorial units in intercommunity development associations or in metropolitan areas, as particular forms of the former,

proved to be, at the beginning, a difficult one, due to the lack of a culture of association, and also the deficient normative framework.

Today, however, the association of administrative-territorial units is seen more and more as a solution to the problem of administrative fragmentation and the reduced administrative capacity of many administrative-territorial units. Its attractiveness has increased as a result of the improvement of the legislative framework and the testing in administrative practice of the new legislative solutions, as well as of the awareness by local actors of the importance of joint action and the financing of certain objectives in partnership, and, on the other hand, of the diversification administrative tasks and changes in the social, demographic and economic reality at local level. At the same time, projects designed jointly and targeting a wider territory and involving European funding have increased chances of obtaining this funding because they address multiple beneficiaries. By association, a legal possibility is created for local public administration authorities to manifest themselves beyond the territorial limits of the administrative-territorial unit in which they operate. If we look at other European states that have experienced the mentioned association models, we will notice that an efficiently managed metropolitan area has positive implications on economic competitiveness [22], the development of basic infrastructure, the increase of interdependence between the component localities and the integrated development of the territory.

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ETHICAL AND LEGAL ASPECTS OF THE DEVELOPMENT AND USE OF ROBOTICS AND ARTIFICIAL INTELLIGENCE. PROTECTION OF HUMAN RIGHTS IN THE ERA OF GLOBALIZATION AND DIGITISATION

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Abstract:
While humanity has been under the pressure of successive and partially interconnected shocks generated by pandemic, war and inflation, in a geopolitical and geoeconomic context perhaps the most complex in recent decades, the multifaceted fields of artificial intelligence (AI) have seized economic and social life at a very rapid pace. We are going through the so-called "Fourth Industrial Revolution", or are we already talking about a "(r)evolution of AI", which is shaping its supremacy through interdisciplinary and cutting-edge technological advances such as robotics, nanotechnology, biotechnology, quantum computing, fifth generation (5G) wireless technologies, 3D printing, fully autonomous vehicles or the industrial internet of things, with human-machine interaction becoming ever more complex and profound.
Here we step into the "wonderful new world" in which the start was made in the global "race" for supremacy in the field of Artificial Intelligence. Moreover, this global competition is due to the enormous economic value and technological capabilities accumulated in the economies that have allocated a lot of resources for the research and development of AI applications, estimating that by 2030, artificial intelligence would bring 11,000 billion euros to the global economy.
In an era of artificial intelligence, we face more and more questions and perhaps few answers. We all ask ourselves what will be the effects on the structure and functionality of society, how much will human rights be affected and how do we manage to prevent this? Is there a right of AI or not? Will robots replace or judge us? Will we dehumanize, expecting more from robots and less from humans? Will AI change the way we humans work, learn, travel, live? How will the digital revolution change the legal world?
In a timid attempt to search for and outline answers in this maze of questions, we propose that through our research we explore the advantages and disadvantages of AI, the determining technology of the future, touching, on the one hand, the regulatory area, respectively the legal framework outlined at international, but also Union and national level, especially the protection of human rights and equality, and on the other hand, the ethics of artificial intelligence, a critical subject for the whole world. At the same time, our research aims to index the main initiatives, actions and achievements in the field of artificial intelligence, by reference to the official strategies of the member states and beyond, taking into account the long-term development plans and the strategic and political vision in priority areas such as ethics and security.
Efforts to regulate artificial intelligence have increased lately, on the agenda of the legislators in Brussels today being the AI Regulation (Artificial Intelligence Act), but also a directive on AI liability, thus crystallizing a new institutional architecture of AI regulation in Romania, but also in the other EU member states, through the need to harmonize the domestic legislation with the acquis communautaire. Thus, on May 11, the Internal Market and the Civil Liberties Committee of the European Parliament approved, with 84 votes in favor, 7 against and 12 abstentions, a first draft of a Law on artificial intelligence, being perhaps the first "bold" step for the EU regulation of artificial intelligence systems, with the draft to be submitted to the plenary

of Parliament in June 2023. Given that currently the regulation of artificial intelligence is at a very low level, these rules will become the first binding "legal construction" in the world in terms of artificial intelligence, the European Union legislator aiming to ensure safe, transparent, non-discriminatory and environmentally friendly AI systems that can be kept under control by humans, avoiding the gradual and imperceptible "suffocation" of people's rights and freedoms by "shaping" the global consciousness. The capitalization of the opportunities generated by artificial intelligence can represent a pivotal point for the economic, but also social and cultural development of Romania, given that we already recognize the profound and dynamic impact on human lives, on the environment, ecosystems, on education, culture, information communication, including on the human mind.

Living among digital assistants (Siri, Alexa, Cortana), autonomous cars, smart cameras with facial recognition or intelligent systems capable of making predictions on future behaviors, we must admit that, in the year 2023, artificial intelligence is a reality, perhaps even a necessity and a way of life installed subtly and imperceptibly in our consciousness and in our behaviour. The future is already here because AI is bringing it faster than we thought, our central objective being the awareness of the need to adapt to the new normal, on the one hand, and on the other, that of promoting a human-centered artificial intelligence, by shaping a stable and transparent legal framework.

We are stepping timidly, but without a way back, into a new legal "realm" open to reflection and practical applications of the most innovative, in which the challenges are proportionate to the stakes created and asserted, artificial intelligence and robotics having enormous potential in human evolution and in improving all areas of human activity, like the great technological revolutions created by man over time.

Keywords: *artificial intelligence, robotics, digitisation, ethics, fundamental rights and freedoms, opportunities, risks, legal framework, international vision, Union vision, digital single market, legislative harmonisation.*

Artificial Intelligence (AI) – "opening the gates" of an interdisciplinary area. Risks, opportunities and consequences for fundamental rights and freedoms

The Organization for Economic Cooperation and Development (OECD) defines the artificial intelligence system as "*a machine-based system that is capable of influencing the environment by producing an output (predictions, recommendations, or decisions) for a given set of objectives. It uses machine and/or human-based data and inputs to (i) perceive real and/or virtual environments; (ii) abstract these perceptions into models through analysis in an automated manner; and (iii) use model inference to formulate options for outcomes."* [1] Thus, we find artificial intelligence systems in the form of software, namely virtual assistants, image analysis software, search engines, voice and facial recognition systems, or systems integrated to objects, such as robots, autonomous cars, drones, Internet of things, etc. In the second section we will analyze the much more extensive and flexible definition proposed at European Union level by the European Commission, as the concept is still under interpretation.

The fact is that to date there is no universally accepted definition of AI. For example, according to the high - level Expert Group on artificial intelligence of the

European Commission (HLEG) “Artificial intelligence (AI) refers to systems that display intelligent behaviour by analysing their environment and taking actions – with some degree of autonomy – to achieve specific goals. AI-based systems can be purely software-based, acting in the virtual world (e.g. voice assistants, image analysis software, search engines, speech and face recognition systems) or AI can be embedded in hardware devices (e.g. advanced robots, autonomous cars, drones or Internet of Things applications)”. [2] Indeed, AI technologies have existed for over 50 years, but increasing computing power, the availability of enormous amounts of data and new algorithms have led to major advances in AI in recent years.

Although information and communication technology “invaded” all aspects of our lives, artificial intelligence (AI) [3] is still a sensitive subject, perceived and assimilated so unevenly and differently, sometimes abstractly, among the population. If we look around, we will find that AI is everywhere and in everything, it has developed on all levels, and the developments of the last years marked by the Covid_19 pandemic have “disclosed trivially” its supremacy and true potential, so we are currently talking about a transposition into interdisciplinary models of analysis. We find, thus, that AI has acquired complex valences, from the socio-economic, to the political and legal ones, materializing in a multitude of actions, strategies, regulations, which require, on the other hand, the promotion of trust and the provision of an ethical, legal, security and dialogue framework. The fact is that AI will exert its influence on sectors and areas that we currently do not even think about, generating real transformations, alterations of society and industry. We are at a stage where society seems to delegate more and more aspects of thinking to technology, and paradoxically, the greater the digital capacity of a society, the more vulnerable it becomes. Let us not forget, however, that AI is not endowed with human emotion, critical thinking or morality, no matter how great the tendency to reproduce human behaviour would be. That is why we need a regulation of ethics in AI, a key landmark of our research, in order to achieve a safe and reliable area.

All these interconnected crises generated by a globalization also in an existential crisis, such as climate changes, trade conflicts between China and the USA, pandemic, the war in Ukraine, followed by the socio-economic crisis “polished” by the effects of the former, represented “a rare and narrow window” of opportunity on the fulminant evolution

of artificial intelligence, reaching the critical *global consciousness* on resetting our world. Moreover, at the most tense moments, a space of aggregation of all the thoughts, ideas and emotions generated by humanity is created, becoming the "engine" of humanity in the age of globalization and interconnection.

In this context, we ask ourselves, what will be the new normal? Will humanity be stronger or more vulnerable? Can AI become a threat to the survival of the human species? How to anchor a "spider" domain like AI, a domain *inter* and *trans* disciplinary, in the sometimes sensitive realities of life, in an ethical, legal, cultural and institutional framework shaped and structured in such a way as to uphold social values and fundamental individual rights? How do we ensure that technology serves society and individuals and how do we protect human rights in the age of AI? Of course, the Question-Answer follows: Why do we need to regulate the use of AI technology? Are we ready for such a transition?

There are numerous legal reactions in various fields to the challenges of AI and attempts are made to coagulate the regulations in this area, which hardly takes shape due to the complexity of the field, French professors-researchers from the University of Paris or Sorbonne anticipating the crystallization of an "*artificial intelligence act*", a law in its own right, built by virtue of its own principles and institutions of functioning. Thus, in the context in which AI is at such an advanced stage of development that it claims its need for regulation, the French intellectual legal effervescence has entered this new realm open to reflection and renowned academics have joined their thoughts to contribute to a complete presentation of the problems raised by the development of artificial intelligence in the volume "*Droit de l'intelligence artificielle*" [4], areas such as ethics, persons law, liability and insurance law, autonomous vehicles, justice, criminal law, intellectual property, personal data, labour law, health law, military law, administrative decision making and cyber security, blockchain, civilian drones and even international law being touched upon.

We are talking about intelligent machines that work with high-level cognitive processes such as learning and even thinking, problem solving, the ability to make decisions and filter information, AI providing opportunities to complement human intelligence and change the way of life. Such machines have not only transformed and

continue to transform people's day-to-day tasks, but have generated multiple profound questions for individuals, the economy, governance and society at large. We can ask whether these algorithms will be able to detect and provide clues about the opinions, emotions, feelings, personality of people who are simply watching a television station, a computer screen, etc. Such situations do nothing but legitimize an absolute surveillance system of individuals, which would lead to serious damage to people's freedom and rights. We face the enormous risk that any human gesture or behaviour will be supervised and even anticipated, and the world could easily turn into a "dystopia", as author Aldous Huxley foretold almost a century ago in his book "*Brave new world*" [5], a world in which under the appearance of democracy, people live in a real dehumanization by the simple fact that every human desire, thought, aspiration can be annihilated and kept under control.

We need to strengthen a strong global perspective, by developing and implementing legislative instruments and standards that are based and developed around the "hard core" of human rights, through which human dignity has been gained, justice, social and economic development, physical and mental well-being, human diversity, interconnection, education, the right to work, essential elements that can guide the evolution of AI in a responsible direction.

We are already talking about a digital economy, digital rights and even a "digital future", recently adopted under the aegis of the OECD, "*Declaration on a trusted, sustainable and inclusive digital future*", [6] which outlines a vision for a digital transformation centered on the human factor and oriented towards rights, bringing up the themes of the "*Declaration on European digital rights and principles*", [7] proposed by the European Commission and signed by the European Parliament and the European Council. With this declaration, EU leaders affirm that they want to ensure European values by: "Putting people and their rights at the centre of the digital transformation, supporting solidarity and inclusion, ensuring freedom of choice online, fostering participation in the digital public space, increasing safety, security and empowerment of individuals, promoting the sustainability of the digital future".

Moreover, the European Commission has also developed a mechanism for achieving common objectives for *Europe's digital transformation by 2030 [8],* a policy

programme that will guide digital transformation, in the sense that digital technologies protect citizens' rights, support democracy and ensure that all digital actors act responsibly and safely, with the EU promoting these values around the world. At the same time, European leaders want to ensure that the digital environment is safe and secure, that citizens can engage in the democratic process at all levels and have control over their own data, but also that digital devices support sustainability and the green transition.

These are only a few positive milestones of digitisation that strengthen the "foundation" of *artificial intelligence law*, there are voices that argue that AI will help humanity overcome its deepest and most complex challenges. If we remain in this optimistic area of opportunities "promised" by AI advocates, in the sense that AI can amplify human intelligence, then we could affirm that a golden age of humanity is coming, with the possibility of eliminating disease and poverty. However, AI can change our lives in a positive or negative way, depending on how we choose to use data and connected technologies. In this regard, the European Parliament established as early as 2020 a commission [9] to assess the impact of technology and to identify and describe the opportunities and dangers of this "ubiquitous" area of the future, with a proposed *Roadmap* for AI in the EU. Thus, the advantages of AI were identified for the economy, which is inevitably moving towards a digital economy, based on digital infrastructure, revolutionising the market for products and services and facilitating access to information, education and training. A digital economy reflects the data economy and its applications, the green and circular economy, optimising sales, increasing the volume and quality of production, improving customer service and saving energy, because AI is not just about robots that will "steal" human behaviour.

Benefits and opportunities have also been identified in the area of public interest, such as strengthening democracy by ensuring access to secure information and avoiding cyber-attacks or facilitating the use of analytical data in the public service sector, but also in areas such as public transport, education, sustainable development, energy or waste management. Let's not forget the possibility of using AI in justice, especially in crime prevention, where crimes or even terrorist attacks can be anticipated and prevented. In fact, there are already online platforms using AI to detect and combat illegal online behaviour. The military is also of major interest, given the possibility of using AI in defence

and attack strategies in hacking and phishing, in vital systems involved in cyber warfare, so that physical harm is reduced.

In any case, in the view of the actors of the European Union's strategies, AI is an essential pillar of the *digital single market strategy*, invoking its fabulous potential to help improve people's lives through better health services, more efficient administration, perhaps safer transport, sustainable agriculture, a green environment, a more efficient use of resources and a much more competitive industry. Let's not forget also the benefits of using robots in surgery or rescue operations in the event of an earthquake or nuclear accident. In fact, Bill Gates predicts that AI will be integrated into all healthcare systems around the world in the future, with robots taking care of the bureaucratic aspects.

In the antithesis of these benefits, however, we bring into discussion the risks of AI on man, on his rights and freedoms, being able to generate and multiply existing prejudices at the level of society. In a more somber view, there were voices that asserted that AI represents the end of control over humanity. There have been a number of tensions and risks that require careful consideration from the perspective of human safety, health and security, freedom, privacy and dignity, non-discrimination, protection of personal data or self-determination. Artificial intelligence systems can become manipulative, discriminatory or cause physical, mental, social and economic harm. Exemplifying such aspects, we can think of the fact that these AI systems can perpetuate social preconceptions, manipulate online behaviours of children, of elderly or other categories of consumers, by exploiting perceived vulnerabilities based on advanced data and algorithms, by forcing, en masse, commercial, electoral decisions, etc. [10]

De lege ferenda, new rights/*digital rights* for consumers / citizens are required to be regulated. That is why the legal problem generated by the development of AI "boils" both at international and regional level, the legislators being "summoned" to provide effective and adequate answers, while the judge and the doctrine advocate are still in the "mixer" of abundant and complex information, difficult to penetrate and "coagulated in the present legal bond". The risk has become more acute because, until recently, there were no legislative "barriers" of any kind, and anything could be created with AI, in the sense that the person launching such a product was not legally obliged to mention that the product was created with AI, or even entirely by an AI. However, we will soon see EU-

wide regulation, which will leave room for debate and improvement in the “digital future” and which will of course be transposed at national level. We will present these steps in the following sections. What is certain is that we have reached the point where we no longer know whether a man or a “machine” has created a particular product or not, and this translates into multiple risks. The first AI-generated trailer, The Great Gatsby, was recently released, in which the script was written by AI, as were the voices. It’s worth noting that no video cameras, cameras, lights or even characters were used in the making of the film - it was all generated by AI. [11]

Consequently, it becomes essential to identify a balanced use of artificial intelligence, since, on the one hand, low use can also represent a major danger in the sense of poor infrastructure, lack of innovation, low investment or fragmented digital markets, limiting economic development and opportunities for citizens, and on the other hand, excessive use can lead either to unnecessary investments in AI applications, but also risks of blocking the social and legal balance.

A major regulatory challenge also remains establishing liability for damage caused by a device or service operated by AI. *Exampli gratia*, in the event of an accident caused by an autonomous car, who bears the damage? The owner, the car manufacturer or the programmer? Life certainly cannot be limited to algorithms, and figures cannot represent complex social reality, and AI can generate distorted positions and seriously affect fundamental rights. For example, AI can be used in facial recognition equipment, online tracking or profiling of individuals, managing to merge information provided by a person and obtaining new data, data that can conceive unexpected results for that person, affecting the right to privacy and the protection of personal data. AI can distort reality by the simple fact that there is the possibility of creating extremely realistic video, audio and false images, so-called “deepfakes”. They can damage the reputation of some people, lead to polarization and manipulation. Among the first “deepfakes” that spread around the world was the image of Donald Trump arrested and the image of Pope Francis in a white fluffy jacket, with celebrities and political figures being targeted. At the same time, AI has also come to voice cloning, or to the realization of influence campaigns generated by AI, which can be used by politicians in order to outsource their political campaigns. Creating a deepfake will become as simple as downloading an app, and there are currently very

few restrictions that prevent people from doing harm, especially in the case of identity theft.

Perhaps the most sensitive and familiar topic when it comes to AI is its impact on the workforce. Will humans be replaced by robots or not? What jobs can AI replace? Globally, “throbs” the preoccupation of people about the possibility of robots replacing them, with a range of professions such as programmers, software engineers, data analysts, marketers, people in the media industry (content creators, advertising, journalism) likely to be taken over by AI. Also under discussion are finance, accounting and legal jobs, with the view that “the jobs of the future will focus on combining technology with human skills, with accounting, legal and financial jobs being taken over by robots”. [12]. Moreover, Anglo-Saxon consultants specializing in legal informatics have long warned that it is necessary for legal professions to integrate AI technologies, since there is a danger that applications of the type *legal tech* [13] to overcome them later. For example, in the USA a cognitive technology has been developed that aims to replace a young lawyer, by offering some related services and even making an experimental artificial representation in court. At the same time, traditional legal journals are losing ground to AI performance in terms of relevance and speed, such as Supra Legem, Case Law Analytics, etc. At european level, numerous studies have been carried out on the impact of AI on justice systems, finding that digitisation offers real opportunities to the judicial public service. In fact, the confrontation between “human lawyers” and “digital lawyers” has already started, the culmination being the appearance of Ross, the first robot lawyer in the world, even employed at a large law firm, Baker&Hostetler, which offers consultations in the field of insolvency. [14] Ross was programmed “to understand human language, postulate hypotheses when asked, research, and generate answers and references where he argues his conclusions”. Interestingly, Ross learns from his own experiences, can go through all the legislation in one area and provide an answer that includes a case, can monitor non-stop the legislation and decisions of the courts, immediately learning about the existence of any case relevant to his matter. There are also online dispute resolution platforms based on computer algorithms, such as *Demander-justice,* in addition to the fact that there are hundreds of platforms around the

world that put clients in direct contact with lawyers, there is more and more talk of "uberisation of law and law practice".

In the area of justice there are indeed strong incentives for the use of artificial intelligence, with public authorities around the world already identifying the budgetary benefits that could be achieved by replacing part of the judicial staff with automated systems. However, we believe that a robot lawyer can never achieve the skills of the human lawyer, namely those of communication, reasoning, analytical, research, human ability, perseverance and creativity. Moreover, the use of AI in judicial decision-making processes, by enabling programmable and predictable judicial outcomes, also entails a multitude of risks and challenges, in particular with regard to the respect of the right to a fair trial. At the same time, however, we can also consider opportunities, such as increasing the level of justice delivery, the degree of accessibility, with justice having an open path to becoming faster and less costly, with the storage and organisation of legal information available in huge quantities impossible to control by the human mind alone. AI is already making its presence felt through the possibility of online transmission of court hearings, online hearings in criminal matters, digital reconstructions, electronic communication of procedural documents, electronic file consultation, etc. The digital revolution will certainly change the legal world. One wonders whether the electronic judge - *cyberjustice* - will emerge or what a proposed regulation by a robot will look like.

Let us also not forget other EU strategies on integrating AI into the judiciary, such as Regulation (EU) 2021/694 of the European Parliament and of the Council of 29 April 2021 establishing the programme "*Digital Europe*", the objectives being to ensure cross-border cooperation, improve access to justice for citizens, businesses and legal practitioners by providing semantic interoperability with databases, facilitate online out-of-court dispute resolution, promote the development of innovative technologies for courts and the legal profession, which are based, *inter* alia, on AI solutions.

Recently, the news regarding Fedha, the first artificial News presenter, "shook up" reality, with journalists around the world worried about the possibility of losing their jobs in such a near future. A Kuwaiti news site tweeted a video featuring a virtual Fedha presenter, which was a test of the company for new and innovative content. [15]

An alarm signal aimed at polarizing society is also the idea of creating *a specific legal status for robots*, idea stipulated in ***European Parliament resolution of 16 February 2017 with recommendations to the Commission on civil law rules on robotics (2015/2103 (INL))***, [16], which starts from the idea that these bots, robots, androids or other materializations of AI have implications, but also legal and ethical effects, which must be regulated. The idea that a robot could have the status of an electronic person responsible for possessing electronic personality, responding to and repairing the damage it causes when it makes autonomous decisions or interacts independently, has generated a number of debates in scientific circles. Thus, the regulation on the assimilation of robots with a corporation or legal entity, as well as the acquisition of rights and obligations, specific to a human being, was rejected by an open letter of a group of AI experts, considering that it is absurd and leads to violation of human rights: "*A legal status for a robot can't derive from the natural person model, since the robot would then hold human rights, such as the right to dignity, the right to its integrity, the right to remuneration or the right to citizenship, thus directly confronting the human rights. This would be in contradiction with the Charter of Fundamental Rights of the European Union and the Convention for the Protection of Human Rights and Fundamental Freedoms*" [17].

If we still remain in the sphere of humanoid robots, let us also remember the news that shocked us in the year 2017, regarding the robot Sophia who acquired citizenship in Saudi Arabia, receiving even more rights than women living in the same country [18]. Doctrinal reactions were not slow to emerge, considering that denying some rights to robots would be "against one of the modern principles of our humanity". [19] The question remains, however, whether or not we can be masters of AI, whether or not we can presume the right to own intelligent entities. And here we are already on the border between reality and science fiction literature. At the same time, we must pay special attention to the possibility of creating an emotional bond between man and robot, triggered perhaps by feelings of loneliness, by the human need for companionship and attachment. Let us, however, avoid reaching the level at which we will strive to be human in a machine world. In Japan, for example, attempts are being made to make technology

compatible with humans in order to fill the elderly care workforce shortage by creating simple robots to help frail citizens get out of bed and into wheelchairs. [20].

Certainly, the expansion of automation will have direct effects on jobs, especially those with lower qualifications in the occupational sectors. On the other hand, AI is expected to give rise to new jobs, but in other sectors. Andrew Moore, dean of the Faculty of Computer Science at Carnegie Mellon University, argued at the Davos Economic Forum in 2016 that machines will perform many of the "tedious tasks of civil servants" and computers will be able to help lawyers prepare millions of documents for trials, which is why digital and AI education and training are becoming essential in adapting to the socio-economic future. It becomes imperative that education prioritises the development of such training and skills programmes. Cristopher Pissarides, a Nobel Prize winner in Economics, warned in 2016 that "the authorities will have to completely reinvent education systems in order to adapt to the changes that will be brought by the rise of automation" and to offer a fair chance for people to find jobs in such a changing market. Furthermore, the EU Council adopted in December 2021 [21] certain *Conclusions on the impact of AI on gender equality in the labour market,* that new technologies would increase women's equal participation in the labour market. In this sense, according to the Council, new forms of work must also be analyzed from a gender perspective, so as to ensure that "women and men can equally benefit from the opportunities created by the use of AI in different areas of the world of work, including in terms of working on online platforms".

Surely AI will revolutionize the labour market and the way of work, and digital skills and collaboration with robots, flexibility and diversity in the work process will become a normality in the near future. The World Economic Forum estimates that by 2025, 97 million new jobs will be created with AI, while 85 million will be replaced by automated processes, which is why half of the employees will need intensive training to acquire new skills in the field of work, so that the future does not take us by surprise. In Romania, it has been estimated that 50% of working time can be allocated to automated tasks, such as banking, where cashiers are already being replaced by digital services. [22]

On a positive note, the vice-president of the Agency for Digitisation of Romania recently stated that "no one will ever lose their job to technology, but to a man who knows

how to use technology in order to make work more efficient", [23] and for Romania, digitisation represents the opportunity for a revolution of rethinking administrative processes, through which to move to digital all bureaucracy, to develop distribution channels, smart cities and a high-performance healthcare system.

People need to overcome this anxiety about the future of the labour market and realise that there have been such panics since the beginning of the first industrial revolution (*Industry 1.0.* - 1760-1840), a period characterised by a shift from a focus on manual work carried out by humans and assisted by working animals, to a more optimised form of work, carried out by humans but using machines such as water engines, steam engines, etc. Socio-economic developments have shown us that jobs have actually increased. And here we could exemplify the period when the steam machine was invented and replaced wheels with water as a source of energy in production in 1800, which is why although this was expected to lead to a decrease in the number of workers in production, the sector expanded sevenfold, from 1.2 million jobs in 1830 to 8.3 million by 1910. If we refer to the agriculture sector, an area in which more than half of the existing labor force was involved in the early 1900s, we will find that, at present, due to the mechanization and digitisation of crop exploitation we find less than 2% of the population involved in this sector, which does not mean that people have not reoriented to other sectors that, on the contrary, have created more jobs, somehow balancing the situation along the way. Looking back to the period of *Industry 2.0* (1870-1914), the second industrial revolution, known as the technological revolution, we find that this too led to the faster transfer of people and ideas through the development of extensive rail or telegraph networks, with electricity becoming increasingly present in production areas, enabling factory electrification and the modern production line. At the same time, *Industry 3.0*, which took place at the end of the 20th century under the name of the *digital revolution*, profoundly marked the evolution of humanity with the advent of computers and automation, which took over the industrial "scene".

We also seem to have ticked off the "*fourth industrial revolution*", also known as *Industry 4.0.*, first introduced in 2015 by Klaus Schwab, executive chairman of the World Economic Forum, in an article in Foreign Affairs. The term represents the fourth major industrial age since the original Industrial Revolution of the 18th century and "is

characterized by a fusion of technologies, a fusion that blurs the lines between the physical, digital and biological spheres". The fourth (r)evolution is about automation and data sharing in manufacturing technologies and processes including cyber-physical systems (CPS), the internet of things (IoT), the industrial internet of things (IIOT), cloud computing, cognitive computing and artificial intelligence. [25]

If we look at it as an evolution, rather than a revolution, we will understand that in this era of digitisation, all this abundance springing from AI will actually expand new areas of work and interest in the labour market. Take the example of Germany and Japan, which although they are the most automated countries in the world, have managed to lower the unemployment rate. Recently, the International Federation of Robotics (IFR) announced that India is also entering the top ten countries in the world in terms of annual robot installations, while the stock of operational robots worldwide has reached a new record of around 3.5 million units and the value of installations has reached around $15.7 billion. Moreover, a 2016 study by the Masachussetts Institute of Technology shows that a human-robot collaboration can be 85% more efficient than human-only or robot-only work. [24] This is why we talk about the need for hybrid skills, training and education, so that we can harmoniously and advantageously integrate AI into our lives, applying the welfare of humanity and enjoying progress, the human component being essential.

In response to all these challenges, risks and opportunities, urgent legislative measures are needed to ensure the protection of fundamental rights and the safety of users, as well as confidence in the development and "embrace" of AI, regulations that are on the agenda of the European legislator and which we will develop in the next section, touching on the history and regulatory trends both at international and Union level, these being the "mirror" in which the new legislative reality will be reflected and will evolve at national level.

Regulation of artificial intelligence (AI) at international and union level. Legal strategies and perspectives in the global decision architecture and influence of future ai

Artificial intelligence is considered a central element of the digital transformation of society and has become a priority at the global level, globalization accentuating the

universalization/uniformization trends in regulation, and digitisation accentuating globalization in turn. The determining factor in the evolution of globalization was represented by the revolution in AI itself, currently this phenomenon having a special impact on international relations and especially on regional and world regulations. [26] This is due to the fact that globalization universalizes, coagulates the principles and strategies of regulation, of vision and tends towards homogenization in a single culture, respecting, of course, national identity and sovereignty. Of course, there are a number of pros and cons to the impact of this fulminating phenomenon, but it is a reality that we must inevitably "embrace", being merged with the evolution of AI. In fact, many regional or national regulations "pull their sap" from these common regulations drawn up by international bodies, the field of AI being targeted with priority in recent years.

We could say that states are still at the beginning of the road to discovering and harnessing the benefits of AI, counterbalanced by the risk of affecting human rights and freedoms, identifying a balance in this regard and achieving a legal "construction" in the field representing a sensitive point on the international and regional "table" of negotiations.

As early as 2016, several states assumed strategies for allocating and "injecting" large amounts in the development of AI, including the USA, Canada, China, Japan, Russia. [27] The first country to adopt a national strategy for AI was Canada, allocating in March 2017, a budget of 125 million Canadian dollars for the first five years of implementation. Japan is the second country to adopt an AI strategy after Canada, in March 2017 launching the "strategy for artificial intelligence technology" and developing a symbol model with a unique innovation value, which led to the capture of the markets of audio-video, automotive or communications industries, but also the creation of a productive and versatile ecosystem that interconnects multiple domains, being constantly one step ahead of global developments. In July 2017, China strongly affirmed its ambition to become the global leader in AI research and development by 2030, with the Chinese government adopting the "next generation artificial intelligence development plan", which aimed to allocate billions of dollars in budgets to support AI projects.

Although, according to the International Federation of Robotics, India currently enters the top ten countries in the world in terms of annual robot installations, it initially

relied on a moderate view of its intentions on AI, through the "national strategy for artificial intelligence" aiming to become the "workshop of 40% of the world", respectively the provider of on-demand AI solutions for the developing and developed economies of the world.

The EU leaders did not lose the start either, and in this respect it must also be remembered the ***European Parliament resolution of 16 February 2017 with recommendations to the Commission on civil law rules on robotics***, this being a first warning signal about the rapid developments in AI that need to be subsumed into ethical and legal principles by common definitions at Union level on systems cyber-physical or autonomous intelligent robots to ensure that civil law rules in the field of AI are in line with the Data Protection Regulation and that areas such as: civil liability for harm caused by robots, intellectual property and data flow, standardisation, employment and institutional coordination and supervision are reached.

After numerous studies and research, the European Commission adopted in 2018 the "***Communication on artificial intelligence***", aimed at numerous measures for the development of technological capabilities at EU level. Moreover, at that time it was recognized that the EU was behind in the field of AI investments, with a budget of about 2.4 - 3.2 billion euros, compared to 6.5 – 9.7 billion in Asia and 12.1 – 18.6 billion in North America. Of course, along with joint efforts for digital transformation at EU level, member states have also adopted national strategies, in particular the UK, Poland, Sweden, Denmark, Finland, Estonia or Latvia. At the same time, in April 2018, the EU member states signed the *"Declaration of cooperation on artificial intelligence*", a declaration by which the signatory states, including Romania, committed to work towards a comprehensive and integrated European approach, to support the financing of AI development, to cooperate on the strengthening of research centres, to support the exchange of best practices, the transfer of information and the access of public administrations, professionals, SMEs to such developments and digital tools, for a common approach to AI challenges but also for the aspiration to occupy a significant place in the global decision-making architecture of the future of AI.

