Petroleum-Gas University of Ploiesti

The Centre for Studies and Legal and Socio-Administrative Research

JOURNAL OF LAW AND ADMINISTRATIVE SCIENCES

No.20/2023
ISSN 2392-8298
ISSN-L 2392-8298

The Journal is indexed in the international data bases

Petroleum and Gas University Publishing House of Ploieşti

EDITORIAL BOARD

Director: Adrian Cristian Moise, PhD

Chief Editor: Mihai Cristian Apostolache, PhD

Executive Editors: Emilian Ciongaru, PhD; Mihaela Adina Apostolache, PhD; Andrei Jean Vasile, PhD

Associate Editors: Adrian Stancu, PhD; Elena Lazăr, PhD; Vasile Muscalu, PhD; Dana Volosevici, PhD

SCIENTIFIC BOARD

Atanas Semov, PhD, University of Sofia, Bulgaria;

Alexander B. Djuric, PhD, University of Niš, Faculty of Law, Serbia;

Zoran Jerotijevic, PhD, Faculty of Business and Law, University "MB" Belgrade, Serbia;

Maria Orlov, PhD, Institute of Administrative Sciences of the Republic Moldova, Moldova;

Verginia Vedinaş, PhD, University of Bucharest, Romania;

Augustin Fuerea, PhD, University of Bucharest, Romania;

Daniel Mihail Şandru, PhD, Romanian Academy, Romania;

Constanţa Călinoiu, PhD, "Dimitrie Cantemir" University Bucharest, Romania;

Nicoleta-Elena Hegheş, PhD, Scientific Researcher gr. II, Institute of Legal Research "Acad. Andrei Rădulescu", Romanian Academy

Nicoleta Diaconu, PhD, "Spiru Haret" University Bucharesti, Romania;

Gheorghe Calcan, PhD, "Petroleum Gas" University of Ploieşti, Romania;

Flavia Ghencea, PhD, Ovidius University of Constanța, Romania;

Cătălin Silviu Săraru, PhD, ASE Bucharest, Romania;

Irina Alexe, PhD., Associate Scientific Researcher at the Legal Research Institute „Acad. Andrei Rădulescu" of the Romanian Academy

Ioan Laurenţiu Vedinaş, PhD c., "Alexandru Ioan Cuza" Police Academy;

Cristina Pigui, PhD, Court of Appeal Ploieşti, Romania.

Iosif Friedmann Nicolescu PhD, Lawyer

CONTENTS

Daniela PANC - THE PARENTAL ACCOMMODATION LEAVE AND BENEFIT IN ROMANIA, IN THE LIGHT OF THE EUROPEAN UNION SOCIAL SECURITY COORDINATION FRAMEWORK……4

Mădălina- Elena MIHĂILESCU - A CURRENT VIEW ON COMBATING CYBERBULLYING THROUGH PUBLIC DECISIONS AT EUROPEAN LEVEL ……..…11

Cristian DRĂGHICI - CONCEPTUAL ASPECTS REGARDING JOINT AND SEVERAL LIABILITY OF COMPANY ADMINISTRATORS IN TAX MATTERS……..22

Dana VOLOSEVICI - DISCRIMINATION IN THE WORKPLACE - AN ANALYSIS OF THE CASE LAW OF THE ROMANIAN NATIONAL COUNCIL FOR COMBATING DISCRIMINATION ON WRONGFUL TERMINATION OF THE INDIVIDUAL EMPLOYMENT CONTRACT ……31

Emilian CIONGARU, Cristian DRAGHICI - THE CONCEPTUAL ELEMENTS OF LEGISLATIVE TECHNIQUE……..41

Gabriel MICU - THE RESPONSIBILITY TO PROTECT IN THE CURRENT WORLD ORDER…….50

Mihaela POP - CONSTITUTIONAL PRINCIPLES GOVERNING THE FUNDAMENTAL RIGHTS, FREEDOMS AND DUTIES OF ROMANIAN CITIZENS……59

Mircea TUTUNARU, Romulus MOREGA - THEORETICAL ASPECTS REGARDING LEGAL RESPONSIBILITY IN ADMINISTRATIVE LAW.....68

Diana Maria ILIE, Ramona DUMINICĂ - FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION, "RESIZED" BY THE PERSPECTIVE OF REGULATION OF A "RIGHT OF THE SOUL" - TRANSDISCIPLINARY ANALYSIS……81

Mihaela Cristina PAUL, Mihaela Adina APOSTOLACHE - CONCERNS AND PERSPECTIVES ON COMBATING AND MITIGATING CLIMATE CHANGE.....125

Flavia Lucia GHENCEA, Laura IACOB - EDUCATION IN NATIONAL MINORITIES LANGUAGE IN ROMANIAN LEGISLATION THROUGH NON-TERRITORIAL AUTONOMY (NTA) - BETWEEN REGULATION AND SCHOOL PERFORMANCE……..133

Snežana MAKSIMOVIĆ, Gorica JEROTIJEVIĆ - TRAINING AND DEVELOPMENT OF HUMAN RESOURCES IN SERBIA'S PUBLIC SECTOR.....146

THE PARENTAL ACCOMMODATION LEAVE AND BENEFIT IN ROMANIA, IN THE LIGHT OF THE EUROPEAN UNION SOCIAL SECURITY COORDINATION FRAMEWORK

Assistant Lecturer Daniela PANC, PhD.[1]
Titu Maiorescu University, Bucharest, Romania
danielapanc@yahoo.com

Abstract
In the European Union, social security systems vary widely from one member state to another, in particular regarding the family benefits. In order to reconcile the conflicting provisions contained in the relevant national legislation and to ensure the right to move and to stay within member states, the European Union provides coordination of social security systems, regulating the principle of equal treatment and the principle of aggregation of insurance periods.
The current paper analyses whether the parental accommodation leave and benefit regulated in the Romanian legislation qualifies as social security benefit, specifically a family benefit, under EU law, meeting the criteria set out in the Court of Justice of the European Union relevant case-law.
Keywords: *coordination of social security systems, Regulation (EC) No 883/2004, Regulation (EC) No 987/2009, family benefits, accomodation leave and benefit in Romania, child adoption, principle of aggregation of periods*

Introductory remarks on the coordination of social security systems in the EU

Within the Internal Market, the European Union (EU) offers legislative and procedural guarantees for the exercise of the rights arising from the European citizenship, specifically the right to move and to stay within member states. Thus, when moving within Europe, for living or working abroad, the European Union provides rules to protect social security rights.

Social security and social protection are a subcategory of social policy, covered under Articles 151-161 of the Treaty on the Functioning of the European Union (TFEU). Social policy is a shared competence between the EU and the Member States under Article 4 TFEU.

Taking into account the fact that social security systems of the member states may differ significantly with regard to the beneficiaries, to what kind and amount of benefits and under what criteria are granted, the EU provides common rules and principles useful when dealing with cross-border social security claims.

[1] This paper is not written in consideration of the author's profession, as a member of the Diplomatic and Consular Corps of Romania, and the opinions expressed do not reflect the position of the Ministry of Foreign Affairs.

In accordance with Article 153(1)(c) TFEU, the EU shall support and complement the activities of Member States in the field of social security and social protection of workers by, for instance, encouraging cooperation and exchange of best practices among competent national authorities and social security institutions.

The European Union regulates on the coordination of the social security systems of the member states, Iceland, Liechtenstein, Norway and Switzerland within the legal framework of Regulation (EC) No 883/2004 on the coordination of social security systems [1] (hereinafter referred to as “the basic Regulation”) and Regulation (EC) No 987/2009 for implementing Regulation (EC) No 883/2004 [2] (hereinafter referred to as “the implementing Regulation”).

According to Article 3 of the Regulation (EC) 883/2004, the EU coordination provisions apply to all legislation concerning the following branches of social security: (a) sickness benefits; (b) maternity and equivalent paternity benefits; (c) invalidity benefits; (d) old-age benefits; (e) survivors' benefits; (f) benefits in respect of accidents at work and occupational diseases; (g) death grants; (h) unemployment benefits; (i) pre-retirement benefits; (j) family benefits.

Family benefits in the EU legislation and the CJEU case-law

In practice, due to member states’ diversity of social security systems and since family benefits have a very broad scope, it may be difficult to determine whether or not a particular benefit is covered by the coordination rules laid down in the basic Regulation and its implementing Regulation.

It follows from the established case-law of the Court of Justice of the European Union (CJEU) that the distinction between benefits excluded from the scope of Regulation (EC) No 883/2004 and those which fall within its scope “is based essentially on the constituent elements of the particular benefit, in particular its purposes and the conditions on which it is granted, and not on whether a benefit is classified as a social security benefit by national legislation.” [3]

Moreover, the Court held in its judgments [4] that “a benefit intended to enable one of the parents to devote himself or herself to the raising of a young child, and designed, more specifically, to remunerate the service of bringing up a child, to meet the other costs

of caring for and raising a child and, as the case may be, to mitigate the financial disadvantages entailed in giving up income from an occupational activity, must be treated as a family benefit within the meaning of Articles 1(u)(i) and 4(1)(h) of Regulation (EEC) No 1408/71" [5], currently replaced by Regulation (EC) No 883/2004.

According to Article 1(z) of Regulation (EC) No 883/2004, "family benefit" means all benefits in kind or in cash intended to meet family expenses, excluding advances of maintenance payments and special childbirth and adoption allowances mentioned in Annex I to the regulation. The Court has held that the phrase "to meet family expenses" is to be interpreted as referring in particular to a public contribution to a family's budget to alleviate the financial burdens involved in the maintenance of children. [6]

When dealing with cross-border social security, relevant stakeholders can obtain country related information on national social security legislation available on the European Commission's Directorate General for Employment, Social Affairs and Inclusion webpages (DG EMPL) [7] and on the EU's Mutual Information System on Social Protection (MISSOC) database [8], useful for decision-making process or for research and consultation on specific cases.

The parental accommodation leave and benefit in Romania

According to legislation currently in force in Romania, the family benefits that are currently considered to fall under the provisions of the Regulation (EC) No 883/2004 on the coordination of social security systems are the following: the state allowance for children [9] (regulated by Law No 61/1993 regarding the state allowance for children), parental leave and the monthly indemnity for raising children (including the monthly indemnity granted for raising children with disabilities) and, as the case may be, the return to work bonus (regulated by the Emergency Ordinance of the Government No 111/2010 regarding parental leave and the monthly indemnity for raising children) [10]. These mentioned family benefits are subject to the rules regarding the coordination of social security systems provided in the basic Regulation and its implementing Regulation.

With regard to the parental accommodation leave and benefit (in Romanian, *concediul și indemnizația de acomodare*), following the adoption of a child, regulated by the provisions of Law No 273/2004 regarding the child adoption procedure [13], national

legislation does not make any explicit mentions about the applicability of Regulation (EC) No 883/2004 to this kind of family benefit. Nor did Romania request to include the accommodation benefit among the childbirth and adoption allowances mentioned in Annex I to the basic Regulation, thus excluding it from the meaning of family benefit in the sense of Article 1 (z) of the basic Regulation.

In the case of Romania, in Annex I to Regulation (EC) No 883/2004, only the childbirth allowance and the layette for newborn children are listed as special birth allowances, having the specifics of single payments granted on the occasion of the birth of a child.

The parental accommodation benefit is an earning-related benefit granted to a person who adopts a child. Parental accommodation leave and benefit is granted to any of the spouses of the adoptive family who earned taxable income. It can be chosen as an alternative to the child-raising leave and benefit.

In fact, at present, the conditions for granting parental accommodation leave and benefit are similar to those granting parental leave and the monthly indemnity for raising children regulated under Emergency Ordinance of the Government No 111/2010.

Article 50 of Law 273/2004 on the adoption procedure and Article 2 of the Emergency Ordinance of the Government No 111/2010 regarding parental leave and the monthly indemnity for raising children regulate eligibility criteria, payment calculation and duration. The entitled persons may benefit from accommodation leave, respectively from parental leave, for a period of maximum two years. The amount of the monthly allowance is 85% of the average net income earned during twelve months within the last two years preceding the date of the entrustment for adoption issued by court decision, respectively, the date of the child's birth.

Unlike the provision on parental leave for raising children, national legislation does not explicitely states that accomodation leave and benefit falls within the scope of Regulation (EC) No 883/2004. Therefore, one must determine whether it qualifies as family benefit not under national law, but under EU law, meeting the criteria identified in CJEU relevant case-law.

Taking into account the fact that parental accommodation leave and benefit is intended to enable one of the parents to devote himself or herself to the raising of the

adopted child, and designed, more specifically, to remunerate the service of bringing up a child, to meet the other costs of caring for and raising a child, we hold the view that it subscribes to “benefits in kind or in cash to cover family expenses”, being a family benefit within the meaning of Article 1(z) of Regulation (EC) No 883/2004 and subject to the rules on the coordination of social security systems provided in the basic Regulation and the implementing Regulation.

Relevant applicable rules of the EU coordination social security systems

One of the main advantages of the coordination of social security systems under Regulation (EC) No 883/2004 is the applicability of the principle of aggregation of periods, described in recital 10 of the basic Regulation as “the principle of treating certain facts or events occurring in the territory of another Member State as if they had taken place in the territory of the Member State whose legislation is applicable should not interfere with the principle of aggregating periods of insurance, employment, self-employment or residence completed under the legislation of another Member State with those completed under the legislation of the competent Member State. Periods completed under the legislation of another Member State should therefore be taken into account solely by applying the principle of aggregation of periods.”

Article 5 of the basic Regulation, entitled “Equal treatment of benefits, income, facts or events”, provides that “unless otherwise provided for by the basic Regulation and in the light of the special implementing provisions laid down, the following shall apply:

(a) where, under the legislation of the competent Member State, the receipt of social security benefits and other income has certain legal effects, the relevant provisions of that legislation shall also apply to the receipt of equivalent benefits acquired under the legislation of another Member State or to income acquired in another Member State;

(b) where, under the legislation of the competent Member State, legal effects are attributed to the occurrence of certain facts or events, that Member State shall take account of like facts or events occurring in any Member State as though they had taken place in its own territory.”

Therefore, in order to be granted social security earning-related benefits, a person who has carried out professional activities and paid social security contribution in at least

two member states of the European Union or other states that apply the provisions of Regulation (EC) No 883/2004 and of Regulation (EC) No 987/2009, benefits from the aggregation of periods worked in these states under the conditions provided by the EU Regulations.

In the specific field of family benefits, Article 67 of the basic Regulation provides that "a person shall be entitled to family benefits in accordance with the legislation of the competent Member State, including for his/her family members residing in another Member State, as if they were residing in the former Member State. […]"

Furthermore, Article 60(1), second sentence, of Regulation (EC) No 987/2009 provides that, for the purposes of the application, in particular, of Regulation (EC) No 883/2004, the situation of the whole family is taken into consideration as if all the persons concerned were subject to the law of the Member State concerned and were resident there, in particular as regards the entitlement of a person to claim family benefits. [7]

In the case C-32/18, the Court held in its judgment that in the event that "the grant of a family benefit is made subject to the condition that the person concerned has worked in the national territory of the competent Member State (…) which makes entitlement to the allowance conditional upon the completion of periods of insurance in that member state territory, that condition must be considered to have been fulfilled where the person concerned has worked in the territory of another Member State. However, the principle of equal treatment established by Article 67 of Regulation (EC) No 883/2004 is not absolute, in the sense that, where several entitlements are payable under different laws, the rules against overlapping benefits laid down in Article 68 of Regulation (EC) No 883/2004 apply." [8]

Conclusions

In dealing with cross-border social security claims, the European Union coordinating social security systems aims at protecting persons exercising their rights within the EU Internal Market.

Regulation (EC) No 883/2004 provides common rules and principles which enable the European Union, together with the member states, to fulfill the objective of promoting "proper social protection" set out in Article 151 TFEU.

It is not always obvious whether a social benefit falls under the scope of the basic Regulation, as emphasized in the current paper, with regard to the parental accommodation leave and benefit under the Romanian legislation.

Taking into account the fact that the parental accommodation leave and benefit meets the criteria identified in the EU legislation and CJEU relevant case-law, it qualifies as family benefit. Therefore, provisions in Regulation (EC) No 883/2004 apply, which involves, among others, the applicability of the principle of equal treatment and the principle of aggregation of periods.

References

[1]Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems.
[2]Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems.
[3]Case C-78/91, Hughes, EU:C:1992:331, para 14.
[4]Case C-275/96, Kuusijärvi, ECLI:EU:C:1998:279, para 60.
[5]Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community.
[6]Case C-449/16, Martinez Silva, EU:C:2017:485, para 23, Case C-802/18, Caisse pour l'avenir des enfants, ECLI:EU:C:2020:269, para 38.
[7]European Commission, Employment, Social Affairs & Inclusion, Your rights country by country, https://ec.europa.eu/social/main.jsp?langId=en&catId=858.
[8]European Commission, Mutual Information System on Social Protection (MISSOC), https://www.missoc.org/.
[9]Law No 61/1993 regarding the state allowance for children.
[10]Emergency Ordinance of the Government No 111/2010 regarding parental leave and the monthly indemnity for raising children.
[11]Law No 273/2004 regarding the child adoption procedure.
[12]Case C-378/14, Trapkowski, EU:C:2015:720, para 36.
[13]Case C-32/18, Moser, EU:C:2019:752, para 39-40.

A CURRENT VIEW ON COMBATING CYBERBULLYING THROUGH PUBLIC DECISIONS AT EUROPEAN LEVEL

Associate Professor Mădălina- Elena MIHĂILESCU, PhD.
Faculty of Law and Administrative Sciences,
"Dunărea de Jos" University, Galati, România
madalina.mihailescu@ugal.ro

Abstract
Bullying and cyberbullying phenomena have taken an unprecedented scale in school groups, but not only, manifesting themselves particularly in the age segment between 10-16 years, but even in the case of adolescents over 18 years. This article aims to show how European countries have tried to tackle this problem in the last few years, both legislatively and in practice, at a social level or within educational institutions, and to what extent the new sanctions introduced by the various countries have succeeded in reducing the phenomenon of cyberbullying and protecting minors from its harmful effects.
Keywords: *bullying, school, adolescents, sanctioning regime.*

1. Introduction

The way children use technology has changed considerably since 2012. Modern devices allow underage users to interact, connect, play and share content with others, often without parental supervision. As the findings of the EU Kids Online 2020 project show [1] that most children say they use their smartphones "every day" or "almost all the time", and time spent online has almost doubled since 2010 in many countries. The age at which children start using digital devices is also getting younger.

Modern devices bring opportunities and benefits, allowing children to interact with others, learn online and have fun. But these benefits are not without risks, such as the dangers of exposure to misinformation, cyberbullying or harmful and illegal content, from which children need to be protected [2].

Although the internet was not created for children, parents report that 75% of European children aged 6-17 use the internet [3].

Teenagers aged 15-16 say their first contact with the internet was at the age of 11. By comparison, 9-10 year olds say they started using the internet on average when they were 7 years old. 33% of 9 to 16 year olds who use the internet say they do so using a mobile phone or other handheld device [4].

In 2022 in the EU, 96 percent of young people aged between 16 and 29 reported using the Internet every day, compared to 84 percent of the adult population, according to Eurostat data. Internet use was reported by more than 94 percent of young people, with the lowest percentages in Bulgaria and Italy, at 94 percent, and the highest percentages in Malta, Luxembourg, Portugal, the Czech Republic, Lithuania and Slovenia, at between 99 and 100 percent[5].

According to studies [6] in January 2022, there were over 13 million social network users in Romania. This was equivalent to 69.7% of the total population. Published data indicates that Facebook had 9.90 million users in Romania at the beginning of 2022. However, Facebook restricts the use of its platform to people aged 13 and over, so it is also worth noting that 59.7% of the "eligible" audience in Romania will be using Facebook in 2022 [7]. According to the data, in 2022, 84% of young people used the internet for social networking, and some of the other uses were reading online news (68%) and internet banking (64% [8.]

Figures published in Byte Dance's advertising resources indicate that TikTok had 6.37 million users aged 18 and over in Romania at the beginning of 2022. Byte Dance allows marketers to target TikTok ads to users aged 13 and over through its advertising tools, but these tools only display audience data for users aged 18 and over. It is estimated that TikTok's advertising reach in Romania was equivalent to 37.9% of the local internet user base at the beginning of the year, regardless of age, and 50.8% of TikTok'

In another survey conducted in Romania in previous years, it was statistically found that 54% of children said that it had happened that someone had bothered or upset them while they were talking on the Internet, the percentage being significantly higher among girls and high school students, while 4.3% of children bothered on the Internet said that they were very upset or quite upset by the incident, with girls saying significantly more that they had been more bothered [9].

2. European and general situation regarding cyberbullying, in general

In Croatia, for example, almost every third child between the ages of 9 and 17 has communicated online with a person they never got to meet in person. More boys (34%) than girls (27%) are in this group, with 50% of them in the 15-17 age group. Thirty percent

of children aged 9-17 have seen sexual content online. Of these, more than two thirds have seen sexual and nude photos or videos online in the last years[10].

According to the survey on the safety of children and youth conducted in Croatia as part of the international project EU KIDS, “more than half of the children from 9 to 17 years old received a violating or inappropriate message. Data refer to 2017 when the survey was carried out on a sample of 1017 children, their parents, and guardians [11].

According to UNICEF data, in Hungary “88% of children aged 10-18 are present on social media, 20% of them have been victims of online abuse, and 10% have been bullying themselves”[12[. Committee of UNICEF conducted “a non-representative survey of 1,191 primary and secondary school students aged 10 to 19 concerning children’s rights, including online safety”. While 96 % and 88 % of respondents “have a mobile phone and a social media profile respectively, half of the children do not consider the Internet as a safe place. One in three children have been exposed to online bullying. In such situations, half of these children tried to defend themselves while as few as one in ten reached out for help [13Î.

In Czech Republic around 57% of elementary schools and 64% of secondary schools “have dealt with at least one case of bullying among students over the past three years, based on analysis from the Czech School Inspectorate” analysis showed that most frequent form of bulling is verbal and it consists of humiliation, slandering and other forms of verbal cyberbullying. What is worrying is the fact that teachers became victims of bullying much more frequently than before [14].

In a Slovak study (form 2014) over 48% respondents confirmed that “repeated attacks occur in cyberspace”. Cyberbullying often “occurs in the public environment as well—public chat, social networks with open access, websites (29% of attacks) and non-public (20%) chat (instant messengers, VoIP, private chat rooms). In this country the most frequent form of bullying is blackmail, and this type of crime on the internet has become a real “taboo topic” because of the content of the messages. Unfortunately, because police intervention is often avoided, a false impression of non-involvement is created and these cases of online child “predators” are treated superficially [15].

3. Legislative aspects from various European states regarding the “fight” against cyberbullying

The first European Strategy for a Better Internet for Children (BIK) was adopted in 2012, while the new European Strategy for a Better Internet for Children was adopted on 11 May 2022[16] the latter having the role of ensuring the protection, respect and empowerment of children online in the new digital decade. Furthermore, as part of its vision for Europe's digital transformation by 2030 The Commission has proposed a European Declaration on Digital Rights and Principles for the Digital Decade [17], which includes EU values such as child protection and empowerment.

The updated BIK+ strategy reflects the recently proposed digital principle "Protecting and empowering children and young people online" and will take into account the European Parliament Resolution on children's rights [18] /by Council conclusions on media literacy [19] and the Council Recommendation establishing a European Children's Guarantee [20].

Since 2012, the EU legal and policy framework on child safety, aimed at ensuring an even higher level of child safety online, has evolved considerably. For example, under the revised Audiovisual Media Services Directive (AVMSD), obligations to protect minors from harmful content - which can affect their physical, mental and moral development - and illegal content now extend to video-sharing platforms. The General Data Protection Regulation (GDPR) provides that children's personal data need special protection and defines the age up to which parental consent is required (which varies in Member States between 13 and 16) The Unfair Commercial Practices Directive protects vulnerable consumers such as children and prohibits direct exhortations to buy [21].

Previously, from a legislative point of view, at European level and worldwide in:

a. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime

b. Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography

c. Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children suspected or accused in criminal proceedings

d. Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law

e. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [22]

f. Recommendation 135 (2003) on local partnerships for preventing and combating violence at school- Congress of local and regional authorities of Europe [23]

g. According to The European Social Charter [24] children's rights are specifically addressed in several articles of the Social Charter, in particular: Article 7 (the right of children and young persons to protection) and Article 17 (the right of children and young persons to social, legal and economic protection

h. The Lanzarote Convention [25] sets out that states in Europe and beyond shall adopt specific legislation and take measures to prevent sexual violence, protect child victims and prosecute perpetrators [26]

i. Convention on Contact concerning Children, 01/09/2005

j. Convention on Cybercrime- 01/07/2004 [27] which prevails possibilities that states can protect their minors under 18 or even under 16 from cyber attacks.

Nowadays, several countries have captured in various forms, in their legislation, the acts of bullying, cyberbullying, stalking or harassment, keeping in mind the increasing seriousness of their effects, the new ways of putting them into practice and giving greater effectiveness to the phenomenon of combating them through specialists, schools, competent bodies such as police stations, prosecutors etc. The penalties imposed have also been considerably increased or their nature changed (imprisonment with execution instead of a fine, days of fines).

For example, in United Kingdom under the Malicious Communications Act, cyberbullying could result in six months or more in prison and a hefty fine. [28] British legislation, beginning with 1997, through section 4 of the Protection from Harassment Act from 1997 “established the ideas of the potential for greater punishment to those found guilty of causing another person to fear, on at least two occasions, that violence will be used against them.” A person found guilty of this offence “could receive up to 5 years in prison, as well as a fine. Section 1 of the Malicious Communications Act 1988 states that “it is an offence for any person to send a communication that is "indecent or grossly offensive" for the purpose of causing "distress or anxiety to the recipient."

Section 127 of the Communications Act 2003 makes it a criminal offence “to send via any electronic communication network a message or other matter that is deemed "grossly offences or of an indecent, obscene or menacing character". If found guilty of an offence under section 127 of the Communications Act 2003, a person can receive up to six months in prison, a fine or both [29.]

Since 25 February 2011 the Polish Seym has passed the novelty to the Penal code, art. 190a, it describes the crime of stalking. In Poland, the “notion of stalking functions as a kind of emotional violence”. Cyberstalking was described in Poland only in the article 190a §2 of the Penal code, persistent harassment, stalking (§1 “Whoever makes a threat to another person to commit an offence detrimental to that person or detrimental to his next of kin, and if the threat causes in the threated person a justified fear that will be carried out shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.” [30].

In 2021 the French government voted on a package of laws to establish that the offence of "school bullying" applies to children and adults in schools and universities, including students, as well as staff such as canteen duty teams and break supervisors. It would carry a maximum penalty of three years in prison and a fine of up to €45,000 (£38,300). If a victim of bullying in school commits or attempts suicide, the maximum penalty could be up to 10 years and €150,000. It is not expected to apply to younger children, and measures include resources for the community and school [31].

On 25. 02. 2023 the French Parliament approved a law that will make bullying in schools a criminal offence, for which either students or staff can be prosecuted. Those

found guilty under the new legislation risk a fine of €45,000 if the victim of harassment cannot attend school for up to eight days. But more serious incidents can be punished with up to 10 years in prison and a fine of €150,000 for longer periods of absence from school or if the victim commits suicide or tries to do so [32].

In Italy Law n.71 of 29 May 2017 is a law finalized to raise awareness of young people on the phenomenon of cyberbullying. Each minor over fourteen who is a victim of cyberbullying “can forward to the data controller or to the manager of the social an application for the obscuring, removal or blocking of the contents shared on the Net” [33]. The penalties are thus varied, ranging from 6 months to 5 years for an adult and 6 months for a minor (or 516 euro fine). To this is added possible civil compensation.

This is why another normative act that comes to the rescue of this type of victims is also article 2048 of the Italian Civil Code, which questions the liability of parents when their minor children cause damage to third parties [34].

In Spain cyberbullying has become such a socially problematic phenomenon that regulations have been established to protect the perpetrators of cybercrime, developed in Article 197 of the Penal Code(5) and amended in Organic Laws 5/2010 of 22 June(6) and 1/2015 of 30 March([35].

In 2015, the legislator introduced a general regulation applicable to all victims of crimes that occurred in Spain called the Statute of Victims of Crime. “Its objective is to respond to those who have been violated legally in 2021 the legislator published Organic Law 8/2021 on the comprehensive protection of children and adolescents against violence” [36].

In 20 May 2021, the Spanish Parliament approved, the Law on the Comprehensive Protection of Children and Adolescents from Violence. The new Law “regulates the safe and responsible use of the internet by minors, by the assessment and monitoring of network content, especially content that promotes violence against children and violations of children's rights” [37].

The Hungarian Criminal Code does not include cyberbullying as a specific offence. In the Hungarian Criminal Code, there is no specific offence on the basis of which cyberbullying could be sanctioned; The closest to it is traditional “offline” harassment (Section 222 of the Criminal Code: Harassment [38] is he Hungarian Government

launched the Digital Child Protection Strategy (Digitális Gyermekvédemi Stratégia), “which applied the academic terminology, and provided non-punitive, alternative dispute resolution techniques, such as restorative methods as a possible solution” [39].

On the 2nd of September 2016, the Government of Hungary adopted the Decision 1488/2016 (IX. 2.) (hereinafter Decision) on the Establishment of Safe Internet Service for Children, the Conscious, Value Creating Internet Use and the Digital Child Protection Strategy of Hungary (Magyarország Digitális Gyermekvédelmi Stratégiája) (hereinafter Strategy) [40].

4. Conclusions

From what has been observed from the specific situations and statistics of certain countries in recent years, most of them have made substantial efforts both to identify as clearly as possible the situations of cyberbullying that are increasingly common in school environments and to establish, from a legislative point of view, forms of sanctioning them.

We have noticed that some countries have decided to mention the act itself as a crime in their criminal codes, while others have decided to dedicate a separate space in their legislative area, so that we have found in many countries bullying or cyberbullying mentioned in special laws regulating antisocial acts associated with the use of the Internet or the protection of minors in general.

What is important to mention is the new sanctioning regime applied and which, as time has gone by, has taken increasingly severe forms, with some countries applying very high fines, in the order of thousands of euros and even penalties such as imprisonment with execution, especially where the facts have resulted in the death-suicide of the victims.

This whole picture of sanctions makes us believe that each country has become aware of the seriousness of the situation related to harassment through social networks of young people, usually between 6 and 18 years old, and has taken serious legal measures to reduce the disastrous effects of cyberbullying, which is usually manifested by: withdrawal from society, isolation from family or group of friends and colleagues, dropping out of school, very poor learning results of the victim, suicide attempts and even suicide.

References:

[1] EU Kids online 2020, apud. COMUNICARE A COMISIEI CĂTRE PARLAMENTUL EUROPEAN, CONSILIU, COMITETUL ECONOMIC ȘI SOCIAL EUROPEAN ȘI COMITETUL REGIUNILOR, Un deceniu digital pentru copii și tineri:noua strategie europeană „Un internet mai bun pentru copii" (BIK+), https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52022DC0212&from=EN, consulted in 24. 01. 2023, 16, 38.

[2] European Commission, New EU strategy to protect and empower children in the online world, 11.05. 2022, apud. https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2825, consulted in 23. 01. 2023, 13, 58.

[3 Eurobarometru Flash 2008. apud. COMUNICARE A COMISIEI CĂTRE PARLAMENTUL EUROPEAN, CONSILIU, COMITETUL ECONOMIC ȘI SOCIAL ȘI COMITETUL REGIUNILOR, Strategia europeană pentru un internet mai bun pentru copii / COM/2012/0196 final apud. https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52012DC0196&from=EN, consulted in 23. 01 2023, 14,16.

[4] European children. Full findings. (2011), raport elaborat în cadrul proiectului EUKidsOnline II., apud. https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52012DC0196&from=EN, consulted in 23 01 2023, 14.22.