At the same time, on 19 February 2020, the Commission published the "***White Paper on Artificial Intelligence – a European approach to excellence and trust"*** [28],

by which the Commission was committed to enabling scientific progress, maintaining the EU's technological leadership and ensuring that new technologies serve all Europeans, improve their lives and respect their rights, the well-being of society relying increasingly on the value created by data. Moreover, on 20 October 2020, the European Parliament adopted three resolutions in the field of AI, namely: *The Resolution containing recommendations to the Commission on the framework of ethical issues associated with artificial intelligence, robotics and related technologies, the Resolution on intellectual property rights for the development of artificial intelligence technologies and the Resolution containing recommendations to the Commission on the civil liability regime for artificial intelligence.*

Subsequently, on 9 March 2021, the European Commission adopted a Communication entitled ***2030 Digital Compass: the European way for the Digital Decade***, which aimed to provide a vision of what a successful digital transformation means by 2030. All this context created the premises for the initiation on April 21 of a ***Proposal for a Regulation laying down harmonised rules on artificial intelligence (Artificial Intelligence Act)*** and amending certain Union legislation, and in addition, an initiative to adapt liability rules to the digital age and artificial intelligence, with a proposal for a regulation on General Product Safety being initiated in June 2021.

At the level of the Council of Europe, too, steps were taken, on December 4, 2018 the European Commission for the efficiency of Justice (CEPE) adopting the ***European ethical Charter on the use of artificial intelligence in judicial systems and their environment***, through which five ethical principles were drawn up in the form of a guide on the AI approach for decision-makers, namely: the principle of respect for fundamental rights, the principle of non-discrimination, the principle of quality and security, the principle of transparency, neutrality and intellectual integrity.

On 12 February 2019, the United States Department of Defense announced in a conference call the launch of its first AI strategy, synchronized with the desire and affirmation of American leaders to maintain their supremacy in the field of AI. As a matter of fact, there have been since 2016 documents that argued the strategic priority of AI for the US, having been formulated since then 23 recommendations for strengthening the global leadership role, including "understanding and taking into account the ethical, legal

and social implications of artificial intelligence" or "ensuring the safety and security of AI systems", the use of AI in military applications creating the greatest legal and ethical challenge in the wars of the future. The AI strategy launched in 2019 under the name "*Using AI to promote security and prosperity*", also developed issues such as the need for cyber security and weapons systems, under the consideration that military applications are justified by the tendency of other nations, such as China and Russia, to make significant investments in AI.

In November 2021, the 193 member states of UNESCO adopted the "***Recommendation on the ethics of artificial intelligence***", [29] this becoming a first global agreement in the ethics of AI, a first "set" of common, universal standards springing from the phenomenon of globalization. The core of the Recommendation lies in the idea that AI must be human-centered and serve the interest of humanity. The basis for this recommendation was, of course, the instruments of the international framework of human rights, namely the Universal Declaration of Human Rights (1948), including the Convention on the Status of Refugees (1951), the Convention on Discrimination (1958), the International Convention on the Elimination of All Forms of Racial discrimination (1965), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), etc.

The stated aim was to define policies and regulatory frameworks that ensure fair use of AI, with respect for human rights, built around four values to support ethical AI: respect for, protection of and promotion of human rights and fundamental freedoms and human dignity, environmental and ecosystem prosperity, ensuring diversity and inclusion, and living in peaceful, just and interconnected societies. The Recommendation also includes 10 principles governing the regulation of ethics in AI, [30] namely: proportionality, safety and security, fairness, sustainability, the right to privacy and data protection, human supervision and determination, transparency and explicability, accountability, awareness and education, as well as adaptive governance and collaboration. This Recommendation crystallized a universal framework of values, principles and actions to guide states in drafting legislation, policies or other instruments on AI in accordance with international law, protecting human rights and fundamental freedoms, human dignity and equality, including gender equality. The perspective of the Recommendation is to protect

the interests of present and future generations, to preserve the environment, biodiversity and ecosystems, and to respect cultural diversity at all stages of the life cycle of the AI system, while encouraging multidisciplinary dialogue and consensus building on ethical issues related to AI systems.

Recently, more precisely on 30 March2023, UNESCO again urged governments to implement much stronger ethics rules in AI, the director-general of the UN cultural and scientific body, Audrey Azoulay, declaring in Paris that “this is the challenge of our time” and the self-regulation of this industry is not enough to avoid the ethical damage caused by the continuous development of AI systems, it is imperative to implement the above-mentioned Recommendation. The reaction is due to the appeal of more than 1,000 experts who called for a moratorium on the new AI systems, the main issues being discrimination and stereotypes, as well as misinformation, personal data protection, human rights and environmental protection. [31]

Regarding these tensions lately, we have all heard of the open letter, initiated a few weeks ago by the Future of Life Institute, and signed by 1000 experts and personalities in AI itself, including Elon Musk, co-founder of OpenAI. This letter calls for a pause of at least 6 months in the development of highly evolved AI systems, such as GPT – the conversational robot of the Americans from OpenAI, on the grounds of triggering potential risks for humanity and society. In response to this moratorium, the co-rapporteurs of the European Parliament, including the Romanian Dragoș Tudorache, [32] initiated a letter published by the influential American daily *The Wall Street Journal* [33] and commented quite a lot by the international press, which makes a global appeal, invoking the fact that there is no need for pause, but for rules. European Commission President Ursula von der Leyen and U.S. President Joe Biden called for emergency convocation *an international summit,* in which leaders from all over the world discuss a *future regulatory and ethical framework on AI technologies*.

According to the European Parliament’s rapporteurs, “*the potential is enormous in the AI area. Like it or not, understand it or not, artificial intelligence is already present in the products and services around us, which we access, and we must understand that by investing in AI, we are actually investing in the economy of the future. We also need to*

understand as a country how we encourage the deployment of artificial intelligence in the economy". [34]

This is also the purpose for which very great efforts are being made to finalize by the European Parliament an EU law on artificial intelligence - *Artificial Intelligence Act*, [35] a regulation designed to support the development and adoption of a reliable, human-centred AI, while ensuring people's health, safety and fundamental rights in line with European values. It is an instrument proposed by the European Commission as early as 21 April 2021, with the stated aim of turning Europe into a global centre for reliable AI.

Experts argue that we need regulation, and AI has indeed shown us that the speed of technological progress is faster and more unpredictable than policymakers around the world expected. Due to the complexity of the effects that AI can generate, it remains extremely difficult to finalise a regulatory framework that keeps pace with the evolution of the technology. Moreover, the European legislator's attempt to provide a first legal framework, a first legally binding instrument in the field of AI, is becoming a truly ambitious challenge on the global market, given that technological progress in the United States and China is taking its natural course outside a regulatory framework.

These very days, several pieces of draft legislation involving AI are on the table of European leaders, with the political groups in the European Parliament reaching a provisional agreement on 28 April 2023 [36] on ***EU regulation on artificial intelligence***, a plenary vote on the EU Parliament's negotiating position is expected in June 2023, followed by negotiations with the Council and the European Commission. It should also be pointed out that since 11 May 2023 the European Parliament has banned artificial intelligence systems that can classify people according to race, ethnicity, citizenship, religion, political orientation, but also those who scan without agreement biometric data from social networks or those obtained from surveillance cameras, as well as emotion recognition systems among law enforcement or in schools. [37]

In addition to strengthening public and private investment in AI and preparing for socio-economic change, AI regulation is the third pillar on which the EU strategy for AI development rests. The Regulation also provides a comprehensive definition in art. 3 of the artificial intelligence system (AI system), meaning "*a software that is developed with one or more of the techniques and approaches listed in Annex I and can, for a given set*

of human-defined objectives, generate outputs such as content, predictions, recommendations, or decisions influencing the environments they interact with". The objectives of the EU in this regulatory framework include: ensuring standards for AI systems introduced and used on the Union market to be secure and consistent with fundamental rights legislation and union values, ensuring legal certainty to facilitate investment and innovation in AI, strengthening governance and effective enforcement of existing fundamental rights legislation, facilitating the development of a single market for legal, secure and reliable AI systems, and preventing fragmentation of the internal market.

At the same time, for the regulation of AI, the European Commission proposes a risk-based approach, distinguishing between four levels of *risk*: (I) an unacceptable risk, (ii) a high risk and (iii) a low or minimal risk. For example, in the category of high risk level were identified: critical infrastructure, such as transport, which could put citizens' lives and health at risk; educational or vocational training, which can determine a person's access to education and career path (e.g. the grading system used in exams); safety components of products (e.g. an AI application used in robotic surgery); employment, worker management and access to self-employment (e.g. CV selection software for recruitment procedures); law enforcement work that may affect the fundamental rights of citizens (e.g. assessment of the reliability of evidence); administration of justice and democratic processes (e.g. law enforcement for a specific set of factual data). On the other hand, in the category of limited-risk and low-risk AI systems, for example, emotion recognition through the AI system in a store has been identified that identifies customer reactions to advertisements based on facial expressions. At the same time, AI systems such as *chatbot,* are subject to minimum obligations of transparency, as they are intended to allow those who interact with such content to make informed decisions so that the user subsequently decides whether or not to continue using the application.

We appreciate the idea of drawing up a legal framework through a Regulation and not a Directive or Recommendation, as we will enjoy a legal instrument of the type *hard-law* at EU level, through which European rules can be directly invoked before national or European courts, as provided for in art. 288 of the Treaty on the functioning of the EU. Indeed, the Digital Single Market must be subject to a genuine harmonisation process, preferably through regulations.

European leaders start from the idea that "*being a global power means being a leader in AI*" [38], and the EU must use all its resources in the scientific and industrial fields, to stimulate research and innovation in the development of technologies, platforms and applications using AI. This Regulation will likely become a model for other regulatory initiatives in different regulatory traditions and environments around the world. That is why the way in which it is regulated is essential, since the member states do not need to "add a superficial layer" of regulations over the existing ones, but to ensure a solid legal framework, centered on man and respecting fundamental rights and freedoms. There have been cases where AI applications have affected people's safety or their fundamental rights, and we are even considering biometric identification. *Brevitatis causa*, in 2020 the Mercadona department store chain in Spain began using in its 40 stores a facial recognition system to identify people with restraining orders and those with a criminal record. The investigation of the Spanish Data Protection Agency led to the fine of Mercadona by 2,252,000 euros because facial identification was carried out for all persons in the shops, namely customers, employees, children, the transparency requirements imposed by Articles 12 and 13 the GDPR Regulation also being violated. [39]

As a consequence, AI systems that are considered a clear threat to the safety, life and rights of individuals will be strictly prohibited by the new regulations, including applications that manipulate human behaviour by bypassing the free will of users („*social scoring*"), systems that exploit the vulnerability of individuals and systems that allow public authorities to create profiles or scores based on social behaviour. Specific restrictions and safeguards on the use of real-time remote biometric identification systems for law enforcement purposes will also be regulated.

What is certain is that throughout this period there has been an intense and permanent preoccupation with the ethical, legislative, social and economic dimensions of AI, a preoccupation that will soon be translated into an artificial intelligence act, perhaps even an AI act in its own right, capable of enhancing the capacity of AI to achieve its goals of benefiting humanity.

Romania's strategy in the field of artificial intelligence (AI). Pillars of the regulatory framework

We believe that the foundations of the national AI strategy are slowly taking shape, with such a strategy having been promised as early as 2017, and since then various working groups have been set up and reformed with this mission.

Moreover, Romania has declared itself open from the beginning to this vision promoted at international and Union level, in 2019 Romania being the only non-OECD European country (Organization for Economic Cooperation and development) that has adhered to the Organization's Recommendations on Artificial Intelligence. Romania also welcomed and took note of the UNESCO recommendations for Ethics in AI, recommendations outlined in the previous section. [40]

Because we are at the culmination of the concretization of a legislative instrument of the type *hard law,* more specifically the EU Regulation on artificial intelligence*,* we consider that it becomes a priority for Romania to invest and get involved in this negotiation process at European level, as we are talking about rules that will reform and trigger the harmonization of the legislation of all member states in the vision and direction outlined in these months. On the other hand, Romania will have to finalize its national strategy in the field of artificial intelligence under the "umbrella" of these European regulations, and a diversity in approach may subsequently generate great difficulties in uniforming and "embracing" the acquis communautaire, these being the advice of European leaders.

According to the directions drawn in stages by the EU institutions, the national strategy has been oriented since 2021 towards the need to establish a Regulatory Authority for AI by 2023, with the aim of monitoring and regulating ethical AI internally. According to the strategy, at the heart of the mission of such an authority is, of course, the protection of fundamental rights of citizens, the development of artificial intelligence in Romania, the harmonization of domestic legislation with EU regulations on AI, ensuring compliance by developers of AI solutions with their obligations in terms of transparency, confidentiality, robustness of the systems developed, informing developers and users of AI solutions about potential risks or rights that could be violated, and also providing technical expertise for the regulation of AI-based systems, so that the regulations

introduced contribute to accelerating AI innovation in Romania and ensuring public confidence in AI-based systems. Of course, a first pillar to support the development of AI at national level is the creation of the data space at national level. [41]

Similar institutions are found in Germany (German Observatory for Artificial Intelligence Institute), which ensures, on the one hand, dialogue between the government, the scientific environment, the business environment and the citizens, and on the other hand, warning actors, developers or users of AI applications about the ethical and legal constraints of AI.

An internal law in the field of AI will certainly "find its place" in the Romanian legislation, but it is a difficult process, with huge stakes and efforts to match, and this is due to the complexity, interdisciplinary character of the field, as well as the "echoes" that it implies in the existing related regulations, such as human rights protection, consumer protection, product safety, nondiscrimination law, GDPR, etc.

The institutional architecture for a regulation of AI seems to be starting to take shape in Romania as well, the establishment of specialized bodies in the field exceeding the objective stage of the strategy. Recently, more precisely on 4 May 2023, it was established the ***Romanian Committee for Artificial Intelligence*** based on Order no. 20.484/2023 on the establishment, organization and functioning of the Romanian Committee for Artificial Intelligence, whose mission declared is to "support the Ministry of Research, Innovation and Digitisation in the exercise of their duties as a state authority in the field of research and development, innovation and digitisation, through proposals on regulation, coordination, monitoring and evaluation of activities on artificial intelligence (AI), as well as its development in Romania". At the same time, according to the regulations in force, the main objective of the committee is "to create an ***artificial intelligence ecosystem based on excellence***, trust and ***compliance with ethical principles, coherent, efficient and sustainable***, to generate added value in social and economic terms through the use of artificial intelligence technologies, to promote and support research-development-innovation and education/training in this field, to increase the number of local specialists and to capitalize on the contribution of the private environment and Romanian citizens abroad, aiming to stimulate the widespread adoption of the field of artificial intelligence in Romania".

This Committee that “brings together the great minds of Romania in the country and in the diaspora” will succeed in consolidating the pillars of the national strategy in the field of AI and closing the circle of efforts to crystallize a coherent and sustainable legal framework. Moreover, several structures, councils and working groups will function within this Committee, such as: *Artificial Intelligence Science and Ethics Council* which will provide the Romanian government with scientific advice on the responsible and ethical use of artificial intelligence, *Artificial Intelligence Education Council*, which will provide the Romanian government with advice on adapting the national educational field to respond to the specifics and needs generated by the evolution of the IA field; and the *Coalition for the Development of Artificial Intelligence*, an open consultative initiative that includes representatives of companies, non-governmental organizations and other legal entities interested in the field of AI, on behalf of the business, investment and start-ups in Romania, with an advisory role to support the work of the Committee, excluding any form of representation of commercial interests or free market influence. [42] All this will come to life by working with the *Romanian Hub for Artificial Intelligence [43],* as well as with the *Interinstitutional Commission for Romania’s AI Strategy*, bodies to be created in the near future.

It should also be noted that NVIDIA, a world leader in artificial intelligence-based processing, and the Ministry of Research, Innovation and Digitisation have recently signed an agreement to strengthen the Romanian capacity in artificial intelligence, whereby “NVIDIA partners will support us in developing a national AI strategy for Romania, within the Romanian Committee for Artificial Intelligence (CRIA), the Scientific and Ethical Council for AI or the AI Hub...in addition, we will be able to use NVIDIA’s accelerated computing platforms to promote Romania’s progress in the field of digitisation of public services, as well as in harnessing solutions based on artificial intelligence” [44].

Let us not forget also the key role of the Authority for the Digitisation of Romania (ADR), [45] institution created since 2020 with the aim of digital transformation of Romanian society by “moving to a new technological, informational and social paradigm”, starting with public institutions, followed by the private environment, the associative environment, local communities and the whole society, which, to the same extent, represent essential parts of this process.

Instead of *conclusions* - reflection: "building" trust in AI together through a transparent and sound legal framework

The fact that globally we are going through a period full of challenges and uncertainties due to the accelerated "adoption" of technology in all aspects of human activity, further "deepens" the need for security in a world "trapped" in the labyrinth of promises offered by AI, a source of modern-day fascination.

Under the impact of these pressures but also promises to increase the quality of life, we believe that we must nevertheless react proactively and responsibly, by understanding in depth the effects generated, by evaluating the benefits, so that the legislator has the necessary data to determine the profile that technologies will have in the emergence of new social and economic models in the medium and long term, generating a balanced, transparent, secure and proportionate regulation, approached from the perspective of data protection, values and principles, competitiveness, physical safety, intellectual property, etc. [46]

Of course, AI will bring about a cultural change, a change that we will have to gradually assimilate, as reliance on artificial intelligence will become a necessity, not an option. The new visions will resize the approach of primary legislation and will accelerate the evolution of the national legal culture, crystallized under the auspices of the European Union but also the international culture, through the trend of uniformity, and here we must take into account the two meanings arising from the core *legal culture*. On the one hand, this designates the way in which the individual understands to relate to a rule of law and to internalize it, we are talking about the subjective dimension of conception of the legal culture, and, on the other hand, the legal culture designates the way in which the individual establishes their behaviour in society by reference to the rule of law, and here we are considering the inter-subjective dimension of modeling social actions and interactions, the impulse given by the rule of law reaching its goal by modeling the human behavior itself. The latter component of legal culture is essential in the assimilation and acceptance of the "new" by humanity, so that legislation "pulsates" in unison with the society.

The draft Regulation on the table of European leaders represents somewhat the "spearhead" of the development of *global AI rules*, by setting standards paving the way for a world-wide ethical technology conducive to the future and innovation. This European "legal construction" represents the first piece of legislation worldwide dedicated to AI and, at the same time, the path to the trust and embrace of artificial intelligence by humanity, promoting only that digital transition that fully respects fundamental rights and is at the service of humanity. At the same time, through the proposed regulatory framework, the EU wants to become the leader in the development of a responsible AI, which emphasizes ethical aspects such as transparency of algorithms, reduction of discrimination, ethical principles representing the foundation around which the regulations on the use of AI have merged. In addition to these principles, the Regulation lists a set of guidelines on ethical AI, responsible AI or trusted AI, which are starting points in the interweaving of procedures for auditing and certifying AI applications (e.g. for Google, DeepMing, Microsoft or Amazon). Crucially, it also aims to stimulate the right of citizens to complain about AI systems and to receive explanations about decisions involving high-risk AI with significant impact on human rights. To this end, the EU AI Office has also been reformed to monitor the implementation of the AI rulebook.

In order to exploit opportunities and prevent threats, it is extremely important to increase confidence in AI but also to monitor its development, and ethical guidelines are needed. Thus, several states, such as France, have published ethical codes and principles, the model being followed by the private sector, for example, Google, IBM, but also by research institutes, such as the Future of Life Institute.

A further boost to confidence in improving the regulatory framework comes from the fact that the European legislator's approach to AI has been to issue legislation in the form of a regulation, which limits the scope for states to create regulations that are unreliable or circumvent European rules. This is a good start for the digital market to undergo a genuine harmonisation process, through perfect coordination and "flexible" legislation, technologically neutral, proportionate and adapted to the demands of the future, but above all human-centred and guided by ethical principles.

As of 8 April 2019, the High-Level Expert Group on AI - AI-HLEG presented the *Ethics Guidelines for Trustworthy AI* [48], which was based on another draft published in

December 2018 to which more than 500 comments were made. According to these Guidelines, AI should be: *legal* - in compliance with all applicable laws and regulations; *ethical* - respecting ethical principles and values; *robust* - both from a technical point of view and taking into account the social environment in which it is carried out, being necessary that all three components work in harmony and overlap in operation. At the same time, ethics must revolve around fundamental rights, being identified by the AI-HLEG ethical principles and their related values to be respected, namely: development, implementation and use of AI systems in a way that adheres to ethical principles: respect for human autonomy, prevention of dangerous effects, equity and explainability; paying particular attention to situations involving specific vulnerable categories, such as children, people with disabilities, but also others who have been disadvantaged in the past or are at risk of exclusion, as well as situations that are characterized by asymmetries in information capacity, such employers and employees or between businesses and consumers; recognising that, although they bring substantial benefits to individuals and society, AI systems also carry certain risks, potentially generating a negative impact, as well as effects that may be difficult to predict, identify or measure, such as democracy, the rule of law, justice or, more seriously, the human mind, hence the imperative of sound regulation commensurate with the scale of the risk. [47]

Relevant for the legal construction in the field of AI remain, of course, the Universal Declaration of Human Rights, the EU Charter of Fundamental Rights, the European Convention on Human Rights, as well as the EU acquis communautaire on data protection and non-discrimination. Moreover, the EU Charter of Fundamental Rights, which became legally binding in December 2009 and has the same legal value as the EU Treaties, requires the Union's institutions, bodies, offices and agencies to respect all enshrined rights when implementing Union law, and this applies to AI as to any other area. Consequently, any new policy, any legislative act implemented by the European legislator and the Member States must ensure respect for the full range of fundamental rights and be accompanied by guarantees to this effect, in accordance with the principle of necessity and the principle of proportionality, all the more so as the implementation of AI systems involves a wide range of human rights.

The fact that there are independent bodies at EU level to protect and promote fundamental rights, such as data protection authorities, equality bodies, national human rights institutions, etc., also gives us confidence and security in accepting AI developments in a good direction, ensuring: respect for people's autonomy, prevention of harm, fairness, non-discrimination, solidarity and justice. Let's not forget that according to the Charter, *the human being benefits from a unique and inalienable moral status.*

In the reconfiguration logic invoked above, the responsibility for fair AI lies not only with the AI companies that create the tools, but also with the companies that use the technology, with IBM research showing that 74% of companies surveyed said they still do not have all the capabilities to ensure that the data used to train AI systems is not biased, nor the tools to allow them full transparency about how the algorithms work. International organisations, governments, the private sector, civil society, technical communities, research institutes or academia all need to be held accountable to respect human rights tools and frameworks in all interventions and processes that gravitate and surround the entire lifecycle of AI systems. All actors involved in the creation or management of AI have a participatory and enabling role to ensure a peaceful, just and interconnected society in ethical values and principles, with AI in turn contributing to the well-being of humanity. It is our responsibility, all of us, to take up these innovations in all sectors of life.

By exploring the benefits of AI and "building" trust in AI together, we can also address global issues. AI has the potential to play a key role in the fight against climate change, and can help companies make sustainability and carbon reduction decisions much more easily. AI can transform business, banking and lending, and help doctors make a diagnosis quickly, with the ability to aggregate data to calculate symptoms. For example, Credit Mutuel in France has adopted AI to help its advisers provide better and faster answers to customers, while NatWest in the UK is helping its customers make better informed mortgage decisions.

We wonder how AI could evolve in 2024, if the year 2022 was a year impacted by the so-called *Chatbots.* Thus, in early 2022, OpenAI launched DALL-E 2, a deep learning technology that produces images from tested instructions, later Google and Meta launching AI that can produce video from text instructions. The year 2023 was marked by

the launch of *ChatGPT 3*, which has the ability to produce eloquent and well-documented texts at the command of a short textual description. The future certainly reserves us an upgrade, namely a GPT-4, which, like its predecessor, will be able to translate into other languages, summarize and generate texts and answer questions more precisely and quickly, since according to forecasts it will benefit from a trillion parameters. Incidentally, Google management issued a "code red" at the time of the launch of ChatGPT 3, motivated by concerns about the impact it would have on Google's search engine, competition being here a sensitive point that will take hold in the coming years in the field of AI. [49] Interestingly, you can have a conversation with such a chatGPT, which gives you in a very real and mature version including the answer to the question: "***Can artificial intelligence conquer the world***?" [50]. According To ChatGPT, *"it is unlikely that an AI system will "take over the world" in the classical sense. Even if advanced AI systems can perform tasks previously considered uniquely human, such as making decisions and solving problems,* ***they do not have the physical ability to take over the world.*** *In addition, the development and deployment of AI systems is seriously regulated and monitored to prevent possible harm.* ***However, an AI system could cause significant harm if its goals or objectives are not aligned with human values or if the system is not properly controlled****".* Consequently, we must be aware of the role of all of us, to weigh between the potential risks and benefits of AI and to develop it only in accordance with ethical principles and in a safe and transparent legal framework.

Let's not forget that AI has changed our lives and brought us many benefits in all areas of life, from the automotive industry, or the function of *facial recognition* from our phone, the transport systems (and Uber uses the AI system for navigation so as to analyze traffic and optimize the route), even the spam system in the email being also an AI, (Gmail having, for example, the spam filtering capacity of 99.9%), up to the use of AI in the exchange, cryptocurrencies or the medical system (starting from the faster identification of cancer cells). Bill Gates predicts AI will soon be integrated into healthcare systems around the world. At the same time, AI can eliminate redundant tasks in our professional lives and take over everything that can be robotic, it can even start a research action by the ability to analyze enormous sets of data and interconnect them, generating a finished product for further analysis by man. Basically, we will be relieved of all the work

of gathering information and will only be prepared for analysis and creative act, starting from a much more advanced point, which will change enormously the scientific method of research and accelerate it. The education system will be forced to focus on analysing information and especially on critical thinking, leaving behind the imperative of assimilating information. We already have Google and access to 99% of humanity's information, but the important thing is how we filter and interpret it. The regulations that will change our vision are very close, and soon we will realise that technology has no empathy, it just follows its natural course through the filter of the human mind, impacting most aspects of our lives for almost 30 years without us even realising it (bank cards, satellites, chips, barcodes, etc.).

Therefore, let's try to move away from associating AI with job losses, the destruction of humanity or the violation of fundamental rights *and enjoy the "journey", discovering together the future with AI!*

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Journal of Law and Administrative Sciences
No.19/2023

FINANCIAL MANAGEMENT AND CONTROL – TRENDS AND PRACTICES IN SERBIA

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Abstract:
The development of the financial management and control system in the public sector creates prerequisites for economical, efficient and effective management of public resources, but also for preventing abuses, reducing the risk of corruption and transparent and objective reporting to the public about the spending of funds. A successfully implemented system and the formation of a management culture in accordance with the requirements of the European Union - consequently leads to the establishment of the basic principles of corporate management in public sector entities in Serbia. The implemented control mechanisms within the financial management and control system include the entire organization, all operational and strategic units in the function of achieving defined goals The aim of this paper is to assess the current state of the established mechanisms of internal financial control and the progress of public sector institutions in establishing an appropriate legal and institutional framework to support the internal financial control system.
Keywords: *internal control, risk management, public sector*

Introduction

Financial management and control is established and evaluated by management and it is a component of internal financial control in the public sector. It represents the entire system of financial and non-financial controls, including organizational structure, methods and procedures and not only financial systems, but also operational and strategic systems of organizations in the public sector[14]. Internal control system is one of the most important and fundamental concepts, which includes all processes, always regarding achieving objectives, eliminating obstacles and avoiding the risk and taking the necessary measures against them [25].

A prerequisite for risk assessment is the establishment of objectives that are linked at different organizational levels and internally consistent. Any system of internal control

has a number of components. Firstly the system has to be established through financial and procedural rules, the system has to be operated by responsible and appropriately trained personnel, and subjected to independent review to ensure and asses whether procedures are working as intended. Usually this checking and monitoring role will be undertaken by an internal audit unit. The effective system of Internal control can provide reasonable but not absolute assurance use of resources and safeguarded of assets, also that transactions are authorised and properly recorded in a way that allows for the timely identification and correction of material errors. Internal control is vital to ensure that resources are properly managed, which at the same time strengthens the responsibility for managing these resources [12].

Internal control is based upon a system of management information, financial regulations, administrative procedures and a system of accountability as well as strong formal project management [19]. Internal control also provides a framework for risk management, to allow organisations to both identify and mitigate risks. Internal control is vital to ensure that resources are properly managed, and that accountability is maintained. Financial management and control includes the entire organizational structure through the establishment of processes, procedures and a complete system of financial and other controls, including internal audit. In this way, it supports the achievement of corporate goals through support in managing business in the organization in a correct, economical, efficient and effective manner. It comprises of following component [8]:

- The control environment
- The entity’s risk assessment process
- The information and communication system,
- Control activities
- Monitoring

Internal controls are designed in such a way as to improve performance and lead to the achievement of the organization's goals. In this context, risks that threaten the achievement of goals at all organizational levels were also identified. Control mechanisms include all aspects of an organization - all employees, processes and infrastructure. In general system of financial control in Serbia is implemented by the government, i.e. the

Central Unit for Harmonization of the Ministry of Finance, with the aim of ensuring that the operations of budget users is in accordance with relevant regulations and the principles of good financial management, of transparency, efficiency, effectiveness and economy.

In the public sector, internal financial control represents control in a broader sense, including but not limited to financial control and internal audit. This means that it includes the principles and qualities of good management. Effective internal controls are when all employees and the appropriate environment work together[10]. Internal control is not an end in itself, but a means to an end. The aim of the work is to address this topic by looking at the support of control mechanisms on conducting business in organization in a correct, economical, efficient and effective way, based on a comparison of the results in the consolidated annual report of the Central Unit for Harmonization of the budget users in relation to the observed weaknesses of them from the State auditing institution. Internal control is carried out by people and it does not represent only certain policies and patterns, but employees at all organizational levels by establishing adequate control mechanisms through their business processes provide support to managers in achieving the organization's goals. With this article, the authors also wanted to emphasize the importance of the correlation between adequately established control mechanisms and risk management, which provide reasonable assurance, for the achievement goals, thereby influencing the improvement of business performanceof the organization's and adequate spending of public funds.

Review of the problem

The system of financial management and control in the public sector was designed with the aim of ensuring compliance with legal and institutional requirements, to promote the concept of corporate management in the public sector, to ensure accountability and good internal control systems. Although there are several different styles of effective management, they all have one common feature, which is the attention paid to the proper implementation of internal control principles in accordance with international standards significantly in public sector organizations, which are not uniform and there are large differences in the way of performing their work, but the standards of a good management

system are generally the same and generally applicable [16]. Public sector organizations vary in size, do not function within the same legal framework, that is, they do not have a uniform organizational structure. It is important to recognize the diversity of these organizations and different management models, which require special consideration and impose different types of responsibilities[26].These are the reasons that the internal control represents an area of interest for all users of public funds, as well as for the external auditor when providing conclusive audit evidences, necessary for underlie the audit opinion [4].

Public sector reforms aimed at new public management have conditioned general expectations that the management of public funds will be fully in accordance with the law and appropriate standards. The reforms brought about a change in the character of public officials, but also radical transformations of public management styles [16].The system of internal management and control creates a supportive environment for activities that are carried out in order to achieve the expected results in the most efficient and effective way, which will enable the provision of quality public services that are integrated and directed towards users and concentrated on results, which requires that all business systems be oriented towards performance measurement [1]. The performance of public affairs can also include open partnerships with other organizations of the public sector, as well as with economic entities, which also includes efficient and effective implementation of public affairs, safeguarding and management of public funds [15].

The FMC *(Financial Management and Control)* system includes the following, interconnected, elements defined in accordance with international internal control standards, which includes the COSO [7] framework:

- control environment;
- risk management;
- control activities;
- information and communication;
- monitoring (supervision).