[5] Econmedia.ro. 96 la suta dintre tineri folosesc zilnic internetul. Romanii se plaseaza aproape de media UE. apud. .https://economedia.ro/eurostat-96-dintre-tinerii-din-ue-utilizeaza-zilnic-internetul-romania-se-plaseaza-aproape-de-media-ue-care-sunt-principalele-utilizari.html, consulted in 30. 11. 2023, 13, 40.

[6] Baet Liker.ro, Digital Market în România – Statisticile rețelelor de socializare în ianuarie 2022, apud. https://baselinker.com/ro-RO/blog/digital-market-in-romania-statisticile-retelelor-de-socializare-in-ianuarie-2022.

[7] Idem.

[8] Amelia Turp, 96% dintre tinerii din UE folosesc internetul zilnic, apud. https://www.forbes.ro/96-dintre-tinerii-din-ue-folosesc-internetul-zilnic-339830, consulted in 30 1 2023, 14 27.

[9] Salvati Copiii, Studiu privind utilizarea internetului de catre copii, pag 5, apud. https://www.salvaticopiii.ro/sites/ro/files/migrated_files/documents/780e38b4-9f55-4114-9448-ab49637d51cc.pdf, consulted in 30 11 2023, 17, 38.

[10] European Comission, New EU strategy to protect and empower children in the online world, apud. https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2825, oonsulted in 12 01 2023, 14 20. See also EU Kins on line, Survey from 19 countries, apud. https://www.lse.ac.uk/media-and-communications/assets/documents/research/eu-kids-online/reports/EU-Kids-Online-2020-10Feb2020.pdf, consulted in 12 01 202, 14, 25.

[11] Stojanalescki Cyberbullying can be reported to the Croatian Police through the RED BUTTON app, 19 12 2019, apud. https://youngjournalists.home.blog/2019/12/19/cyberbullying-can-be-reported-to-the-croatian-police-through-the-red-button-app/, consulted in 30 .11. 2023. 19,14.

[12] Andrea KIS, Hungary Cyberbullying: the high seasons begins, 2020, apud https://childhub.org/en/child-protection-news/hungary-cyberbullying-high-seasons-begins?language=ro consulted in 30. 11. 2023, 18,03.

[13] Digital success programme, Digital child protection strategy of Hungary, p 14, apud. https://digitalisjoletprogram.hu/files/c2/61/c2610c5560ef56425860d4d7bdd68b3d.pdf consulted in 30. 11. 2023, 18, 09.

[14] BRNO Daily, Czech News Agency, Over Half of Czech Primary and Secondary Schools Deal With Cases of Bullying, 14 march 2022, aoud. https://brnodaily.com/2023/03/14/news/over-half-of-czech-primary-and-secondary-schools-deal-with-cases-of-bullying consulted in 30. 11. 2023, 18, 41.

[15] Kamil Kopecky, Cyberbullying in a population of Slovak teenagers (quantitative research), in Human Affairs nr 2*2016, https://www.degruyter.com/document/doi/10.1515/humaff-2016-0013/html?lang=en consulted in 3.12. 2023, 11,40.

[16] A Digital Decade for children and youth: the new European strategy for a better internet for kids (BIK+), apud. https://digital-strategy.ec.europa.eu/en/library/digital-decade-children-and-youth-new-european-strategy-better-internet-kids-bik, consullted in 2. 12. 2023, 12, 40.

[17] See the abstract at https://digital-strategy.ec.europa.eu/en/policies/digital-principles, consuted in 1.12. 2023 15, 55.
[18] Available at https://www.europarl.europa.eu/doceo/document/B-9-2021-0164_RO.html, consulted in 1. 12. 2023, 15, 56
[19] EU Official Gazette, in 9 96 2020.
[20] COMISIA EUROPEANĂ, COMUNICARE A COMISIEI CĂTRE PARLAMENTUL EUROPEAN, CONSILIU, COMITETUL ECONOMIC ȘI SOCIAL EUROPEAN ȘI COMITETUL REGIUNILOR Un deceniu digital pentru copii și tineri:,noua strategie europeană „Un internet mai bun pentru copii" (BIK+), accesta la https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52022DC0212&from=EN, consulted in 1.12. 2023, 15, 54.
[21] COMISIA EUROPEANĂ, COMUNICARE A COMISIEI CĂTRE PARLAMENTUL EUROPEAN, CONSILIU, COMITETUL ECONOMIC ȘI SOCIAL EUROPEAN ȘI COMITETUL REGIUNILOR, Un deceniu digital pentru copii și tineri: noua strategie europeană, Un internet mai bun pentru copii" (BIK+), https://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52022DC0212&from=EN, consulted in 1. 12. 2023, 16, 00.
[22] European Schools Cooperating to be Bullying Free, Aseline study on the state of art ofbullying in Europe, at http://frompeertopeer.eu/wp-content/uploads/2018/02/State-of-Art.pdf, p. 9, consulted in 3 12 2023, 12 42.
[23] Available at https://rm.coe.int/168071a261, consulted in 1.12. 2023, 14, 35.
[24] Available at https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=163, consulted in 1.12 2023, 14,30.
[25] Available at https://www.coe.int/en/web/children/lanzarote-convention,consulted in 1.12, 2023, 14, 32
[26] Antibullying Policies in Europe Page 1 of 65 Antibullying Policies in Europe, A Review and Recommendations for European Quality Assessment of Policies to Prevent Bullying in Schools., pp 58, apud. https://www.gale.info/doc/project-abc/Dankmeijer-2020-Antibullying-Policies-in-Europe.pdf, consulted in at 1. 12. 2023, 14, 35.
[27] Available at https://rm.coe.int/1680081561, consulted in 1.12. 2023, 14, 50
[28] End Violence Against Children, The Council of Europe programme, Cyber-bullying:trends, prevention strategies and the role of law enforcement, 9th of March, 2021, apud. https://rm.coe.int/consolidated-ppt-webinar-cyberbullying-09-03/1680a1b6de, consulted in 12 01 2023, 14, 07.
[29] Local Solicitors, The Law on Cyberbullying, https://www.localsolicitors.com/criminal-guides/the-law-on-cyberbullying, 2021, consulted in 2. 12. 2023, 15,19.
[30] Sylwia Ćmie, Cyberbullying Legislation In Poland And Selected EU Countries, ocedia - Social and Behavioral Sciences 109 (2014) 29 – 34, pp 31, see also i Śledziewski D. (2013). Cyberstalking w polskim prawie karnym [in] „Cyberprzestepczość i ochrona informacji, Bezpieczeństwo Internecie. Tom II" (red.) Hołyst B., Pomykała J., Wydawnictwo Wyższej Szkoły, enedżerskiej, Warszawa, p. 275
[31] Antibullying Alliance, ABA's position on the French government plans to introduce new laws to criminalise school bullying, apud. https://anti-bullyingalliance.org.uk/aba-our-work/news-opinion/abas-position-french-government-plans-introduce-new-laws-criminalise, 3. 02. 2023, 12, 05.
[32] France's parliament approves new law criminalising school bullying, 25 02 2023, apud. France's parliament approves new law criminalising school bullying, consulted in 3. 02. 2023, 12, 14.
[33] Erasmus, Programe ale UE, EUROPE AGAINST BULLYING AND CYBERBULLYING, 11-15 iuolie 2022, Brusells, apud. https://www.youtube.com/watch?v=iwyK7rcsRU4, consulted in 2 12 2023, 15,40.
[34] Greta Ubialli, Cyberbullismo, conoscere la legge per combatterlo, 21 iulie 2023, apud. https://alleyoop.ilsole24ore.com/2023/06/21/cyberbullismo-legge, consulted in 2. 12. 2023, 15, 51.
[35Î Benjamín Ballesteros Barrado. Teléfono ANAR: la herramienta de prevención, detección e intervención frente al acoso escolar y el ciberbullying en España, p 241, apud. https://www.injuve.es/sites/default/files/2017/42/publicaciones/documentos_14._telefono_anar._herramienta_de_prevencion_deteccion_e_intervencion_frente_al_acoso.pdf, consulted in 2. 12 2023, 16,39.

[36] EUROPE AGAINST BULLYING AND CYBERBULLYING, 11-15 iulie 2022, apud, https://www.osservatoriodigenere.com/images/CyberIncludingGoesEurope/EuropeLaw_09_09_low.pdf, consulted in 2. 12. 2023, 16, 17.
[37] Francisco Javier Moreno-Fuentes and Gregorio Rdríguez-Cabrero – European social policy network, Spain improves the protection of children and adolescents, against violence, july 2021, apud. file:///D:/Download/ESPN%20-%20Flash%20report%202021%20-%2039%20-%20ES%20-%20July%202021.pdf, consulted in 2. 12 .2023, 16,26.
[38] What protection does legislation provide against cyberbullying?,consulted in 15. 11. 2017, apud. https://english.nmhh.hu/article/191031/What_protection_does_legislation_provide_against_cyberbullying, consulted in 2. 12. 2023, 17,09.
[39] Tamás Pango, The current cyberbullying situation in Hungary from a legal perspective, Justum Aequum Salutare XV. 2019, p. 155. See also Hungarian Government Decision 1488/2016. (IX.2.) 118–120.
[40] Hunarian Government Decision 1488/2016. (IX.2.), in Tamás Pango,The current cyberbullying situation in Hungary from a legal perspective in Justum Aequum Salutare XV. 2019, p. 164.

CONCEPTUAL ASPECTS REGARDING JOINT AND SEVERAL LIABILITY OF COMPANY ADMINISTRATORS IN TAX MATTERS

Lecturer Cristian DRĂGHICI, PhD.
Titu Maiorescu University, Faculty of Law and Economics Tg-Jiu, Romania
cristidrg@yahoo.com

Abstract
The activity of companies under Law no. 31/1990 is facing a series of challenges, often independent of the will of the shareholders, associates or management and control bodies, challenges generated by external factors, at macroeconomic level, such as economic instability or existing political conflicts at international level, but also by microeconomic factors, such as the problem of maintaining a positive cash flow, due to delays regarding collections from clients. In addition to the influence of these extrinsic factors, there are situations in which the illegal, culpable actions or inactions of the company administrators, exercised in bad faith, determine the non-payment of the outstanding payment obligations of the debtor and thus attract the state of insolvency of the company. The fiscal procedural legislation establishes a distinct procedure for the joint and several liability of the governing bodies of a taxpayer, a procedure that contains specific eligibility criteria, as well as different conditions for contesting the joint and several liability decisions. Not infrequently, the courts are charged with ruling on the legality and validity of the decisions to engage the joint and several liability of the administrators, in assessing the existence of the condition of bad faith, a necessary and mandatory condition for incurring joint and several liability in fiscal matters.
Keywords*: insolvency, joint liability, bad faith, corporate administrators.*

Legal nature of administrator's joint and several liability

In this study, we propose an analysis of the conditions under which the joint and several liability of the administrator can be drawn for the outstanding payment obligations of the debtor declared insolvent, under the conditions of the procedural-fiscal norm, related to the interpretations of the courts and the doctrinal arguments.

The administrators' liability is joint and several with the company, according to the provisions of art. 73 of Law no. 31/1990, which provides that administrators are responsible for: the reality of payments made by associates; the real existence of dividends paid; the existence of the registers required by law and their correct keeping; the exact fulfilment of the decisions of the general meetings and the strict fulfilment of the duties that the law and the constitutive act impose. From the perspective of this regulation, the liability of the administrator is civil, contractual and/or tortious and concerns the relations between the company and the administrator.

The legal framework for incurring the administrator's joint and several liability in fiscal matters is established by the provisions of art. 25 para. 2 of the Fiscal Procedure Code, which provides for a distinct, special procedure to attract the joint and several liability of the corporate administrator, establishing a passive solidarity between the company/principal debtor and the administrator, co-debtors of the fiscal body regarding the outstanding tax payment obligations of the company, respectively regarding the payment of fiscal claims. The liability of the administrator in fiscal matters has a subjective nature [1].

The choice of the joint and several liability procedure based on the provisions of the Fiscal Procedure Code does not exclude the right of the fiscal authorities to promote the action in the liability for the insolvency of the debtor company under the terms of Law no. 85/2014, which is a tortious commercial liability, for which the cumulative meeting of the conditions of tortious liability is necessary: the illegal act, the damage caused to the company, the causal relationship between the illegal act, damage and guilt [2].

One of the subjects of many controversies in judicial practice, has been the possibility of starting the procedure of individual liability of the administrator for the outstanding fiscal debts of the company, based on the provisions of art. 25-28 of Law no. 207/2015, simultaneously with the insolvency procedure of the main debtor according to Law no. 85/2014. This dispute was settled during the meeting of the presidents of the administrative and fiscal litigation sections of the High Court of Cassation and Justice and the appeal courts, that took place at the Craiova Court of Appeal, between October 17-18, 2019. On this occasion, unanimously the opinion expressed by the the National Institute of the Judiciary trainer was approved, according to which "The procedure for incurring joint and several liability regulated by the provisions of art. 25 and 26 of the new Fiscal Procedure Code can also be applied if the debtor is in the insolvency procedure regulated by Law no. 85/2006 on insolvency prevention and insolvency procedures"[3].

The joint liability established by fiscal provisions is a legal solidarity, the law being it`s source. Solidarity is established by fiscal administrative act issued by the competent fiscal body when the conditions provided by the law are met. At the same time, this form of liability is a passive solidarity, being an obligation with several debtors, with all the consequences arising from it and a conditional solidarity, it can only be established if

certain conditions provided by law for attracting responsibilities, subjective or objective, as the case may be [4].

Joint and several liability represents a guarantee of the tax debt collection, being both passive and conditional solidarity. Thus, in fiscal matters, the fiscal bodies can hold the administrators/associates liable only for the outstanding fiscal obligations (main and ancillary) of the company, with reference only to those related to the period for which the persons in question had the capacity that was the basis of the joint and several liability [5].

The liability of administrators for the insolvency of the company carrying out commercial activity is a tortious civil liability. For this liability to be drawn, it is necessary to fulfill the general conditions of the liability according to the provisions of art. 1357 Civil Code (illegal act, damage, causality and guilt), conditions that have some particularities in this situation. On the other hand, the liability established by the provisions of art. 25 para. 2 of the Fiscal Procedure Code is a tortious civil liability for one's own deed, a liability that has a subjective nature, the administrator being responsible only for his own actions or inactions, respectively for the way in which he exercised his duties as an administrator of the company[6] and only for his eventual share of the damage [7].

From the perspective of the causal relationship between the illegal act and the creation of the state of insolvency, from the analysis of of the Fiscal Procedure Code provisions, it appears that in order to attract the joint and several liability of the administrator, the causal link between the illegal acts and the state of insolvency of the company must be properly proven.

By the provisions of art. 25 para. 2 of the Fiscal Procedure Code, a legal presumption of liability is not established, but only the possibility of liability was provided, based on the evidence leading to the conclusion that, through the facts listed by law, the state of insolvency of the company was caused. In the case of the liability regulated by the fiscal rule, the administrator's guilt must exist and must be proven, together with the fulfillment of the other conditions required for incurring tortious civil liability, the administrator's fault not being presumed under art. 1082 Civil Code, applicable only to contractual liability [8].

The conditions of the administrator's joint liability for the cases provided for by art. 25 para. 2 of the Fiscal Procedure Code

Among the five cases provided by law no. 207/2015 of joint and several liability for the outstanding payment obligations of the debtor declared insolvent, four have as the subject of the obligation report the person of the corporate administrator. The liability of administrators/associates does not automatically become operative in all cases when the social liability or part of it cannot be covered, but only when it is proven that the administrators/associates caused the state of insolvency of the company by culpably committing any of the express acts and limitatively listed in art 25 paragraph (2) letter a)-e), and the damage resulted directly from the culpable act/s committed, respectively the commission of these acts caused the legal person to become insolvent[9] . The simple existence of managerial deficiencies in the administration of the company, without the fiscal administration body having proven a behavior likely to frustrate the legal measures to recover accumulated debts, cannot justify the joint liability of the administrator [10].

Thus, a first case of joint and several liability of the corporate administrators for the outstanding payment obligations of the debtor declared insolvent, according to art. 25 paragraph 2 (b) of Law no. 207/2015, is the one in which *they caused the insolvency of the debtor legal entity by alienating or hiding, in bad faith, in any form, the assets of the debtor*.

Therefore, for the incidence of this case of attracting the liability of the administrator, it is necessary the proven existence of acts or facts of alienation or concealment of the debtor's assets, carried out in bad faith by the administrator.

Order no. 431/2022 of the Ministry of Development, Public Works and Administration for the approval of the Joint Liability Hiring Procedure regulated by the provisions of art. 25 and 26 of Law no. 207/2015 regarding the Fiscal Procedure Code, published in the Official Gazette no. 342 of April 7, 2022, gives only by way of example, cases of bad faith concealment of the debtor's assets: changing the location of the movable asset so that it can no longer be found both in fact and in law; hiding movable and/or immovable property in any form, both in fact and in law, in order to no longer be the subject of enforcement proceedings, or not declaring movable and/or immovable property, especially the debtor's movable property, at the request of the body local fiscal.

The acts of alienation or concealment of the debtor's assets must lead directly to the provocation of the state of insolvency, which, according to art. 265 paragraph 1 of the Fiscal Procedure Code, is that situation of the debtor *whose income and/or traceable assets have a lower value than the fiscal payment obligations or who has no traceable income or assets. In this sense, the fiscal body communicates the insolvency report to the debtor.*

The provisions of the law require that the state of insolvency of the debtor company be ascertained under the conditions and in compliance with the Fiscal Procedure Code, prior to establishing the liability of the corporate administrator[11]. The decision declaring the state of insolvency, uncontested under the law, are consolidated under all the factual and legal aspects retained in its content.

In court`s practice[12] it was held that the simple alienation of some assets from the debtor's property cannot lead directly to the presumption that these acts caused the state of insolvency of the company, it being necessary to prove the administrator's bad faith and the connection of causality between the acts of alienation and the state of insolvency of the company.

Another case of attracting the joint liability of administrators regulated by art. 25 para. 2 (c) of the procedural-fiscal law is the one in which, *during the exercise of the mandate, in bad faith, they did not fulfill their legal obligation to ask the competent court to open the insolvency procedure, for the fiscal obligations related to the respective period and remained unpaid on the date of the declaration state of insolvency*.

In the practice of the courts[13], it was held that the simple failure to formulate the request to open the insolvency procedure cannot lead to the conclusion of bad faith on the part of the administrator, in order to have caused the insolvency of the company and the evasion of the payment of tax obligations, the commission of these facts not presuming bad faith. In addition, a possible request for the staggering of tax receivables by the company cannot be requested in the event of the opening of the insolvency procedure contrary to the debtor company.

The most common basis in practice for the liability of the administrator is the one indicated in art. 25 para. 2 (d) of the Fiscal Procedure Code according to which, for the outstanding payment obligations of the debtor declared insolvent, *the administrators who,*

in bad faith, determined the non-declaration and/or non-payment of the tax obligations when due are jointly and severally liable with him.

The legal text requires bad faith as a form of guilt, regarding the statutory administrators who determined the non-declaration and/or non-payment of tax obligations when due, in their activity of administration of the legal entity.

The proof of bad faith requires the presentation of the reasons and the evidence on which the fiscal body bases its opinion regarding the fulfillment of the conditions for incurring liability, considering that this cannot imply a simple lack of diligence, respectively a volitional attitude of the guilty person consisting in the representation of the negative result and the pursuit of this finality through his actions and inactions.

The administrator's bad faith cannot be presumed in relation to the fact that the company has debts due to the state budget, since, on the one hand, bad faith is not presumed, but must be proven, and on the other hand, the provisions of art. 25 para. 2 (d) of the Fiscal Procedure Code cumulatively establish two conditions for the engagement of the administrator's joint and several liability, respectively the material act described by the law and, distinctly, the condition of the administrator's bad faith. The persistence of fiscal payment obligations is not sufficient for the engagement of liability, the fiscal body having the task of precisely identifying the non-compliant works attributable to the administrator and proving the concrete way, the fraudulent act through which he caused the state of insolvency of the company [14].

Therefore, only in the situation in which the bad faith of the administrator is legally, argued and substantiated, it is up to him to prove his good faith, respectively to justify the reason why he did not pay the company's obligations when due. The passivity, disinterest or non-manifestation of a pro-active attitude of the corporate administrator does not equate to bad faith, in the sense of the procedural-fiscal norm[15], even if, in relation to the provisions of art. 73 of Law no. 31/1990, the company administrator is obliged to strictly fulfill the duties that the law and the constitutive act impose on him, and according to art. 20 para. (1) from Law no. 207/ 2015, he also has the obligation to pay taxes, local taxes and contributions, non-payment of the company's fiscal obligations[16]. Bad faith is a *sine qua non* condition for incurring joint and several liability [17].

A last case of joint and several liability of corporate administrators regulated by the provisions of art. 25 para. 2 of the Fiscal procedure code is the one from letter e, according to which, *the administrators are jointly and severally liable with the debtor declared insolvent who, in bad faith, determined the restitution or reimbursement of sums of money from the general consolidated budget without them being due to the debtor.*

In the practice of the courts[18] it was held that, *if the tax authorities establish the fictitiousness of some commercial relations - allegedly existing between the debtor company and a third company - following the finding of improper VAT reimbursement for economic operations carried out by the debtor company, against the unreal nature of them, the direct intention in the declaration of these reports and subsequently in the coordination of the illegal value added tax deduction operations is obvious. In these situations, the condition of bad faith of the administrator results from the very materiality of the fact of carrying out fictitious commercial operations.*

Conclusions

The provisions of art. 25 para.2 of the Fiscal procedure code does not establish a legal presumption of liability, but only provides for the possibility of holding the corporate administrator liable, regulating a procedure suitable to guarantee the realization of the tax claim. However, the tax authorities have the obligation to overturn the principle of good faith and to demonstrate, with sustainable arguments, the incidence of one or more of the reasons provided by the text of art. 25 para.2 of the Fiscal procedure code for the joint liability of company administrators. The simple affirmation of causing the insolvency of the debtor, through the alienation of some of its assets, cannot constitute grounds for the joint and several liability of the administrators. It is necessary to establish the destination or the way in which the sums of money obtained from the sale of the company's assets were spent. Also, the simple statement of the non-fulfilment of the administrator's legal obligation to ask the competent court to open the insolvency procedure cannot justify incurring joint and several liability, given that even the tax authorities have the possibility to request the opening of the insolvency procedure contrary to the debtor, according to the provisions of art. 3 point 20 of Law no. 85/2014, as a creditor entitled to request the opening of insolvency proceedings, holder of a certain, liquid and enforceable claim older than 60 days on the debtor's patrimony. Although indicated as a *sine qua non* condition

in the regulation of situations in which the joint and several liability of administrators can be drawn, the notion of "bad faith" is not rigorously defined by the legislator within the procedural-fiscal law, being interpreted *per a contrario* with that of good faith. This is where the fundamental role of judicial doctrine and practice comes in, to "fill" this legislative gap.

References:

[1]Moțu, Flavius-Iancu, Deli-Diaconescu, Andreea, Proceduri paralele insolvenței – Răspunderea solidară în materie fiscală (Part II), Phoenix Magazine, april – june 2015, p. 26
[2]Gavrilescu, Luiza-Cristina, Incidenţa răspunderii administratorului unei societăţi din cadrul unui grup pentru intrarea în insolvenţă, ca urmare a încălcării obligaţiei sale de loialitate, available at https://www.universuljuridic.ro/incidenta-raspunderii-administratorului-unei-societati-din-cadrul-unui-grup-pentru-intrarea-in-insolventa-ca-urmare-a-incalcarii-obligatiei-sale-de-loialitate/
[3]Meeting of the presidents of the administrative and fiscal litigation sections of the High Court of Cassation and Justice and appeal courts, Craiova, October 17-18, 2018, available at https://inm-lex.ro/wp-content/uploads/2020/02/Minuta-intalnire-SCAF-punctaj-principal-17-18-octombrie-2019-Craiova-1.pdf
[4]https://mfinante.gov.ro/documents/35673/6785068/ArinaDragodan6.pdf, accesed at 03.12.2023
[5]Popa, Mihai, Buscu, Dana, Atragerea răspunderii organelor de conducere – aspecte de insolvență și drept fiscal, available at https://www.juridice.ro/681777/atragerea-raspunderii-organelor-de-conducere-aspecte-de-insolventa-si-drept-fiscal.html
[6]Dragan, Iacob Constantin, Răspunderea administratorului pentru insolvabilitate conform Codului de procedura fiscala, available at https://avocatdragan.ro/atragerea-raspunderii-administratorului-pentru-insolvabilitate/
[7]Alba Iulia Court of Appeal - Administrative and Fiscal Litigation Section, Dec. No.. 627 of November 15, 2023, available at https://www.rejust.ro/juris/6274dg332
[8]https://avocatdragan.ro/atragerea-raspunderii-administratorului-pentru-insolvabilitate/, accessed at December 02, 2023
[9]Iași Court, Section II Litigation Administrative and Fiscal, Dec. No.. 467/ of March 28, 2019, available at https://www.rejust.ro/
[10]Suceava Court of Appeal - Administrative and Fiscal Litigation Section, Jurisprudence Bulletin 2022, available at https://www.iccj.ro/wp-content/uploads/2023/03/CA-Suceava-Buletinul-jurisprudentei-SCAF-2022.pdf, accessed at December 03, 2023
[11]https://www.iccj.ro/wp-content/uploads/2023/03/CA-Suceava-Buletinul-jurisprudentei-SCAF-2022.pdf, accesed at December 03, 2023
[12]High Court of Cassation and Justice - Administrative and Fiscal Litigation Section, Dec. no. 1587 of March 27, 2014, Timisoara Court of Appeal, Administrative and Fiscal Litigation Section, Dec. no. 29/2018, available at https://www.rejust.ro/
[13]High Court of Cassation and Justice, Administrative and Fiscal Litigation Section, Dec. no. 1177 of March 16, 2015, available at https://www.rejust.ro/
[14]High Court of Cassation and Justice - Administrative and Fiscal Litigation Section, Dec. no. 4862/2022, available at https://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=199681#highlight=##
[15]Brașov Court of Appeal, Administrative and Fiscal Litigation Section, Dec. no. 693 of November 08, 2023, available at https://www.rejust.ro/juris/985g94274
[16]https://mfinante.gov.ro/documents/35673/6785068/ArinaDragodan6.pdf, accessed at December 03, 2023
[17]High Court of Cassation and Justice - Section for Administrative and Fiscal Litigation, Civil Dec. no. 4488 of October 7, 2021, available at https://www.rejust.ro/

[18]Bucharest Court of Appeal, Administrative and Fiscal Litigation Section, Dec, no. 5020/2017, available at https://www.rejust.ro/

DISCRIMINATION IN THE WORKPLACE - AN ANALYSIS OF THE CASE LAW OF THE ROMANIAN NATIONAL COUNCIL FOR COMBATING DISCRIMINATION ON WRONGFUL TERMINATION OF THE INDIVIDUAL EMPLOYMENT CONTRACT

Lecturer Dana VOLOSEVICI, PhD.
Petroleum-Gas University Ploiesti
dana.volosevici@vplaw.ro

Abstract
Discrimination in the workplace takes the form of a variety of behaviours, which could come from colleagues, subordinates and superiors. The acts are all the more serious in cases where the employer, taking advantage of the inequality of the parties in the legal employment relationship, distorts the provisions of the Labour Code, using them to create a situation affecting the employee's rights or an intimidating, hostile, degrading or offensive environment, in order to force the employee to terminate the employment relationship. This article presents the case law of the Romanian National Council for Combating Discrimination in the field of access to employment and profession, presenting some relevant cases of discrimination perpetrated by abusive application of the legal provisions on dismissal for reasons unrelated to the person of the employee, disciplinary dismissal, reinstatement of the unlawfully dismissed employee and termination of the employment contract at the initiative of the employee.
Keywords*: discrimination, harassment, employment, dismissal*

The field of employment relations is an area in which discriminatory and abusive manifestations still reach a significant level, despite legislative efforts to prevent and punish such acts. At European level, the Directive 2006/54/EC [1] provides the legal framework for the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation; the Directive 2000/43/EC [2] implements the principle of equal treatment between persons irrespective of racial or ethnic origin, while the Directive 2000/78/EC [3] lies down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment. Romania has transposed the abovementioned European legislation into two specific laws – the Government Ordinance no. 137/2000 on the prevention and sanctioning of all forms of discrimination [4] and the

Law nr. 202/2002 on equal opportunities and equal treatment of women and men [5]. The Romanian Labour Code prohibits various forms of discrimination, namely direct discrimination, indirect discrimination, discrimination by association, harassment and victimization. Discrimination can occur in relation to all aspects of the employment relationship, from recruitment to the treatment of former employees, both in normal working conditions and in times of crisis, such as the COVID-19 pandemic, when the Government (secondary legislator), rushing to counter the effects of the crisis, establishes a discrimination not provided for by the law issued by Parliament (primary legislator) [6].

Despite the existence of a constantly improving legal framework, according to statistics published by the National Council for Combating Discrimination (N.C.C.D.) [7], petitions registered in the field of "access to employment and profession" are constantly in first place, representing 36.65% of the total number of petitions in 2022. The criteria invoked were, in descending order of petitions filed, social category, other (including status as a person reintegrated following a process with the complainant company), gender, age, disability, chronic non-contagious disease, ethnicity, language, beliefs, religion, HIV, sexual orientation, nationality, race.

An analysis of the case law of the N.C.C.D. in the field of "access to employment and profession" reveals that a number of acts have been committed in connection with the abusive interpretation of certain provisions of the Labour Code, which regulate the dismissal of the employee and his reinstatement.

The acts consisted of both actual discrimination and harassment. It should be recalled that, for an act to be considered discrimination, there must be a differentiation based on a criterion which infringes a right. According to ECHR case law, to prove differentiation, „it must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment, and that there is no reasonable or objective justification for this distinction” [8]. The ECHR stated that Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment in law [9].

It should be noted that a peculiarity of the act of harassment, as regulated by the provisions of G.O. no.137/2000, is that it does not presuppose the existence of analogous, comparable situations. The mere fact that the employer has engaged in

certain conduct which may be related to one of the criteria laid down by law, conduct which has the effect of creating an intimidating, hostile or degrading environment for the complainant, is a necessary and sufficient condition for the existence of the act of discrimination provided for and penalised by Article 2 para. (5) of G.O. no 137/2000. This legislative choice derives from the fact that harassment in itself is wrong because of the form it takes (verbal, non-verbal or physical abuse), and the potential effect it can have, namely the violation of human dignity.

With regard to dismissals, a significant number of cases arise from the misuse of the provisions of Article 65 of the Labour Code, which governs dismissal for reasons not related to the employee's person. According to the legal provisions, the termination of the individual employment contract is determined by the removal of the job position for one or more reasons unrelated to the employee's person.

The courts have held that "the basic idea is that the removal of the job position, which also entails the dismissal of the employee, must not conceal any reason other than the employer's genuine need" and that "the purpose (cause) of the removal of the job position cannot be the exclusion of the unwanted employee" [10].

As regards the conditions expressly established by the article 65 para (2) of the Labour Code - „the removal of the job position must be effective and have a real and serious cause", the Constitutional Court stated that „those conditions seek to strike a balance between the two parties to the employment contract, that is to say, between the need to ensure that the employer is free to decide whether to terminate employment when objective considerations so require - economic difficulties, technological change, reorganisation of the business, etc. - on the one hand, and the need to protect the employee from any abusive attitude on the part of the employer, on the other. For these reasons, the law requires not only that the termination of employment be effective, but also that it be justified by a real and serious cause or, in other words, that it be determined by an objective cause, of a certain seriousness that really requires this measure. The phrase "real and serious cause" evokes facts, determinable hypotheses that exclude subjective approaches. The cause is real when it is objective, being imposed by the need to overcome technical and economic difficulties, by the economic imperative of increasing labour productivity and adapting to new technological developments. The cause is serious

when the situation of the employer's unit is serious, threatening its development or even its viability" [11].