It is important to point out that the primary responsibility for the adequate establishment of a financial management and control system rests with the heads of the organization, which is in accordance with the law and the appropriate standards, that

public funds are managed with absolute integrity, that is, that public funds are spent in a manner prescribed by law [19]. In order for all responsibilities to be realized, for all responsibilities to be realized, it is necessary for all those responsible for managing affairs within the public sector to establish and maintain an appropriate structure for managing the affairs and funds entrusted to them. In accordance with the principles of corporate management, the responsibility for results, i.e. the achievement of goals, rests with the managers of the organization and cannot be transferred to other persons. In accordance with the guidelines for the delegation of management responsibility [13] to enable managers to devote their time to important decisions and activities, but also that managers at lower levels of the organization have their own level of responsibility.

The control environment refers to the defined standards, processes and structure in the organization [22]. It creates internal organization and discipline, and thus represents the foundation of the overall system of internal controls, because it reflects the "tone at the top" which also outlines the structure and flow of authority and directives within the organisation and reporting procedures [11]. Each public sector organization, respecting the standards and guidelines, establishes such an organizational and managerial structure, which will ensure the legality of activities and transactions, while monitoring the adequacy and effectiveness of this structure in practice. This includes monitoring the achievement of strategic and operational goals, as well as reacting and responding adequately to risks, on the basis of which the public is regularly and transparently informed about the results and activities of the organization[23]. Every business activity, i.e. program and project in an organization in the public sector must have an internal control system in which the established goals are monitored. This system consists of procedures, rules, policies and instructions that are designed to ensure the achievement of the organization's goals in the most efficient way [3].

In the context of the adequate establishment of the financial management and control system, managers encourage an environment that promotes control [5]- this means that the attitude of managers towards the internal control system should demonstrate high ethical and personal standards, integrity, diligence, loyalty and honesty.

Also, the development of financial management and control, require public companies to pay more attention to the risks and their impact on the overall business.

This means that managers have the responsibility to identify risk exposures with respect to each activity, organizational unit, or system in a particular organization [2]. The exposure is evaluated in terms of the impact it will have on the organization and the probability of materialization od risk. Managers also make decisions about controlling and responding to risks, harmonizing risk and control measures, taking into account the costs of implementing control measures. Once the risk management system is in place, managers must adapt to external and internal changes in order to avoid critical risks to the organization in the future [6].

The effective establishment of control activities actually means that it is necessary to establish an adequate structure of basic operations in the public sector organization, which includes clear and understandable policies, operational and performance standards, budgets, plans, systems, procedures, etc., which resolve identified risk exposure and reduce it to an acceptable level [5].

In order to perform the work more efficiently, the system of adequate financial management and control requires adequate delegation (transfer) of authority and responsibility within the assigned competencies in order to perform the work more efficiently and effectively and achieve the goals of the organization. Viewed in this way, managers should design and implement control processes that motivate, channel and/or otherwise direct employees to perform tasks in a way that enables the achievement of positive results. In addition to the above, there is also a system of constant monitoring in order to determine the effectiveness through which the control processes achieve the planned purpose in a timely manner and submit reports on this[18].

An effective system of internal control mechanisms requires from public sector organizations the entire control framework established through each business process and procedures within it, with an assessment of control activities and identified risks. The result is a general general assessment of control activities through a self-assessment that is required at least once a year from all budget users, with the aim of providing reasonable assurance about the effectiveness of the internal control system [19].

Adequately established system of financial management and control represents general interest in order to protect public resources, therefore managers of public sector organizations are obliged to establish an internal system that will be clear, transparent

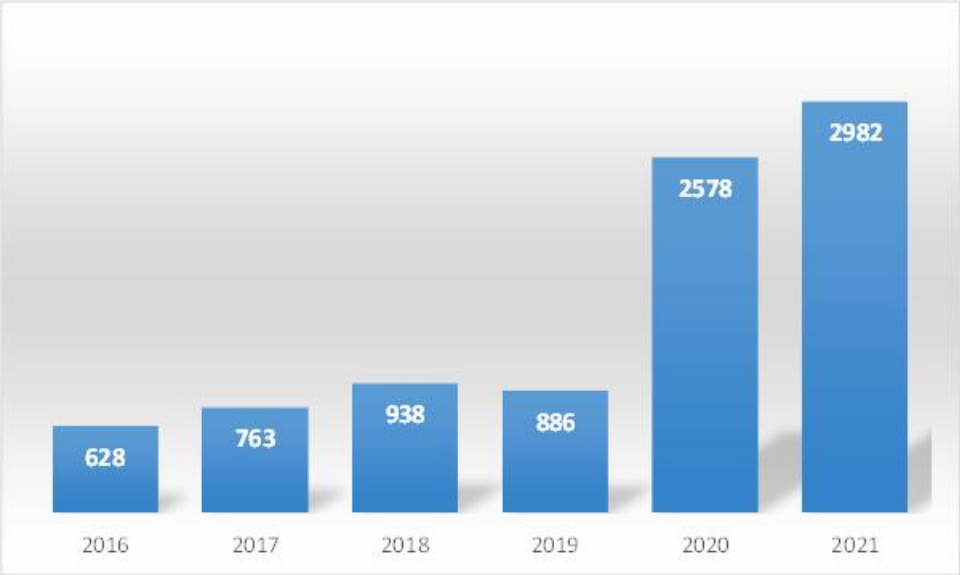
and in accordance with valid regulations, but at the same time effective in achieving goals [17].

The role of internal auditors is particularly important for the organization, as it provides objective and reasonable assurance about the effectiveness of the management and internal control systems, as well as the risk management system.

Research questions

Requirements related to an effective internal control system in public sector organizations don't only refer to the assessment of control activities, but should be viewed more broadly in terms of their adequacy and effectiveness of the entire internal control system. In this context, the research in this article tried to answer the question of the progress in the implementation of the financial management and control system based on the annual consolidated report of the Central Unit for Harmonization of the Ministry of Finance of the Republic of Serbia and what are the recommendations of the internal audit related to the general system of internal control and its adequacy based on the report of the State Audit Institution.

The author's idea is to point out the contribution of establishing an independent internal audit in the public sector organizations themselves. The process of reviewing the established system of financial management and control is carried out by the organization itself internally, or by an external authorized body, or by an internal auditor within the organization, that is, by an organization for internal audit of major users of public funds. The purpose of quality assessment is the regular/periodic evaluation of the financial management and control system, especially the internal system control of users of public funds, in order to detect critical deficiencies that could affect the achievement of the organization's goals and to support the further development of this system by providing adequate recommendations to users of public funds.



Graph 1. The number of processed annual reports on the FMC system submitted by beneficiary of public funds by reporting years, *Source: Consolidated annual report for 2021 [20]*

For 2021, a total of 2982 public beneficiaries submitted an annual report on the Financial Management and Control system and all received reports are included in the analysis [20]. The high reporting rate saw further growth. With the 2013 framework, COSO introduces 17 principles of internal control [9]. Each principle relates to one of the five components and each principle includes several points to focus on. The principles enable the effective functioning of the five components of internal control and the entire system of internal controls. In order to demonstrate that the principle is present and working, the organization must understand the purpose and application of the principle, help employees understand the principle and apply it, then see the principle's weakness or absence, all of which require management attention[14].

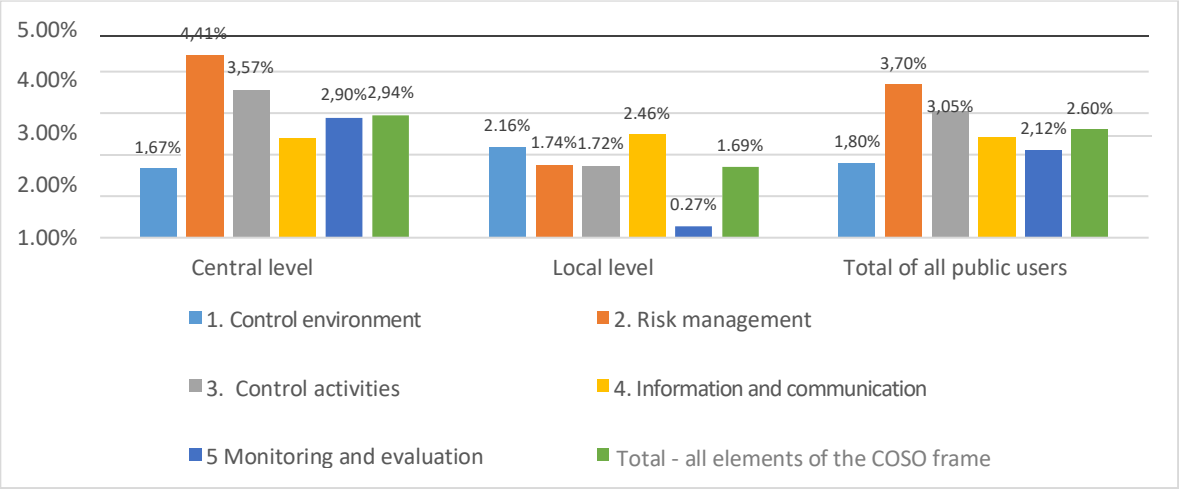
The annual report on the FMC system in the part of self-assessment, consists of 74 issues grouped in five areas from the perspective of the COSO framework for internal controls. Compulsory social security organizations, public companies and ministries with administrative bodies have clearly positioned themselves as leaders when it comes to the level of assessment of the FMC system. There is a need for improvement when it comes to individual users of public funds at the local level. The assessment of the level of establishment / implementation of the FMC system is based on the 2013 COSO

framework [9]. Overall, the results for the five elements of the FMC framework, the segments of the control environment, control activities and especially the information and communication system deserve solid marks.

The analysis of results by levels and categories of public sector entities shows that organizations at the central level in most cases report better results compared to the local level. Also, there was a noticeable improvement in the self-assessments of indirect users, which was reflected in the increase of overall assessments in certain elements. Key areas that require additional engagement in a larger number of users of public funds are monitoring and assessment, as well as risk management.

The average scores for the elements of the COSO framework are relatively uniform and amount to (4,08) for the element of monitoring (supervision) and assessment, to(4.48) for the component of information and communication [20]. All results are significantly above the average, which is best sublimated by the average grade for all FMC elements of priority entities of public sector (4.22), which is 14.50% higher than the overall average grade of all public sector entities (3.69) [20]. .

The following graph shows the growth rates (in %) of average grades by elements of the KOSO framework for the period 2020-2021. years.



Graph 2. Growth rates (in %) of average grades by elements of the KOSO framework (2020-2021), *Source: Consolidated annual report for 2021* [20].

The average growth rate of grades for all elements of the FMC system in the period 2020-2021. is 2.60% [20] average score of the risk management component recorded the

highest growth rate (3.70%), while the lowest level of average score growth was expressed by the COSO element control environment (1.80%) [20] which is understandable, considering the high initial value and stable growth in previous period. Immediately after the risk management component, control activities have the highest growth rate (3.05%), which indicates a high correlation between these two elements. The score for monitoring (surveillance) recorded a growth of 2.12%, while for the element of information and communication the growth is 2.42% [20].

Observing the priority subjects of the public sector as a separate category, it is imperative that in the coming period they improve the level of organizational establishment of the FMC system, above all when it comes to the preparation of key documents. The share of organizations from this group that have completed business process maps of 77.91% is still not satisfactory [20]. Work on creating risk registers is also urgent, because only 70.93% of priority public entities met this criterion. On the other hand, the data on the annual growth of the number of priority public entities that have business process maps of 16.36% is encouraging. Growth in the segment of creating risk registers is somewhat more modest (5.45%)[20]. Overall, further developments can be expected when it comes to the organizational establishment of the FMC system in accordance with modern standards.

The majority of public sector organizations stated that during 2021 they were also faced with major challenges in functioning in the circumstances caused by the pandemic. The challenges are reflected in management and communication, the difficult implementation of various work segments and in impossibility of achieving the expected results. In addition it is also difficult the operational organization of services with a reduced number of employees who are available to carry out regular business activities due to infection and disease, and due to the adjustment of working conditions with a limited number of employees due to the prevention of contact and the spread of disease. Due to the increase in the electronic exchange of information and communication, they emphasized the need to establish and develop information systems that include key business processes, enable the performance of regular operational activities, increase efficiency, smooth operation and continuity of business, and at the same time support

control functions, i.e. considering that it is necessary to provide technical equipment for work and increase the digital literacy of employees.

The introduction of irregularity management in public sector organizations represents an important tool for the managers for the purpose of monitoring the FMC system, additional optimization of organizations operations and reducing the risk of misuse of public funds. During 2021, the largest number of public sector entities (94.16%) had no confirmed suspicions of irregularities[20], 5.84% reported that they had confirmed irregularities, of which 63.10% were resolved within public entities, 0.60% were resolved outside public entities, and 36.31% both internally and externally[20] .

Based on the review of the results from the report and on the recommendations of the State Audit Institution regarding the general system of internal control and the adequacy of the established control mechanisms, we can conclude that all users of public funds are not aware of the benefits of internal audit, which as a function adds value to the organization. The situation is better at the central level, with the direct users of public funds, and the best is in organizations of mandatory social insurance, which are obliged by other regulations to establish an independent and effective internal audit.

Analysis and discussion

For the user of public funds, internal control is defined as an integral process which is carried out by the management and all employees of the organization. It is designed to respond to risks, as well as to provide reasonable assurance regarding the achievement of results while simultaneously acting in the public interest and accomplishes the organization's mission [27].

The responsibility for the functioning of the financial management system and internal control in the public sector lies with the managers of the users of public funds, with the help of other senior managers [19]. They are formally and fundamentally responsible for the establishment and development of an adequate and effective internal control system in their organizations.

All users of public funds are obliged to submit an annual report on the functioning of the internal control system to the Central Unit for Harmonization, which is based on self-assessment. Based on the recommendations in the report of the state audit institution, we can conclude that these answers are often subjective and that there is no

awareness of the importance and contribution of the internal control system in the context of more effective business operations[. In order to get a more realistic picture of financial management and control of the system in the prefix, it is necessary to take into account the external verification of the system [19]. So the authors compared the assessments given in the previous chapter from the perspective of the state audit institution, based on their annual reports.

On this basis, research questions were also asked. It is important to point out that the state audit and budget inspection test the application of financial management and control from their own angle, as well as that their recommendations continuously encourage users of public funds who are subject to audit, to dedicate themselves to improving their financial management and control systems [26]. The state of the FMC system is, as before, viewed from the perspective of the COSO framework for internal controls. Key aspects of the control environment have been implemented to a large extent (integrity and ethical values, mission and vision as essential prerequisites, efficient organizational structure, as well as clear reporting lines)[7]. In the field of risk management, significant progress has been made, but it is still necessary to invest efforts in the further development of this segment [24].

There is space for improvement in the areas of defining control activities, as well as in the area of IT infrastructure project planning. It can be concluded that, although some control mechanisms are already incorporated into business processes, updating and improving business processes, or revising control activities that are in the function of risk management, are not performed regularly in practice. Information and communication systems represent the best segment of FMC with relatively high marks in all public users categories. On the other hand, the area of supervision and evaluation of the FMC system represents the aspect that needs to be improved the most and within which the highest range of average values was registered.

The recommendations that is given in the consolidated report also refer to the implementation of mechanisms for monitoring the FMC system, i.e. the assessment of the adequacy and efficiency of its functioning. The manual of the Ministry of Finance on the implementation of the FMC system, the instructions are clearly given to budget users about the importance of continuous assessment activities, for the reason that each

organization analyzes the perceived weaknesses in time, and then monitors the implementation of corrective activities[19]. It is important to point out that the largest number of users who submitted the report stated that they are familiar with the content of the recommendations and that they are working on their implementation, but there is still concern because there are the users who submitted the reports, but they don't implementing the recommendations from previous reports. Deficiency of personnel and resources is mainly cited as the reason for not implementing the recommendations, a number of users also stated that the pandemic stopped the implementation of the recommendations. The lack of knowledge and skills of managers and employees in the process of establishment and development of FMC was identified as the most important weakness in the submitted report about FMC systems.

A great drawback is that some of the most important users of public funds dont have business proceses maps and risk registers. Even 7 ministries do not have maps of proceses (33.33%), while 8 of them (38.10%) dont have a risk register[20]. Risk management strategy was not adopted by 6 ministries (28.57%) [20]. Nine public companies (25.00%) did not create business process maps, 11 public companies (30.56%) did not create a risk register, while 11 public companies (30.56%) did not adopt a risk management strategy. In the case of cities, 12.00% did not create maps, risk register 24.00% and risk management strategy 12.00%[20] . The local level reports lower grades compared to the national level for all elements of the COSO framework. The weakest results of self-assessment are observed at the level of indirect users of public funds and at the central and local levels. The area of monitoring and evaluation of the FMC system continues to be the element of the COSO framework with the lowest average score. Although significant progress has been observed in comparison to last year, it is necessary to maintain the rate of growth of grades in the risk management segment. Updating and improving business processes and/or revising control activities that are in the function of risk management in practice is not carried out regularly. The authors of this article want to emphasize their observation that all five components of internal control are interconnected and must be present throughout all business processes, at all levels in the organization. The management of the organization, depending on its assessment of the functioning of internal controls, can decide on the detailed application of the

individual principles that make up each component. The extent to which each component will be implemented depends on the size and complexity of the organization, the type of activity, philosophy and management culture in the organization.

Conclusion

Financial management and control as a way of managing and controlling should not be viewed as a separate system, but as an integral part of all activities and functions of the entity which must be embedded in all financial and non-financial processes. The managers in public sector have an obligation and responsibility to ensure the best use of resources while taking measures to reduce losses, wastage, prevent abuse and prevent and detect fraud and corruption. They also should be aware that a strong internal control structure is the foundation for achieving business goals and purposes of their business.

The subject of research in this article is the analysis of the development of the financial management and control system, which regardless of the legal obligation, is proceeding very slowly in order to show that the establishment of adequate control mechanisms significantly contributes to the achievement betters results.The analysis of FMC development was observed on the basis of reports submitted by public sector entities in perform a self-assessment of the FMC system. The annual report / questionnare is created by the Central Unit for Harmonization of the Ministry of Finance of the Republic of Serbia, and it is grouped by the components of the COSO framework. Based on the responses from the Questionnaire, it is determine the weaknesses of the system and plan activities related to their elimination.

Self-assessment of controls is considered a reliable means of evaluating effective management and helps management and internal auditors to create added value in the organization. Looking at the results from the report, we can conclude that the most common problem in the introduction of the process approach for the users of public funds is the inability to see how the process works as a whole. Business processes are often inflexible because the participants in the process have little understanding of the whole process. Understanding the whole is a key condition for the possibility of process improvement. Bearing in mind the insufficient awareness of the importance of internal control mechanisms, the fact that a third of large budget users do not have an adequately

established FMC system, which we saw in the research, it is clear that in Serbia the system of internal financial controls has not taken root in full capacity.

It is also important to emphasize that in order to successfully establish an adequate and efficient system of financial management and control as a whole, it should include at the first managers of organizational units and other employees who, with their knowledge, experience and knowledge of how the organization functions, can do this job successfully. It is difficult to expect that this work can be successfully done by someone "outside the organization" who would be trusted and who is not sufficiently familiar with the way business processes unfold and how the organization functions as a whole. By involving management and employees in this work, instead of someone else "outside the organization" doing it, the quality of system implementation will increase, as well as the responsibility of employees and its full would not be experienced by employees as something imposed from the outside and which cannot be implemented in practice. An effective mechanism that would successfully act on a more positive approach of management and employees is appropriate training on financial management and control so that they can do this job successfully. The author's intention is to help policy makers and decision makers in public entities to increase awareness of the importance of adequately established internal controls in public sector organizations.

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SOME CONSIDERATIONS ON DIGITAL TOOLS IN THE FIELD OF COMPANY LAW

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Abstract:
In the last few years, a series of measures have been adopted by EU, with the stated purpose of facilitating public access to information about companies and their branches established in the European Union, as well as the effective development of cross-border commercial relations. Thanks to their business activities and investments, including on a cross-border basis, companies play a leading role in contributing to the EU's economic prosperity, competitiveness and in carrying through the EU's twin transition to a sustainable and digital economy. To this end, companies need a predictable legal framework that is conducive to growth and adapted to face the new economic and social challenges in an increasingly digital world. While companies are established under national law, EU company law lays down a legal framework that enhances legal certainty across the single market and predictability for them. This company law framework, which encompasses the roles and responsibilities of the business registers, needs to keep abreast with new developments and challenges. The COVID19 pandemic crisis clearly demonstrated the need for increased resilience of cooperation across the EU, as well as the importance of continuing to facilitate and simplify procedures for the business of traders, an important component of a society based on European values and a more resilient economy.
Keywords*: digitalisation, cross-border cooperation, trade registers, companies, legal certainty.*

Expanding and upgrading the use of digital tools and processes by companies

Globally[1] , at different rates in each country, digitization takes place as a necessity of integration into the infrastructure frameworks established by new technologies. In the era of globalization and interconnectedness, international transactions and commercial relationships have become increasingly common. These new technologies not only take over from humans tasks that once, in the not-too-distant past, were done manually and repetitively, but they can even create entire specific, fully automatic processes by themselves, which do not need the intervention of people.

The need for digitization is increasingly present among companies, and they are constantly looking for solutions that make their work more efficient, faster and that bring them the desired results. An investment in digitizing processes can prove to be a good idea in the long run, as it will help the firm save time and financial resources needed to carry out manual processes.

The accelerated development of commercial relations, the need for rapid interconnection and the collection of information in real time are realities of recent years that have prooved the need for digitization, simplification of procedures in commercial matters and more. The COVID-19 pandemic was the catalyst that triggered the rapid implementation of digitization procedures in all areas, clearly demonstrating the essential role of digital tools, for example, in judicial procedures, in ensuring the continuity of companies' interactions with commercial registers and authorities, etc.

Businesses need digital tools to access information, interact with national authorities and enjoy effective access to justice[2]. Digital access to justice can facilitate operations, reduce costs and regulatory burden, while improving access to the single market for all businesses, especially SMEs. Legal practitioners must be able to provide the highest level of support to their clients, particularly by communicating with the courts and transmitting documents safely and efficiently. It is important that national and European authorities have the appropriate tools for secure communication with other countries and to exchange evidence and documents. EU justice and home affairs agencies need effective means to support national authorities and cooperate effectively with each other[3] .

One area where a slow rate of digitization was noted is that of registers and databases. Individuals, businesses and legal practitioners face difficulties in accessing the information to which they are entitled. In many cases, this access is not available online, actually creating a number of inefficiencies.

Directive (EU) 2017/1132 of the European Parliament[4] and of the Council of 14 June 2017 relating to certain aspects of company law brought together a large part of the European Union (EU) company law rules in a single directive. The directive covers matters such as incorporation, capital and advertising requirements, as well as company operations (such as mergers and divisions).

This Directive has the merit of codifying the names of the system of interconnection of trade registers, which interconnects national trade registers and makes information on joint-stock companies available to the public through a single point of access, the European e-justice portal, and which provides secure means for the exchange of

information between trade registers (for example, on branches, cross-border operations, persons who have been denied the right to exercise a management function)[5] .

Subsequently, this Directive was amended by Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019, as regards the use of digital tools and processes in company law and by Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019, as regards cross-border conversions, mergers and divisions.

BRIS - Business Registers Interconnection System

Based on Directive (EU) 2017/1132, the BRIS - Business Registers Interconnection System - was implemented in the matter of trade register cooperation at the European level. Thus, since June 2017, the trade registers of all EU countries are interconnected, allowing access to information about companies registered in any EU country, Iceland, Liechtenstein or Norway, information about foreign branches and cross-border mergers of companies. Information on the name and legal nature, place of business and country of registration, as well as the identification number of a corporate entity or an entity equivalent to companies, is made available through BRIS, free of charge. In addition, it is possible to obtain, electronically, information and documents related to the commercial registration documents of the companies, such as the members of the corporate bodies, the statute, the annual accounts and the subscribed share capital.

The purpose of BRIS is to facilitate public access to information about companies and their branches established in the European Union by: ensuring the interconnection of trade registers from the EU member states and from the European Economic Area, thus facilitating cooperation and electronic communication between the registers; increasing confidence in the single European market by ensuring transparency and access to up-to-date information; a higher degree of legal security regarding the information contained in the trade registers at the European level[6].

In our country, the Ministry of Justice, through the National Trade Register Office (ONRC), as the implementing body, ensures the interconnection with BRIS - Business Registers Interconnection System according to the provisions of Law no. 152/2015 for the

modification and completion of some normative acts in the field of registration in the trade register regarding the implementation of European Directive no. 17/2012/EU regarding the interconnection of central, trade and company registers[7] .

BRIS is made up of the following components:

- the European e-Justice portal, which provides the interface for electronic access to information on companies registered in the trade registers of EU member states and the European Economic Area;
- European Central Platform (ECP) – The central service platform that interconnects the trade registers of the member states to be able to use the e-justice portal;
- Trade registers from the EU member states and from the European Economic Area.

The Romanian Electronic System for the interconnection of the trade register of the National Trade Register Office (ONRC) with BRIS has become operational since September 2019 and can be accessed on the European e-justice portal, https://e-justice.europa.eu/ .

Through BRIS, the following information registered in the trade register kept by the ONRC is available free of charge: the name and legal form of the person registered in the trade register, the registered/professional headquarters of the person registered in the trade register and the member state in which it is registered, order number from the trade register of the registered/registered person, the unique identifier at European level (EUID) and the unique tax registration code, the state of the company.

The new law on the Trade Register[8] transposes Directive (EU) 2019/1.151 of the European Parliament and the Council of 20 June 2019 amending Directive (EU) 2017/1.132 regarding the use of digital tools and processes in the context of company law. According to the statement of reasons, this normative act, necessary and mandatory, moreover, as a result of Directive (EU) 2019/1.151, brings the following new elements[9] :

● Online accessibility of all formalities for setting up a company and registering a branch by using electronic means of identification and electronic means of communication;

● Simplification of the registration procedure in the trade register to allow the submission of documents in electronic format, the verification of the fulfillment of the conditions provided by the law by communication between the authorities and the use of information/documents already at their disposal;

● Regulation of the registration procedure in the trade register based on the legality control, carried out by the registrator;

● Regulation of the status of the Trade Registry registrator;

● Regulation of online access to information on companies, including information on companies registered in other member states of the European Union and, in order to improve the accessibility of the public service of the trade register, ensuring the availability of extended and updated information on the establishment and operation of companies;

● The codification of the legislation in the field of registration in the Trade Register and its systematization, in relation to the regulations in the field of companies, in the matter of preventing and combating money laundering, of the protection of personal data.

Ever since its publication, the law has sparked numerous controversies. Practitioners and theoreticians in law have opined that online prevails in connection with the registration procedure in the Trade Register, the concept of a listed company is not regulated in the legislation, nor in the new regulatory act, there is a lack of a definition and regulation of the emblem[10]. One thing is certain, however: The new law lays the foundations for an intensified digitization of the Trade Register.

Extension and further improvement of the use of digital tools and processes in the field of company law

In the same context of the acceleration of the digitization procedure and the expansion of digital tools, recently, on March 29, 2023, the European Commission[11] adopted the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2009/102/EC and (EU) 2017/ 1132 regarding the extension and further improvement of the use of digital tools and processes in the field of company law[12] .

The proposal aims to facilitate the cross-border operations of businesses and increase transparency and trust in businesses by making more information about them

publicly available at EU level. The proposal will contribute to the further digitization of the single market and help businesses, especially small and medium-sized enterprises, to operate in the EU space.

According to the statement of reasons[13], the proposal aims to increase transparency in the single market on companies through the use of digital tools such as BRIS, improve the reliability of company data and build trust between Member States' registers and their authorities, including by creating the conditions for public authorities to be more connected.

The proposal also aims to eliminate and reduce formalities related to the use of company information in cross-border situations, to shorten the duration of the procedure for setting up subsidiaries and branches in other Member States and to make it more cost-effective, including by the use of the "once only" principle (according to which companies should not be required to submit the same information to the commercial registers several times). In this way, it seeks to reduce the overall administrative burden for companies and other stakeholders in cross-border situations and facilitate the expansion of SMEs across the EU.

To reduce bureaucracy and administrative burden for cross-border businesses, the proposed rules include:

• applying the "once only" principle so that companies do not have to provide information again when setting up a branch or company in another Member State. Relevant information can be exchanged through the trade register interconnection system;

• an EU company certificate, containing a set of basic information on companies, which will be available free of charge in all EU languages;

• a standard multilingual EU digital power of attorney model that will authorize a person to represent the company in another member state;

• eliminating formalities, such as the need for an apostille or certified translations for company documents.

The proposal updates existing EU rules for companies to further adapt them to digital developments and new challenges and to boost economic growth and competitiveness in the single market.

To ensure greater transparency and trust in businesses, the proposed rules also aim to ensure that important information about companies (for example, about partnerships and groups of companies) is made available to the public, in particular EU level, through BRIS. At the same time, according to the proposal for the Directive, it is aimed to facilitate searches for information about EU companies, allowing searches to be carried out through BRIS and, at the same time, through two other EU systems that interconnect the national registers of beneficial owners and insolvency registers, but also ensuring that the data on companies appearing in the trade registers is accurate, reliable and up-to-date, for example by carrying out checks on the information on companies before they are entered in the trade registers in all Member States.

Conclusions

The legislative initiatives adopted or proposed at the European level, also transposed into national legislation, are the natural consequence of the evolution of commercial relations in the current social, economic and legal context and are intended to significantly reduce administrative barriers when companies use information about the company from the registers commercial in cross-border situations, including in administrative or judicial proceedings. Small and medium-sized companies benefit, thanks to these legislative changes, from the reduction of administrative burden and increased legal security, as well as easier access to information. The new regulations aim to improve the safety and reliability of company information in commercial registers across the EU, and also to increase access to company information, especially at EU level, and to remove administrative barriers when companies and public authorities use such information in cross-border situations, through the use of digital tools and processes.

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LEGISLATIVE EXAMINATION OF THE AMENDMENTS AND ADDITIONS TO THE ADMINISTRATIVE CODE

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Abstract:
The Administrative Code was adopted by the Government of Romania through Emergency Ordinance no. 57/2019, after the law on the administrative code was declared unconstitutional by the constitutional court. Since its entry into force, the normative act has undergone several changes and additions, these legislative events taking place through acts of the Parliament or the Government. The paper aims to highlight the transformations that the Administrative Code has undergone since its entry into force until today, by presenting the legal acts that modified and supplemented the normative content of the act and certain relevant legislative solutions provided by them.
Keywords: *emergency ordinance, administrative code, legislative changes, public administration*

Introduction

After long efforts and countless discussions, the Administrative Code became a reality through its adoption by the Government of Romania, in 2019, through Emergency Ordinance no. 57/2019 [1]. Moreover, the unification and systematization of the legislation were objectives that were constantly found in the governing programs of the various political parties that succeeded each other at the rule of the country. The materialization of concerns regarding the codification of legislation in the field of public administration was achieved, initially, by adopting the Law on the Administrative Code of Romania, a law that did not pass the constitutionality test. Because the grounds of unconstitutionality did not concern the substance of the regulation, but were of an extrinsic nature, the content of the normative act declared unconstitutional was taken over, with certain additions, in the Government Emergency Ordinance no. 57/2019. As shown on another occasion [2], the emergency ordinance constitutes an exceptional instrument for regulating primary social relations that the fundamental act makes available to the Government and that can be used by the Government under the conditions stipulated by the Constitution and developed by the jurisprudence of the Constitutional Court. Even the form of the Code adopted by emergency ordinance was not spared from criticism of unconstitutionality, in the sense that the court was called to rule on the constitutionality of the provisions of the

emergency ordinance as a result of the referral made by the People's Advocate, shortly after its entry into force. By Decision no. 60 [3] of February 12th 2020, the constitutional court judged that the provisions of the administrative code are constitutional in relation to the criticisms made.

From the moment of its entry into force, Emergency Ordinance no. 57/2019 saw several legislative interventions, determined by the permanent transformations in society, to which the legislator had to provide an answer. It is also worth remembering that, soon, it will have been 4 years since the adoption of the Administrative Code and the emergency ordinance has not even been approved, by law in the Parliament. This situation has a positive side as well, being viewed in the doctrine [4] as an opportunity that the legislator must exploit to complete the content of the regulation with "solutions that will provide legal efficiency" and "ensure the legal basis for a functional and capable public administration to exercise its constitutional and legal role".

The legislative interventions on the Government Emergency Ordinance no. 57/2019 were produced through an equal number of normative acts originating from the legislative authority, respectively from the delegated legislator, the Government. Thus, since the entry into force of the aforementioned ordinance and until today, 14 laws and 14 emergency ordinances have been adopted that modified and completed the ordinance or just approved the Government ordinances.

Normative acts that amended and supplemented the Administrative Code

The first normative act that completed the provisions of the Administrative Code was the Government Emergency Ordinance no. 63/2019 [5]. The legislative solution chosen by the executive took into account the completion of Article 61 paragraph 2, by introducing letter c¹) whose rules recognize the general secretary of the ministry, who has the status of a high civil servant, the capacity of main credit release authority when the position of minister is vacant or in the situation where the holder of the portfolio is in the absolute impossibility of exercising its powers. The purpose of this amendment was to create the legal framework for the taking over of an important attribution of the minister, that of principal authorizing officer of credits by the general secretary of the ministry, in extraordinary situations, in order to ensure the continuity of the activity within the ministry,

as it results from the preamble of the normative act. The text of Article 61 paragraph 2 letter c[1]) was supplemented, with the entry into force of Law no. 153 [6] of June 4th 2021, regulation by which the general secretary of the ministry was recognized also the right to acquire the capacity of legal representative of the respective authority, in the situations previously presented.

Another normative act originating from the Government and which also concerned norms from the Administrative Code was Government Emergency Ordinance no. 1/2020 [7], a normative act that suspended until January 1st 2021 the application of the provisions of Article 210, which regulates the age limit allowance for the mayor, deputy mayor, president of the county council and vice president of the county council. These norms aroused deep discontent in society and forced the legislator to postpone their application. The initial suspension was extended until January 1st 2022, through the entry into force of Emergency Ordinance no. 226 [8] of December 30th 2020 and then until January 1st 2023, as a result of the provisions of Article XXII of GEO no. 130/2021 [9] regarding certain fiscal-budgetary measures, the extension of some deadlines, as well as for the modification and completion of some normative acts [10]. Emergency Ordinance no. 226/2020 was approved by Law no. 274/2022 [11]. It is necessary to specify that the norms establishing this privilege for certain categories of local elected officials (mayor, deputy mayor, president and vice-president of the county council) were analyzed from the point of view of their compatibility with the constitutional text, when they were included in a another regulation, and the constitutional court judged that they are contrary to the Constitution [12]. Despite this decision of the Constitutional Court, the Government included these rules in the Administrative Code, but, as a result of public pressure, postponed the moment of their application. We hope that, with the adoption of the law approving the Emergency Ordinance no. 57/2019, the legislator will remove these unconstitutional provisions from the active fund of the legislation, solving, in this way, both a problem of constitutionality, and also one of public morality, and giving this complex legislative work a more agreeable appearance.

By Government Emergency Ordinance no. 44/2020 [13] the mandate of local public administration authorities was extended from 2016-2020, as a result of the impossibility of organizing local elections on time, a situation determined by the pandemic.

This normative act was declared unconstitutional by the Constitutional Court [14]. The constitutional court justified the fact that the extension of the mandates of local authorities cannot be done by the Government, through an emergency ordinance, but only by the Parliament, through an organic law [15]. In order to allow the continuation of the activity by the local authorities elected in the 2016-2020 mandate, it was necessary to discuss and approve in an emergency procedure Law no. 84/2020 [16], a law that ensured the legislative instruments for extending the mandate of local authorities, changed the holder of the right to establish the date of the elections and completed the provisions of Article 151 paragraph 3 of the Administrative Code.

Emergency Ordinance no. 61/2020 [17] modified article 134 paragraph (5) letter a), article 137 paragraph (1), article 141 paragraph (1) and article 180 paragraph (1) and introduced letters a^{1}) and a^{2}) in article 134 paragraph (5). The amendments and additions to the Administrative Code allowed local deliberative authorities to hold online meetings as well, and not only with the physical participation of local/county councilors, and at the same time established the right of local/county councilors to participate in ordinary or extraordinary meetings of local and county councils using electronic means of communication. By recognizing this right, local or county councilors can participate in the meeting of the deliberative authority including in a mixed system, in the sense that some can be physically present, others online, using the means of communication indicated by the technical staff in charge of organizing and conducting the meeting of the local or county deliberative authority in good conditions. The ordinance was approved through Law no. 63/2022 [18].

Another normative act that completed the Administrative Code is the Government Emergency Ordinance no. 164 [19] of October 1st 2020, a normative act that introduced in the body of the aforementioned regulation article 364^{1} and paragraph (1^{1}) in article 510. Through this legislative initiative, the Government sought to cover the legislative void that determined the blocking of the granting of donations to the state or to the administrative-territorial units whose object is goods that fall into their private property and to ensure the legal instruments so that the holders of public functions exercised temporarily be able to continue their activity, without involving the organization of a contest. The Emergency

Ordinance was approved by the Parliament, through Law no. 272 [20] of September 29th 2022.

Government Emergency Ordinance no. 4 of January 27th 2021 amends and completes several provisions of the Administrative Code and, at the same time, repeals article 389 letters b) and c), points 3 and 4 of annex 5 point I letter A. Thus, this normative act modified: article 250, article 251 paragraph (3), article 267 paragraph (1), article 397, article 494 paragraph (5) letter a). In annex no. 6 there was amended article 3 paragraph (1) letter b), article 3 paragraph (2), article 4 paragraph (1) letter b) and paragraph (2). It also introduced paragraphs (2^1) - (2^5) in article 251, paragraphs (11) - (14) in article 265, paragraph (1^1) in article 275, letter (c^1) in article 389, point 6 of annex no. 5 point I letter A. Government Emergency Ordinance no. 4/2021 was approved by Law no. 155 of June 4th 2021, which, in turn, introduced paragraph (15) in article 265 of the Administrative Code. The provisions of this paragraph give the prefect the right to delegate, by order, the duties of the general secretary of the prefect institution to the head of the legal department within the prefect institution, in the situation where the position of general secretary is vacant or temporarily vacant or in the situation where its holder is in the impossibility of exercising its powers. The prefect's order must be reasoned.

Law no. 153/2021 amended article 494 paragraph (1) the introductory part, paragraph (2) and paragraph (5) the introductory part and article 598; introduced letter c^1) in article 61 paragraph (2), article 292^1, paragraph (8^1) in article 494 and annex no. 7 - Norms regarding the constitution, organization and operation of disciplinary commissions, as well as the composition, attributions, reporting method and disciplinary procedure, and repealed article 494 paragraph (9) and article 625 paragraph (1) letter a).

Government Emergency Ordinance no. 138 of December 28th 2021 modified article 597 paragraph (1) letter d), article 618 paragraph (24), article 619 paragraph (2) the introductory part and paragraph (10), note from annex no. 5. At the same time, paragraph (3) was introduced in article 384, with annex no. 5¹ and point II letter A was repealed with points 15-19 and letter B points 20 and 25 of annex no. 5. The normative act was approved by Law no. 156/2022 [21]. With the approval of the ordinance, the legislator amended and completed the Administrative Code, through the approval law. Thus was amended article 618 paragraph (24) and annex no. 5¹ was also amended and

replaced. Annex no. 5 also had some changes and article 292² and article 610¹ were introduced.

Government Emergency Ordinance no. 1/2022 [22] amended article 22 paragraph 3 of the Administrative Code, in the sense that it stipulated that the attributions, organization and operation of the Chancellery of the Prime Minister should be established by a Government decision. In the original form of the regulation, the competence of the Chancellery and its way of organization and operation were established by the decision of the Prime Minister. After its entry into force, the Government act was approved through Law no. 19/2022 [23].

Another normative act that amended and supplemented the Administrative Code is the Government Emergency Ordinance no. 94 [24] of June 29th 2022. This act amended article 272 paragraph 7 letter b) and introduced article 300¹ made up of two separate paragraphs.

An important law that developed the normative framework in the matter of the association of administrative-territorial units and determined the amendment of article 5 letter q) and article 89 paragraph (2) of the Administrative Code and led to the repeal of article 5 letter e) from the contents of the same regulation is Law no. 246 [25] of July 20th 2022. This is the first Romanian normative act regarding metropolitan areas [26], through which the legislator gave a new meaning to the notion of metropolitan area by expanding the scope of administrative-territorial units that can form such an associative structure and by establishing the phrase “metropolitan territory”, eliminating, in this way, the notions of “immediate area” and “border area”. In the initial form of the Administrative Code, the notion of urban agglomeration was also defined, which, with the promotion of a new concept regarding metropolitan areas, was removed from the legislation [27]. Metropolitan areas are particular forms of intercommunity development associations, which, paradoxically, benefit from their own regulation. The association of administrative-territorial units is an alternative to the merging of localities, a variant that is very difficult to apply in the absence of political will and the opposition of local actors who want to maintain local identity. The current normative framework allows the association of administrative-territorial units in intercommunity development associations, in metropolitan areas, as species of intercommunity development associations, in

administrative consortia and in local action groups, the latter being structures created on the basis of public-private partnership, supported financially through the European mechanism for the support of rural areas.

Another normative act that brought changes to the Administrative Code is Law no. 261 [28] of July 21st 2022, which amended article 363 paragraph 6). In the initial form of the Administrative Code, the rule was established that the appraisers, natural or legal persons authorized, under the law, drawing up the appraisal report of the goods in the private domain of the state or the administrative-territorial units subject to sale, should be selected by public auction. Through the aforementioned legislative intervention, the legislator established that this selection be made in compliance with the legislation in the field of public procurement.

Law no. 283 [29] of October 17th 2022, amends article 458 paragraph (5) and introduces paragraph (3)-(11) in article 374, article 374^1, letter j) to article 529 paragraph (1). Also, after article 534 sect. a 2^1-a was introduced including articles 534^1 and 534^2, letter e) to article 537 paragraph (1) and the mention regarding the transposition of directives after article 638.

New legislative solutions were also introduced through the entry into force of Government Emergency Ordinance no. 191 [30] of December 28th 2022, in the sense that several articles were amended and supplemented and article 617 paragraph 3 was revoked. Thus, article 382 was amended, the introductory part, article 401 paragraph (1) letter m) and paragraph (3), article 411 paragraphs (2), (5) and (8), article 598, article 619 the introductory part of paragraph (2), article 619 paragraphs (10) and (12) and article 398^1 letter m_1) was introduced, in article 401 paragraph (1), paragraph (1^1) and (1^2) in article 410, paragraph (1^1) and paragraphs (8^1)-(8^4) in article 411, article 485^{11}, letter i) in article 597 paragraph (1), paragraph (4) in article 597 and annexes no. 8 and 9.

The last two normative acts that brought changes and additions to the Administrative Code are Law no. 72/2023 [31] and Government Emergency Ordinance no. 34/2023 [32].

Law no. 72/2023 amended and supplemented article 150 paragraph 1). From the comparative analysis of the original text and the amended and completed one, the following result:

- The legislator establishes the rule for the mayor taking the oath in the meeting regarding the local council establishment ceremony. If the original text established that the oath should be taken in the first meeting regarding the local council constitution ceremony, the amended text mentions the meeting regarding the local council constitution ceremony, a change that allows the mayor to take the oath in another meeting of this kind as well, as after validation, the local councilors can meet at the convocation of the prefect in the first meeting regarding the establishment ceremony or in another meeting, if the conditions provided for by article 116 of the Administrative Code are not met;

- Apart from the variant of taking the oath in front of the local deliberative authority, the mayor has the possibility of taking the oath in the court as well, given that their mandate is validated by the court, more precisely, in the council chamber, in front of the judge delegate. One can resort to such a variant, in the situation where the meeting regarding the local council constitution ceremony does not take place within 30 days of the elections or when, for other valid reasons, the mayor cannot take the oath in the meeting regarding the constitution ceremony of the local council. Other valid reasons can be those listed in article 116 paragraph 8 of the Administrative Code, namely hospitalization or bed rest, proven by a medical certificate, travel abroad in the interest of work, force majeure events, such as floods or other catastrophes that prevented travel, death in the family or other similar situations.

- The procedure of taking the oath before the delegated judge is completed by drawing up the conclusion, which is final and must be communicated immediately to the prefect and the general secretary of the administrative-territorial unit.

Government Emergency Ordinance no. 34 of May 12th 2023 amended article 546 letters a)-h) and letter d) was inserted to article 548 paragraph (2).

Conclusions

From the moment of entry into force until today, the Administrative Code has been amended and supplemented by various normative acts originating from the Parliament or from the delegated legislator. This complex legislative work, the law of laws for administration [33], “a guidebook for every ‘actor’ on the social scene in a relationship with the authority”,[34] whose appearance reduced the number of normative acts in the

field of public administration and opened the way for the systematization of legislation in this field, also needed improvements determined by objective needs, resulting from administrative practice or imposed by the exceptional situation that we witnessed and crossed with difficulty, but also experienced changes of a subjective nature, especially in the matter public office. At the same time, Government Emergency Ordinance no. 57/2019 was also the subject of referrals before the Constitutional Court, introduced both by the People's Advocate, who has the right to refer directly to the constitutional court with the exception of unconstitutionality, together with other legal issues. Of these, one was admitted, and in the Admission Decision [35], the Constitutional Court highlighted the fact that the provisions of article 517 paragraph (1) letter d) are constitutional to the extent that the phrase "standard age conditions" does not exclude the possibility of the female civil servant to request the continuation of the work relationship under the same conditions as the male, respectively until reaching the age of 65.

From the analysis carried out, we note that while a large part of the Government emergency ordinances that brought changes and additions to the Administrative Code were approved by law, Emergency Ordinance no. 57/2019 has not yet been approved, by law in the Parliament. As shown in the content of the article, this delay can also represent an opportunity, the legislative authority having the opportunity to bring into the Romanian legal reality an improved law text, which includes other solutions from practitioners, but also the ideas supported by theoreticians in various specialized works.

Administrative practice will also highlight other shortcomings of the regulation, but beyond the shortcomings found and, some of them, corrected by the legislator, this substantial regulation represented a "legislative event" [36] that proved its usefulness and provided an impetus for the urgent adoption administrative procedure code.

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100 YEARS OF…CONSTITUTIONALITY

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Abstract:
The present study aims to take a look at the modern constitutions of Romania, starting with the protoconstitutional attempts, then going through the Constitution of 1866, getting to the true constitutional consecration of the Great Romania of 1923 to finally see the constitional continuity of our country up to the present. This constitutional itinerary does not aim to make a detailed analysis of each constitutional regulation but tries to point out only the main fundamental milestones of the constitutional reglementations of Romania, in the triggering context of the particularly troubled historical events of this people.
Keywords*: protoconstitutions, statal formations, constitutions, historical events, social and democratic changes.*

Introduction

Paraphrasing a famous masterpiece of the matchless Gabriel Garcia Marquez we will make a brief journey through the history of the Romanian State and law focusing on the most relevant aspects of the architecture of the modern Romanian State edifice.

Starting from the title we are inclined to speak about a centennial historical continuity of the constitutionality of Romania, a continuity that preserves the fundamental democratic values, regardless of the political regimes Romania has gone through, but also to highlight the aspects characterizing the Romanian State forms in relation to the political regimes that this people, so put to the test by geopolitical neighborhoods and vicissitudes, went through in the course of history.

We cannot talk about the fundamental milestone set by the Constitution of 1923 for the foundation of the modern statality of Romania without speaking of the precursors of the essential regulations brought about by the constitutional precedents mentioned above.

I. Protoconstitutionality of the modern edifice of Great Romania

According to the opinion of Professor Cristian Ionescu: *The unitary constitutional character of the constitutional development of the two Romanian countries [Wallachia and Moldavia] was favoured, among others, by natural geographic factors which permitted the connections on water and land between the different zones… The unitary constitutional evolution was, at the same time, accentuated as well by the homogenous Romanian character of the population... In the light of the above, we consider that in the constitutional development of the Romanian State the following constitutional cycles occured:*

1. From the foundation of the Romanian Feudal States of the 16th century until the end of the 18th century, when the feudal State actually reached a final form. At the beginning of the 19th century began the modernization of the State life of the two Romanian Principalities in harmony with the guiding lines of the European constitutionalism.

2. From the application of the Organic Regulations of Wallachia and Moldavia of 1831 and, respectively, 1832 up to the Convention of Paris in 1858.

3. From the Convention of Paris in 1858, until the adopttion of the Constitution of 1866.

4. From the adoption of the Constitution of 1866, until the Constitution of February 1938 [the democratic Constitutions].

5. The autoritary Constitutional Organization [The Constitution of Charles II and the Constitutional Acts of September 1940].

6. From the reenforcement of the Constitution of 1923 on 31 August 1944, to the proclamation of the Republic on 30 December 1947 [the decline of the Parliamentary democracy].

7. The socialist constitutional organization [The Constitutions of 1948, 1952 and 1965].

8. The Constitution of 1991 inaugurated a new constitutional cycle based on the Parliamentary traditions and the Romanian political organization traditions connected to the fundamental principles of the contemporary constitutional democracy" [1].

This very inspired classification made by the above-mentioned author would tempt us to go along the same doctrinal journey of a particularly pertinent analysis, yet our desire

to return to the main topic, that of the commemoration of a century of constitutionality leads us to go over a few historical stages and focus our attention starting with the constitutional regulations of 1866.

II. Protoconstitutionality of the modern edifice of Great Romania

About this Constitution of 1866 one can say many things, yet the historical reality exceeds all customs and legends.

Thus, Alexandru Ioan Cuza, immediately after his enthronement as ruler of the United Principalities of Romania, ordered the creation of the working structure: "*Central Commission and the protocols of the Central Commission relating to the Constitution"* and *"elaborated a Project of Constitution of the United Principalities Moldavia and Wallachia"* [2].

During his reign, Alexandru Ioan Cuza constantly modernized the two principalities, taken over medieval formations and transformed, in an extremely short historical time into modern formations, contemporary with those existent in Western Europe. Towards the end of his reign there was already a Constitution project drafted by the State Council, a Constitution which was decreed and enforced later on by Carol I and the act itself was published in the Official Journal (Monitorul Oficial) of July 1, 1866, so after the forced abdication of February 11, 1866 of the ruler Alexandru Ioan Cuza.

As published, it foresaw in Art.1: *"The United Romanian Principalities constitute one State, under the name of Romania, under a reigning prince chosen from a reigning dinasty of Europe, with right of heredity, in the male lineage of his family."* This Constitution was modified by the laws of "*13 October 1879 and 8 June 1884… The law of 8 June 1884 added in the Constitution also Art. 133 called additional article, decreeing that the Constitution will apply, by special laws, also in the Romanian side over the Danube, in Dobruja. Consequently, by the Law of 14 April 1910, with its regulation of application from 16 April 1910, the inhabitants of Dobruja, as well, were granted their political rights. At the same time, the Law of 1 March 1913 and its regulation of 25 April 1913 instituted Courts of jurors from the cities of Tulcea and Constanța, to judge ordinary crimes and political and press crimes*".[3]

As we can observe, after 1878 when the United Principalities become the Kingdom of Romania, constitutional recognition comes and modifies the initial regulations of this constitution, supporting the new form of government, namely the one of kingdom. What this modification does not say is, however, the consequence of the second thesis of the former Article 1 abrogated, namely the stipulation of the hereditary character of the recently restored monarchy and the supporting of the salic law from the perspective of the succession to the throne, a consequence that, as we will see, survives until 1947 when by the abdication of the last king of Romania, namely King Mihai I, Romania becomes a republic, from the perspective of its form of government.

III. The Constitution of 1923

In the doctrine of public law in general, and especially of constitutional law, there is awareness of the indissoluble relation between the transformations and historical modifications of substance and the adaptation of the normative framework to the special dynamics of the social relations to be regulated. Thus, the history, the will of the peoples and their right to selfdetermination led, as it is known, to the fateful events of Romania in 1918 and immediately after these moments the realization of the Great Union and the return to the motherland of the historical territories lost or found under the boundaries of the different neighboring empires. The immediate consequence of the First World War was that the great feudal empires imploded, and the peoples under their dominion asked and obtained, many of them, the sovereign right to selfdetermination. The fall of “the prison of the peoples”, namely of the Austro-Hungarian Empire, then the Bolshevik Revolution of 1917 led to the evaporation of unjust formations and the return, albeit for a short historical period of time, to their traditional homeland, of certain territories unjustly subjugated by the mightier ones of those times.

We will not make a historical analysis of the events, but it was necessary to make this reference to the historical componence lying at the basis of the subsequent constitutional development.

The Great Romania, as it is known, was formed by the Union of Transylvania, Bessarabia and Bukovina with the Kingdom of Romania.

These territories returned to the historical homeland of the Romanian spirituality, were, however, heterogeneous from the viewpoint of the form of government but also from the legislative perspective. Namely, Bessarabia was a component of the Russian Empire, a component become after the Revolution of 1917 the Democratic Moldavian Republic! Transylvania was part of the Hungarian Kingdom which from 1867 formed the Austro-Hungarian Empire. Bukovina was under Austrian administration namely under an empire recently disintegrated after the First World War. In this political and administrative "cocktail", a unitary formation was needed, starting from the State structure up to the form of government, from the principles of constitutional law up to the uniformization of the institutions and public authorities which needed to function unitarily and continually.

The administrative unification of the completed Romania was the main component of the legislative unification process, as the existence of four different administrative systems was endangering not just the stability of the Romanian State but also the so-called "unification of the soul", which all the responsible voices were invoking as fundament of the national project. [4]

During the period November 1922 - March 1923, the Deputies' Assembly and the Senate, as Constituant Assemblies, drafted and debated in their own commissions the Constitution project which was adopted on 26 March 1923 by the Deputies' Assembly and then on 27 March 1923 by the Senate. On 28 March 1923, the Constitution of the Completed Romania was promulgated, as the necessary constitutional setting "*for the consolidation and well-founded prosperity of Our beloved Romania*" [5] .

The adoption of the Constitution of 1923 marks a unique moment in the constitutional and statal history of Romania. It made perfect and consolidated, on the level of the fundamental Law, the Romanians' national project of realization of the Romanian unitary national State, being the politico-juridical act which permitted the legislative and administrative unification of the Romanian State after the Great Union of 1918. The essential elements proclaimed and supported by this constitution are:

- the form of government is the kingdom;
- the State structure is national unitary and indivisible State;
- the administrative territorial delimitation is in counties and communes [urban and rural];

- the equality in rights is guaranteed regardless of gender, ethnicity, language, religion or freedom of conscience;

- the freedom of the education, of the press, of the reunions, of the association, as well as the individual freedom are instituted. At the same time, the domicile inviolability is guaranteed and also property is guaranteed;

- mining ores, and the State riches of the underground of any nature are the property of the State;

- the freedom of labour and the freedom of conscience are defended;

- the right of petitioning is introduced and guaranteed;

- the separation of the powers in the State is instituted, all the powers emanating from the nation. Here we need to have in view a few characteristic features, namely: the legislative Power "is exerted collectively by the King and the national Representation made up of two Assemblies: the Senate and the Deputies' Assembly ". Any law requires the meeting of the minds of the three branches of the legislating power. No law can be submitted to royal sanctioning except after having been discussed and voted freely by the majority of both of the Assemblies (art. 34).

- the category of senators of law is instituted;

-"*the executive power is entrusted to the King who exerts it in the way regulated by the Constitution*" [art. 39];

- "*the judicial power is exerted by its organs*" [art. 40];

-"*a legislative Council is created, meant to help consultatively in the making and the coordination of the laws*" [art. 76];

- the monarchy instituted is constitutional, hereditary and salic [art. 77];

- "*the royal lieutenancy is instituted, made up of three persons, which will exert the royal powers until the King is enthroned*" [art. 79];

-"*the King names and revokes his ministers*"[art. 88];

-the government exerts the executive power in the name of the King... and these make up the Council of Ministers presided by the President of the Council of Ministers, entrusted by the King with the formation of the Government [art. 92-93];

- the Court of Cassation and Justice is instituted, with competences of solving administrative disputes regarding the interpretation of the constitution;

- the local administration is based on the principle of decentralization;

- taxes of any nature can only be established and collected by law;

- the colours of the flag are blue, yellow and red, the residence of the Goverment is in the Capital and the official language is Romanian.

As the President of Romania noted in his discourse on the occasion of the anniversary of 100 years since the adoption of the Constitution of 1923: *The fundamental Romanian law was one of the most advanced in the Europe of those times, becoming the juridical and political foundation for the functioning of the institutions of Romania, a monarchy based on a democratic, parliamentary constitutional regime.*

The Constitution of 1923 was a modern juridical work, of European inspiration, which reflected not just a series of aspirations and traditions specific of the Romanian society, but also the natural belonging of Romania to the cultural, political and juridical space of the Western democracies.

The explicit consecration of the unitary character of the State, of the civil and political rights, the protection of the religious freedom, the law of national minorities, the regime of property, the interdiction of discrimination on grounds of ethnicity, language or religion and of the death penalty in times of peace, as well as the interdiction of censorship are just a few of the modernizing elements that the Constitution of 1923 brought to the Romanian State.

In the fundamental Law of a century ago found their place the principles of liberal constitutionalism, such as the separation of the powers in the State, the rationalization of the legislative process or the consecration of the control of constitutionality over the laws, realized back then by the Court of Cassation and Justice" [6].

IV. The Constitution of 1938

In the proclamation of King Carol II of 20 February 1938, the authoritarian political regime is instituted. Reading this proclamation, this is sprinkled only with good intentions such as: saving the Country, lying more solid foundations, priority of the Romanian nation, a better clarification of the citizen's rights and obligations, reduction of the number of Senators and Deputies [see again the referendum of 2009!], a better representation of the peasants, workers and intellectuals in the parliament, increased punishments for

those attempting to steal from the public wealth, strenghtened control on the administration of public money, etc. The New Constitution was approved by the plebiscite of 20 February 1938. While regarding the stipulations on the citizens' rights they remain in principle the same as in the Constitution of 1923, with mentions and completions, apparently posipositia new chapter is introduced concerning the Romanians' obligations. Of these, we underline:

-"*considering the Motherland as the most significant basis of their purpose in life, sacrificing themselves to defend her integrity, independence and dignity; contributing by their work to her going higher morally and her economic prosperity; accomplishing faithfully the community tasks imposed by laws and contributing willingly to the accomplishment of the public tasks without which the State's being cannot live on*" [art. 4];

-interdiction of changing the form of government, of sharing or distributing the wealth of others, tax exemption or class struggle;

-interdiction of the priests' spiritual subordination to other States, interdiction of any political propaganda;

-interdiction of any political associations on religious grounds;

-interdiction of registering militarily for other States.

A series of new aspects emerge concerning the State powers, such as:

-"*the legislative power is exerted by the King through the National Representation*" [not in common by these components!];

- the categories of the non-elected senators are reduced;

-"*the initiative of the laws is given to the King*";

- regency is instituted instead of lieutenancy.

From this enumeration of a few elements introduced by the Constitution of 1938 it does not result very clearly why the period 1938-1940 was considered to be a "royal dictatorship"! If anyway the executive power belonged to the king and was exerted via "his government", one can talk about the king taking upon himself the legislative power by pushing behind himself the National Representation [the bicameral parliament!] and exerting the legislative initiative himself. Even if in the Constitution there appears no interference in the judiciary power we can observe that by sanctioning the Law for the

defense of the Rule of law of 25 February 1938 the Council of Ministers was entrusted the dissolution of the political groups endangering the political and social order, which by decision – i.e. administrative act – would accomplish such a prerogative [not at all the judiciary]. It is known that the central organ of the public administration was subordinated to the king, that the king was the executive power and the ministers were subordinated to him. In this context can we still speak about the separation of the powers in the State?Not at all! It is a huge step back that Romania took after the issuing of the Constitution of 1923 which, as it was correctly estimated at that moment, was one of the most democratic and progressist constitutional regulations of Eastern Europe. Then, the right of association supported by the Constitution was immediately removed by the Law-Decree for the dissolution of all associations, groups or political parties, a normative act issued on 31 March 1938. The troubled times that Romania entered subsequently represented an even greater diminution of the democracy leading, as we will see, to the suspension of the Constitution of 5 September 1940 and the dissolution of the Legislating Bodies. This fact occured through the resigning of the Government of Ion Gigurtu and the naming of the general [later on become marshal] Ion Antonescu in the function of President of the Council of Ministers and his being entrusted with the formation of the new government. The instauration of Antonescu's dictatorship occured formally immediately by the Law-Decree no. 3053/5 September 1940 when the King invested General Ion Antonescu with full powers to lead the Romanian State, the King still keeping a few prerogatives, such as: to be *the head of the army*, strike coin, confer decorations; exempt a person from executing a condemnation and reducing punishments; accrediting ambassadors, concluding treaties. All the other State powers were exerted by the President of the Council of Ministers. And as the roller of the dictatorship and of the full ecclipsation of the fresh democracy did not stop here, in January 1941 General Ion Antonescu asked the King to abdicate. Aquiescing this unprecedented approach, King Carol II abdicates in September. The historical troubles seem endless! In 1940 transferring symbolically his throne to his son Mihai, Great Voivode of Alba Iulia, he becomes under those precarious historical conditions King Mihai I. The crazy race of historical troubles continues so that by the Royal Decree for the approval of the Royal Decree no. 3151 of 14 September 1940 the National Legionary State is founded, a State created based on dictatorial principles

starting with 15 February 1941. General Ion Antonescu consolidates his power by a plebiscite in the month of March 1941 obtaining a confirmation with 2,960,298 votes against 2,996 votes. This is how dictators manage by apparently democratic methods to institute their own dictatorship and to obtain the support of the masses despite defying the most elementary democratic rules.

V. The Coup of 23 august 1944 and its constitutional and political consequences

It is known that on 23 August 1944, being in audience at the Royal Palace, General Ion Antonescu was arrested and by the Proclamation to the Country King Mihai I announces Romania's withdrawal from the Axis Powers and the end of Romania's war against the Allies. A new Government of National Unity was formed and the conclusion of a peace with the Allies was decided, the armistice offered by the Soviet Union, Great Britain and the United States was accepted, guarantees were received regarding the country's independence and autonomy, the injustice of the Vienna Diktat by which a large part of Transylvania was stolen was aknowledged. This put an end to the dictatorship of General Antonescu and restored the citizens' rights and freedoms. The Guvernment was formed of the representatives of four political parties: National-Liberal, National-Peasant, the Communist Party and the Social-Democratic Party united all in the National Democratic Block.

By the Royal Decree no. 1626/31 August 1944 the Romanians' rights *"are those recognized by the Constitution of 1866, with the modifications also brought later on by the Constitution of 29 March 1923… Until the organization of the National Representation, the legislative power was exerted by the King at the proposition of the Council of Ministers".*

There is a return for a short while to the previous democratic constitutions, especially that of 1923. The legislative power was "*exerted collectively by the King and the National Representation, according to the provisions foreseen in the Constitution of 29 March 1923, concerning the State powers*," as it results from the contents of the Decree no. 2218 on the exerting of the legislative power of 15 July 1946.

VI. The proclamation of the republican form of government

By the act of abdication of King Mihai I of 30 December 1947, he renounces both for himself and for his successors to the throne, leaving to the Romanian people *"the liberty to choose their new form of State".* The foreword of the royal abdication act notes that the transformations and the rapports of power *"no longer correspond today to the conditions estabilished by the fundamental pact – the Constitution of the country – they demanding a fast and fundamental change".*

So, by the Law no. 363/30 December 1947 for constituting the Romanian State in the Romanian Popular Republic, is abrogated both the Constitution of 1866 and that of 1923. The Chamber of Deputies aknowledges the abdication of King Mihai I for himself and his successors. We observe two fundamental changes: the bicameral Parliament disappears and the form of government changes from kingdom to republic! "*Until the enforcement of the new Constitution the executive power will be exerted by a presidium made up of five members elected, with majority, by the Assembly of Deputies out of the personalities of the public, scientific and cultural life of the Romanian Popular Republic*" [7].