The summary regulation of this cause of dismissal encourages abuses by some employers who distort the purpose of the legal regulation in order to eliminate those employees who become undesirable in the workplace. In addition, in an appeal in the interest of the law, the High Court of Cassation and Justice ruled that, in the case of dismissal for reasons not related to the employee's person, it is not mandatory to list all available jobs in the establishment and the deadline for employees to opt for a vacant job [12]. It therefore follows that the effect of removal of the job position is to dismiss the employee, even if there are other vacancies in the establishment.

One of the recent cases before the N.C.C.D. [13] concerns the dismissal of an employee by removing the position in question, in the absence of any justification from the employer, in view of the vulnerable situation in which the employee concerned found herself, in the light of her chronic illness, her classification as disabled and her age of over 50. The employer did not indicate that persons in similar situations were subject to the same legal consequences, without a causal link to certain personal characteristics such as health or age. N.C.C.D.'s Board found the existence of the multiple acts of discrimination pursuant to the provisions of Article 2 para. (1), Article 2 para. (6) and Article 7 lett. a) of the G.O. no. 137/2000.

In another case [14], the dismissal for reasons unrelated to the employee concealed discrimination on the grounds of maternity and was organised in such a way as to appear to comply with the maternity protection measures imposed by the relevant legislation. N.C.C.D.'s Board found that the complainant was discriminated against and harassed on the basis of maternity during her two pregnancies and during her prenatal, postnatal and parental leave for her two children. Thus, the complainant pointed out that the position she held following the selection and recruitment process was changed, removed, within the period of maternity protection and that on her return from statutory leave, her duties and responsibilities were significantly reduced, and she was assigned to other commercial areas.

The Board found that the complainant's job position, which she had held and filled through a competition, had been removed on the basis of performance appraisals for the

period during which she had not held the post, being on maternity leave, child-raising leave and during the statutory maternity protection period. For these reasons, the Board found that the complainant did not receive equal treatment in the field of employment and professional practice and that the complainant's job position was removed for unsatisfactory performance without any responsibility on the part of the complainant. Moreover, the complainant was retained in the respondent's position only to comply with the legal provisions and, as soon as the legal deadlines expired, the complainant was dismissed.

The case presented is all the more interesting because the employer, in its discriminatory actions, invoked for dismissal both reasons related to the application of Article 65 of the Labour Code and reasons related to the employee's lack of performance. Acts of discrimination can also be disguised as disciplinary dismissals. The employer, according to the provisions of Article 247 para. (1) of the Labour Code, has the disciplinary prerogative, having the right to apply, according to the law, disciplinary sanctions to its employees whenever it finds that they have committed a disciplinary offence. At the same time, under Article 7(e) of G.O. no. 137/2000, acts of discrimination by the employer, manifested when applying disciplinary measures, constitute a contravention whenever an employee is discriminated against on the grounds that he belongs to a particular race, nationality, ethnic group, religion, social category or disadvantaged category, or on the grounds of his beliefs, age, sex or sexual orientation, in a labour and social protection relationship, except in the cases provided for by law.

In one case [15], the complainant alleged that he had been disciplined for acts relating to the establishment of a trade union of which he was president. The complainant also alleged that during the same period, out of a total of about 400 employees, 19 employees were dismissed, the official reason invoked by the employer being reorganisation. However, all 19 of those dismissed were union members. The petitioner claimed that all the respondent's actions had one purpose, namely the dissolution of the union, the first action being the dismissal of the petitioner on the false ground of disciplinary misconduct, which was confirmed by a decision of the Ilfov Tribunal. Despite the decision, the employer refused to enforce a court ruling, denying him his right to work and dignity on the grounds that he would be a danger to flight safety. From the date of

reinstatement until the date of the referral to the N.C.C.D, the complainant did not receive his service badge, uniform, access to the company's computer system, and flight or training duties as per his job description. Instead, he was remunerated according to his contractual basic salary, which was the lowest part of the complainant's salary. In addition, the employer's decision to exclude him from the IT system prejudiced his right to use the employee ticketing system (Private Travel) and the benefits included, causing him financial loss.

The N.C.C.D. Board found that by dismissing the complainant, the employer had acted actively, with effects that unduly disadvantaged the members of the trade union of which the complainant was the president, the provisions of Article 2 para. 4 of G.O. no. 137/2000 being fully applicable.

The Board decided to impose a fine of 1,000 lei for the effects of the treatment that led to the dismissal of the complainant on trade union grounds, taking into account the following: the relevant European Union directives (e.g. Council Directive 2000/43/EC, Article 15) and the case law of the European Court of Justice require the Member States of the European Union to apply effective, proportionate and dissuasive sanctions; the discrimination was aimed at stopping the trade union movement, which is an extremely serious offence.

Some of the discrimination cases relate to the employer's obligation to reinstate the unlawfully dismissed employee. Thus, according to Article 80 of the Labour Code, if the dismissal has been carried out unjustly or unlawfully, the court will order its annulment and, at the request of the employee, will restore the parties to the situation prior to the issuing of the dismissal act.

Article 287 para.1 lett. d) of the Criminal Code provides that failure to enforce a court decision ordering the reinstatement of an employee constitutes a criminal offence and is punishable by imprisonment from 3 months to 2 years or a fine.

In order to avoid criminal liability, some employers start the process of reinstating the employee, but divert it from its legal purpose. In this way, employees are created with unfit working conditions in order to induce them to terminate the employment relationship by resignation. In this case, the criterion of discrimination is, according to the case law of the N.C.C.D, "the situation of a person reintegrated following a process with the company

complained of", which belongs to the category "any other criterion"[16]. Indeed, according to Article 2 para. 5 of the G.O. no. 137/2000, constitutes harassment and any behaviour based on race, nationality, ethnicity, language, religion, social category, beliefs, gender, sexual orientation, membership of a disadvantaged group, age, disability, refugee or asylum seeker status or any other criterion that leads to the creation of an intimidating, hostile, degrading or offensive environment is punishable. In the judgments cited, the N.C.C.D decided that "the treatment described by the complainant creates a hostile and degrading environment for the complainant, on the basis of her situation as a person reintegrated following a process with the complainant society".

The attitude of employers is all the more serious since, as the Constitutional Court has pointed out, contractual employment relationships, by their nature, involve significant human interaction [17]. The evolution of this interaction after an unfair dismissal can be significantly damaged, so as to lead to a decision to leave a job, regardless of the safeguards that national regulations provide for the employee to protect his rights by sanctioning abusive attitudes of the employer [18].

The abusive acts committed by employers, as reflected in the case law of the N.C.C.D, can be manifested through a wide range of actions. In a recent case [19], the N.C.C.D's Board noted that the complainant's reinstatement after winning a court case against her employer concerning her dismissal and harassment resulted in hostile behaviour towards her. Thus, the complainant was not provided with working tools for the performance of her duties (inadequate office, access to ERP software, etc.), her job description was altered by restricting her duties, which led to her isolation, the creation of a negative image in the workplace, the deprivation of her right to work in accordance with her professional training and her individual employment contract, and the creation of an intimidating, hostile, degrading and offensive environment.

In another case [20], the facts consisted in subjecting the reinstated employee to degrading, unfair and humiliating treatment, being forced to manually tear the drafts of her colleagues into pieces smaller than 1 cm, this work being closely supervised; she was presented as a negative example, showing other employees what could happen to them if they had the courage to defend their interests in court against their employer; the complainant's office was placed at a distance from the offices of her colleagues; she was

not given access cards to other areas of the employer, similar to her colleagues, so she did not have free access to the lunch room; compared to other employees, she had to hand in her mobile phone, USBs, CDs at the end of her working time; a similar practice was not applied against other colleagues, the secretary employed in her place was treated completely differently.

To give an example from the sphere of public administration [21], the job of the legal adviser, reinstated following several foreclosure procedures, was located in the office of the librarian of the institution, at a school desk, surrounded by children present in the library to access the BIBLIO-NET program, without access to the means necessary to carry out the work and perform the duties set out in the job description.

Another case of abusive conduct by the employer is harassment of the employee with a view to inducing him to resign or terminate the employment contract under Article 55(b) of the Labour Code, following the agreement of the parties. Of course, in both cases the employee's consent is vitiated, being obtained by psychological violence. By way of example, in a recent case [22], the complainant stated that she had decided to terminate her individual employment contract following numerous hostile and humiliating attitudes on the part of her employer. These attitudes were exemplified by the use of a raised tone, throwing documents at the complainant, restricting her right of reply and the right to express her opinion. The employer refused to pay her outstanding salary entitlements and, in response to the employee's repeated requests for her rights to be respected, sent an email to several employees in which he used a series of abusive expressions likely to damage her dignity, reputation and honour.

In view of the content of the email, the N.C.C.D’s Board decided that the statement was likely to undermine the dignity of the complainant and create an intimidating, hostile, degrading, humiliating and offensive atmosphere against her on the basis of her gender. Such statements, according to ECHT case law, are not protected by the right to free expression. Thus, the employer's action constitutes discrimination, since it created a distinction on the basis of gender which had the purpose and effect of restricting the equal exercise of the right to dignity.

As is evidenced by the cases presented in this article, a large part of the acts of discrimination concerning termination of employment are aggravated by the violation of

other legal provisions, such as those concerning maternity protection, freedom of association and trade union membership, the right to exercise trade union activities, the objectivity and legality of professional evaluation, or the modification of the individual employment contract. The inequality of the parties in the employment relationship and the legal subordination of the employee encourage the misconduct of some employers and the misuse of the provisions of the Labour Code. From the Council's case law, it appears that this type of acts are committed by all categories of employers, public and private, with foreign or Romanian capital participation, small, medium and large, which demonstrates the seriousness of the problem under analysis and requires the application of stronger measures to combat discrimination in employment relations.

References:

[1] Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ L 204, 26.7.2006, p. 23–36.
[2] Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, 19.7.2000, p. 22–26.
[3] Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p. 16–22.
[4] Republished in the Official Gazette of Romania, Part 1, no.166 of 7 March 2014.
[5] Republished in the Official Gazette of Romania, Part 1, no. 326 of 5 June 2013.
[6] For such an example, see Silviu-Dorin Șchiopu, Considerații asupra constituționalității unor prevederi din Legea nr. 55/2020 cu impact asupra legalității întrebuințării în context intern a certificatului digital al UE privind COVID, Revista „Dreptul" (Law Review) nr. 4/2022, p. 58-59.
[7] National Council for Combating Discrimination, 2022 Activity Report, available at https://www.cncd.ro/wp-content/uploads/2023/08/Raport-de-activitate-CNCD-2022-EN-R2-interactiv.pdf.
[8] ECHR, Fredin v. Sweden (no. 1) judgment of 18 February 1991, Series A no. 192, p. 19, para. 60; Stubbings and others v. The United Kingdom, judgment of 22 October 1997, para. 72.
[9] ECHR, Rasmussen v. Denmark judgment of 28 November 1984, Series A no. 87, p. 15, para. 40; Stubbings and others v. The United Kingdom, judgment of 22 October 1997, para. 72.
[10] Pitești Court of Appeal, Civil Decision no. 449/17.03.2020.
[11] Constitutional Court of Romania, Decision no. 420/2013, published in the Official Gazette of Romania, Part 1, no. 48 of 21 January 2014.
[12] High Court of Cassation and Justice of Romania, The Competent Court to Judge Appeals in the Interest of the Law, Decision no 6 of 9 May 2011 on appeals in the interest of the law, on the applicability of the provisions of Article 74 para. (1) letter d) of the Labour Code in the case of dismissals for reasons unrelated to the employee's person, published in the Official Gazette of Romania, Part 1, no. 444 of 24 June 2011.
[13] National Council for Combating Discrimination, 2022 Activity Report, p. 40.
[14] National Council for Combating Discrimination, Decision no. 520 of 31 August 2022.
[15] National Council for Combating Discrimination, Decision no.330 of 27 April 2016.
[16] National Council for Combating Discrimination, Decision no. 709 of 04 December 2013, National Council for Combating Discrimination, Decision no. 255 of 25 March 2020.
[17] Constitutional Court of Romania, Decision no. 279 of 23 April 2015, published in the Official Gazette of Romania, Part 1, no. 431 of 17 June 2015, para. 34.
[18] Constitutional Court of Romania, Decision no. 401 of 18 June 2020, published in the Official Gazette of Romania, Part 1, no. 906 of 6 October 2020.
[19] National Council for Combating Discrimination, Decision no. 728 of 7 December 2022.

[20] National Council for Combating Discrimination, Decision no. 709 din 04 December 2013.
[21] National Council for Combating Discrimination, Decision no. 255 of 25 March 2020.
[22] National Council for Combating Discrimination, Decision no. 661 of 02 November 2022.

THE CONCEPTUAL ELEMENTS OF LEGISLATIVE TECHNIQUE

Professor Emilian CIONGARU, PhD.
University Titu Maiorescu Bucharest - Romania;
University Bioterra Bucharest-Romania;
Associate Scientific Researcher – Romanian Academy,
Institute of Legal Research „Acad. Andrei Radulescu"
emil_ciongaru@yahoo.com

Lecturer Cristian DRAGHICI, PhD.
University Titu Maiorescu, Bucharest - Romania;
Faculty of Law and Economic Sciences Tg-Jiu, (Romania),
cristian.draghici@prof.utm.ro

Abstract
The legal framework regulating the technique of drafting regulatory acts is supplemented by the acts establishing, organising and operating administrative authorities or bodies, which include provisions on the right to issue or adopt administrative acts of a regulatory or individual nature in the exercise of the powers conferred by law. Regulatory orders, instructions and other such acts of the heads of ministries and other bodies of the specialised central public administration or autonomous public administration authorities are issued only on the basis of and in execution of laws, decisions and ordinances of the Government. Thus, the legal framework of the technique of drafting administrative acts of a regulatory nature is supplemented by regulations issued by each authority and administrative body.
Keywords: *legislative tehnique; juridical order; rule of law; juridical law; comunity order*

The legal framework regulating the technique of drafting legislative acts

As is known, an administrative act must meet certain formal and substantive conditions in order to produce legal effects, and failure to meet some of these conditions [1] may result in the act being null and void or voidable.

In order to create a uniform framework for the preparation, drafting and adoption of legislative acts, including administrative acts, Law No. 24/2002 on the rules of legislative technique for the drafting of legislative acts was adopted. [2]

Article 3 para. (1) of the law establishes the scope of its application, specifying that: *"The norms of legislative technique are mandatory in the preparation of draft laws by the Government and legislative proposals belonging to deputies, senators or citizens; in the preparation and adaptation of Government ordinances and decisions, as well as in*

the preparation and adaptation of legislative acts of other authorities with such attributions".

That the rules referred to are not only applicable to the law-making process follows from para. (2) of the same Article 3, according to which *"The rules of legislative technique shall also be duly applied to the preparation and adoption of draft orders, instructions and legislative acts issued by the heads of specialised central public administration bodies, as well as to the preparation and adoption of legislative acts issued by local public administration authorities"*.

Thus, the legal framework of the technique of drafting administrative acts of a regulatory nature is supplemented by regulations issued by each authority and administrative body.

On the basis of the above provisions, the Government issued Decision No. 555/2001 approving the Regulation on the procedures for submitting draft legislative acts for adoption by the Government. This Regulation was in force until the adoption by the Government of Decision No. 50/2005 approving the Regulation on procedures at Government level for the preparation, approval and submission of draft legislative acts for adoption, which repeals the Regulation approved by Decision No. 555/2001. The Government also issued Decision No. 1,361/2006 on the content of the instruments for the submission of draft legislative acts for approval by the Government.

The legal framework regulating the technique of drafting regulatory acts [3] is supplemented by the acts establishing, organising and operating administrative authorities or bodies, which include provisions on the right to issue or adopt administrative acts of a regulatory or individual nature in the exercise of the powers conferred by law.

Drafting legislative acts

As mentioned above, the main legislative act that introduces techniques for the drafting of legislative acts in general into our legislation, is the updated Law No. 24/2000 on the rules of legislative technique for the drafting of legislative acts, republished.

For each draft legislative act, the explanatory memorandum must contain an express mention of its compatibility with the relevant Community regulations. [4]

The introduction of the impact assessment as a tool for presenting draft legislation is intended to estimate the economic and social costs and benefits. [5]

As stated in Article 32 of the law ”the explanatory documents must be drafted in an explicit, clear style, using the terminology of the draft legislative act they present and must refer to the final form of the draft legislative act”.