As it results of the Law no. 364/30 December 1947 the presidium included: C.I. Parhon, Mihail Sadoveanu, Ștefan Voitec, Gh.C. Stere, Ion Niculi.

By the Law no. 32/25 February 1948 issued by the Assembly of Deputies, the electoral body is convoked for 28 March 1948 to elect the Great National Assembly which will come together on 6 April 1948. It will elaborate the Constitution of the Romanian Popular Republic, and until its constitution the legislative power will be exerted by the Government. As we can see, we are witnessing the sunset of the separation of the powers in the State and the instauration of the communist regime.

VII. The socialist constitutions

VII.1. The Constitution of the Romanian Popular Republic of 13 April 1948

As it results from this Constitution, Romania is a popular, unitary, independent and sovereign State, and its whole power emanates from the people and belongs to the people. As a continuity of these regulations, this Constitution stipulates the exclusiveness

of State property, but mentions certain domains such as the post office, the telegraph, the telephone and the radio as belonging to the State. The adjudication of the means of communication by the State was the grounds for restraining certain fundamental rights and excluding any form of competition. Equality in rights was substituted with equality in front of the law, formally, there being no discriminations, from any perspective. This Constitution proclaims the autocephaly of the Romanian Orthodox Church and the freedom of the cults. In a manner that is slightly puerile and contradictory appears regulated the freedom of the press, of the word, of reunion, of the meetings, corteges and manifestations, because ”*the exercise of these rights is assured by the fact that the means of printing, the paper and the places of reunion are made available to those working.”*

A new right is introduced, the right of refuge guaranteed to the strangers pursued for their democratic activity, for the fight for national freedom, for scientific and cultural activity, but also a constitutional obligation of the obligatory military service for all the citizens.

Supreme organs appear in various statal zones, such as the Great National Assembly, as unique legislative organ, and its presidium is that permanence of power acting in the periods between the Great National Assembly's sessions, and then the Council of Ministers as a supreme executive and administrative organ. On a local level, the country was divided into communes [*urban and rural – our completion*], second order administrative units called *plasa*, counties and regions, these being led by local popular councils as local organs of the State power. The judicial organs were formed of the Supreme Court, tribunals and popular courts and the prosecutor’s office is stipulated along with them having huge constitutional powers. As symbol, the coat of arms of the country is introduced, which persists throughout the communist regime, appearing on the national flag in the middle, while its three colours remain the same, already known [blue, yellow and red].

VII.2. The Constitution of the Popular Republic of Romania of 27 September 1952

This Constitution has an introductory chapter glorifying the victory of communism and the role of the Soviet Army lying the bases of the proletary dictatorship. The

constitutional servilism to the Soviet Union reflects a behavioural pathology of the decision-makers of those times.

A whole chapter describes the social order emphasizing exclusively the alliance of the workers and of the peasants, excluding the intellectuals from the existence of the society, continuing with the glorification of the Soviet influence. This Constitution institutes the omnipresence of the socialist property on the production means, lies the bases of the cooperatist property and institutes the right of possession on the small household property. Instead of private property, there appears the right to personal property. The State is proclaimed as being popular democratic, unitary, sovereign and independent. There emerge as dominant the regions of Soviet inspiration and an Autonomous Hungarian Region, with the raions (districts) comprising the Hungarian minorities, an experiment which in time will prove very dangerous.

On the level of the State regions, the ones supported by the previous Constitution are preserved, however describing their juridical appearance more. On the local level, towns and raions emerge, which did not exist according to the previous Constitution, while the administrative unit called *plasa* disappears. The fundamental rights and obligations are regulated somewhere at the end of the Constitution and are generally the same as in the previous Constitution. The *innovative* element is the regulation on the exclusivity of the unique party, the Party of the Romanian Workforce / Partidul Muncitoresc Român bringing together "*the most active and conscientious individuals from among the workforce class and from among the other layers of working people.*"

Another element of constitutional novelty is the insertion in the contents of the Constitution of the electoral system, which normally would have needed to find its place in a law not in a Constitution. Summing up, this Constitution is rather an ideological manifesto and a pile of regulations that go very far from the rigor and the techniques of a logical and efficient fundamental norming. The most eloquent argument on the atechnicity of the constitutional regulation is the description of the coat of arms [on its left there was an oil rig, the coat of arms is framed by a wreath of ears of wheat, at the top there was a star with five corners, while at the bottom the ears of wheat are kept together by a tricolored ribbon on which the letters R.P.R. are written]. All these heraldic signs should have appeared in a law, not at all in a Constitution. It is known that there was no

Legislative Council, which, if it had existed, would have been able to suggest how fundamental act needs to be drafted.

By the Law no. 1/25 March 1962 for the modification of the Constitution, the State Council is introduced in the place of the presidium of the Great National Assembly, which assured the permanence of the Assembly in the period between the Assembly's sessions.

VII.3. The Constitution of the Socialist Republic of Romania of 21 August 1965

Unlike the previous Constitution, this one is drafted much better technically and much more clearly. It consecrates the socialist order of Romania and the leading role of the Romanian Communist party, which becomes a fundamental principle of public law. The socialist State property becomes omnipresent and the citizens' personal property is restrained to a few basic elements [house to live in and its annexes, the insignificant agricultural inventory etc.]. A greater openness to the world is manifested, constitutional priority going to the relations with the other socialist countries but also with all the States of the world and also an openness to the international organizations. The territory of the country is divided into counties, towns and communes, administrative divisions still valid to this day. The civil and political rights are supported by this Constitution as well as the belonging to the Romanian Communist Party of the most "conscientious of the workers, peansants and intellectuals". As one can note, is reintroduced, after a long historical absence, the category of the intellectuals which returns in the attention of the socialist State. The right of asylum stipulated previously by the Constitution of 1948 returns. The organs of the State power are the same with the mention that for the State Council a whole constitutional chapter is alloted to regulate its juridical aspect.

As a novelty, this Constitution has for the first time a chapter dedicated to the President of the Socialist Republic of Romania, a constitutional institution that appears only in 1974, and the person occupying this function was considered as the head of State representing the State power in the internal and international relations of the country, being elected by the Great National Assembly / Marea Adunare Naţională [this gives birth to the parliamentary republic]. As a special note, beside a chapter dedicated exclusively to the judiciary, a distinct chapter is alloted to the Procuratorate, which denotes its

importance for the socialist State and which was called to oversee the defence of the socialist order. This Constitution resisted until the Revolution of 1989 when the socialist State imploded and all the structures of power ceased their activity, this vacuum being filled by the Council of the National Salvation Front / Frontul Salvării Naţionale.

VIII. The period of constitutional transition

In the press release to the country of the Council of the National Salvation Front of 22 December 1989 the following guidelines were set:

-abandonment of the party's role of leader;

-organization of free elections;

- separation of the powers in the State;

-restructuring of the economy based on the principles of the market economy;

-reorganization of the education;

- respecting the rights and freedoms of the national minorities;

-promoting good relations with the neighboring countries in the external politics;

-promoting the citizens' interests in the internal politics.

All these desiderata were later on supported normatively by the Law-Decree no. 2/27 December 1989 regarding the constituting, the organization and the functioning of the Council of the National Salvation Front [8].

IX. The Constitution of 1991

The present Constitution of Romania was adopted in the meeting of the Constituant Assembly of 21 November 1991 and came into force after its approval by the national referendum of 8 December 1991.

The Constitution was reviewed in the year 2003 by the adoption of the Law reviewing the Constitution of Romania, approved by the national referendum of 18-19 October 2003, law that came into force on 29 October 2003, date of its publication in the Official Journal of Romania.

The Constitution of Romania is the fundamental law of the Romanian State which regulates, among others, the general principles of organization of the State, the rights, freedoms and fundamental duties of the citizens and of the fundamental public authorities.

This fundamental act is considered as one of reference because Romania returns to her democratic trajectory interrupted by the communist period.

The essential elements of the Constitution are the statuting, with the force of the fundamental law, of the qualification of the State [national, sovereign, independent, unitary, indivisible, Rule of law, democratic and social], the determination of the form of government [republic] [9], "*consecration of a bicephalic executive, in which there are two heads, respectively the President and the Government*" [9]. This Constitution supports the separation of the powers [public authorities] in the State, the legislative authority [the bicameral Parliament], the executive authority [the Government], the judicial authority [courts] and introduces new public authorities: the Superior Council of Judicature /Consiliul Superior al Magistraturii [guarantor of the accomplishment of justice], the Constitutional Court [guarantor of the constitutionality of the laws], the Advocate of the People [garantor of the respecting of the citizens' rights and freedoms], the Court of Accounts [garantor of the efficient using of the public money], the Supreme Council for the Defense of the Country [garantor of the defense of the country and of the national security].

On the central level, the parliamentary bicameralism already introduced previously to this Constitution is preserved, and the Government adopts beside simple decrees and ordinances also emergency ordinances. These normative acts were given in the competence of the Government by the Constitution [art. 114 paragraphs 3 and 4] as a legislative delegation, the Government being able to legiferate in the domain of the ordinary laws when the Parliament delegates this right of theirs during the parliamentary holidays empowering the Government to decree via simple ordinances in various domains, strictly established, and subsequently these ordinances reenter the parliamentary procedures being confirmed, modified or abrogated by the legislative forum. The emergency ordinances are a distinct situation of primary legiferation bestowed upon the Government by the Constitution and they could manifest themselves even in the domain of the organic laws only in emergency situations, so exceptionally... the condition being that the Parliament be in session. Unlike the incipient period of the transition when the acts of the Goverment were annulable by the "superior structures of power" [see the Council of the National Salvation Front or the Popular Council of National Union], after

the first general elections they could only be annulled by the administrative legal department.

On a local level, modern and democratic public authorities emerge: county councils and local councils [deliberative authorities], town halls [executive authorities] by means of which the local autonomy is realized by these elected public authorities. Beside these constitutional principles, the Constitution also supports another basic principle of organization of the local public administration, namely the principle of decentralized public services.

Conclusions

The continuity of the constitutional regulations in this Carpathian-Danubian-Pontic area is the constant of the fundamental regulations that delineated the architecture of the State-related organization and of the reglementation of the relations between citizen and State. Our belonging to the European area can be seen as well through this prism of the constitutional regulations as it is known that almost the unanimity of the democratic countries of the world [10] rely on a Constitution, as a fundamental law, function of which all the other legal norms had to be aligned to this sacrosanct principle of the constitutionality of the laws. Romania, through the prism of its constitutional continuity is part of this *honourable family* of the modern, democratic States. Even though the socialist period was considered a deviation from the democratic trajectory of the country, however, there is this constant of the constitutional regulations which remains, even throughout this period.

References

[1]See assoc. prof. Ph.D. Cristian Ionescu, *Dezvoltarea constituțională a României. Acte și documente 1741-1991*, Ed. Lumina Lex, București, 1998, p. 10-11
[2]Published by M. Kogalniceanu, Tipografia Minervei, Podul Lung, 1861, *apud* Cristian Ionescu, *op. cit.*, p. 311
[3]For more information, see Cristian Ionescu, *op. cit.*, p. 383
[4]In the same time, see Dan Constantin Mata, *Constituția din anul 1923 și organizarea administrativă a României întregite. Între imperativul unificării și dilemele descentralizării* în Revista “Dreptul”, Anul CLII, Serie Nouă XXXIV, nr. 3/2023, p. 69
[5]According to the parliamentarians of the Constituent Assembly
[6]Extract from the speech of President Klaus Iohannis from 27.03.2023
[7]Art. 6 of Law no. 363/30 december 1947
[8]See Ivan Vasile Ivanoff, *Aprecieri critice privind apariția și evoluția administrației locale din România*, Ed. Bibliotheca, Târgoviște, 2021

[9]For more details, see Verginia Vedinaș, *Drept administrativ, Ediția a II-a revăzută și actualizată*, Editura Universul juridic, București, 2006, p. 14 et seq. [attenuated or parliamentarized semi-presidential regime, a semi-parliamentary regime]

[10]Except for the United Kingdom of Great Britain and Northern Ireland

Journal of Law and Administrative Sciences
No.19/2023

DIVISION OF COMPETENCES IN FEDERATIONS AND EUROPEAN UNION

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Abstract:
The failure of the Constitutional Treaty, but also the recent developments in the European Parliament, through the formation of a group of countries following the nationalist current, demonstrate that the attribution of the title of superstate to the European Union does not reflect the political-legal reality of the European construction.
On the other hand, the consideration of some of the powers of the Union as superpowers is also inconsistent with the regulations of contemporary international law, generating confusion, both on a legal and political level.
This article aims to present the necessary arguments for clarifying the legal nature of the powers of the European Union and correlatively, the sui generis character of this international organization with an integrationist vocation.
Keywords*: competences, sovereign attributes, European Union, decentralization, federalism*

General remarks

The device of the Treaty of Nice did not bring all the necessary clarifications regarding the efficiency and transparency of the decision-making process. This thing it also emerges from the approach to annex to the Treaty a Declaration in which the initiation of a broad public debate on the revision of the treaties, in the form of a *European Convention on the Future of Europe*, was mentioned.

The Convention proposed the elaboration of a draft *Constitutional Treaty*, intended to simplify the European political and legislative framework. In this sense, the project proposed the merging of the three pillars, but with the continued maintenance of special procedures in the fields of *foreign policy, security and defense*.

Following the non-ratification of the Constitutional Treaty in France and the Netherlands (May 29 and June 1, 2005, respectively), it did not enter into force. There followed a period of reflection on the causes of the failure, after which, in the first part of 2007, the institutional process was resuscitated by Chancellor Angela Merkel, who presented a new version of the Treaty, which would replace the Constitutional Treaty.

The Intergovernmental Conference that followed allowed the adoption of the Reform Treaty on October 19 and its signing on December 13, 2007, in Lisbon.

Its ratification took place during 2008 and 2009, so that, starting from December 1, 2009, the treaty entered into force. The ratification process in the 27 member states was mostly achieved through parliamentary ratification, Ireland being the only country that had the constitutional obligation to organize a popular referendum. The option of a referendum was also discussed in countries such as Denmark, the Netherlands and Great Britain (at that time a member of the EU). [1]

First of all, we must emphasize the fact that the European Union, following its establishment by the Treaty of Lisbon, appears as an international organization, being constituted as an organization of states, based on an international multilateral treaty, endowed with its own bodies and will own, distinct from that of its founding states and also has international legal personality. [2]

The *sui generis* character does not come from the fact that it is a union of states in an international organization, but from the powers that are attributed to it by the states and that make this construction one with specific elements of a state[3] (governance, creation of the legislature, etc.). Also of a *sui generis* nature is the fact that this organization with obvious state-like powers cannot be generically fitted into the federative or confederate model.

Regarding the sovereignty of the member states, a first remark is related to the fact that, regardless of the nature of the international organization, the states must respect their domestic law,[4] but also the commitments they make in different forms of cooperation in which they have agreed to participate.

Finally, the actions of the international organization represent actions that the member states agree to respect and for the achievement of which they assume commitments. Consequently, any type of state cooperation, but especially those carried out in international organizations, inevitably implies the assumption of obligations that lead to the restriction of freedom of action in favor of the organization or its other members.

On the other hand, with all the current importance of international organizations, after their expansion creating a real structured network of entities, thus transforming the

international community, they do not replace states,[5] remaining, however, the primary element of the construction of international society, with whose existence they are interdependent.

The international organization's *own will does not lead to the imposition* of obligations towards the member states, due to the fact that they are the only ones who have the full capacity to establish them and therefore participate in the formation of their will. In this sense, the states are not subordinate to the international organization, but have commitments with them. All acts, regardless of their name, decision, resolution or any other document, are adopted by the states and do not become binding on them except in accordance with their constitutive rules (ratification, adoption, etc.).[6]

The European construction does not depart from the norms of international law.[7] What appears to be an act of direct governance of the European Union in relation to the member states, is in fact a *competence*, exclusive or shared, attributed by them to the European institutions, in order to regulate in certain areas, on their behalf and for them. The competence thus created is the direct and immediate result of the will of the states, the national authorities have agreed to delegate the exercise of some sovereign attributes to the institutions of the Union.

In this sense, the principles according to which the act of European governance is carried out, such as the assignment of competence, subsidiarity, proportionality,[8] which had in mind the precise harmonization of the fundamental principle of international law, sovereignty, with the decision-making process of the institutional structure built by the states themselves.

In this sense, from the beginning of the Treaty of Lisbon, it is mentioned that what remains under the jurisdiction of the member states and which is not contained in the EU portfolio with the title of community competences are those areas that define and compose the *national identity*.

This approach is necessary for the actual existence of the fundamental political and constitutional structures of the member states, which respect the essential functions of the states and, in particular, those aimed at ensuring *territorial integrity*, maintaining *public order* and *national security*.[9]

In support of what has been stated, arguments can be made that demonstrate the EU's abstention from the creation of a military block and, therefore, the fusion of the common defense function by maintaining the regulations in this field in the logic of intergovernmental cooperation.

The maintenance of the sovereignties of the states in the face of the European construction results from the fact that they continue to hold the status of subject of international law, exercising all their powers, except for those that, based on their freely expressed will, have been *delegated for exercise to the EU institutions*. The procedure itself of assigning powers to the EU institutions is proof of the expression of the sovereign will of the states, because otherwise this would be incompatible with their EU membership.

In conclusion, the European Union represents an association of states that remain sovereign, and which, together with the European institutions, are the basis of the entire community construction. The Union cannot exist without the member states, seeing that they represent the constituent element of the European Union, which has the member states as the foundation of its legal existence. The European Union itself is the result of the activity of the founding states that assign it powers to achieve common objectives, as can be seen in Article 1 of the Treaty[10].

In certain specialized works the expression transfer of sovereignty appears, creating confusion and inducing harmful currents for the existence and proper functioning of the community construction itself. According to what is mentioned in this study, from the use of this phrase we can deduce that sovereignty is neither exclusive nor inalienable, thus losing the material elements that constitute the concept of sovereignty and, with them, disappearing the cornerstone of the entire modern international order.

This approach does not reflect reality in the sphere of international relations either, due to the fact that such an interpretation would lead to the dissolution of statehood and, implicitly, to the erosion of one of the fundamental pillars of the community construction which is formed by sovereign member states. It would be most appropriate to use terms that reflect the fact that the reference is made to the lack of exercise of sovereign powers by the member states, as a result of the attribution of powers to the European Union, considering that it does not have sovereign attributes, but powers.[11]

This does not mean that, in the future, the states will not be able to decide to coagulate in a federal-type construction, with the newly constituted entity gaining sovereignty, in the current sense of the term, starting with the termination of the sovereignty of the member states, a phenomenon that would subscribe to the rules of order current international.

The division of competences in the European Union and of sovereign attributes in federations

The European Union has no equivalent in the history of federations and confederations, but the distribution of authority between the center and the member states can be compared to various federal models.

The political consensus necessary for the creation of the federation is shaped by a federal constitution that distributes powers. The evolution of federalism creates a diversity of authority resulting from the distribution of competences between the institutions of the central government and the member states.[12]

In federalism, authority is assigned through the primary and secondary vertical division of powers. The federal constitutions explicitly establish the competences at the central and local level, while the Treaty establishes exclusive competences of the Union and the member states, which cannot be violated, and the common (concurrent) authority exercised according to specific conditions at both levels of the multi- level.

In federal states, the primary distribution of authority is followed by a secondary differentiation in which the vertical dimension of the principle of *separation of powers* is specified. The powers outlined as a result of the secondary distribution of powers may be: implicit, inherent, reserved or denied to the central government and the subjects of the federation, either separately or jointly.

The history of federalism indicates that the maintenance of constitutional regulation for decades or hundreds of years has generated tensions due to the change of the social context. The constitutional framework of the vertical division of powers within the federation is shaped by the arbitration of the constitutional jurisdictions or by the constitutional revision by the judicial power.[13]

Compared to federalism models, based on federal constitutions, as an expression of their sovereignty, the European Union is a political-legal entity based on a multilateral treaty, not on a fundamental law, in which political integration is rather at the beginning of the road and , at the same time, contested by some member states, but in which there is strong economic cooperation complemented by the necessary legal regulations, which in turn creates the need to expand the powers of the Union.

The exclusive nature of some aspects of the community authority is not explicitly provided for in the founding Treaties and it was justified by the jurisprudence of the European Court of Justice.[14] A *presumption of competence* on the part of the member states involved in the decision-making process is applied to the community authority.

The Court does not use the terminology of distribution of powers, but established the term ”exclusive competence of the Communities”, as well as two types of community authority, *specific powers*, which refer to implicit authority, and *non-specific powers*, which are exercised when there is no a legal basis for the application of a certain authority.[15]

Subsidiarity[16] and *proportionality* are the fundamental principles that regulate the distribution of authority in the areas of common competence of the Community and the member states. The objective of the principle of subsidiarity is to guarantee an efficient division of authority and bringing decision-making closer to the citizens.

Subsidiarity is a dynamic concept, a feature that emerges from the protocol on subsidiarity and proportionality of the Treaty of Amsterdam, in Articles 94, 95 and 308 EU, the authority of the Communities can be extended to include issues related to the construction and operation of the common market and those regarding the achievement of other objectives of European integration, which are not regulated by the Treaties as spheres of competence of the European institutions.

The theme of the explicit division of powers between the European Union and the member states is a constant one in the European integration process, the division of powers reflecting the continuity of the principles established during the previous evolution of the European integration process and bringing functionalism and the community method closer to the federal method.

The fundamental principle of the *express delegation of powers* acts as a guarantee against the concentration of power within the EU institutions, and the principle of

subsidiarity and proportionality governs the exercise of Union powers. The Union acts in the context of the *authority delegated* by the member states, which retain their other sovereign attributes, the exercise of which is not expressly delegated to the EU institutions.

On the other hand, based on the principle of subsidiarity, the European Union can act beyond its express competences only if and to the extent that the objectives in question cannot be achieved by the member states and would be better achieved at the EU level. The principle of subsidiarity is subject to control by national Parliaments. At the same time, EU institutions should exercise authority in accordance with the principle of proportionality, which provides that the form and content of EU action should not exceed the level necessary to achieve the objectives established by the Treaty.

The sharing of authority follows a simultaneous implementation of functional and sectoral approaches. The *exclusive competence of the European Union* implies that only the Union can legislate and approve legal acts in a certain field, while the member states can act within the scope of this authority only when they are authorized by the European Union to implement these acts. The Union has the exclusive competence to establish the competition rules necessary for the functioning of the internal market and in the areas of monetary policy in the Euro Zone, common commercial policy, customs union, conservation of marine biological resources.

The European Union becomes a member of international treaties only to the extent that this is provided for in a legislative act of the European Union or when it is necessary for the exercise of its competences or is related to an internal act of the European Union. The EU's competence also includes the promotion and coordination of the economic and employment policies of the member states, as well as defining and implementing the Common Foreign and Security Policy and gradually defining the EU's defense policy.

The *concurrent (joint) authority* of the EU and the member states is achieved through their authority to legislate and adopt binding legal acts in the appropriate fields. Member States exercise their *sovereign attributes* where the European Union has not exercised any competence or where it has ceded its exercise.

The areas in which the legislative authority is shared between the sovereign attributes of the states and the competences of the EU institutions apply to the areas expressly provided for in the Treaty: the internal market, the area of freedom, justice,

agriculture and fishing, transport and trans-European networks, energy, social policy, economic, social and territorial unity (cohesion), environment, consumer protection, general public health safety issues.

In the field of research, technological development and space, development cooperation and humanitarian aid, the European Union is competent to approve and implement programs, without however preventing the member states from exercising their own sovereign attributes. The *implicit competences* of the European Union come from the powers expressly regulated as a necessary instrument for their implementation. The *exclusive competences* of the member states are all other competences that have not been delegated to the European Union by the Constitution.

Finally, it can be assumed that a more detailed definition of competences could face serious political resistance in the institutions of the European Union and the member states, due to the need to adopt amendments to the national Constitutions. The formula of the transfer of sovereignty will prove insufficient to formulate a clear distribution of power.

The abandonment of this line of constitutional development will in turn generate conflicts that the European Court of Justice or, in the case of the dissolution of national sovereignties and the simultaneous formation of the sovereignty of a European federal state, a possible future Constitutional Court of the EU, will be able to solves them effectively.

A brief study indicates that the ratification of an EU Constitution will bring clarity and understanding to legal and institutional structures, but as long as the European Union remains an international organization and does not legally transform into a federal state, it will not be possible to establish a unique hierarchy of methods, institutions and legal acts, such as the one in the national constitutions.[17]

Reverse hierarchy[18] of EU governance through intergovernmental and community methods will be preserved, although it will function in a more efficient manner by improving the interdependence between the EU and the member state institutions. The supremacy of EU Law reflects the legal supremacy within the framework of the *divided competences*, and the reverse hierarchies take precedence in the situation where different holders act in the sphere of the exclusive competences of the EU and the institutions of the member state.

References:

[1] The three founding treaties were the Treaty establishing the European Coal and Steel Community (ECSC), 1951, the Treaty establishing the European Community (EEC), 1957, and the Treaty establishing the European Atomic Energy Community, 1957. The fourth founding Treaty is the Treaty of at Maastricht or the Treaty on the European Union (1992/1993). The Merger Treaty - (1965), the Single European Act (1986/1987), the Treaty of Amsterdam (1997/1999), the Treaty of Nice (2001/1.02.2003) and Treaty of Lisbon (2007/2009) subsequently amended the founding treaties. The accession treaties signed with the new member states are examples of *new treaty amendments*.
[2] art. 47 of TUE.
[3] Draghici, Cristian (2021). *Some considerations on normative inflation and its effects on fundamental human rights and freedoms.* Journal of Law and Administrative Sciences No.15/2021, Petroleum and Gas University Publishing House of Ploieşti, p.59.
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[8] Maillet, Pierre, *Trois défies de Maastricht (convergence, cohésion, subsidiarité)*, Ed. L'Harmattan, 1993, p.105.
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[10] Anghel, Ion M., "Uniunea Europeană și poziția (calitatea de subiect de drept internațional) a statelor membre",
in *Revista Română de Drept Comunitar*, 2009, nr. 6, p.97.
[11] Anghel, Ion M., "Uniunea Europeană și poziția (calitatea de subiect de drept internațional) a statelor membre",
in *Revista Română de Drept Comunitar*, 2009, nr. 6, p.92.
[12] The specialized literature outlines many models of federalism, which demonstrates the existing diversity in regulating the distribution of powers between the central government and the subjects of the federation. The distribution of competences constitutes the vertical dimension of the division of powers as outlined for the first time by J. Madison in the United States of America. For the American, German and Swiss model of distribution of authority in the federation, see W. Lehmann, "Attribution of Powers and Dispute Resolution in Selected Federal Systems", WP European Parliament, AFCO 103, Luxembourg, 2002.
[13] In fact, the intervention of the bodies in charge of constitutional control not only resolved disputes between bodies based on the constitution, but also ensured, through interpretation, the dynamics of the distribution of authority where the constituent power was inactive, although the constitutional text was maintained. The Constitutional Courts thus guaranteed the smooth functioning of the federal government by resolving disputes or created constitutional provisions regarding the distribution of authority that corresponded to the new realities and compensated for the inactivity of the constituent power.
[14] The Court usually applies "selective exclusivity" to issues that are within Community competence. Other issues are subject to common competence.
[15] Lenaerts, Koen, "Constitutionalism and the Many Faces of Federalism", 38 *The American Journal of Comparative Law* (1990), pp. 213-218.
[16] The principle of subsidiarity was introduced for the first time by the Single European Act (1987), but only in the field of environmental protection. Since its recognition as a general principle of community law by the Treaty on the European Union (1993), it has been applied in all areas of common competence.
[17] Ciongaru, Emilian (2022). "Some general conceptual developments of the constitutionality of social justice". *Journal of Law and Administrative Sciences* No.17/2022, Petroleum and Gas University Publishing House of Ploieşti, p. 19-22.
[18] Roeben, Volker, "Constitutionalism of Inverse Hierarchy: The Case of the European Union", *Jean Monnet Working Paper* No. 8/03, Jean Monnet Center, NYU School of Law, 2003.

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SOME CONSIDERATIONS REGARDING THE ADMINISTRATIVE ORGANIZATION OF ROMANIA UNDER THE EMPIRE OF THE 1923 CONSTITUTION

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Abstract:
The union of Transylvania and the other lands left under foreign occupation with Romania is the most important event in the history of the Romanian nation, accomplished under particularly difficult conditions, being the work of the entire Romanian people. The adoption of the Constitution of 1923 constituted the main legislative theme of Romania as a whole, giving the Romanian state a monarchical form of government, but based on the parliamentary-constitutional democratic regime. Having a new constitution, it was necessary to draft the law for the administrative unification of Romania of June 14, 1925.
Keywords: *Constitution, administrative reform, law, unification, decentralization*

General considerations

After the establishment of the Great Union, the Constitution of 1923 represented the main legal establishment, on the basis of which the fundamental institutions of the entire Romania functioned.[1] Although the Constitution enshrines, in its eight titles, prescriptions related to the constituent elements of the state, the organization and functioning of the state powers, the composition and functioning of the electoral system, social organization, organization of the army, financial and administrative organization, etc., it was imperative to adopt the Law for the administrative unification of June 17, 1925.

The 1923 Constitution established and developed the principles of national sovereignty and the separation of powers in the state, predicting and ensuring the participation of citizens in the exercise of political rights and in the management of public affairs. [2] Through this constitution, which was the supreme law of great value of the Romanian state, the Romanians perfected their institutions and legislation. [3]

Administrative unification - an essential element of the legislative unification process

In the context of unified Romania, administrative unification was the main component of the legislative unification process. The existence of four different administrative systems endangered not only the stability of the Romanian state, but also the spiritual unification, the synthesis of the historical development of a given era, in the life of a people. [4] Constantin Hamangiu's statement regarding the "unification of legislation" with the axiomatic vocation cannot be reduced only to the sphere of civil law, it must be understood as the essential objective for the consolidation of national consciousness. Andrei Rădulescu, for the same purpose, described the importance of adopting a new unitary legislation, for the "soul unity of the nation". [5]

Similarly to other major components of the legislative unification process (civil legislation or criminal legislation), administrative unification was a difficult process, due to the heterogeneity of the existing legal system on the territory of Romania, in the first years after the achievement of political unification. The administrative system on the territory of the old kingdom was of Western inspiration, predominantly French, an essential foundation of modernization from the second half of the 19th century, but which at the beginning of the interwar period required numerous adjustments.