According to Article 32 para. (5) of the law ”explanatory memoranda to laws and explanatory notes to Government ordinances and decisions shall be published together with the legislative act in question in the Official Gazette of Romania, Part I, or shall be submitted on the Internet by the issuing authority”.

It should be noted that this provision has not been complied with since the publication of Law No. 24/2000 and until its republication in 2004, and is still not complied with. The publication of the explanatory documents on the internet does not cover this, as not everyone who wishes to know the reasons has access to the internet, which is why it is considered that the explanatory memorandum and the explanatory notes to the two categories of legislative acts, laws and ordinances or government decisions of greater legal force, should be published in the Official Gazette of Romania, together with the act they accompany.

Drafting of legislative acts

In order to ensure a logical sequence of the envisaged solutions and to achieve an internal harmony of the legislative act, art. 35 of the reference law recommends that ”the drafting of the text of the draft shall be preceded by the drawing up of a plan for grouping the ideas according to the connections and the natural relationship between them, within the general concept of regulation we consider that this rule is a recommendation, because in the case of control of the legality of legislative acts, the plan on the basis of which the draft of the respective act was drawn up will not be required, and the lack of this plan does not constitute a reason for the illegality of the act in question”.

Imposing care for the terminological consistency of the act in question, the law establishes, in art. 37, that ”in the legislative language, the same notions are expressed only by the same terms” and that in the event that a notion or a term is not established or may have different meanings ”its meaning in context shall be established by the legislative

act establishing them, within the general provisions or in an annex intended for the lexicon in question, and shall become binding for legislative acts in the same subject".

Structure of the legislative act

The structure of the legislative act is regulated in Chapter V of the Law which comprises two sections as follows:

- Section I - constituent parts of the legislative act;
- Section II - systematization of the contents of the legislative act.

Constitutive parts and systematization of the content of the legislative act

Article 40 of Law no. 24/2000, republished, establishes that: the legislative act has the following constituent parts:

a) the title of the legislative act; b) the introductory wording; c) the preamble; d) the enacting part; e) the mention concerning the transposition of Community rules; f) the wording certifying the authenticity of the act.

The content of a draft legislative act is systematised in the following order of presentation of ideas:

a) general provisions or general principles;

b) provisions concerning the substance of the regulation;

c) transitional provisions;

d) final provisions.

In the case of short regulations, the text may be drafted without marking the above elements separately in this order of presentation.

Within the above structure, the articles may be grouped into chapters, which in turn may be divided into sections and, where appropriate, into paragraphs. In codes and other large laws, chapters may be grouped in ascending order - into headings and, where appropriate, into parts, depending on the organic link between the regulations they contain.

Regulatory orders [6], instructions and other such acts of the heads of ministries and other bodies of the specialised central public administration or autonomous public administration authorities are issued only on the basis of and in execution of laws, decisions and ordinances of the Government. Therefore, the introductory wording of

these legislative acts shall contain all the legal bases provided for in Article 42 para. (4) of Law no. 24/2000, republished.

Orders, instructions and other such acts must be strictly limited to the framework established by the acts on the basis and in execution of which they have been issued and may not contain solutions that contravene their provisions. Orders and instructions shall be drawn up within the period prescribed by the superior act or, where appropriate, within such time as will enable them to be carried out.

With regard to the acts of the local public administration authorities, according to art. 80 of the Law on the rules of legislative technique for the drafting of legislative acts, they ”shall be adopted or issued for the regulation of activities of local interest, within the limits established by the Constitution and by law and only in the areas in which they have legal powers”.

Legislative technique issues - case study

A sensitive and delicate issue of legislative technique arose with regard to the Decentralisation Law, declared unconstitutional by the Constitutional Court on 10 January 2014. [7]

It states that ”The transfer of competences regulated by the law subject to constitutionality review does not comply, in terms of clarity, precision and predictability of the rule, with the general framework imposed by Framework Law No. 195/2006. According to art. 19-28 of that law, powers may be exclusive, shared and delegated. In order to make such a strict distinction between them, the law containing decentralisation measures must be clear, precise and predictable, so that the addressee of the rule can adapt its conduct according to its legislative hypothesis. However, the legislator has failed to meet these requirements”, the reasoning of the CCR states, detailing the areas with the most problems.

Therefore, in the chapter *Agriculture and rural development*, the CCR argues that although Title II of the law is entitled *Decentralisation measures in the field of agriculture and rural development*, the decentralisation measures operated in the field of rural development are unclear.

As a result of the reorganisation of the county and Bucharest municipal directorates for agriculture provided for in Article 1 of Title II of the contested law, decentralisation concerns only those directorates, not their original rural development component, which is now a structure within the Ministry of Agriculture and Rural Development.

The CCR maintains that, in the field of agriculture and rural development, on the one hand, it is not known exactly what the legal regime of the components to be decentralised is and why certain components are to be decentralised and others are not (the explanatory memorandum to the law does not contain any information in this regard), and, on the other hand, the control exercised by the central public administration, due to the generic wording of the text, is to cover not only the activity of the newly created structure but also that of certain local public administration authorities.

In the chapter Culture, the CCR states that the decentralisation law *confusingly* regulates the issue of the county and the municipality of Bucharest directorates for culture, the addressee of the rule not knowing whether the zonal commissions still exist, whether the new county commissions set up have powers at the county level or, although belonging to the county, have zonal powers.

In the field of tourism, the Decentralisation Law grants powers to approve tourist routes to both the National Tourism Authority and county councils, and this ”would amount to arbitrariness in the sense that the central and local authorities will act in competition”.

There are also ambiguities regarding the institutions that must authorise the operation of B&Bs, tourist accommodation and catering establishments located in administrative-territorial units and tourist resorts.

In addition, the question arises as to the competence of local councils to set up tourist information centres in localities with tourist activities (of national/local interest), whereas other regulations in force refer to national tourist information and promotion centres.

The CCR concludes that in this chapter of the law there are ”serious issues of legislative technique” and that natural or legal persons, local and central authorities cannot know ”objectively and rationally the conduct they must adopt in relation to the law's equivocal legislative hypothesis”.

In the chapter *Pre-university education*, the Decentralisation Law maintains only the National Children's Palace as a related unit of the Ministry of Education, while the other children's and pupils' palaces and clubs are excluded from this category, without, however, establishing their subordination to any public authority, but only the fact that they are financed by local public administration authorities. Their transfer to the local authorities is not explicitly regulated, but only follows by way of interpretation of the provisions of the National Education Law.

In the chapter Environment, the CCR points out that there are no clear rules on the transfer of tourist beaches to the administration of local authorities and it is unclear whether they are transferred from the public domain of the State to the public domain of the administrative-territorial units or only constitute a right of administration [8] in favour of local authorities.

In the field of Health, the CCR states that the Decentralisation Law introduces a regulation on the operation, in addition to the county and municipal public health directorates, of diagnostic and treatment centres and medical centres, as well as county centres for the maintenance and repair of medical equipment and pay clinics.

The Court points out that the law does not specify whether these units are organised under the county and municipal public health directorates, but *attached to* them.

Moreover, there is no authority competent to appoint the *heads* of public health directorates, the text only provides that they are appointed under the law, nor does it provide for the sanction applicable to the *heads* of public health directorates from the date of the conflict of interest/incompatibility.

In the field of Youth and Sport, the law does not provide for the subordination of student cultural centres and nothing is said about the ”Tei” Student Sports Cultural Complex.

With regard to the appointment of the heads of the county and of the municipality of Bucharest directorates for sport and youth, the CCR notes that the law does not indicate the holder of the right of appointment.

”The vague and incomplete nature of the regulation is such as to entail a violation of art. 1(5) of the Constitution concerning the quality of the law. Last but not least, the

Court notes the inadmissible negligence in the drafting of a legislative act with direct reference to the repetition in the same article of the law of a power of the county and of the municipality of Bucharest directorates for sport and youth", the reasoning states.

In chapter *Transport*, the law regulates the possibility of transferring free of charge from the private property of the State to the private property of the municipality of Bucharest, at the request of the local public authority, the stake that the Romanian State holds in Metrorex (a commercial company in which the State holds 100% of the shares through the Ministry of Transport).

In the opinion of the CCR, the transfer of the shares of this company to the private ownership of the municipality of Bucharest is not a decentralisation measure, but rather an act of disposal of the company's share capital

Conclusions

In conclusion, all the aspects presented, in conjunction with current and long-standing problems in Romanian case law, show that there must be continuous improvement of several aspects of legislative technique and the drafting of legislation in accordance with it.

Romania is in a continuous process of harmonising national legislation with Community regulations.

At the same time, it should be pointed out that there is a need for better communication and cooperation between the participants in the drafting of legislation and the specialists in legislative technique, who have often been ignored, with the consequences of rejecting these acts and declaring them unconstitutional. It can thus be said that it would even be worth considering setting up a postgraduate teaching subject to train more specialists in legislative technique, thus avoiding ambiguity in legal rules and attaching due importance to the principle of legal certainty as the absolute trust of the litigant in justice as the body responsible for applying the law and as a means of ensuring compliance with the law.

References:

[1] Apostolache. M. (coord.) (2014). The Constitution and contemporary society, Universitara Publishing House, Bucharest, p. 77.
[2] Law no. 24/2002 regarding the rules of legislative technique, for the elaboration of normative acts Published in the Official Gazette no. 139 of March 31, 2000.

[3] Ceterchi, I., (1967). General theory of the state and law, Didactic and Pedagogical Publishing House, Bucharest, p. 419.
[4] Micu, G. (2007). Community institutional legal order, Paideia Publishing House, Bucharest, pp. 330-333.
[5] Badescu, M. (2020). General theory of law. University course, Hamangiu Publishing House, Bucharest, p. 224.
[6] Niemesch, M. (2019). General Theory of Law, Hamangiu Publishing House, Bucharest, p.19.
[7] Decision no. 1 of January 10, 2014 on the objection of unconstitutionality of the Law regarding the establishment of some measures to decentralize some powers exercised by some ministries and specialized bodies of the central public administration, as well as some reform measures regarding the public administration.
[8] Decision no. 724 of April 13, 2017 issued by the Second Civil Section of the High Court of Cassation and Justice, having as its object a request to establish a legal situation.

Journal of Law and Administrative Sciences
No.20/2023

THE RESPONSIBILITY TO PROTECT IN THE CURRENT WORLD ORDER

Lecturer Gabriel MICU, PhD.
The National University of Political Studies and Public Administration;
University Bioterra Bucharest, Romania
gmicu2004@yahoo.com

Abstract
The imperative norms of international law represent concepts that have crystallized in long historical periods, with the aim of regulating the conduct of states and other subjects of international law in such a way as to respond to the imperatives of maintaining peace and security throughout the world. It is well known that the ten fundamental principles have binding legal force and are superior to any other sources of international law.
The violation of any imperative rule can be reported by any state, regardless of the context or conjuncture, and the only international court vested with the competence to judge such an approach is the International Court of Justice, according to the UN Charter. The question legitimately arises as to how a conflict in the application of such rules should be resolved, precisely because of their importance.
The purpose of this study is to identify the principles of international law in correlation with the sovereignty of states and the responsibility to protect, which derives directly from the imperative to respect fundamental human rights and freedoms.
Keywords*: state sovereignty, non-interference in internal affairs, human rights, multilateral diplomacy, humanitarian crises, international commission, intervention*

1. The context of the initiation of the responsibility to protect norm

The world order represents a concept in permanent adaptation to the developments registered in interactional relations. Depending on the stage we are referring to, the rules for conducting international relations correspond to the practice followed by states on the international stage, which reflects the evolution of humanity in several fields, such as the economy, technical-scientific research, the collective mentality of humanity.

In general, international relations have been characterized, since ancient times, by the struggle for resources, regardless of their nature, and war was the legitimate means of obtaining them.

With the end of the First World War, a new and significant page was opened in international relations, war was considered illegal and the *right of force* was replaced by the *force of law*.

The world order, based on rules, has developed over time, reaching today to be governed by ten imperative norms, which can be grouped into two large categories: those deriving from the principle of *sovereignty* (non-interference in internal affairs, respect for the territorial and political integrity of states , the inviolability of the state territory, the right of peoples to self-determination) and those whose essence is *cooperation* between states (respect for human rights and fundamental freedoms, the fulfillment of assumed obligations in good faith, non-recourse to force and the threat of force, peaceful settlement of disputes) [1].

State sovereignty enshrined the idea that sovereignty is not merely protection against external interference, but rather is a conduct of states that have positive *responsibilities for the well-being of their populations* and, in this context, to assist each other.

The rights that a state has in its internal organization, which arise from sovereignty, are characterized by the exclusivity of public power (legislative, executive, judicial) over the population, a fact that does not allow the activity of another public power on its territory. The principle of the sovereign equality of states is closely related to the principle of territorial integrity and the principle of the inviolability of the state border and imposes the obligation of all states to *refrain* in their international relations from the threat of force or the application of force against the territorial integrity or political independence of any state.

In the theory of international relations, the reference moment for consecrating the concept of sovereignty is the Peace of Westphalia in 1648, which, however, failed to stabilize relations between states, in a Europe torn by countless military actions, including the Thirty Years' War years, which had just unfolded.

However, the consequences of the two peace treaties that followed the end of the bloody and long military conflict had an important role in the international relations system of the 17th century, a century characterized by growing discontent with the abuses of the papacy. Different princes and kings tried to consolidate their sovereign authority, within the formations they led, over territories they had achieved through the use of several instruments, mainly as a result of military actions.

In its modern meaning, the *concept of sovereignty* implies a dual responsibility of states, of different legal natures, *internal* and *external*. In relation to the internal function of the state, it is recognized as supremacy in the exclusive organization of all aspects related to the existence and functioning of the state, which in essence can be said to be a recognition of a *unique authority* to exercise specific sovereign attributes.

This category includes legislation, tax collection, the use of force to maintain public order, but also respect for the human dignity of every person under its jurisdiction.
As a corollary of this supremacy is the abstention, to which any other subject of international law is obliged to interfere in the internal affairs of states.

With regard to the external function of the state, it has the free will to organize its external policy as it sees fit, in order to promote its national interests as efficiently and effectively as possible. It should be noted that, in this context, independence and sovereignty have the same foundation, namely the *political will of the state*, which is expressed within its borders, respectively outside them.

In the modern understanding of the two notions, sovereignty and independence, neither the internal nor the external function of states is *absolute*. Internally, the public authority is obliged to ensure compliance with at least the minimum standards of human dignity, and externally, to comply with the imperatives and all the commitments assumed towards the other subjects of international law.

Analyzing through this prism, sovereignty is the concept on which the equality that each state enjoys in relation to any other state is based, as well as the foundation of the legal personality of a state, the *legal identity* of each one in international law. Mutual respect for sovereignty by states ensures international order and stability, while providing a degree of predictability in international relations.

Summarizing the above, sovereignty can be analyzed on *three levels*. The first, the classic one, in which the state authorities exercise their sovereign attributes, having the duty to ensure the well-being of the population and the human dignity of each person under its jurisdiction, simultaneously with ensuring their security. The second level of analysis refers to the state's responsibility both to its own citizens and to the international community.

From here derives the third level of analysis, in the paradigm of which the present study is also included, the one that refers to the possibility of engaging the responsibility of the state, by virtue of its sovereignty, for the actions and inactions of its agents who, through their actions, contravene norms of international law.

According to what was mentioned, the acquisition of the sovereignty of a state is closely related to the respect of the sovereignty of the other states. In this context, another principle of international law was shaped and crystallized, that of non-intervention in the internal affairs of a state. It constituted, at the beginning, a customary source, later becoming an imperative norm, codified in the UN Charter and unanimously recognized by all states as a norm of international conduct from which no derogation can be made.

The principle of *non-admission of interference* in the internal affairs of a state is enshrined in the UN Charter (art. 7), with reference both to the UN and to other subjects of international law. The recognition of this right as a component part of the principle of sovereign equality of states allows them to enjoy effectiveness and stability.