In Transylvania, the legal order was formed by the rules of Hungarian law, and in Bucovina Austrian law was applied, while in Bessarabia the legal system was made up of tsarist legislation[6] and partially of some fragments of the old Romanian law of Byzantine inspiration. [7]

In relation to this normative background, Paul Negulescu specified that there is a complex, a set of traditions and public mentalities, which made "the public spirit of these provinces to be so different from ours, that we are facing a serious obstacle in the work of administrative unification to which the national and political unity of the Romanian state is linked." [8]

Anibal Teodorescu, during a public lecture in April 1922, drew attention to the fact that one of the most important reforms, which must be carried out, was the administrative

reform. Considering that there was no compatibility between the four existing administrative organization systems on the territory of Romania at that time, Anibal Teodorescu raised the issue of their unification. [9]

There were numerous controversies regarding the legislative and administrative unification, but in accordance with the provisions of the 1923 Constitution, it had to be taken into account that it provided, similarly to the fundamental law of July 1, 1866, that the territory of Romania is divided into counties and communes. The regulation in Article 4 of the 1923 Constitution also had a series of specific elements, determined by the criticisms that appeared in the doctrine or in the political discourse regarding the administrative organization of the old kingdom. It was expressly provided that the territory of Romania is divided, from an administrative point of view [10], into counties, and the counties into communes. Although this addition seems unnecessary in a text that precisely regulated the administrative division of the state, it was considered necessary because the territory of Romania is indivisible from a political point of view, but divisible from an administrative point of view. [11] Thus, the mistake committed in 1866 was corrected, giving up the highlighting in the constitutional text of the nets, whose mention in the contents of art. 4 of the 1866 Constitution caused long controversies regarding their legal status. [12] Considering that the provisions of articles 106 and 107 of this Constitution recognized the independence (in the sense of local autonomy) only of counties and communes, it was concluded that the counties had no legal personality, being only simple administrative subdivisions of the counties. [13]

Principles of administrative organization in the Constitution of March 29, 1923

In all the debates, comments and projects regarding the principles to be the basis of the administrative organization of Romania as a whole, two immediate imperatives were addressed in an almost identical manner: the depoliticization of the Romanian public administration and decentralization. The two imperatives showed the deficient structure of the Romanian public administration both regarding the composition of the attributions of the administrative bodies and regarding the qualification and conduct of the public administration personnel. Analyzing the provisions of the Constitution of March 29, 1923, it was observed that four principles relating to public administration were included:

- the administrative division of the territory;

- decentralization;

- the representative principle in the constitution of county councils and communal councils;

- the establishment of administrative disputes within the jurisdiction of the courts. [14]

Removing politics from the administration was one of the great expectations of the administrative reform, according to the March 1923 Constitution, and this meant tying the civil servant to his position, recognizing his stability. [15] The lack of stability of civil servants determines the purge campaigns after the elections and encourages corruption, political clientelism, lack of vision, etc. Anibal Teodorescu emphasized the need to remove the administration from political influence and proposed decentralization, for the administrative organization of the country. After the achievement of national unity, the problem of decentralization acquired a new dimension, in the context in which each of the new Romanian provinces brought a different administrative organization, with its own forms of decentralization. [16]

Decentralization was seen as the starting point for a new stage in the evolution of Romanian society. The idea of renewing the Romanian society determined the adoption of the Law for the administrative unification of June 14, 1925. Centralization served the ideal of the political unity of the state, and decentralization perfected the cultural ideal, science, art and Romanian civilization. [17]

After the entry into force of the Law for administrative unification, its limits were also noticed, as the centralizing tradition of the old kingdom continued. [18] As Victor Onişor, professor of administrative law at the Cluj Faculty of Law, observes, "Although the 1923 Constitution provided for communal institutions as the organizing principle, administrative decentralization in Article 108", the 1925 legislator did not deviate from the basic principles of the laws above. [19] Also, the law preserved the prefect in his double capacity, as the representative of the government, but also as the executive authority of the county administration.

The law for administrative unification was repealed on August 3, 1929, and the law for the organization of local administration entered into force, by which the dual role of the

prefect was renounced, by regulating the role of the president of the county delegation as the head of the county administration. [20]

Moreover, the Minister of the Interior I.G. Duca, in his statement from 1928, specified: "In the interval of almost three years, since the Law for administrative unification of June 14, 1925 came into effect, we could find that the strict application of some provisions of this law often encountered great difficulties and it was really impossible." [21]

After the union of Bessarabia with Romania [22], for a better administrative organization, seven regions were established, namely: Upper Moldova, with the residence in Iasi; Lower Moldova, with residence in Galati; Upper Bessarabia, with residence in Chisinau; Lower Bessarabia, with residence in Izmail; Dobrogea, with residence in Constanta; Muntenia, with residence in Bucharest; Oltenia, with residence in Craiova. Each region was represented by a regional council composed of prefects, the presidents of the county councils, one delegate of these councils and the mayors of the county residences that were part of the region. [23]

In 1921, during the second government led by Alexandru Averescu, the best draft law for the organization of public administration appeared, initiated by the Minister of the Interior Constantin Argetoianu, which created nine administrative regions by merging several counties. Each region was led by a regional council made up of members delegated by the county councils and municipal councils in the region and by legal members (the heads of the decentralized public services and one delegate each of the public institutions based in the region's residence, which carried out activities in the cultural field , agricultural, commercial, industrial or labor). The decisions of the Regional Council were implemented by a one-person administrative body, appointed by the president of the region. [24]

By establishing the regions, the aim was not to undermine the autonomy of the communes or counties, but precisely to develop the public life in these administrative-territorial units by coordinating efforts in order to achieve larger objectives, because the region could coordinate efforts to carry out major works of general interest. [25] Although the arguments invoked by the doctrine and by a part of the political class were scientifically substantiated, there was no constant political will in the sense of establishing

regions as intermediate units from a territorial administrative point of view. Therefore, the administration bill of August 3, 1929 renounced the region to appease the fear of the state's unity. [26]

Although both the law for administrative unification of June 14, 1925 and the law for the organization of public administration of August 3, 1929 had opted for the notion of general county association, this phrase was abandoned in order not to create confusion and to avoid the word region in order to not to create a legal person with a political-administrative and territorial character superimposed on the counties and communes with their own powers as their tutelary body. It was considered that this association was nothing more than the region, as it had been provided for in the draft law of 1929, published. [27]

We must mention that the liberal and later the national-peasant governments were extremely reluctant to accept the notion of region, citing an alleged violation of some provisions of the Constitution of March 29, 1923, which provided for the administrative division of Romania's territory into counties and communes (art. 4), the achievement of exclusively county or communal interests by county councils and communal councils (art. 41) or the possibility of establishing taxes only for the benefit of the state, counties, communes and public institutions that performed state services.

In addition to these constitutional reservations [28], there was also the fear, repeatedly expressed from the parliament's rostrum, that the administrative regionalization of the entire Romania could be speculated by the partisans of the irredentist discourse. Under the 1929 law, general county associations were bodies created on a voluntary basis, for a limited period, by reuniting counties from a directorate in order to execute, create or maintain works or institutions of sanitary, economic, cultural or works benefit public and for any other act of creation or exploitation of services or institutions that fall under the attributions and competence of the counties. [29] The general county associations were legal entities under public law, having as governing bodies the Association Council, the Association Council Delegation and the President of the Association Council Delegation. The seven local ministerial directorates created were "local administration and inspection centers", based in the cities of Bucharest, Chernivtsi, Chisinau, Cluj, Craiova, Iasi and Timisoara. These bodies were led by a local ministerial

director, appointed at the proposal of the Council of Ministers, by royal decree, having under him the heads of all the ministerial services in the directorate and the prefects of the arrondissement counties. Since the organization and functioning of this complex administrative body through general county associations and directorates proved extremely difficult in practice, until the repeal of these legal provisions in 1931, no general county association had been established. [30]

The First Constitution of Romania from 1866 reinforced the sense of local autonomy for county and communal institutions, which carried out their activity based on administrative decentralization (art. 107 and 108). Later, the Constitution adopted in 1923 through articles 41 and 108 fixed, in turn, the principle according to which "county and communal institutions carry out their activity on the basis of administrative decentralization and the members of the councils are elected by Romanian citizens, through their universal, equal vote, direct, secret, mandatory and with the representation of the minority." [31]

The creation of a modern administration after the reunification of Romania was based on the preeminence of several fundamental principles:

- decentralization;
- deconcentration;
- consulting citizens on local issues of particular interest;
- local autonomy;
- the eligibility of local authorities. [32]

From a political point of view, decentralization represents a liberal institution called to formulate and guarantee the exercise of local freedoms. This liberalism belongs to political liberalism, being nothing more than a democratic system, which involves the participation of citizens or their representatives, in order to achieve public interests. From an administrative point of view, decentralization represents an effective principle for managing local interests. [33]

Regarding the decisions adopted by the devolved bodies, they are adopted on behalf of the state, which maintains its hierarchical control over the legality and appropriateness of the adopted acts. [34]

Conclusions

The Romanian constitution adopted in 1923 was a constitution with centralist tendencies, but it also had fundamental democratic principles and managed to establish the foundations of the administrative organization of Romania as a whole. The constituent legislator elaborated a balanced regulation within the framework of permissiveness offered by the social and political context of the early 1920s.

The constitution of March 29, 1923 represented in many aspects the upper limit of what could be accepted at that time. There was no provision of this constitution that would complicate the decentralization process or block the course of administrative regionalization, but the political class of that period contributed to the application of the principles regarding the administrative organization of Romania.

Decentralization really represents democracy applied in the administration of local affairs, and deconcentration shifts the place of decision-making power, because local state authorities are the territorial extensions of the central administration.

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No.19/2023

THE FUNDAMENTAL LEGAL VALUES GUARANTEED BY THE CONSTITUTION - ELEMENTS OF COMPARATIVE LAW

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Abstract:
The practical analysis of the principles of the rule of law clearly states that the constitutional power belongs to the people and is exercised by them through their representatives - the parliamentarians - and which delegates it to them, for the most efficient management of the government, it must be accepted that the fundamental values enshrined by the Constitution are the very essential, useful and necessary values for that people, so that the duty to protect, guarantee, defend and promote them belongs to the state itself. Any constitution as a fundamental law in any constitutional state must fulfil two roles that are apparently unequivocal in the sense that the constitutional provisions must be flexible and simple enough, in order to easily adapt to any social need that may arise in the evolution of society, and in the second sense, the constitution must have an efficient, effective and long-term stability. In the absence of constitutional norms that have a very general character and that enshrine the fundamental values recognized at a certain historical moment in a constitutional state, these tasks can be quite difficult and burdensome and will never be able to be fulfilled.
Keywords: *system of law; law; principles of the rule of law; values of law; constitutional norms.*

Conceptual elements of fundamental legal values in constitutional law

The Constitution, the fundamental document of any state governed by the rule of law, enshrines: the fundamental principles specific to that form of state organization, the cultural, economic, social, legal values, etc. [1]

The emergence of democracy and constitutions in the modern era responded to the need that the law has to give itself a specific justification, but, nevertheless, neither the democratic legislations nor the constitutions will be able to satisfy the modern needs for the law to have an unequivocal foundation.

Therefore, law as a fundamental science must be based on the objective authority of science as a concept, which becomes a necessary element of positive law [2], in which case it can be considered that the law is not only based on the authority of science, but also on fundamental values protected by legal norms.

In the collision between legal validity and social validity, the condition for a system of rules to be valid from a legal point of view is that the rules belonging to the system in question are valid from a social point of view. If an attempt were made to produce a written constitution[3] for a state which had just emerged from a period of dictatorship, violence and disorder, it should be acknowledged that the effectiveness of such a work would depend on the general belief that that constitution is itself necessary, useful and effective, and the provisions of such a constitution should be simple not only in terms of specific language, but also in the intended purpose.

The constitution will have to be considered a necessary framework for the future actions of the government. In the proposed constitutional elaboration, the idea that the pursuit of an ideal of equity and justice must begin with small, simple steps that ensure a more solid future development clearly appears. The fundamental human values[4] recognized and protected by laws appeared as a result of a lengthy evolution. In new democracies, this evolution is resumed, in a similar form, much faster and less difficult, less bloody. However, there must be a certain preparation for the new changes, a certain sedimentation, since any recognition and guarantee of values is a continuous conquest.

The fundamental legal values of the legal system

The evaluation of a legal system and its specific values[5] is also possible through a historical analysis, for example by studying the institutions of Romanian law and how they contributed to the creation of modern law.

From the point of view of comparative law, a historical analysis of legal systems is also possible by observing particular legal cultures, such as that of Oceania, for example, where some of the legal aspects of the cultures of this area are similar to particularities of European legal archaism.

In the case of "new democracies", it is not about unpredictable changes in an unknown direction. Although limited by the need to respect different legal cultures and local specifics, the direction in which this evolution takes place is known in advance, most of the time, being only about adapting certain models, about taking over certain influences and not about new discoveries.

In cases where legal systems have evolved, however, in such a way that they have reached unknown territory, for which they cannot find a model or even a source of

inspiration in the existing systems, the only way to evolve is to accept the guidance of principles and values, especially of values that cannot be subject to any negotiation or limitation - for example, the right to life, the right to health, etc. The superiority of the legal norm over any other human rules also implies an obligation, namely that of the promise that the state makes in the sense that it will enact and apply the legal norms in pursuit of an ideal of justice, which inevitably has the idea of equity as its foundation, this being the only way for a real, effective and efficient guarantee of fundamental human rights and freedoms, as well as for maintaining the rule of law and promoting fundamental values for any society in which the specific standards of the rule of law are achieved.

Comparative law elements of legal values

When drafting the French Civil Code, important conceptual clarifications were made in the sense that: "There is no need for unnecessary laws [...] nor should everything be simplified [...] nor everything provided [...], it would be a mistake to believe that there could be a body of laws that would provide for all possible cases and be suitable for the special case of each individual citizen [...] To govern too well is to govern badly".[6]

In this sense, the idea appeared that a government that would aim to predict any situation or to find solutions to problems that have not even appeared is not possible and it would not be efficient and effective. Such an abstraction as well as the major degree of generality that an effective legal rule must have can give rise to a challenge consisting in applying the provisions of the concrete legal rule to a concrete situation. This kind of issues can be resolved by the combination in the mathematical logic of the legal norm and what could be called the human factor, that is, the enforcement of legal norms on human beings, only by humans.

Therefore, the enforcement of the legal norm, necessarily also has a moral dimension, but it is not only the implementation and enforcement of the law that has a strong moral component, but also the elaboration and adoption of the legal norms.

However, it should also be mentioned that, in the case of constitutional legal norms, due to the very high degree of generality as well as the constitutional legal force, the legislator must provide, in general terms, the vast majority of situations that may arise later, at least for an average time period, as well as possible means of resolving potential conceptual conflicts that may arise.

In the constitution of any state, the fundamental principles for that form of state organization, cultural, economic, social, legal, etc. values are enshrined.

A fundamental law must contain the fundamental principles of organization and functioning of a state or of a group or confederation of states, from all areas of social life. Although not even a fundamental law can create fundamental principles of law, the constitution has a major role in affirming, recognizing and guaranteeing these principles. By recognizing, directly or indirectly, the fundamental principles of law in the constitution, they become constitutional principles at the same time, thus ensuring a wide spread as well as supreme legal force. Furthermore, the constitution can be recognized as having the role of "architect" regarding the creation of new fundamental values, including legal values. This is because neither the law, in general, nor the constitution in particular, can be considered as mere arbitrators or mediators of conflicts that may arise in society. As it emerges from the study of any constitution, it can be qualified as a real declaration of values specific to a particular legal culture.

Even in significantly different legal cultures, the constitutional legislator often chooses to protect fundamental values in a similar way.

As an example in the field of comparative law, the principle of equality appears in a similar form in the states where it is obeyed as follows:

- the Romanian Constitution, art. 16 paragraph (1), "Citizens are equal before the law and public authorities, without privileges and without discrimination";
- the Japanese Constitution, art. 14 paragraph (1), "All citizens are equal before the law and there is no discrimination based on race, religious belief, difference of sex, class or social origin, or arising from political, financial or social relationships";
- the German Constitution, art. 3 paragraph (1), "All people are equal before the law"; paragraph (2) "Men and women have equal rights. The state promotes the genuine achievement of equal rights for women and men and acts to remove the existing disadvantages"; paragraph (3) "Nobody can be disadvantaged or favoured as a result of sex, social origin, race, language, homeland or provenance, belief or religious or political views. No one can be disadvantaged because of a disability";
- the Indian Constitution, Part III, art. 14, "The State shall not deny to any person equality before the law, or equal protection afforded by law, on the territory of India."

Following the study of several national constitutions[7], it was demonstrated that there is an explicit constitutional reference to the principle of legality in quite a few states and that many other states adhere to this principle in judicial practice.

In this sense, the author who carried out the comparative examination believes that *nulla poena sine lege* can be considered a fundamental principle of law, according to the meaning given to this phrase by the Statute of the International Court of Justice.

Since the constitution appears in the form of a regulation[8], the existence and enforcement of its provisions would not be possible without obeying the principle of legality, this principle being in fact the foundation on which all other principles and fundamental values of the law are built[9]. The Constitution holds a central place, which ensures the stability of the entire legal system, of the legal order. State power as well as the role of coercion it fulfils are often based, and even legitimized, on the recognition of the supremacy of the law.

The constitutionalisation of European law[10], as a process that is at the centre of legal development in recent years, can become complete only by using a doctrine of principles, of common fundamental values. Also, a complete constitutionalisation of a legal order can be achieved exclusively through a constitution that can penetrate all legal relationships, a fact that is most easily achieved through constitutional principles, meaning that a doctrine of principles should participate in the transformation of "law integration" into a multifunctional and efficient legal framework.

Looking at the Draft for the Establishment of a Constitution for Europe, even if it lacked legal power, it still had an essential importance on the Treaty of Lisbon, being important mainly due to the fact that it represents a potential "axiological compromise"[11]. As it was known, the need to find common fundamental values in Europe was felt since the end of the Second World War. Thus, if the European Union wants to be an important factor in global politics, it is absolutely necessary to understand what the foundation of European culture[12] is and also what the mission and purpose of European culture in a globalised world is.

Constitutional guarantee of fundamental legal values

Axiology understood as a complex of historically accumulated social values seems to be a community of spirit and mind of European citizens, a basis for political unity in cultural diversity.

However, it should be taken into account that the idea of a solitary regulation is abstract enough to be accepted by litigants as recipients of legal norms[13]. It is also necessary and useful that each legal norm represents a recognition of at least one important social value. Likewise, fundamental values for society, such as equality, freedom or human rights, must be and can be guaranteed only by law.

It could be said that regulations are socio-legal values by themselves[14], in a democratic regime, however this statement must be viewed with some caution. Idealizing the laws and even the constitution can be somewhat dangerous especially if we look at the Roman legal system where, due to the fact that the law was considered sacred, most of Roman law had to develop through jurisprudence - through legal precedent. Although a law that is considered sacred is much less likely to be broken and is theoretically much better legitimized, changing such a law would become very difficult.

In cases where social needs demand more and more flexibility from a regulation, any legal norm must be considered important because it would not otherwise have authority and would not be obeyed, however it must not in any way be considered an axiom that what cannot be changed in a situation is similar to a constitution as a fundamental law.

The fundamental law must not be considered sacred, but it has intrinsic value because it is the main guarantor of the fundamental values in a democratic state and at the same time a value in itself, through the authority it has, through the social recognition that brings it very close, from certain points of view, to J.J. Rousseau's idea[15] of a social contract, a contract by which it is stipulated that the population delegates an important part of its sovereignty to very well-defined state bodies.

Conclusions

In conclusion, a constitution - as a fundamental document - in a democratic state must recognize the sovereignty of the people, but at the same time the constitution must limit this sovereignty to some extent. In essence, national sovereignty is a democratic

principle the achievement of which is dependent on the people's awareness of its vital interests resulting objectively from the conditions of its existence and development. The legitimacy of any constitution is sovereignty itself, but the sovereignty of the people is not absolute, just as the autonomy of will, in the case of the individual, is not absolute, a fact for which it is increasingly necessary for a constitution, in a democratic state, to be legitimized by certain values, which cannot be combated in any way.

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No.19/2023

SERBIA'S DIPLOMACY AND THE VENETIAN REPUBLIC 12-14. CENTURY

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Abstract:
The relations between Serbia and the Venetian republics were significantly and largely complex throughout history. In certain periods, these relations were characterized by expressed hostility, but it was indisputable that there were periods of close cooperation, which were determined by the fact that states were related to common interests against Byzantine, but also economic trade. The period from 12 to the 14th century is especially important for the history of Serbia. It is a period of its strengthening and unification, and the design of medieval statehood, given the fact that it is a period of the rule of Nemanjić dynasty. At this time, Serbia becomes a kingdom, and later he gains the prerogative imperial authorities, during the reign of Emperor Dušan.
Key words: *Serbia, Venice, relations, cooperation, economic trade.*

INTRODUCTION

Strengthening the Serbian state authority and the expansion of territories in the wars did not favor other European forces, and they took certain steps, to prevent this Serbian penetration through the Balkans and to the ground.

On the other hand, the period of the Middle Ages marked the strengthening of the Venetian Republic and its development. Although neither Serbia and also the Venetian Republic were central European Forces, however, were both significant factors in shaping the geopolitical situation in the Balkans and in Europe. The importance of the action of the Venetian republic was laying in its economic power. From a modest city built on the sludge lagoons Venice became the center of the middle-aged, the capital of the largest colonial empire of the Middle Ages, a very rich and successful city known for its luxury and its reputation[1]. The success of the action of Venetian forces lies in the fact that the Venetians quickly realized that the future of their action rests on the action of the fleet and

within sea traffic. Starting from the early Middle Ages, they wore expensive materials, jewelry, spices and similar products that were at the price. The beginning of the rise of the Venetian Republic signifies the 11th - she then established dominance in the Adriatic, and expanded its maritime power and developed wealth. From the centurenthary century, it was constantly strengthened that by the end of the 11th century, significant possessions on the eastern drain coast and on Levanta would create significant possessions as an independent republic. The most important elements of the development of the Republic were its trading and transport function, and a long-term association with the Byzantine empire has enabled it to be a privileged position in the Mediterranean store[2]. Thanks to the favorable geographical position and the need to maintain airworthiness with the mainland, the Venetian population gradually grew into very skyrocket and sought-after seafarers. Records on the first milestone is made by the Roman politician Cassidor, which states that these inhabitants only have enough fish; The poor and rich are equal, everyone feeds with one food, everyone has equal houses. Furthermore, what particularly characterizes them is and the fact that there is no envy among them, they only compete in salt production[3].

The central theme of the research is the relations between Serbia and the Venetian Republic in the period of time from the 12th to the 14th century. These relationships are complex and require careful analysis. In addition, the question of research is not only the character of these relations, but more than that the policies that shaped the nature of the actions of these states in the mentioned period. The initial hypothesis of the work rests on the idea that Serbia and the Republic of Venice had conflicting policies in this period, but that the basis of their common interest was action towards Byzantium, which influenced the final decision on the course and direction of foreign action.

The period of time to which the research is limited is one of the key periods of creation and strengthening of Serbian and Venetian statehood, and therefore it is of primary importance to examine relations with neighbors. It is precisely the economic conditioning in mutual relations that shaped the relations between the Serbs and the Venetian Republic in different periods of time. It should be borne in mind that none of these states had their own completed statehood in the mentioned period, that is, they were relatively young states that were still examining the framework of their statehood. In

the introductory part of the paper, we will present the development of historical events concerning the statehood of Serbia and the Republic of Venice in the initial period in which the framework of the research was set. In the central part of the work, we will point out important aspects of the internal and external policy of both countries during the mentioned historical period. When we talk about policy frameworks, the research is not only directed towards foreign political relations. In a certain segment, we will present the issues that shaped the actions of these countries on the internal level. Finally, in the final part of the paper, we will look at the conclusions reached in the research. In addition, the final part of the paper aims to show further potential in future research dealing with this and related topics.

The method that will be used during the research is primarily a historical method, which aims to present chronologically, objectively and impartially the events that took place in the period that is set as a framework in the research topic itself. By analyzing historical facts, we can reach relevant conclusions related to the evolution of relations. In addition, since the subject of interest in the framework of the research is a comparative presentation of the politics of Serbia and the Republic of Venice in a certain period of time, in order to fully present the facts that caused this action, a normative method will be applied. which is based on the analysis of the existing provisions of the law that were valid at that time. It is also necessary to look at the economic circumstances that significantly and significantly influenced the emergence and development of relations between Serbia and the Republic of Venice, since trade is certainly what shaped both their internal and external relations to a certain extent. We are talking about two countries that were significantly and to a large extent oriented towards mutual cooperation. In addition to the mentioned key methods of cognition, in the framework of the research, in order to substantiate certain claims, to the extent that it is necessary, logical methods of reasoning, especially the method of deduction, will be used. Also, other methods characteristic of social and humanistic sciences will be applied.

The political effects of Serbia and the Venetian Republic to the 14th century

The period from the 12th to the 14th century represents a period about which there are relatively few direct historical sources, since for both Serbia and the Republic of Venice it is a period that marks the awakening and emergence of their statehood.

Therefore, in this part of the work, we will present important historical events and characteristics from the mentioned period. In addition, in this part of the work, we will analyze the key historical events that shaped the political relations between Serbia and the Republic of Venice. The aim of this part of the research is to introduce the reader to further periods of research, which are crucial for determining the findings related to the initial topic of the research.

War of the Venetians and Serbs against Byzantium in 1171/2. year, i.e. during the time of Stefan Nemanja, it is the first example of military cooperation between two states. The Venetians, who were at war with Byzantium, encouraged fighting in Serbia between the Serbs and the Byzantines. However, due to the epidemic that broke out in the spring of 1172 and which noticeably thinned the Venetian army, the cooperation between the two states was not fruitful [4].

In the period of the action of Nemanjina sons, a larger number of data on Serbian-Venetian relations is available. Namely, according to information, in relevant historical sources from the present period, it is known that Stefan Nemanjić, right before the civil war, and in mind the conflict with his Vukan, who made himself increasingly, decided to approach Venice every day[5]. Admittedly, about the very approaching Venice, almost nothing directly known; That we had to conclude him from the fact that Stefan took the Vukan Kotor and set his prince with the origin of Venice, Laura Zana. The conflict of brothers, so he culminates that he who was more dominant in conflict began to influence the formation of the government and further widespread his influence, without control of which it became more limited. It is possible that this separation of Kotor from Vukan's share of the principality and immediate subordination of the Grand Countan Stefan Nemanjic was Casus Beli[6]. Later, however, when the war between the brothers ended up, Vukan's son and the successor in Zeta, Djordje, 1208, will swear on the loyalty to Venetian bed.

At the very beginning of the 13th century, important events took place that would affect future Venetian-Serbian relations. Then, after the Fourth Crusade, the Republic of Venice became the largest naval power, occupying strategically important ports. It was important for Serbia that in 1205, Durrës and, what is especially important, Dubrovnik

came under the rule of Venice, so that indirectly Venice also became a neighbor of the Serbian state[7]. From then until 1358, the Dukes of Dubrovnik would be Venetians[8]. One of the most responsible for building the Venetian power was the former doge, Enrico Dandolo, one of the main inspirers of the Crusader conquest of Constantinople. A little later, Stefan Nemanjić, who already had two marriages behind him, seeing that Venetian power was at its peak, married in the first half of 1217 Anna Dandolo, granddaughter of Enrico Dandolo[9]. Although at that time Enrico Dandolo was no longer among the living, his family was among the most powerful and respected in the Republic of Saint Mark. Soon, probably in September 1217, Stefan Nemanjić and Ana Dandolo were crowned with the royal crown brought from Rome in the Church of St. Apostles Peter and Paul in Ras.

Anna will later outlive her husband, and will most likely die in the seventh decade of the 13th century. Her death is depicted on a fresco in Sopoćani, the endowment of her son, King Uroš I[10].

The next important event in which Venice took part was the conflict between the churches of Bar and Dubrovnik, lasting over half a century. Venice was interested in this dispute because the archbishops of Dubrovnik at that time were Venetians. In addition, the people of Dubrovnik had a lot of expenses in this dispute, so that they occasionally had to borrow money in Venice. The conflict itself did not go well for Dubrovnik, and its course often depended on the attitude of their supreme lord, Venice, in the papal struggle with the Holy Roman Empire. In the end, in 1255, the dispute ended favorably for the Bar church[11].

Ten years after the end of the dispute between Bar and Dubrovnik, strained relations between Dubrovnik and Serbia once again occurred. In the fall of 1265, King Uroš began to harass the people of Dubrovnik. Feeling threatened, the people of Dubrovnik fortified the city walls, exposing themselves to great material sacrifices. They also decided to send an embassy headed by Archbishop Aleardo to Venice, hoping to find an understanding there because the Serbian king was, among other things, robbing Venetian merchants. However, Venice was at war with Genoa at that moment[12]. Also, with the restoration of the Byzantine Empire in 1261, its positions in the East were shaken. In addition, at the end of 1265, a rebellion broke out in Dubrovnik against the Venetian

prince, which probably influenced the Venetians to delay providing assistance to the Dubrovnik embassy. Only at the beginning of April of the following year, the people of Dubrovnik took a loan of 325 pounds of Venetian groschi in Venice[13]. However, the real war did not occur, and the state of tension ended in 1268, when it was agreed to increase the annual tribute from one thousand two hundred to two thousand perper and determine the deadline for payment on Michaelmas(day)[14].

Towards the end of the reign of King Uroš I, in 1275, a war broke out between Serbia and Dubrovnik. The king personally led the army, however, the people of Dubrovnik managed to suppress it, and they also caused damage to Serbian territories from ships. In one such attack, a large number of Dubrovnik fell into an ambush, and the Serbian king blinded two Dubrovnik commanders, one of whom was the duke's deputy, a Venetian. In the end, at the request of Dubrovnik nobles who also asked for help in shipping, the Venetian doge sent only two representatives to King Uroš I, Nikola Navajoza and Nikola Miljan, which was still enough considering that they managed to convince the Serbian king to withdraw. On that occasion, peace between the states was restored[15]. King Uroš I was overthrown by his son Dragutin in 1276, who, after breaking his leg falling from his horse, handed over power to his younger brother, Milutin[16]. Nevertheless, he kept certain territories in the north of Serbia for himself, and soon, as the son-in-law of the Hungarian ruling house, he received the Machvanian-Bosnian banovina[17].

Hungarian King Andrija III Mlečić, whose position was extremely unstable, with the aim of binding King Dragutin to himself, decided to marry his son Vladislav to his niece, Constanta Morozini from Venice[18]. The marriage contract was concluded on August 24, 1293 in Venice, and the marriage itself lasted for fifteen years[19]. As a great trading power, Venice paid great attention to the money it traded in, i.e. its weight and purity. During the time of Doge Enrico Dandolo, it began minting the so-called grosso, i.e. large dinar, following the example of Byzantine coins, whose fineness was 965/1000 and weight 2.178 grams[20].

Later, Venice decided to introduce a gold coin; In 1285, the gold ducat (ducato d'oro) began to be minted, which contains 24 carats of gold and whose weight is 3.559 grams, and which is eighteen times more valuable than the groschi, while after 1328 the ratio of ducats to groschi will be 1:24.20 King Dragutin, and possibly his father, King Uroš,

also minted his own money on the model of the Venetian grosz. In the beginning, this money had a similar value to the Venetian money, which is why it was a valued and gladly accepted currency. However, at the end of Dragutin's reign, and especially at the time of King Milutin, the Serbian dinar began to deteriorate; his weight became less and less over time[21].

The decline in the value of the Serbian dinar was the reason for the Venetian government to try various means to ban its circulation. The first such known attempt was the decision of the Great Council made on April 24, 1280, that the supervisors of the state mint must swear to give Venetian groschi for Brskov dinars "pondus per pondus". After the exchange, the dinars from Brsk were beaten and reworked, and the people of Venice suffered a loss of around 10% due to reduced income[22].

Two years later, at the very beginning of Milutin's reign, a decision was made to cancel the Brsk dinar as a means of payment. Namely, on May 3, 1282, the Great Council decided that Serbian money should be cut and turned into metal, or marked in some other way, i.e. damage. The money destroyed in this way had to be reported and handed over to the mint within three days, and the mint in return gave matapan in the same weight. If, on the other hand, more than 12 pieces were found in a person's possession, 10% of all dinars had to be taken from them as a penalty. The decisions had to be followed by all the rectors of Venice, except for the one from Dubrovnik[23]. A similar decision was made again half a year later. Brsk dinars found in Venice were supposed to be cut within three days. An order was also issued to the princes of Zadar and Dubrovnik, as well as the consuls in Apulia, Durrës and Kotor, that all Venetian merchants who live and work in the mentioned places must swear that they will not bring or send Brskov dinars to Venice, except for cut ones, and if they have them, that they will cut them off before they get to Venice under the threat of a 10% fine.

So, this time the ban only applied to Venice, while Serbian money could circulate freely in Dubrovnik, Zadar, Durrës and Apulia, as well as Kotor[24]. However, these decisions had no impact, and the Venetians decided on a somewhat more radical approach. In 1286, the Venetian Council authorized the Duke of Dubrovnik to forbid the people of Dubrovnik and the Venetians in Dubrovnik to trade in the lands of King Milutin, King Dragutin and their mother Queen Jelena[25]. In order to solve the problem of Serbian

money, the Venetians sent an envoy to the Serbian king at the end of July 1287. The sources do not inform us what happened next, but judging by future events, the deputy did not have any success[26].

The next decision aimed at banning the Brsk dinar was made on September 29, 1290. Similar to previous decisions, this one also provided for a fine of 10% of Serbian money brought to Venice or its district, after which the said money was cut off[27]. In June 1292, another ban was passed, which is actually just a softened repetition of the ban from 1282. Namely, the Venetians predicted that the "de Brescoa et de Rassa" dinars and other similar Venetian money that was not minted in Venice, and which came to the Venetian offices and banks, would be cut across[28]. Two years later, a decision was made that anyone who owns Serbian money has 15 days to hand it over to the mint, where it will be accepted at the exchange rate of 11 pounds and 5 soldi per mark. After the expiration of the mentioned term, the supervisors were to receive "denarios grossos de Brescoa et de Rassa" at the exchange rate of 28 dinars for one grosso. Also, the supervisors were obliged to inform the doge, the councilors and the council of forty about the profit or loss every fifteen days. In addition, every fifteen days they had to check the purity of the silver. So, now Serbian money could be in circulation again, but according to the exactly prescribed exchange rate, which was, as we mentioned, 28 dinars for one grosz. If we bear in mind that the matapan was then worth 32 dinars, the ratio of Serbian money to the matapan was 3.5:4. However, in 1299, a new decision was made by which Serbian money was exchanged at the exchange rate of 24 dinars for one grosz. So now the ratio was 3:4. Finally, the last decision to ban Serbian money was made at the end of October 1302. It was then decided that all Serbian money must be cut within eight days, after which it was most likely melted down and turned into metal[29]. Although the last decision to ban Serbian money was made in 1302, this does not mean that the money rate of the Serbian dinar did not continue to fall. However, in the second and third decades of the 14th century, there was a crisis in the circulation of silver coins in Venice, primarily for two reasons. Firstly, the production of silver in European mines decreased, and secondly, due to the very nature of Venetian trade, there was a large outflow of silver from Venice to the East. In the 1930s, there was an even greater shortage of silver money, and all this influenced Venice to change its attitude towards Serbian money. As a

consequence, Serbian silver exports to Venice, via Dubrovnik, have been growing especially since the end of the twenties of the 14th century. During the next two decades, silver was bought in Dubrovnik, but also cross groschi, which were then sent to Venice, melted down, and turned into metal or forged into matapana[30].

Relations between Venice and Serbia during the 14th century

In this part of the paper, we will deal with issues related to the relationship between Serbia and Venetian republics during the 14th century. Namely, it is a period that is characteristic in Serbia as a period of change of significant number of rulers. It is this sensitivity of internal relations in Serbia, somewhat shaped complex relationships that existed in relation to the Venetian Republic. In this part of the paper, we will show the relations between Serbia and Venetian republics, from King Milutin, all the way to the emperor of Dušan.

1*. Venetian Republic and King Milutin*

The Serbian-Dubrovnik war from the beginning of the 19th century was a significant event in Venetian Srpskal relations, primarily, as we will see, because of the role of Venetians as a mediator when concluding peace[31]. In the same year, when a peace treaty signed in Venice between Venice and Byzantium, Serbia ended the war with Dubrovnik. A lot is known about the war, but, on the other hand, peace negotiations are well documented in modern sources. The causes of war are not known. Some historians represent the opinion that Serbia and Dubrovnik was a consequence of the conflict of Venice and Byzantium. This is one of the most significant wars that took place under the rule of King Milutin. In this, in its occasion, the Serbian king captured a number of Dubrovnik merchants and held them closed until the end of the war, as Dubrovnik, on the other hand, occupied Mljet and set their princes on the island. The fact that some Dubrovniki allegedly planned to move out into some quieter places in Italy where they would not be disturbed, but this Dubrovnik government bans[32].

In early September 1301, he was decided to send two deputies to the Serbian king to mediate in the Serbian-Dubrovnik dispute, however, Members of Serbia did not go until October 17. There is nothing so much delay, especially if they have the order that "non possiant de ragusio redire sine nostro mandato, Salvo si Negotium Inter Raže aptatum", which would mean that Venice really cares about It reaches peace before. Maybe with

the sending of the embodiment, it was hesitated because negotiations were already guided in Dubrovnik. Also, it was predicted to spend two months or more in the road to Dubrovnik and Serbia, and it was necessary to agree with the Venetian Prince of Dubrovnik, while with the authorities there, it was only consulted. At the same time she sent two deputies to mediate between Dubrovnik and Serbia, Venice was watching to provide Vojno to his protégé. In doing so, the captain of the Venetian Adriatic fleet was ordered to go to Dubrovnik, and two gales were also returned to Dubrovnik, while Loaded grain was ordered to arrive in Venice. In addition, it was decided that the Venetian government would submit the costs needed to help and defend Dubrovnik. All this would indicate that Venice and Dubrovnik were not sure whether the Serbian king was ready to agree to negotiations. By mediating Venice, peace between Serbia and Dubrovnik was concluded in 1302. At the end of the second decade of the 14th century, two events were important for Venetian-Serb relations. The first was the war of Serbia and Dubrovnik in which Venice, as the Supreme Lord of the city, had the role of intermediaries between the two warring parties. The second was the war of King Milutin with Mladen II Bribirski.

2. *Venice and Stefan Decanski*

After the death of King Milutin, war broke out between his sons, Stefan and Constantine. Stefan emerged victorious from the conflict. However, the civil war shook the royal power, which some members of the local authorities used to become independent. In the new conditions, the Branivojevics managed best, which had as their starting point the Ston War, from which they further expanded their power to Popovo and towards the Dubrovnik border, and soon towards the Neretva valley and across it.

In the meantime, Stefan Decanski decided to introduce some news to the Dubrovnik merchants, so in April 1327, the people of Dubrovnik decided to withdraw their merchants from Serbia within a month, as well as to stop all trade with the lands of the Serbian king. At this time, the people of Dubrovnik feared that war with Serbia might occur. On the other hand, they sent complaints to the Doge of Venice, asking him to withdraw the Venetian merchants from Serbia. The people of Dubrovnik gave their merchants a month to withdraw from Serbia[33]. Otherwise, there is a fine of five hundred perper. They also invited the Doge of Venice to resort to the same measures, which should apply to all his subjects. The people of Dubrovnik here probably had in mind the

Dalmatian cities that were under Venetian rule. However, Venetian merchants still sent goods to Serbia, and probably went there themselves. For this reason, the Dubrovnik Grand Council decided on July 20 to prohibit the Venetians who stayed in Dubrovnik from exporting fabrics and other goods to Serbia. However, the ban did not apply to those Venetians who temporarily stayed in Dubrovnik; they could export their goods, but during the day they had to report the amount of cloth to the municipal chancellor. On the same day, the Venetian merchant Filip de Ledje reported to the municipal chancellor that there were four bales in the house, i.e. thirty-six pieces of cloth[34]. The people of Venice soon decided to show solidarity with the people of Dubrovnik. In August 1327, the Venetian Senate forbade its subjects to go to Serbia, and ordered its merchants to withdraw from that country. At the same time, Venice told the Serbian king that "it cannot abandon its faithful citizens of Dubrovnik, to whom it will provide help and service in everything they need, and especially to preserve their rights, because there is no authority in the world against which this municipality (i.e. Venice) she would not be able to protect her faithful and others from hardship". In the end, armed conflict was inevitable.

It is known that the Serbian army attacked Stonski Rat, which once belonged to the Branivojevics, and which the people of Dubrovnik annexed to their republic after the defeat of Branivoje's sons. We also know that the Serbian army took Dubrovnik's cattle away from the Ston War. The Serbian king considered the War of Ston a part of Serbia, and for the damages caused to the people of Dubrovnik, he did not pay compensation after the end of the war. On the other hand, a certain Branko, possibly the son of Duke Mladen, caused some damage in the Dubrovnik territory, in Zupa. Those damages were included in the fall of 1328. during the payment of the Sentdmitar income for the previous two years.

3. *Venice and Emperor Dusan*

Unlike his predecessors, Stefan Dušan pursued a very friendly policy towards Dubrovnik. Dušan's attitude was probably influenced by considerations towards Venice, which would later play a significant role in Dusan's plans. It seems that already at the beginning of his reign, at the end of 1331, King Stefan Dusan issued a charter on freedom of trade to the people of Dubrovnik[35]. Dušan's friendly policy towards Dubrovnik is evidenced by some other events from the beginning of his reign, which concerned the

War of Ston. Namely, the people of Dubrovnik occupied the Ston War, as we have seen, in 1326; in order to legalize this asset of theirs, they tried, although without success, to settle with Stefan Decanski. However, with Dusan's accession to the throne, the situation changed, and the new Serbian king issued a charter in January 1333 that gave the people of Dubrovnik as a "heritage" the coastline from Ston to Dubrovnik, the Ston War, as well as the island of Posrednjica at the mouth of the Neretva. On the other hand, the people of Dubrovnik had to pay 8,000 perper to the king, and then pay a regular annual tribute of 500 perper (Ston income). Considering that they did not adhere to some of the provisions stipulated in the aforementioned charter, the Serbian king issued them a new charter in May of the following year, specifying the obligations of the people of Dubrovnik regarding the War of Ston.

More than any of his predecessors, Dusan procured large quantities of weapons in Venice. These acquisitions do not only testify to Serbia's good relations with Venice; they are also a witness to Dusan's conquest policy. We have information that Dušan purchased weapons in Venice in May 1336, after the battles against Byzantium and Hungary. The procurement of weapons on two occasions in 1341, and once again the following year, seem to foreshadow Dusan's offensive towards the Byzantine territories. In addition to acquiring weapons, Dusan also recruited mercenaries in the west, via Venice. Thus, at the beginning of December 1336, the Venetians allowed three hundred mercenaries, who were going to Serbia, to pass through their district. However, in May 1341, the Venetians, apologizing, refused to allow the Serbian king to hire an army in Venice.

In the middle of the 14th century, Venice and Serbia had a common enemy, Hungary, and were natural allies in the fight against it. Namely, we know that in 1346, Serbia was at war with Hungary. From an undated letter dating back to 1346, we learn that while King Lajos I was preparing to go on a campaign against some enemies who had invaded his states, Stefan Dusan attacked Hungary. Not wanting to fight on two sides, the Hungarian king concluded a truce with the Serbian emperor, which contained the condition that one of the king's relatives would marry Stefan's son, Uros.

It is not known when this truce was signed, but there is reason to assume that it was the period between April, when Dusan was crowned emperor, and July 29, 1346,

when the Venetians expected the Serbian ruler to meet with the Hungarian and when they begged him to intercede for them. As the Hungarian king was already near Bihać on May 27, on his way to Zadar, the proposed time frame could be narrowed down to the first half of May 1346.

Conclusion

After everything presented, it is more than clear that Venetian-Serbian relations were extremely complex. Those relations were not independent of the relations of both states with other states. The complexity of the situation on the Balkan Peninsula was caused by the changing relationship between Serbia and the Republic of Venice, its development and transformation. They were influenced, first of all, by the mutual relations of both states with Hungary, Byzantium, Dubrovnik and Bosnia. Only in the context of the wider policy that was conducted in the area that was important for the Serbs and the Venetians, can the relations between the Balkan Kingdom and the Italian Republic be fully understood.

The Eastern Adriatic is an area where, above all, the interests of the Venetians and Hungary collide. Here the Venetians hold Zadar, which they consider their most valuable possession on the Dalmatian coast. Turmoil in the Kingdom of Hungary from the end of the 13th and the beginning of the 14th century was in principle suitable for Venice, however, they resulted in the strengthening of the Croatian rulers(probably Serbs) in the hinterland, primarily Subic, which, on the other hand, did not suit the Venetians at all. Pavle Subic is currently at enmity with Serbia, and when his son enters Zadar, he will have a new enemy - Venice. The existence of a common enemy would point Serbia and Venice to cooperation, but if we exclude one piece of information that would speak in favor of that, there is no solid evidence of the alliance between the two states at this time. Soon the Šubićs became citizens of Venice, and after several more years of enmity with Serbia, their power was crushed by the Hungarian king. Venice takes advantage of such a situation and takes other important Dalmatian cities under its protection.

We can conclude that the starting hypothesis of the work, which refers to the determination of the complexity of the relationship between these states, has been confirmed.

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Journal of Law and Administrative Sciences
No.19/2023

THE GUARDIANSHIP MANDATE

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Abstract:
The guardianship mandate is a new type of mandate, unfamiliar to traditional Romanian law, inspired by the modern legislation of other states such as Quebec, France, and Belgium. It aims to meet the requirements of the 2007 United Nations Convention on the Rights of Persons with Disabilities, ratified by Romania, as well as the Decision of the Romanian Constitutional Court No. 601 of July 16, 2020. This decision imposes the reconfiguration of the protection system for persons with disabilities by adapting the measures taken to provide minimal legal intervention in their lives, particularly regarding their legal capacity. This type of mandate is unique and takes the form of a solemn contract that is valid only when scripted in authentic notarial form, and its effects come into play only when there is a deterioration of mental faculties, following the procedure established by law.
This article aims to analyze the new type of contract based on its characteristics, the approval procedure, and its effects, while also considering comparative law.
Keywords: *guardianship mandate, protection of persons with disabilities, legal capacity*

Introduction

The protection of individuals with intellectual and psychosocial disabilities is regulated by Law No. 140 of May 17, 2022, regarding certain measures for the protection of individuals with intellectual and psychological disabilities. This law is intended to complement and amend several normative acts, including the Civil Code and the Code of Civil Procedure, and was published in the Official Gazette No. 500 of May 20, 2022.

This law is the Romanian legislator's response to the Decision of the Romanian Constitutional Court No. 601/2020, published in the Official Gazette of Romania, Part I, No. 88 of January 27, 2021. This decision refers to the unconstitutionality exception of the provisions of Article 164 paragraph (1) of Law No. 287/2009 on the Civil Code, republished with subsequent amendments, published in the Official Gazette of Romania, Part I, No. 88 of January 27, 2021. The Romanian constitutional court ruled that the provisions of Article 164 paragraph (1) of the Civil Code, which established that a person lacking the necessary discernment to care for their own interests due to mental alienation

or debilitation, should be placed under judicial interdiction, were inconsistent with the constitutional provisions contained in Article 1 paragraph (3), Article 16 paragraph (1), and Article 50, as interpreted in light of Article 12 of the Convention on the Rights of Persons with Disabilities. Article 20 paragraph (1).

The protection of individuals with intellectual and psychosocial disabilities can take various forms regulated by Law 140/2022, such as assistance in concluding legal acts. However, the most important forms, intended to replace the former institution of judicial interdiction, are two: judicial counseling and special guardianship, treated in Chapter III, which amend Articles 164-177 of the Civil Code, which previously represented the judicial interdiction, as well as other provisions of the Civil Code.

Thus, Law no. 140/2022 provides several protection measures for people with intellectual and psychosocial disabilities, with a different legal nature: conventional (assistance at the conclusion of the legal act), judicial (judicial counseling, special guardianship and guardianship) and mixed (mandate of protection and guardianship), when the interested party appointed, by authentic deed, a curator.[1]

The legislative solutions proposed, essentially aim to reconfigure (and rename) the current institution of judicial interdiction and create a new protective mechanism - judicial counseling. The entire legislative framework is based on three fundamental pillars: necessity (the protective regime is established with the purpose of adequately safeguarding the vulnerable person), subsidiarity (protective measures for adults are ordered only when the court deems that other measures provided by law are insufficient to safeguard the interests of the person under protection, applying the general legal rules for protecting a general or specific interest, those concerning representation or assistance, those relating to the rights and obligations of spouses, or approving a guardianship mandate concluded by the person in question), and proportionality (the protective regime corresponds to the degree of incapacity and is individualized according to the needs of the person under protection and the circumstances they face)[2].

Legal Provisioning

The legal framework for protective measures through legal counseling or special guardianship is primarily provided by Articles 164-177 of the Civil Code, in terms of

substantive conditions, and Articles 936-943 of the Code of Civil Procedure, in terms of procedural conditions. The placement under protection of individuals with intellectual and psychosocial disabilities is normatively established to replace the institution of interdiction, which is substantially modified in terms of conditions, procedure, effects, and termination.

Both interdiction and protective measures have as a common element the essential condition of a pre-existing illness, documented in medical records based on specialized evaluations.

Based on the provisions of Article 164 of the Civil Code, we can define the placement under protection of adults with intellectual and psychological disabilities through legal counseling or special guardianship as a civil protective measure, which is ordered only by the court, for adults or minors with limited legal capacity who, due to medical conditions (reflected in specialized documents based on medical and psychosocial evaluations) leading to the deterioration of mental faculties, whether temporary or permanent, partial or total, require support in their care and interests, to the extent that taking this measure is necessary for exercising their legal capacity on an equal basis with others.

Regardless of the chosen form of protection (legal counseling or special guardianship), the appointed person to exercise the role of guardian will be named from the date of the final decision, according to Article 170 of the Civil Code.

Following the example of modern legislations, the Romanian legislator has adopted the possibility for individuals who may benefit from a protective measure in the future to appoint a guardian through a new form of civil mandate, the guardianship mandate.

The guardianship mandate is regulated in Article 166 of the Civil Code, which states in paragraph 1 that *any person with full legal capacity can designate, through a unilateral act or agreement executed in authentic form, the person to be appointed as a guardian to take care of their person and assets in case they are placed under legal counseling or special guardianship*.

Paragraph 2 of the same article provides that "*a person with full legal capacity or a person benefiting from legal counseling may conclude a guardianship mandate for the*

situation where they are no longer able to take care of themselves or manage their assets."

Article 2009 of the Civil Code has also been amended by Law 170/2022, so that in paragraph 1, the mandate contract is defined as "the contract by which one party, called the mandatary, undertakes to conclude one or more legal acts on behalf of the other party, called the mandator," and paragraph 2 is dedicated to the guardianship mandate itself, stating that "*the mandate may also include the conclusion of acts aimed at ensuring the protection of the mandator's person, the administration, in whole or in part, of their assets, and, in general, their moral and material well-being*."

Article 2016, paragraph 2 of the Civil Code provides that "*to conclude acts of alienation or encumbrance, transactions or compromises, to be bound by bills of exchange or promissory notes, or to file legal actions, as well as to conclude any other acts of disposal, the mandatary must be expressly empowered, except when the guardianship mandate explicitly authorizes the mandatary with full administration of the mandator's assets.*"

In Book V, Title IX, Chapter IX, Section 2 of the Civil Code, after Article 2,029, a new paragraph, § 3^1, comprising Articles 2,029^1-2,029^10, is introduced, dedicated to the regulation of the mandate of protection.

As it is a separate contract of mandate, the mandate of protection has a special regime. Article 2016(2) of the Civil Code provides the possibility for the mandatary in such a contract, if granted full authority to administer the mandator's assets, to perform any act of disposal or encumbrance, transactions or compromises, including the obligation to issue bills of exchange or promissory notes or to initiate legal actions, all of which are normally within the competence of a mandatary with a special power of attorney.

Article 2029(1) of the Civil Code captures the specificity of this type of contract, stating that "the mandate of protection is given by a person with full legal capacity for the situation in which they can no longer take care of themselves or manage their assets. The mandate of protection can also be given by an adult who benefits from legal counseling, with the consent of the legal guardian and the authorization of the guardianship court."

Therefore, the mandate of protection will only take effect in the event that the mandator becomes incapable of taking care of themselves or their assets in the future,

as a result of a significant deterioration of their mental faculties, which will be ascertained through a medical and psychological evaluation.

The new regulation is welcome and intended to provide a certain level of control to a person who, prudently relying on a family history or presumed or early diagnosed conditions, wishes to ensure that in the event of a deterioration of their mental faculties preventing them from taking care of themselves or their assets, they can designate a trusted person to take care of them and their interests.

The mandatary can be a person with full legal capacity, as well as an adult for whom the measure of legal counseling has been instituted, provided that their mental faculties are only partially impaired, with the consent of the legal guardian and the authorization of the guardianship court. Such a provision was necessary, especially since a person who has already been subjected to legal counseling can reasonably anticipate the need for someone to fully take care of their person or assets in the future.

In the future, the mandate of protection may become a widely practiced extrajudicial protective measure, as there are areas of intersection with those established through a maintenance contract, which enjoys extensive practical applicability, as it can assign the mandatary with the care of the mandator and their living conditions after the onset of incapacity, in accordance with Article 2029(2), paragraph 2.

The form in which this type of mandate contract is concluded is, as explicitly provided in Article 2029^1, an authentic notarial form. It will be registered in the National Notarial Registry of Powers of Attorney to comply with the publicity requirements that allow third parties to know the specifics of the contracting party.

Although the contract is validly concluded by fulfilling the specific substantive and formal conditions of this solemn contract, its execution will be conditioned by the occurrence of mental faculties deterioration of the mandator, as determined through medical and psychological evaluation reports, and by the approval of the guardianship court, at the request of the designated mandatary in the contract, as stipulated in Article 2029(1), paragraph 4 of the Civil Code.

Therefore, the invoked legal text imposes a dual condition: the ascertainment of the deterioration of the mandator's mental faculties through a dual medical and psychological evaluation, following the methodology set forth in Order no.

3423/2128/2022 of November 11, 2022, regarding the approval of the methodology and the report on the medical and psychological evaluation of persons with intellectual and psychosocial disabilities in the context of the imposition, extension, replacement, or lifting of protective measures, as well as the approval of the guardianship court through the procedure regulated by the Code of Civil Procedure.

Even though Article 2029(1), paragraph 5 of the Civil Code provides that "the guardianship court may, when approving the mandate in order to prevent serious harm to the mandator, take any necessary measures to protect the person of the mandator, represent them in the exercise of their rights and freedoms, or administer their property. The choice of such measures, when they do not complete the protective mandate but modify those decided by the protected person, must be made in accordance with the principles of necessity, subsidiarity, and proportionality.[3]

The object of the protective mandate contract may include, in addition to the conclusion of legal acts on behalf of the mandator and the conclusion of acts aimed at ensuring the protection of the mandator's person or the administration, in whole or in part, of their property, the well-being of the mandator, both morally and materially, as provided in Article 2009 of the Civil Code.

Furthermore, the contract will also include "the person designated by the mandator to whom the mandatary must account, as well as the frequency of fulfilling this obligation, which cannot exceed 3 years. If the mandator has not designated such a person, it will be designated by the guardianship court when approving the mandate," according to Article 2029(2) of the Civil Code.

The obligations of the mandatary are listed in Article 2029(3) of the Civil Code and are an expression of the principles that should govern the protection of persons with disabilities, as enunciated in the New York Convention, stating that "any decision regarding the execution of the mandate is taken in the best interest of the mandator and ensures respect for their dignity, rights, and freedoms, as well as the preservation of their will, needs, preferences, and the safeguarding of their autonomy."

This article directly refers to the applicability of Article 174(1) and (2) which regulate the obligations of the guardian, with the mandatary being a guardian designated in advance by the protected person, subject to court approval.

In specialized doctrine [4], it has been noted the absence of the requirement for periodic verification, at a precisely established time interval, of the continued existence of the conditions that warrant the application of the extrajudicial protective measure. Although there is always the formal possibility for the mandator, once capable again, to revoke the mandate, as well as the possibility for the mandatary, the healthcare institution providing periodic care, or even close relatives to notify the guardianship court to determine the termination of the protective mandate, it has been appreciated that meeting the requirements demanded by the decision of the Constitutional Court also requires mandatory periodic reassessment for this form of protection established by the vulnerable person, similar to the one provided for legal counseling (3 years) or guardianship (5 years). This is because, hypothetically, the protective mandate can operate independently of these protective measures.

When the scope of the protective mandate is doubtful, the mandatary interprets it according to the rules regarding the special guardianship of adults, as indicated in Article 2029^4 of the Civil Code.

But what happens when the protective mandate is not comprehensive enough regarding the care of the person or the administration of their property?

The answer is provided by Article 2029^5 of the Civil Code, which allows, in the procedure for approving the mandate or subsequently, separate from it, the guardianship court to order a protective measure that complements it. In such a case, the mandatary will be appointed "with priority as the guardian in the function of the mandatary from the protective mandate contract. If the mandatary also fulfills the function of the guardian, they will continue to perform their mandate and, at the request and at least once a year, they will submit a report to the guardian of the mandator, and at the end of the mandate, they will also account to them."

Therefore, the aim is to cover all the needs of the protected person, including by adopting a mixed system that combines extrajudicial protection resulting from the protective mandate and the judicial, subsidiary protection, meant only to supplement the shortcomings of the protective mandate, giving priority to respecting the parties' will and preferably appointing the mandatary as the guardian.

Among the obligations of the mandatary, when entrusted with the administration of the principal's assets, is the obligation to inventory the principal's assets. This obligation must be fulfilled within 10 days from the approval of the protective mandate contract, which is transmitted, in copy, to the guardianship court and to the person to whom the mandatary is accountable, designated according to Article 2029^2, paragraph 2. The provisions of Articles 820-822 apply if the parties have not agreed otherwise in the contract, as stated in Article 2029^6 of the Civil Code.

The legal regime of acts concluded by the mandatary is regulated in Article 2029^7 of the Civil Code, making a distinction between acts concluded by the mandatary before the approval of the protective mandate, which can be annulled or the obligations arising from them can be reduced only if, at the time they were concluded, the lack of discernment was notorious or known to the other party. In contrast, legal acts concluded by the mandatary after the approval of the mandate and incompatible with its provisions cannot be annulled, and the obligations arising from them can only be reduced if the mandatary suffered a prejudice.

Therefore, the law imposes the condition of prejudice when examining an action for the annulment of a legal act concluded by the mandatary, a person protected by the ongoing execution of the protective mandate following its approval by the guardianship court, with a third party, regardless of whether the latter was aware of the mandatary's situation or not, similar to the regime of the lesion.

The ways in which the protective mandate contract ceases are provided in Article 2030 of the Civil Code, which states that, in addition to the general causes of termination of the mandate contract, the following special cases apply: revocation of the contract by the mandatary, renunciation by the mandatated, death, incapacity or bankruptcy of the mandatary or mandated. Additionally, the regaining of the mandatary's capacity to exercise rights, as provided in Article 2029^9 of the Civil Code.

Regarding the determination of the termination of the mandate execution, the holder of the application for determination, to be addressed to the guardianship court, can be the mandatary, to whom this legal obligation is legally incumbent, the healthcare institution where the principal is being cared for, as well as the principal who has regained capacity.

Similarly to the initiation of the contract execution, the termination of the contract execution is also determined by the court, which will analyze whether the mandatary has regained the capacity to exercise rights and therefore whether it is no longer necessary for the administration of their assets or decisions regarding the mandatary's person to be made by the mandated.

Revocation of the protective mandate can be done by the mandatary before its approval by notifying the revocation to the mandated and the notary public who drew up the document. The mandated can also renounce the mandate by notifying the renunciation to the mandatary and the notary public, as stipulated in Article 2031^4 of the Civil Code.

However, revocation can also be requested by any of the persons mentioned in Article 111 of the Civil Code, the same as in the case of revocation of guardianship, in the event that the mandate is not properly executed. These persons can address the court to request both the revocation of the mandate and the fulfillment of the mandated's obligation to account, as well as a protective measure to prevent harm to the principal.

In line with the primary safeguarding of the principal's interests, the possibility of renunciation of the mandate by the mandatary is also regulated in Article 2029(10) of the Civil Code.

According to the mentioned legal text, the mandated cannot renounce their mandate without substituting another person for the execution of the mandate, if expressly authorized by the mandatary, or without requesting the guardianship court to institute a protective measure regarding the mandatary. Any contrary clause is considered null and void. The person substituting the mandated is obliged to immediately notify the guardianship court of the substitution.

The other causes for termination of the protective mandate contract concern the death, incapacity, or bankruptcy of one of the parties. (1) In the event of death, incapacity, or bankruptcy of one of the parties, the heirs or representatives of that party have the obligation to immediately inform the other party. In the case of the protective mandate, the mandated shall promptly inform the guardianship court about the death of the mandatary. (2) In the case provided for in paragraph (1), the mandated or their heirs or representatives are obliged to continue the execution of the mandate if the delay would

endanger the interests of the mandatary or their heirs. In the case of the protective mandate, the heirs or representatives of the mandated shall promptly request the guardianship court to take protective measures regarding the person of the mandatary.

By Law 170/2022, the Code of Civil Procedure was also amended, which dedicates Book VI, Title II, Chapter II to the procedure for approval of the protective mandate, comprising Articles 943^1-943^7.

The competent court to adjudicate the request for approval is the court at the domicile of the principal or, as the case may be, the domicile of the beneficiary of the protective mandate, maintaining the already established rule in the general procedure, namely the domicile of the protected person.

The request for approval of the protective mandate exclusively has as its holder, as indicated in Article 943^2 Civil procedure code, the mandated named in the contract.

In specialized doctrine, it has been proposed that it might not be without practical utility to extend the possibility of submitting the request to the guardianship court by the vulnerable person (when their discernment is only diminished) as well as by other family members, especially since, according to the legislative proposal, the revocation of the protective mandate is expected to use the same procedure, apparently including the requester (in contradiction with the proposed amendment to Article 2030^2 Civil Code)[5].

The request shall be accompanied by a copy of the protective mandate contract, medical and psychological evaluation reports as provided in Article 938^6, and, if applicable, the report provided for in Article 938^3, drawn up no more than two months before the date of submission to the court. In the case provided for in Article 114(6) of the Civil Code, the death certificate of the mandatary or, as the case may be, the evidence regarding the reasons why they can no longer fulfill their guardianship duties towards the beneficiary of the protective mandate shall also be included, as well as a copy of the decision by which special guardianship was established for them.

As preliminary measures, Article 943^3 Civil procedure code, provides for the communication of a copy of the request together with the attached documents to the mandatary or the beneficiary of the mandate, to the prosecutor, and to the person designated to be accountable.

By resolution, the court shall also order verifications in the National Notarial Register kept in electronic format if "the protective mandate has not been revoked by the mandatary or if the mandated has not renounced the mandate," requesting the instrumenting notary to transmit, electronically, a certified copy of the contract, according to Article 943^3 Civil procedure Code.

The procedure for approval of the protective mandate is clearly non-contentious, as the law establishes that it shall take place entirely in chambers, with the short-term citation of the mandatary or, as the case may be, the beneficiary of the protective mandate and the mandatary, and with the participation of the prosecutor.

The procedure requires that the court must hear the mandatary or, as the case may be, the beneficiary of the mandate, asking them questions to ascertain the necessity and appropriateness of approving the protective mandate, in order to personally assess the condition of the principal.

Article 943^4 of the Civil procedure code. establishes that the court verifies whether the principal has designated a person to whom the mandated must be accountable in the contract, and if not, designates such a person with their consent.

The law does not specify whether the agreement must be in writing, in an authentic or private signature deed, or oral, taken directly in front of the court. Without such specification, it means that it can be given in any of these forms.

The court shall approve the protective mandate by means of a concluding order, subject only to appeal, and after the finality of the order approving the protective mandate, the court that issued it shall immediately communicate its dispositif, in certified copy, to the institutions provided for in Article 941, as well as to the notary public who drafted the protective mandate.[6]

In French law, in 2007, as a result of the conclusion of the New York Convention, the explicit regulation of this form of extrajudicial protection, called a future protection mandate, was established.

It allows the mandatary to designate in advance one or more persons, designated mandataries in the contract, who will protect the personal and/or patrimonial interests of the mandator in the event of their mental incapacity.

The French Civil Code provides for two types of future protection mandates: the first type is the mandate for oneself, which can be concluded by any adult or emancipated minor with one or more persons designated to represent them for the day when they will no longer be able to care for their own interests due to a medically established impairment of their mental or physical faculties that prevents them from expressing their will, according to Article 425 of the Civil Code.