In the era of globalization, the current fundamental principles suffer a series of nuances, some authors even denying the actuality of the essence of the principle of sovereignty. In the same context, we witness more and more situations in which we find the violation of some principles of international law. There is even a tendency to prioritize imperative norms, an approach that both in international custom and in official documents assumed by states, have equal legal force and even more, have imperative value.

In this sense, more and more international actors, as well as researchers and experts in the field of international relations, put the general interest of humanity at the forefront, thus paving the way for the third generation of human rights, generically called *solidarity rights*. In this context, the consecration of a new fundamental principle, that of the *responsibility to protect*, is taking shape more and more.

In this key, the new obligation of the international community in the face of extreme human suffering to intervene, in order to save and ensure the security of individuals, must be analyzed, not only in the face of external challenges to which a state may be subjected, but also in the face of significant violation and repeated of the fundamental rights and freedoms of the people under its jurisdiction.

Of course, the effectiveness and effectiveness of the adoption of such conduct fundamentally depends on its application, which must be correct and constant, regardless of the region or nation. [2]

According to the explanatory dictionary of the Romanian language, by humanity is meant ”feeling of goodwill”, compassion for the misfortunes of others, kindness, humanity, humanitarianism, and by human community is described the totality of people, mankind. Starting from this statement, the idea emerges that human rights are to be respected regardless of national borders.

In this sense, we can mention the exceptions to the principle of non-interference in internal affairs, provided in Chapter VII of the Charter, which refer to concerted actions that the international community is called to undertake, in case of threats to international peace and security, of any acts of aggression.

The main objective of the UN, assumed by all signatory states of the UN Charter, is to ensure international peace and security. In this sense, any aspect that constitutes a potential threat to peace constitutes an international concern and extracts it from the domain of domestic competence.

The decision-making role regarding possible actions that would be required on the part of the international community to restore international peace and security rests with the Security Council, authorized to analyze and take decisions regarding a conflict, before it reaches dimensions that are difficult or unmanageable. Accordingly, all implementing decisions adopted by the Security Council under Articles 41 and 42 of the UN Charter are excluded from the scope of the principle of *non-interference in the internal affairs* of other states.

Interference in the internal affairs of the state can be considered not only for reasons of threat to international security and stability. The concept of interference has, in this context, a wider meaning, such as interference in the economic and financial affairs of a state such as the implementation of an embargo against it, judicial interference or judging the interference, in which case the perpetrators of the crimes could be brought before the international criminal jurisprudence, the jurisdiction of the state being thus diminished.

Democratic interventions refers to the *politics of interventions* or the *philosophy of intervention*, which corresponds to the desire to translate the ideals of Western pluralist democracy into *humanitarian intervention*. This concept has a specific foundation, the protection of the *right to life* and the defense of all fundamental human rights, and this construction has a democratic purpose. [3]

The doctrine of the responsibility to protect was developed by international experts in response to the failure of the international community to prevent or respond effectively enough to the commission of genocide, war crimes, crimes against humanity and ethnic cleansing in Rwanda, Bosnia, Haiti and elsewhere. during the last decade of the 20th century and the first of the 21st century.

2. The legal content of the responsibility to protect norm

From the mentioned, the *concept of responsibility to protect* is based on an argument that can be summarized in three aspects.

First, states have a *responsibility to protect their citizens* from crimes against humanity, ethnic cleansing, genocide and war crimes. The state, as an exponent of sovereign power, has certain international rights and obligations, for the observance of which it has the full and exclusive competence internally to establish the legal regime of its population, of the various categories of persons under its jurisdiction, at a given moment.

However, recent developments in the international framework, and especially the evolution in the field of respect for fundamental human rights and freedoms, have transformed genocides, torture methods or slavery into international *crimes* and *misdemeanors*, sanctioned under international law.

Secondly, the responsibility of the international community to react, by offering assistance and applying concrete measures to prevent / manage a conflict, has the legitimacy, regulated in the UN Charter, to intervene and cooperate, through its institutions and bodies. The responsibility to assist states in fulfilling their obligations, including that of protecting their citizens, is therefore *shared* between the international environment and the state in which it intervenes. [4]

The sovereignty of a state requires compliance with a minimum set of domestic obligations. This condition is mandatory for the institution of *international recognition*, the states being the ones that, based on the principle of reciprocity, recognize each other's sovereignty.

In modern theories, the idea is increasingly promoted that *only under these conditions* states can benefit from the protection offered by the principle of sovereignty. If these obligations are not fulfilled, the international actors justify their intervention by the fact that certain normative imperatives are not respected, violating the international conduct shared by the majority of individuals belonging to a society.

In the current world order, *justified intervention* raises issues regarding those actions that threaten international peace and security and the resolutions of the UN Security Council, in the context of the application of Chapter VII of the UN Charter, in order to protect human rights.

This existing dilemma regarding the application of mandatory norms has its solution in art. 2, par. 7, of the UN Charter, which states that ”no provision in this Charter shall authorize the United Nations to intervene in matters which essentially belong to the internal competence of a State, nor shall it oblige its Members to submit such matters for resolution on the basis of the provisions of this Charter; however, this principle will in no way affect the application of the coercive measures provided for in Chapter VII.”

In the current world order, more and more experts appreciate that the *responsibility to protect* replaces the concept of the *right to intervene*, being considered a moral necessity, full of complexity, but more beneficial than passivity. [5] Intervention measures can range from direct assistance to sanctions, or from financial incentives to humanitarian aid. [6]

In practice, there are also situations in which states are not able to exercise their authority over the population, so that it has a more *fictitious nature*, which does not correspond to political reality.

At the same time, the expansion of democracy as a political system, authority and sovereignty, are established by the population, a fact that transforms the rule by which the *law is subordinated* to the authority of the state into the rule of law that is *subordinated to human rights and fundamental freedoms*. [7]

Third, the responsibility to react requires decisive action. The tools used to exercise the responsibility to react, by offering assistance and applying concrete measures, can take several forms, such as the direct involvement of the UN Secretary General in the settlement or mediation of the conflict, the creation of international commissions of inquiry, to establish the state of fact, economic measures [8] and a series of measures of a legal nature [9].

However, regardless of the instrument used, the aim is to *help the state in difficulty* to resolve the conflict in which it is in by peaceful means, and in the event that it refuses assistance and continues to repeatedly violate its assumed obligations, refusing to be cooperative with the international community, it must exhaust all peaceful means at its disposal before considering *military intervention*. [10]

The international community has a responsibility to react to human rights violations when the state is unable or unwilling to fulfill its obligation to respect them, either through economic or political sanctions, or through the use of armed force as a last resort.

Resolution 1973 of the UN Security Council can be considered an indicator of the application of the concept of the *responsibility to protect*, considering the authorization of the military intervention of several states on the territory of another state, in order to protect civilians. [11]

Like all other imperative norms of international law, there is an *uneven application* of the concept of the *responsibility to protect* internationally, with omissions or, even worse, *unauthorized interferences* under the pretext of responsibilities to protect.

In conclusion, it can be stated that the emergence of an imperative norm, which aims to protect the population under the jurisdiction of a state from the abuses of its national authorities, is still at the stage of *pros* and *cons* debates. The normative tenor of this approach places, nowadays, *the responsibility to protect* at an *early stage*, not having met a majority, necessary for states to assume this concept as an imperative norm.

References:

[1] U.N. Charter of 26 June 1945, In: https://www.un.org/fr/sections/uncharter/chapter-i/index.html.
[2] Damrosch, Lori Fisler, "The inevitability of selective response? Principles to guide urgent international action" In: Albrecht Schnabel, Ramesh Thakur (eds), *Kosovo and the Challenge of Humanitarian Intervention*, New York: United Nations University Press, 2000, p.406.
[3] Agaar, Samia., *La responsabilité de proteger: a new concept?* Available at: https://tel.archives-ouvertes.fr/tel-01587742 , document, p. 68.

[4] Resolution of the UN General Assembly of 16.09.2005, art. 139, Available at: https://undocs.org/fr/A/RES/60/1
[5] Agaar, Samia, *La responsabilité de proteger: a new concept?* Available at: https://tel.archives-ouvertes.fr/tel-01587742 , document, p. 43.
[6] In 1991, France, Belgium, the United Kingdom, and the United States were authorized by the UN Security Council to use force and intervene in Iraq through Resolution 688, which aimed to end human rights violations against Kurds and Shiites.
[7] Mascré, Aline., *Comment la Responsabilité de protéger a t-elle étè développee, appliquée et débatue?*, Available at: https://www.ie-ei.eu/Ressources/file/memoires/2015/ALINE_MASCRE.pdf , p. 8.
[8] funds for development, humanitarian aid and funds for conflict resolution or prevention efforts
[9] establishment of International Criminal Tribunals for Rwanda, Yugoslavia and Sierra Leone
[10] Mascré, Alin, *Comment la Responsabilité de protéger a t-elle étè développee, appliqué et débatue?*, In: https://www.ie-ei.eu/Ressources/file/memoires/2015/ALINE_MASCRE.pdf
[11] UN Security Council Resolution 1973 (2011), Available at: https:// www.undocs.org/fr/S/RES/1973%20(2011)

Bibliography

1. Agaar, Samia., *La responsabilité de proteger: a new concept?*, Available at: https://tel.archives-ouvertes.fr/tel-01587742 , document
2. Damrosch, Lori Fisler,"The inevitability of selective response? Principles to guide urgent international action" In: Albrecht Schnabel, Ramesh Thakur (eds), Kosovo and the Challenge of Humanitarian Intervention, New York: United Nations University Press, 2000
3. Mascré, Aline., *Comment la Responsabilité de protéger a t-elle étè développee, appliquée et débatue?*, Available at: https://www.ie-ei.eu/Ressources/file/memoires/2015/ALINE_MASCRE.pdf , p.
4. Resolution of the UN General Assembly of 16.09.2005, art. 139, Available at: https://undocs.org/fr/A/RES/60/1
5. U.N. Charter (June 26, 1945), https://www.un.org/fr/sections/uncharter/chapter-i/index.html
6. UN Security Council Resolution 1973 (2011), Available at: https://www.undocs.org/fr/S/RES/1973%20(2011)

CONSTITUTIONAL PRINCIPLES GOVERNING THE FUNDAMENTAL RIGHTS, FREEDOMS AND DUTIES OF ROMANIAN CITIZENS

Lecturer Mihaela POP, PhD.

Titu Maiorescu University, Faculty of Law and Economic Sciences Tg-Jiu, Romania
mihaela.pop@prof.utm.ro

Abstract
The Constitution explicitly guarantees and protects the fundamental human rights and freedoms that are deemed to be of utmost importance. By incorporating them directly into the basic law, their existence and recognition are assured, as well as providing efficient measures for guaranteeing and protecting them. The constitution's language should only include principled restrictions, as that is its purpose. In the realm of basic rights and freedoms, the Romanian Constitution of 1991, with its revisions, establishes certain regulations referred to as principles. In this article, we will provide a concise overview of these principles.
Keywords*: fundamental rights and freedoms, principles, guarantees, Romanian Constitution.*

These principles are fundamental regulations that succinctly encapsulate the core aspects of safeguarding and ensuring human rights and liberties. They are primarily outlined in Chapter I of Title II of the Romanian Constitution, but can also be found in other provisions such as Article 1, Article 4, Article 6, and Article 53 of the Constitution [1].

1. The general applicability of essential rights, liberties, and responsibilities

The formulation of this idea is found in Article 15(1) of the document. Citizens derive advantages from the rights and freedoms protected under the Constitution and other legislations, along with the corresponding responsibilities imposed by them. The idea encompasses both the universal nature of fundamental rights and freedoms, as well as the individuals who possess them. The lawmaker aimed to provide complete equality among people in terms of their ability to effectively exercise their fundamental rights and freedoms. “In the doctrine of constitutional law, this principle is considered the main pillar of the construction of fundamental rights and freedoms, because there is a system of international protection of the individual whose rights have been violated.” [2] Naturally,

the manner in which any individual takes use of this opportunity is contingent upon their aptitude, education, and diligence.

The Constitution aligns with Article 2 of the Universal Declaration of Human Rights by enforcing this principle: Every individual is entitled to exercise all the rights and freedoms stated in this declaration. The same idea aligns with the requirements stated in the introductory statements of both human rights agreements, acknowledging that these rights originate from the inherent worth of every individual and obligating nations to advance widespread and meaningful adherence to human rights and freedoms.

Due to the inseparable connection between rights and obligations, it is acknowledged that the universality of rights also entails the universality of duties. Furthermore, it is inherent in the essence of existence that individuals possess both entitlements and responsibilities towards their fellow citizens and society as a whole. This principle is clearly stated in the two international human rights agreements, which affirm that individuals have obligations to both others and their community. They are expected to actively work towards promoting and upholding the rights outlined in these agreements.

2. Equality in rights of citizens

Articles 4 and 16 uphold the principle that Romanian citizens, irrespective of their race, nationality, ethnic origin, language, religion, sex, opinion or political affiliation, wealth or social background, have equal access to all the rights granted by the Constitution and laws. They are entitled to equal participation in political, economic, and cultural activities, without any preferential treatment or discrimination. Both public authorities and fellow citizens are obligated to treat them equally.

Equality in rights encompasses all the entitlements of Romanian citizens, irrespective of whether they are explicitly enumerated in the Constitution or in other regulatory measures. Simultaneously, this idea is evident in all domains of endeavor.

As per international standards, a rule was enforced stating that any action made in response to a public threat that endangers the nation cannot result in discrimination solely based on race, color, sex, language, religion, or socioeconomic origin.

The idea outlined here establishes the fundamental notion of gender equality, granting women the same rights as men. Women, who constitute half of the population,

actively contribute to all areas of society. Therefore, women have the ability to exercise all rights on par with males and have the opportunity to hold any post under the same circumstances, while getting equal compensation for same labor. The foundation of a family lies in the voluntary agreement between two partners and their equal status.

The Constitution declares the equal rights of citizens, irrespective of their race, nationality, ethnic origin, or language, without regard to their money or social background. This is due to the fact that individuals from various nationalities, including Hungarians, Roma, Germans, Serbs, Turks, Jews, and Armenians, have contributed to the realization of national ideals. They are granted the opportunity to utilize their native language in cultural events and educational settings, while also enjoying unrestricted access to all governmental functions. According to article 6(1), the state acknowledges and ensures that individuals who are part of national minorities have the right to maintain, advance, and demonstrate their ethnic, cultural, linguistic, and religious identity. Another facet of this concept entails ensuring equal rights irrespective of one's faith, viewpoint, or political affiliation. This serves to avoid the conjecture of individuals' political or religious inclinations and, consequently, any form of discrimination.

Article 16(2) stipulates that all citizens are equal before the law and political authorities. This indicates that regardless of one's status within the public authority structure, every individual is considered a regular citizen.

The Constitution allows for some instances of "affirmative" discrimination, which encompass specific measures aimed at providing social safeguards for employment, a particular protection regime for children and young people, as well as special protection measures afforded to individuals with disabilities.

3. Protecting Romanian nationals overseas and their corresponding responsibilities

Romanian citizenship represents the political and legal connection between the person and the state, as expressed by this principle. As per Romanian nationals, they are entitled to state protection when they are outside the country. They have the right to seek protection from Romanian authorities and it is constitutionally mandated for the authorities

to provide it. The cooperation among governments about this strategy is bolstered by a multitude of agreements and conventions.

Nevertheless, the application of this concept should not compromise the authority of the state in which Romanian individuals are situated. Regardless of being beyond Romania's boundaries, the Romanian citizen is nonetheless obligated to execute their duties as outlined in the Constitution and legislation. An exception arises when these commitments are incongruous with the non-presence of citizens within the nation. For instance, a person should not be obligated to engage in numerous benefits aimed at mitigating the impacts of tragedies when they are outside the nation. Being outside the nation does not excuse Romanian citizens from their duty to do military service, pay taxes, or provide for the upbringing, support, and education of their underage children.

4. Legal protection for foreign citizens and stateless individuals in Romania

Articulated in article 18 of the Fundamental Law, this concept showcases Romania's adherence to global norms in safeguarding human rights and liberties. Romania provides comprehensive protection for both foreign and stateless individuals, including their general well-being and safeguarding their possessions. The granting and revocation of the right to asylum in Romania is determined by the legislation, in accordance with international treaties and conventions to which Romania is a signatory.