The second type of future protection mandate allows parents of children with disabilities to designate one or more mandataries to represent them in the event that the child is unable to take care of their own interests due to a medically established impairment of their mental or physical faculties that prevents them from expressing their will.

Unlike Romanian law, under French legislation, the future protection mandate can be concluded either in a private signature document or in an authentic document and will be registered in a special register.

The procedure for approving the future protection mandate is simplified and differs from the one adopted by the Romanian legislator, being more of an administrative procedure. Thus, for the approval of the mandate, the mandatary will request the determination of the health status of the mandator by one of the doctors listed in an approved list, and once the document is obtained, they will appear together with the mandator - the mandator's presence not being mandatory if there is a medical certificate attesting that their presence is not compatible with their health status - at the registry office of the judicial or proximity court at the mandator's domicile and will submit, along with the mentioned medical document, the original or certified copy of the future protection mandate, the identification documents of the parties, and proof of the mandator's domicile.

The control carried out by the clerk is purely formal, as they will verify that the mandator was of legal age or an emancipated minor at the time of drafting the mandate, the methods of verifying the activities of the mandatary are expressly provided, that the lawyer countersigned the mandate in the case of a private signature mandate, that the mandatary as a legal person is listed in a special list, and if the conditions are met, the

clerk will initial each page of the mandate and will mention, at the end of the document, that this mandate will take effect from the date of submission to the court registry.

The procedure will involve a judge only if the clerk refuses to approve the mandate, considering that the purely formal conditions are not met, in which case the judge can decide without hearings, and if the request for approval is granted, the judge will order the clerk to initial the mandate. If the request is rejected, the rejection order is not subject to appeal.

In conclusion, the regulation of the protective mandate for persons with disabilities is welcome and necessary in national law, even if the adopted legislation does not provide an answer to all the questions that may arise in practical situations, judicial practice being expected to provide a comprehensive interpretation of the legal norms in order to resolve the situations that arise.

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Journal of Law and Administrative Sciences
No.19/2023

THE PRINCIPLES GOVERNING THE ADMINISTRATIVE-DISCIPLINARY PROCEDURE UNDER ROMANIAN LAW

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Abstract:
This paper aims to provide an overview on the provisions regulating the principles that govern, under the Romanian Administrative Code, the activity of the disciplinary committee, but which are applicable to the entire administrative-disciplinary procedure.
Keywords: *administrative-disciplinary procedure, civil servant, principles of law*

The administrative-disciplinary liability of the civil servant represents a form of administrative liability, along with contraventional liability [1]. As in the case of civil and criminal liability, administrative liability is based on fault [2], and its legal regime is established by the provisions of the Administrative Code, in the provisions of Part VI. *The state of civil servants* supplemented by the provisions of Annex 7, which includes the rules regarding the manner of constitution, organization and functioning of disciplinary commissions, as well as the composition, the attributions, the reporting method and the disciplinary procedure. This article analyses the administrative-disciplinary procedure through the principles that govern the activity of the disciplinary committee, but which are actually applicable to the entire disciplinary procedure. Disciplinary commissions are deliberative structures, without legal personality, independent in the exercise of legal powers.

The principles governing the disciplinary procedure and the activity of the disciplinary committee are expressly provided by art. 17 para. (1) of Annex 7. These principles can be classified, depending on their object, into principles regarding the regulation of liability, principles regarding the guarantee of rights and procedural principles.

I. Principles regarding the regulation of liability

A first series of principles regulates the concept of administrative-disciplinary liability and the way of establishing the sanction. First, the administrative-disciplinary responsibility can only operate under the conditions or in the cases provided by the law and within the limits established by it - the principle of the legality of the employment of the administrative-disciplinary responsibility, expressly provided by art. 17 para. (1) lit. e) from Annex 7.

Administrative-disciplinary liability can be incurred only in the case of committing an act that meets the typical elements of disciplinary misconduct and only if this act is listed expressly or by reference to art. 492 para. (2).

Thus, disciplinary misconduct represents the culpable violation by civil servants of the duties corresponding to the public office they hold and of the rules of professional and civic conduct provided by law. As I have shown previously, administrative-disciplinary liability can only be incurred under the conditions of the existence of the civil servant's guilt, there being no disciplinary offense in situations where the deed was committed by mistake, through physical or moral violence, or in a fortuitous case or by force major [3]. Art. 492 para. (2) of the Administrative Code, limitedly establishes the facts that constitute disciplinary violations, either by the express enumeration of these facts (a) systematic delay in the performance of works; b) repeated negligence in solving the works; c) unmotivated absence from work; d) non-compliance with the work schedule; e) interventions or efforts to resolve requests outside the legal framework; f) failure to respect professional secrecy or the confidentiality of works of this nature; g) manifestations that affect the prestige of the public authority or institution in which the civil servant carry out the activity; h) carrying out activities of a political nature during working hours ; i) unmotivated refusal to perform the duties of the service; j) the unmotivated refusal to submit to occupational medicine control and medical expertise as a result of the recommendations made by the occupational medicine doctor, according to the legal provisions), or by reference to other normative acts (k) violation of the provisions related to duties and prohibitions established by law for public officials , other than those related to conflicts of interest and incompatibilities ; l) violation of the provisions related to incompatibilities if the civil servant does not act to terminate them within a term of 15 calendar days from the date of the intervention of the case of incompatibility; m) violation

of the provisions regarding conflicts of interest; n) other facts provided as disciplinary violations in the normative acts in the field of public office and civil servants or applicable to them).

As a consequence, an act that is not expressly provided for by the legislation in the field of public office cannot constitute a disciplinary offense and public servants or applicable to them. The use of the syntagm "normative acts" removes from the scope of interpretation acts that regulate the activity of an institution, but which do not have a normative character, such as, for example, an internal regulation, a procedure or a work instruction. Moreover, those normative acts inferior to the organic law must be excluded, given that the Constitution establishes the fact that the status of the civil servant is established by organic law.

In the situation where a disciplinary offense is found, the establishment of the sanction must comply with three principles expressly provided by the Administrative Code.

First, the principle of uniqueness states that only one disciplinary sanction can be applied for a disciplinary offense. This principle must be respected even in case of multiple disciplinary violations, when the disciplinary sanction related to the most serious disciplinary violation is to be applied (art. 492 paragraph (7) of the Administrative Code).

Based on the principle of the legality of the sanction, this single disciplinary sanction can only be one of those expressly provided by art. 492 para. (3) of the Administrative Code, respectively:

a) written criticise;
b) reduction of salary rights by 5-20% for a period of up to 3 months;
c) the reduction of salary rights by 10-15% for a period of up to one year;
d) suspension of the right to promotion for a period of one to 3 years;
e) demotion to a lower-level public position, for a period of up to one year, with the corresponding decrease in salary;
f) dismissal from public office.

The individualization of the applied sanction is done in compliance with the principle of proportionality, according to which a correct ratio must be observed between the seriousness of the act that constitutes a disciplinary offense, the circumstances of its

commission and the sanction proposed to be applied (art. 17 para. (1) letter d of Annex 7). However, the cited provisions must be supplemented with the provisions of art. 492 para. (6) of the Administrative Code, which provides that when the disciplinary sanction is individualized, according to the provisions of para. (4), the causes and seriousness of the disciplinary offense, the circumstances in which it was committed, the degree of guilt will be taken into account and the consequences of the misconduct, the public servant 's general behaviour during service, as well as the existence in his antecedents of other disciplinary sanctions that were not removed under the law.

Unlike labor law where individualization is carried out on the basis of legal criteria, in administrative law the Code establishes imperatively the sanctions that can be applied for various disciplinary violations, limiting the possibility of the decision-maker to choose the prescribed sanction. With regard to this norm, the doctrine [4] has shown that in practice there can be abuses, exemplified by the situation in which an official was dismissed from the public office for committing the disciplinary offense "unjustified absence from work", although, in fact , had applied for leave during the period in which it was planned and was not aware of the fact that it had not been approved.

Also based on the principle of legality, disciplinary sanctions in art. 492 para. (3) lit. b)-f) can only be applied after the prior investigation of the committed deed and after hearing the public official, the two conditions having to be fulfilled cumulatively, as it was confirmed by the doctrine [5] and established by the jurisprudence of the supreme court [6].

II. *Principles regarding the guarantee of rights*

Once the principles governing administrative-disciplinary liability and the establishment of the sanction have been clarified, three other principles have a fundamental role in carrying out the commission's activity, namely the presumption of innocence, guaranteeing the right to defense and adversariality.

Based on the presumption of innocence, the civil servant is considered innocent for the act reported as a disciplinary offense as long as his guilt has not been proven. The principle of the presumption of innocence is enshrined in Article 6 paragraph 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms, a legal

provision that refers to "a person accused of a crime". Later, ECtHR jurisprudence specified that the principle of presumption of innocence is not limited to a simple procedural guarantee in criminal matters, its scope being wider and requiring that no representative of the state or a public authority declare that a person is guilty of a crime before its guilt has been established by a " court " [7]. Even after expanding the scope of the article, with regard to professional disciplinary proceedings, in *Albert and Le Compte v. Belgium*, 1983 (§ 30) the Court considered it unnecessary to give a ruling on the matter, having concluded that the proceedings fell within the civil sphere. However, the Court emphasize, that the two aspects, civil and criminal, of Article 6 are not necessarily mutually exclusive [8]. The case law on disciplinary proceedings resulting in the compulsory retirement or dismissal of a civil servant follows the same path; the Court found that Suche proceedings were not "criminal" within the meaning of Article 6 (*Moullet v. France* (dec.), 2007; *Trubić v. Croatia* (dec.), 2012, § 26; *Pişkin v. Turkey* , 2020, §§ 105-109; *Čivinskaitė v. Lithuania* , 2020, §§ 98-99).

In common labour law, the Constitutional Court ruled on the constitutionality of article art. 52 para. (1) lit. a) from Law no. 53/2003, which provided for the possibility of the employer to suspend the employee's individual employment contract as a result of the initiation of the preliminary disciplinary investigation against him [9]. In its decision, although the Constitutional Court established the unconstitutionality of the article, it assessed that "that the suspension of the employment relationship in the case provided by art. 52 para. (1) lit. a) from Law no. 53/2003 does not have the significance of violating the presumption of innocence, since, as shown above, it does not constitute a disciplinary sanction and even less one of a criminal nature. Thus, the employer does not pronounce on the guilt or innocence of the employee, nor on any possible criminal liability. Likewise, it cannot be argued that this measure could be equated with what the European court understands by an accusation of criminal guilt formulated by a "representative of the state or a public authority", before the pronouncement the court". In labour law, therefore, the presumption of innocence is not expressly provided for, nor did the Constitutional Court consider it appropriate to extensively interpret the provisions of the Labour Code, in the sense of enshrining this principle through jurisprudence.

Another principle expressly provided by the Administrative Code is that of guaranteeing the right to defense. According to this principle, the civil servant has the right to have access to all existing documents in the case file, to be heard, to present evidence in his defense and to be assisted or represented during the administrative investigation procedure.

The right to have access to all existing documents in the case file can be exercised for the entire duration of the procedure and covers, as a rule, documents of any nature submitted by the parties, as well as minutes drawn up by the commission, together with all their annexes. A limitation of this right can intervene under the conditions of art. 492 para. (10) of the Administrative Code, according to which "during the administrative investigation, in the situation where the civil servant whose act was reported as a disciplinary offense may influence the administrative investigation, the head of the public authority or institution has the obligation to prohibit his access to the documents that can influence the research [...]. The measure is ordered for the entire duration that the civil servant can influence the administrative investigation". The legal provision covers any documents that can influence the investigation, therefore also those documents that would be in the case file. Being in the presence of a limitation of a right, the invoked legal provision must be interpreted restrictively, and the proof of the existence of the factual situation, respectively the concrete possibility of influencing the administrative investigation must be made prior to the restriction of the right.

Regarding the civil servant's right to be audited, it must be specified that the hearing is a stage of the administrative-disciplinary investigation procedure and has as its subjects the person who made the complaint and the civil servant whose deed was notified as a disciplinary offense, as well as other people who can provide information regarding the resolution of the case.

As a rule, the person who made the notification is heard separately from the civil servant whose act was notified as a disciplinary offense. However, if the parties agree, the hearing can be held in the presence of the person who made the notification and the civil servant whose act was notified (Article 41 paragraph (2) of Annex 7.

The summoning of the persons to be heard is done by the president of the disciplinary commission, by subpoena. The subpoena is individual and includes elements

required by law, under penalty nullity. To ensure the right to defense, the subpoena is communicated accompanied by a copy of the notification, as well as copies of the documents submitted by the person who formulated the notification. Also, the legal provisions establish a deadline for the communication of the summons, i.e. at least 5 working days before the deadline set for holding the meeting.

After receiving the summons, the notification directed against him and the documents submitted by the person who formulated the notification, the civil servant can formulate an objection, which includes the answer to all the factual and legal aspects of the notification, as well as the means of proof by which understands how to defend himself. According to art. 39 para. (2) of Annex 7, the objection is submitted by the deadline at which the disciplinary committee administers the evidence. We believe that the objection should be filed within a reasonable period before the date set for the hearing, to allow the persons heard to refer, in their testimony, to the answer to the factual and legal aspects of the referral.

The way the hearing is conducted and the parties' submissions are recorded and have the role of reducing the possibility of abuse, whether this abuse materializes by exerting pressure on the public official, or by distorting the submissions of the heard parties. Thus, the hearing is also recorded on electronic media, which is kept in the case file and constitutes an appendix to the hearing minutes. In turn, the hearing minutes contain both the questions posed by the members of the disciplinary committee and the answers of the person being heard.

Another constituent element of the right to defense is related to the presentation and administration of evidence. Thus, the person who made the notification and the public official whose act is being investigated have the obligation to propose the means of proof they consider necessary. In the hearing report, the deadline by which the means of evidence that were not requested during the hearing can be invoked, but not later than the deadline at which the disciplinary committee administers the evidence, is established. It follows, therefore, that before the date of the hearing, the deadline by which the disciplinary committee administers the evidence must be established and communicated to the interested persons. This term is a reference, as I have shown above, including for

the filing of the response by the civil servant, an essential act in the exercise of the right to defense.

The minutes of the hearing are signed on each page by all persons present at the hearings. Additions, deletions or changes are signed in the same way, under penalty of not being taken into account.

Regarding the administration of evidence, it may consist of documents and witnesses (art. 39 para. (3) of Annex 7). According to the law, evidence can be proposed by notification (art. 27 para. 1 letter d), by response (art. 39 para. (2), during the hearing by the person who formulated the notification and by the public official whose the act is investigated, as well as after the hearing, but not later than the deadline at which the disciplinary commission administers the evidence (art. 41 para. (3) and para. (7).

The civil servant therefore has the right to present evidence in his defense having knowledge of both the content of the referral and the evidence that was proposed through the referral, a copy of which will be communicated to him with the subpoena. However, it does not follow from the provisions of the Administrative Code what is the regime for communicating the evidence after the hearing, more precisely, what is the concrete way in which the public official whose act is being investigated can have knowledge of and can respond to the evidence presented by the person who formulated the notification. Art. 43 stipulates that the administration of the evidence involves their "analysis", but without specifying by whom and, from the systemic interpretation, it follows that the analysis is carried out by the disciplinary committee. It is true that art. 45 stipulates the obligation of the disciplinary committee to ensure unrestricted access of the civil servant to the documents used in or resulting from its activity regarding the act reported as a disciplinary offense, but its obligation to notify the civil servant of any new evidence submitted after the date of the hearing is not established. This aspect should be regulated in the future, in order to limit the possibility of abuse in the matter of administrative-disciplinary investigation.

Regarding the hearing of witnesses, the legal provision is summarized to establish that their hearing is done in compliance with the provisions of art. 41 of Annex 7, which, however, does not clarify whether the public official whose deed is being investigated participates or not in the hearing of the witness and, therefore, also whether he has the

right to ask him questions. Also, there is no provision for the commission's obligation to notify the public official that the witness's hearing took place and that he could have access to his statement, in order to exercise his right to defense.

These aspects must be managed by the disciplinary commission by applying another principle that governs its activity, namely adversariality, according to which the commission has the obligation to ensure to persons in divergent positions the opportunity to express themselves regarding any act or fact that is related with the disciplinary offense for which she was reported. Therefore, the interpretation of the articles that stipulate the conduct of the disciplinary procedure must be carried out in compliance with the principle of adversariality, which requires the disciplinary commission, for example, to communicate to the civil servant any documents submitted after the date of the hearing by the person who made the referral and information regarding the hearing of witnesses. Finally, the guarantee of the right to defense is carried out, according to art. 17 para. 1 lit. b the final thesis of Annex 7 by recognizing the right to be assisted or represented during the administrative investigation procedure. The right is recognized both to the public official whose deed was notified, and to the person who formulated the notification. Thus, pursuant to art. 32 para. (4) of Annex 7 each of the two parties may participate in the administrative investigation personally or may be assisted or represented, upon request, by a lawyer or a representative of the trade union of which he is a member. Of course, the representation of the official will make it impossible to hear him, which is an eminently personal procedure, which is likely to bring into question the relevance of the establishment of the measure of representation. With regard to the right recognized by the person who made the complaint, this fact is related to the specificity of the administrative-disciplinary responsibility, the disciplinary committee can also be notified by a person who considers himself injured by the act of a public official (art. 26 para. (1) letter a) of Annex 7).

In common law, the employee only has the right to be assisted, the possibility of representation being excluded. Thus, the employee can be assisted, at his request, by an external consultant specialized in labour legislation or by a representative of the trade union of which he is a member. The specialized external consultant can be, according to art. 233^1 para. (4), a lawyer, an expert in labour law or, as the case may be, a mediator

specialized in labour law, who, through his active role, will insist that the parties act responsibly to extinguish the conflict, respecting the rights of employees recognized by law or established by employment contracts. *De lege ferenda*, mediators could be granted the right to assist the official whose act was reported, for the same reasons for which this is established in labour law.

III. *Principles regarding the conduct of the procedure*

Two other principles concern aspects directly related to the activity of the disciplinary committee. Thus, according to the principle of swiftness of the procedure, the commission has the obligation to proceed without delay to the solution of the case, without thereby prejudicing the rights of the persons involved or violating the procedures provided by law. The principle of the obligation of the opinion requires each member of the commission to pronounce by vote, when drawing up the report on the resolution of each notification pending before the disciplinary commission. The refusal to pronounce by vote constitutes a disciplinary offense, under the conditions of art. 492 para. (2) lit. n) from the Administrative Code.

Finally, the activity of the disciplinary commission is also based on the principle of processing security and the confidentiality of personal data. Based on this principle, the commission's activity must be carried out with the implementation of appropriate technical and organizational measures, in order to ensure an appropriate level of security of personal data. Given the complexity of the technical and organizational measures, we believe it is more appropriate to require the committee to "observe" the technical and organizational measures established by the competent staff, the "implementation" of such measures involving activities that could exceed the competence of the committee.

Provided for in paragraph 3 of the same article 17, a number of other principles complement the principles stated above. Thus, the members of the disciplinary committee exercise their duties respecting the principles of independence, stability within the committee, integrity, objectivity and impartiality in analyzing the facts and in making decisions.

As it follows from the analysis carried out, the principles on which the activity of the disciplinary commission is carried out are also the principles of the administrative-

disciplinary procedure and have the role of ensuring compliance with a complex set of rights and legitimate interests, including the rights of the civil servant or of the person who considers himself injured by the act of the public official. In future research, the activity of the disciplinary commission will be deepened, both in terms of the exercise of administrative and functional duties, in order to identify those aspects that could be taken over by the disciplinary commissions under the labour law regulation, but also for promoting proposals to improve the legal provisions in force.

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CONFLICTING RULES REGARDING PROPERTY AND REAL RIGHTS

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Abstract:
In the era of globalization and interconnectedness, international transactions and commercial relationships have become increasingly common. However, when it comes to property and real rights, conflicting rules often arise between different jurisdictions. The conflict rules regarding property and real rights in Romania are primarily governed by the provisions of the Romanian Civil Code. These rules determine the applicable law and jurisdiction in cases involving property and real rights with foreign elements. This article will focus on conflicting rules regarding property and real rights and will explore solutions to overcome these international legal divergences.
Keywords*: goods, real rights, private international law.*

The term "*goods*" is used in two distinct senses. In a narrow sense (*stricto sensu*), it refers to things that can be the subject of property rights and obligations, as well as intellectual creations and any form of energy, to the extent that they can be the objects of property rights and obligations. In a broad sense (*lato sensu*), "*goods*" encompass both things, intellectual creations, and any form of energy as objects of property rights and obligations, as well as property rights and actions relating to the goods mentioned in the narrow sense.

According to the Romanian Civil Code [1], the general principle is that the law applicable to property and real rights is the law of the country where the property is located, known as the *lex rei sitae* principle. This means that the rights and obligations arising from property and real rights are determined by the law of the country where the property is situated.

However, there are exceptions and special rules for certain situations. For example, the law of the country where the property is located may be disregarded if there is an agreement between the parties to apply the law of another country or if there are specific provisions in international treaties or EU regulations that dictate the applicable law. [2]

The conflict rules regarding property and real rights in the European Union (EU) are primarily governed by the private international law regulations established at the EU level. These regulations aim to harmonize the conflict of laws rules among EU member states to ensure consistency and legal certainty in cross-border situations involving property and real rights. [3]

The main regulation in this regard is the EU Regulation (EU) No 593/2008 [4], commonly known as the Rome I Regulation. This regulation sets out rules for determining the applicable law to contractual obligations, including contracts related to property and real rights.

According to the Rome I Regulation, the general principle is that the law chosen by the parties to a contract will govern the contractual obligations, including those related to property and real rights. If the parties have not made a choice of law, the regulation provides specific criteria to determine the applicable law, taking into account factors such as the characteristic performance of the contract and the habitual residence of the parties.

In addition to the Rome I Regulation, there are also specific EU regulations that address certain aspects of property and real rights, such as the Brussels I Regulation (recast), which governs jurisdiction and the recognition and enforcement of judgments in civil and commercial matters within the EU.

It's important to note that the conflict of laws rules within the EU are constantly evolving, and there may be additional regulations and case law that could impact the determination of applicable law in specific situations. Therefore, it is advisable to seek professional legal advice or consult the relevant EU regulations and case law for accurate and up-to-date information in a particular case.

Legal relationships concerning goods are governed by the law of the country where they are located. Therefore, the place where the goods are located serves as the connecting factor for these legal relationships. When applying the rule of *lex rei sitae*, which is recognized with certain nuances and variations in all legal systems, it is necessary to consider the different forms in which goods can be present. Hence, it is important to determine whether the good is considered individualized (*ut singuli*) or exists as a legal unity (such as the assets or business assets of a commercial company), whether the good is tangible or intangible, as the latter has different legal regimes.

Additionally, "special attention must be paid to the particularities that certain goods may have, such as vessels and aircraft in transit and those belonging to a foreign state." [5]

The determination of the applicable law to goods is an important aspect of private international law and involves establishing the legislation that governs the rights and obligations relating to goods in cross-border situations. There are different methods and criteria used to determine the applicable law to goods, and these can vary depending on the jurisprudence and legal system of each country.

The establishment of the legal regime of goods by the law of their location represents a universally accepted rule in all legal systems. However, given the distinct scope of application and interpretations provided, the rule does not have a uniform character.

Under our previous legislation, conflicts of laws regarding goods were regulated by a general norm. Movable goods were governed by the law of the domicile. This rule was formulated by the maxim *mobilia sequuntur personam*, meaning that movable corporeal goods of a person were considered to always be located at the owner's domicile.

Currently, the rule of *lex rei sitae* is provided for in the provisions of the Civil Code. According to Article 2613, possession, ownership rights, and other real rights over goods, including real security rights, are governed by the law of the place where they are situated or located, unless otherwise provided by special provisions.

The current regulation applies to both immovable property and movable property. Furthermore, the expression "place where they are located" is used for movable goods, while "place where they are situated" is used for immovable property [6].

For the application of the law of the location of goods, it is necessary, first of all, to consider whether the goods are regarded *ut singuli* (individually) or as a *universitas juris* (legal unity) or as a *de facto* unity, whether the goods are corporeal or incorporeal, and finally, the particular regime of vessels and aircraft in transit.

For the application of the law of the location of goods, it is necessary, first and foremost, to observe whether the good is regarded *ut singuli* (individually) or is seen as a universitas juris (legal unity) or as a *de facto* unity, whether the good is corporeal or incorporeal, and finally, the specific regime of vessels and aircraft in transit.

The law of the actual location of the asset regulates several aspects. They form the real status, which constitutes the content of the conflict rule *lex rei sitae*.

The nature of movable or immovable property is determined according to the law of the place where it is located or situated. In derogation from the rule of qualification according to *lex fori*, Article 2558 paragraph (3) of the Civil Code provides that these elements are subject to the law of the place's situation.

Regarding the notion of immovable property, the provisions of Article 2613 paragraph (2) of the Civil Code also include a legal qualification. According to the law, platforms and other durable installations for the exploitation of submarine resources located on the continental shelf of a state are considered immovable property.

Based on the regime of their legal circulation, goods can either be the subject of civil legal acts or not. Goods that are in commercial circulation move freely or under certain conditions. “If they are withdrawn from civil circulation, goods become inalienable”. [7]

The law of the situation primarily regulates the right of ownership and other real rights over property, including the various forms of ownership rights, which are the main real rights. The law of the situation also governs, in particular, real guarantees, which constitute accessory real rights.

Regarding the modes and conditions of establishment, transfer, and extinction of real rights, a differentiation is necessary between specific (original) modes of acquisition or transfer of real rights and non-specific modes.

Specific or original modes of acquisition, transfer (occupation, accession, expropriation, acquisition by prescription, registration in the land register), and extinction (extinctive prescription, expropriation, requisition, confiscation) of real rights are subject to the law of the location of the property. Similarly, non-specific modes of acquisition and transfer (e.g., contract or will) of real rights are also subject to the law of the property's location. For example, aspects related to the real status concerning the conditions for the birth of a real right, the moment of transfer of ownership, and the assumption of the risk of the thing.

On the other hand, aspects that are not of a real nature are not governed by the law of the situation. They constitute limitations to the rule of *lex rei sitae*.

Regarding tangible movable property, a conflict of laws may arise due to a change in the connecting factor. This situation is resolved in accordance with the provisions of Article 2617 of the Civil Code. According to the text, the establishment, transfer, or extinction of real rights over a property that has changed its location is governed by the law of the place where it is located at the time when the legal fact that generated, modified, or extinguished the respective right occurred. Depending on the location of the property at the time of the legal fact, either the old law or the new law will be applied.

Another situation concerns movable property. The acquisition of a real right through prescription will be subject to the law of the state where the property was located at the beginning of the possession period established for this purpose. If the property has been brought to another state, where the duration of the prescription period is fulfilled, the possessor may request the application of the law of that state, provided that all conditions required by that law are met from the date of the property's relocation (Article 2616 of the Civil Code). Since prescription has retroactive effect, the law of the property's location at the start of the prescriptive period applies, i.e., the previous law. However, upon the possessor's request, the new law may also be applied, provided that the legal conditions are met.

The regime of formalities regarding property publicity is provided for in Article 2626 of the Civil Code. Additionally, Article 2621 letter d) and Article 2630 contain provisions regarding the forms of publicity for acts concerning real rights and guarantees over ships and aircraft, as well as movable mortgages.

The formalities for the enforceability of real rights against third parties are subject to the law applicable at the time and place of compliance. Since publicity measures involve the intervention of a public authority, the applicable law will be that of the country where the publicity is carried out. Therefore, the law of the place where the publicity form is fulfilled is identified with the law of the property's location.

The formalities of publicity concerning immovable property are subject to the law of the state where the immovable property is located. The same solution is accepted for the formalities of publicity with constitutive effects on real rights over immovable property, even if the legal basis for the birth, transfer, restriction, or extinction of the real right or guarantee was established by the application of another law.

Due to their specific nature or the position, they occupy, some goods are not subject to the law of their location. The following goods, to which another law will apply, are: means of transportation, goods in transit, goods belonging to a foreign state, claims, negotiable instruments, securities, intellectual property rights.

According to Article 2620 of the Civil Code, the legal regime of these goods depends on the purpose of the means of transportation.

For ships and aircraft, as stated in Article 2620(1)(a), the law of the flag they fly applies, known as *lex pavilionis* or *lex banderae*. Since it represents the nationality of the means of transportation, the law of the flag is applied as the *lex patriae*. This law can be easily known, it is stable, and provides reliable information about the legal status of ships and aircraft.

Considering that ships and aircraft can move from one place to another as movable property, typically and very quickly, if the law of their location were applied, their legal regime would change frequently in relation to the country they are in. The transfer of such goods from one owner to another would be complicated, and the security of legal transactions would be compromised. It would not be possible to secure loans or create mortgages on them if they were successively governed by the law of the country they are in, without considering the fact that there is no law of the location in the open sea. Only by subjecting ships to a stable and permanent law can the certainty of legal operations regarding them be ensured. In addition, it should be noted that ships and aircraft are goods of particular importance to the national economy, and therefore, the legal regime of these goods is not a matter of indifference to the state. “In general, systems of private international law acknowledge that ships and aircraft are governed by the law of the state under whose flag they navigate or the law of the state where they are registered”. [8]

Res in transitu - goods in the course of transportation are subject, according to Article 2618 of the Civil Code, to the law of the state from which they were dispatched. Since these goods pass through multiple countries until they reach their destination, they could be successively subjected to different laws. During the transportation period, the goods can be sold, pledged, mortgaged, or be the subject of other legal acts. If the goods are represented by a negotiable instrument, the debtor can be changed simply by the delivery of the transport object. Avoiding complications and ensuring the certainty of legal

operations is achieved through a single law, with the law of the place of dispatch being known from the beginning and not changing during the transportation.

Goods belonging to a foreign state - in this situation, the principle of state immunity applies, [9] and the status of the goods is governed by the law of that state. "State immunity and its property" refers to the principle that a state, in terms of its legal status and its property, cannot be subjected to the law or jurisdiction of another state. This situation also applies to most international organizations. Goods belonging to a foreign state cannot be subject to enforcement measures, requisitioned, or seized. Jurisdictional immunity [10] can be waived or modified through specific regulations contained in international treaties.

The securities issued by commercial companies are represented by titles. The most important securities are shares and bonds [11]. They certify complex rights that arise from being a member of a collective entity. In the matter of securities, the provisions of the Civil Code address the following aspects: the applicable law to the issuance of securities, the applicable law to the transfer of securities, and the applicable law to the representative title of the goods.

According to Article 2622(1) of the Civil Code, the issuance of shares or bonds, whether nominative or bearer, is subject to the law applicable to the organic status of the issuing legal entity.

The applicable law to the issuance of securities encompasses the following areas: substantive and formal conditions of shares and bonds, the substantive conditions and effects of the subscription contract between the issuing company and the titleholder. The law of the issuing company will also determine the rights of shareholders and bondholders. However, in certain cases, the issuance of the title has a special nature, and the formalities of publicity are governed, for example, by the law of the place of publication, which is the place of issuance of the title. “The accelerated development of commercial relations, the need for rapid interconnection and the collection of information in real time are realities of recent years that have proved the need for digitization, simplification of procedures in commercial matters and more”. [12]

Rights over works of intellectual creation - in this regard, there are international regulations that have established a uniform law, both regarding the legal status of

foreigners and regarding conflicts of laws in this field (copyright, industrial property rights, designs, models, and trademarks).

Conclusions

The conflict rules regarding property and real rights in Romania represent an important component of the legal system, particularly in the context of international relations. By adopting clear approaches and specific solutions, the aim is to ensure a fair and coherent resolution of legal divergences in these matters. It is essential for Romanian legislation to be in line with international standards and developments in the field of private international law in order to facilitate cross-border commercial relationships and investments in a predictable and equitable manner.

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