Internationally, there are three legal regimes that apply to foreigners:

a) The most favored nation clause grants foreigners rights that are at least equal to those given to citizens of any other country;

b) The special regime grants foreigners specific rights that are either specified by the state's legislation or outlined in an international treaty;

c) The national regime grants foreigners the same rights as the country's own citizens, with the exception of exclusive rights.

Romania extends its national regime to foreign citizens and stateless individuals, allowing them to enjoy the same rights and freedoms as Romanian citizens, along with the corresponding responsibilities. However, they are excluded from participating in political affairs and are not required to defend the country. “Practically, foreigners and

stateless persons in Romania can enjoy all the rights and freedoms, except those for which the Constitution or the law imposes the quality of Romanian citizenship." [3]

The right of asylum is exclusively extended to non-citizens or those without a nationality who are being pursued for their political activity. It entails the provision of shelter and protection by the Romanian government. Asylum is provided in accordance with the international treaties and conventions that Romania has ratified. Consequently, granting refuge is considered a humanitarian gesture and should not be classified as an antagonistic action by the state providing it. Individuals accused of crimes against peace and humanity or war crimes are ineligible to receive this protection. Extradition of foreign and stateless individuals is only possible if there is an international agreement or reciprocal circumstances in place. However, this can only occur if there is a court ruling, as stated in article 19 (3, 4) of the rules.

5. Priority of international regulations

In Romania, the Constitution addresses the relationship between international law and domestic law in articles 11 and 20. Article 11 encompasses all international agreements and treaties, regardless of the specific relations they govern. Article 20, on the other hand, specifically pertains to international documents that are related to the protection of rights and fundamental human freedoms.

Article 11 stipulates that the Romanian state is obligated to fully comply with its commitments under the treaties it has entered into, and to incorporate ratified treaties into domestic law in accordance with parliamentary legislation. "Since the Constitution distinguishes between organic and ordinary laws, the consequence is that the ratification of international treaties is to be done by the parliament either through organic laws or through ordinary laws, depending on the field of social relations that form their regulatory object." [4]

By means of ratification, these international agreements are incorporated into domestic legislation. Given the differentiation in our Constitution between constitutional laws, organic laws, and ordinary laws, it is necessary to determine the specific category to which the treaty subject to ratification belongs, considering its regulatory purpose. Under the principle of constitutional supremacy, it is impermissible to enter into

international treaties if the norms or principles of international law conflict with our Constitution. An agreement of this nature can only be established subsequent to the amendment of the Constitution, as long as it does not conflict with the stipulations outlined in article 152, which delineates the boundaries of the revision process.

Art. 20 establishes two important principles. Firstly, it ensures that the interpretation and application of citizens' rights and freedoms align with the provisions of international treaties that Romania has agreed to. Secondly, it establishes that in case of any conflicts or contradictions between international regulations and domestic regulations, the international regulations take precedence. We are specifically referring to the pacts and accords that have been officially approved by our nation, with a particular emphasis on the protection of fundamental human rights.

When examining the three kinds of legislation mentioned earlier, the issue arises as to which of them demonstrates this priority. It is improbable but not impossible for there to be a contradiction between the constitutional and international rules of human rights in our country, considering that our chosen basic legislation closely aligns with the worldwide catalog of human rights. Inconsistencies may arise during the implementation of constitutional principles when the interpretation of texts deviates from international standards, resulting in non-compliance. For instance, it is possible to have a constitutional document that is "in line with" international law. However, if this document is further specified in a parliamentary bill, it may contradict international law.

The ratification of human rights treaties leads to several positive outcomes. Firstly, it fosters the emergence of a civil society that plays a pivotal role in altering the mindset of the population, promoting tolerance and liberal thinking. Secondly, it stimulates the engagement of Romanian non-governmental organizations in safeguarding human rights and strengthening civil society. Thirdly, it encourages solidarity among citizens and their active participation in shaping and reforming Romanian society in line with the principles of the rule of law and European standards. Lastly, it facilitates the development of a national legal framework based on the jurisprudence of the Strasbourg bodies, which actively contributes to the interpretation and application of domestic and international norms, aiming to achieve harmonization.

The constitutional answer provided by Article 20 not only demonstrates a commitment to international norms, but also a strong willingness to embrace their potential and foreseeable changes. However, the most challenging responsibility of modern countries goes beyond the legal assurances. It involves preserving the supremacy of international treaties not only in terms of legal obligations but also in terms of economic and social considerations.

6. Unrestricted availability of legal recourse

Art. 21 enshrines the notion that each individual has the right to seek legal recourse to defend their rights, freedoms, and legitimate interests. The role of justice within the structure of state power, along with the guiding principles that govern the specific actions of judicial authorities, guarantee the efficient implementation of unrestricted access to justice and, more broadly, the enjoyment of basic rights and freedoms. The principles governing judicial action, such as the publicity of debates, orality and adversariality, legality and officiality, and the protection of freedom and the right to defense, ensure the proper functioning of the justice system.

The term “any person” encompasses both Romanian citizens and foreign citizens or stateless individuals. A concern that emerges pertains to the elucidation of the phrase “legitimate interests”. Given that the Constitution does not safeguard and govern all rights and freedoms, it is necessary for the individual's interests to also be grounded in law and its origins. Given that illegitimate interests are inherently in conflict with the principles of legality and the rule of law, it is imperative to combat and penalize them. Article 21 establishes the necessity of clearly distinguishing between the right to pursue legal action and the constitutional duty to safeguard rights, freedoms, and legitimate interests.

Free access grants the ability to submit any request that is within the jurisdiction of the judicial authorities. Furthermore, according to the rule, individuals have the right to submit any request or complaint to the judicial system at any stage of the criminal prosecution and trial, as well as during the implementation of the punishment. The defense of legitimate interests is achieved by both direct action and the utilization of the exception of unconstitutionality as stipulated in Article 146, paragraph d of the basic law.

Given that the Constitution ensures unrestricted access to justice, it is only reasonable that Article 21(2) specifies that no law can restrict the exercise of this right.

7. The exceptional character of the restriction of certain rights or freedoms

According to Article 53 of the Romanian Constitution, specific rights and freedoms can only be limited by law and only if it is necessary for the protection of national security, public order, public health, public morals, the rights and freedoms of citizens, criminal investigations, or the prevention of natural disasters or severe disasters.

“In other words, only the rights and freedoms enshrined in the Constitution are subject to the protection regime enshrined in art. 53 of the Constitution. On the contrary, the rights enshrined by the infra-constitutional legislation can be subject to limitations without respecting the constitutional guarantees applicable to the restriction of the exercise of fundamental rights and freedoms.” [5]

The enjoyment of some rights may be restricted only if it is required for the protection of the collective interest in a democratic society. In the aforesaid scenario, the designated public authority with the legal mandate to conduct the criminal inquiry is alone protected. The measure is not warranted in a democratic society since the protected group interest is of lesser importance and has an indirect impact.

Conclusions

In the current world, it is essential for a person to express themselves as a part of the human society. As civilizing progress grows more dynamic, individuals become increasingly reliant on the collective group they are a member of. They cannot survive without this collective and its operational norms.

Chapter II of the Romanian Constitution guarantees fundamental human rights and freedoms, which offer comprehensive protection to both Romanian citizens and non-citizens residing in Romania.

The rights, freedoms, and fundamental duties of citizens pertain to the connection between individuals and the state in terms of their entitlements, liberties, and responsibilities as outlined and governed in Title II Chapter II of the Constitution.

Without a question, the growth of human rights is one of the most dynamic processes of the latter part of the 20th century. This topic garners increasing attention and forceful actions, both at the national and international levels. In the present day, countries are collaborating more than ever to address both theoretical and practical issues of human rights. Their aim is to safeguard and advance these rights using the most efficient approaches, while also ensuring proper recognition of essential liberties.

References:

[1] The Constitution of Romania from 1991 was amended and supplemented by the Law on the revision of the Constitution of Romania no. 429/2003, published in the Official Gazette of Romania, Part I, no. 758 of October 29, 2003, republished by the Legislative Council, pursuant to art. 152 of the Constitution, updating the names and giving the texts a new numbering (art. 152 became, in the republished form, art. 156). Law on revision of the Romanian Constitution no. 429/2003 was approved by the national referendum of October 18-19, 2003 and entered into force on October 29, 2003, the date of publication in the Official Gazette of Romania, Part I, no. 758 of October 29, 2003 of the Constitutional Court Decision no. 3 of October 22, 2003 for the confirmation of the result of the national referendum of October 18-19, 2003 regarding the Law on the revision of the Romanian Constitution.
[2] Camelia Nicoleta Olteanu, THE CONSTITUTION - THE GUARANTEE OF THE PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS, https://infolex.snsh.ro/wp-content/uploads/2020/07/olteanu-mai2020.pdf, p. 29
[3] Ioan Muraru, Elena Simina Tănăsescu, Constitutional law and political institutions. Volume I, Edition 16, Publishing House C.H. Beck, Bucharest, 2023, p. 200
[4] Tudor Drăganu, Constitutional law and political institutions, Ecological University "Dimitrie Cantemir", Faculty of Law Târgu Mureş, vol I. 1993, p. 67
[5] Corneliu-Liviu Popescu, Restriction of the exercise of fundamental rights and freedoms by decrees establishing or extending the state of emergency or siege and by military ordinances, article published in the online magazine of the Faculty of Law, University of Bucharest, AUBD – Legal Forum, 2020, p. 1

THEORETICAL ASPECTS REGARDING LEGAL RESPONSIBILITY IN ADMINISTRATIVE LAW

Associate Professor Mircea TUTUNARU, PhD.
Titu Maiorescu University Bucharest, Faculty of Law Tg-Jiu
mircea_tutunaru@yahoo.com

Lecturer Romulus MOREGA, PhD.
Titu Maiorescu University Bucharest, Faculty of Law Tg-Jiu
mircea_tutunaru@yahoo.com

Abstract
Currently, in specialized studies, the idea of responsibility and legal liability of the state to the citizen is increasingly addressed as an inherent condition of the rule of law. By essence, this implies the responsibility of public authorities for the way in which state power is exercised. Despite its importance and actuality, the given problem is little studied at the scientific level, especially in our country.
Over time, the responsibility, initially non-existent, of the state for the mistakes of its agents, became primary, and their responsibility became secondary. It is clearly preferable to hold the state responsible more and more, because it offers a much faster and safer guarantee of recovery of the damage, and the liability for errors is a patrimonial one. At the same time, the state is responsible for the training of people, its agents who represent it, so that, through this training, the existence of any deficiencies in their training must be avoided.
Keywords: *liability, administrative law, state, civil servant, coercion*

Responsibility and liability. Conceptual clarifications

Legal liability represents the concrete liability of the legal or natural person, established by a competent authority (administrative or judicial) within a procedure established by law, by applying a sanction (civil, disciplinary, contraventional or criminal) and by canceling the illegal act, removing the illegal state of facts, the restoration of the previous state of facts and the establishment of compensations for the repair of the damage caused by the illegal fact. It should not be confused with the sanction; the non-concrete sanction has a generic, hypothetical character as an element of the legal norm and is only materialized when the legal relationship generated by the illegal act or fact committed by a natural or legal person, act or fact causing damage is born.

Legal responsibility and liability under administrative law are governed by the specific principles of these institutions: hierarchical subordination, the supremacy of the

public interest, the unconditional fulfillment of the public service, the swiftness of the administrative act, the concordance between competence and responsibility, the exhaustion of administrative ways to reach the transformation of responsibility into legal liability. The conditions of legal responsibility and liability under administrative law are set unilaterally, based on and in execution of the law.

In the absence of a general theory on responsibility, as well as the ambiguous use of the notions of "responsibility", "responsibility" and "compulsion", we will make some considerations, trying to clarify the content of these concepts to check if they have the same meaning, and if not what would be the meanings and usefulness of each of them.

In fact, the term "responsibility" includes two Latin words: the verb "spondeo", which means to solemnly promise, to guarantee, to answer for someone, and the noun "res", which means thing, reason, cause, reality, business, matter, interest, advantage, etc. We draw the conclusion from here that the notion of legal responsibility means the bond established by a solemn promise or by law to do or not do something, or to bear something in a business, matter, work, reality, etc., as a result of violation of previous obligations.

In the specialized literature, opinions regarding legal responsibility are different. Alessandra Levi shows that legal responsibility is nothing more than the obligation of the subject to fulfill a duty (an obligation) that replaces a previous obligation that was not fulfilled [1].

Decenciaere-Ferrandiere shows that "responsibility can be defined as a set of obligations that are born in the charge of a subject due to the fact, action or omission of the one to whom it is imputable. When these obligations are sanctioned by positive existing law, the responsibility is legal, and in the other cases the responsibility is only moral". [2]

In another opinion, responsibility would be a coercive legal relationship with legal sanction as its object. [3]

According to other authors, responsibility is a form of social reaction, of repression, coming from society for some reprehensible actions imputable to the person. Of course, it is a reaction institutionalized and organized only by a law within the limits and for the facts or acts provided for by the law. [4]

In conclusion, compared to the above, we believe that a precise use of the concepts of responsibility and liability is required, both in positive law, in judicial practice, and in legal doctrine. However, the implementation of the constitutional concepts of "guarantee-protection" is closely related to the way of regulating responsibility, liability and legal constraint, as well as to the way of their implementation.

Fundamentals of legal liability

In the doctrine, a fairly large number of different ways of interpreting legal liability have been formed. Among the most widespread, we could name the following: legal liability is a sanction, a punishment that provides a measure of coercion of the delinquent by the state; the legal obligation of the person guilty of committing a crime to bear the punishment; legal relationship in which the delinquent endures a coercive measure applied by the state.

Something more general than the previously mentioned conceptions is the conception of legal responsibility as a complex phenomenon that includes retrospective and positive aspects. In law, there are other explanations of legal liability, but, in one way or another, they all come down to one of the four mentioned above.

We will start with the first interpretation – legal liability is a sanction (a punishment). The admissibility and validity of the understanding of legal liability as a sanction that provides for a repressive measure, a punishment applied by the state on the delinquent, as a rule, are related to the fact that sanctions constitute a mandatory element of the institution of legal liability. [5]

Most authors link the notion of legal liability with state coercion, based on the legal assessment of the behavior of the subject of the violation and which is expressed by establishing negative consequences for the subject of the illegality, consequences in the form of limitations of a subjective, personal or patrimonial nature. Only the tandem of these three elements gives rise to legal liability.

In specialized literature, we have various theoretical approaches to the phenomenon of legal liability, which basically keep the same essence, liability is a constraint and a sanction. For example, Prof. Gh. Avornic, presenting various approaches to the concept of legal liability, mentions, in particular, that "legal liability is a coercive measure applied

by the state for the commission of an illegal act, expressed through the application of material sanctions, organizational or patrimonial". [6]

A. Băiesu also defines civil liability as a form of state coercion that consists in delegating any person to repair the damage caused to another by his illegal act provided by law or contract. [7]

Professor I.Craiovan comes up with another way to express the essence of the notion, invoking the repressive and educational character of the law which aims to highlight "its capacity to induce a compelling collective reaction towards the one who violates the rule of law and whose anticipation is in a position to induce respect and compliance on the part of society members who do not want to incur legal sanctions". [8]

C.Stătescu and C.Bârsan believe that legal liability has an essential characteristic through the possibility of applying, in case of need, state coercion. [9]

Generalizing the opinions presented, we highlight three important points regarding legal liability: first, liability is inextricably linked to illegality; secondly, it is expressed through the application of state coercive measures to the subject of the illegality; thirdly, the very act of application of coercive force contains the condemnation of the principal's actions. This is the distinctive feature of this approach and this, in the final analysis, explains the specific character and the extent to which legal liability is included in the process of regulating social relations.

If legal liability as a sanction is a domain of objective law, then liability understood through the lens of legal obligations is already the domain of subjective law. That is why, in the latter case, it is researched mainly in the system of subjective law categories and is expressed by the notion of legal obligation.

Generalizing the opinions expressed regarding the two approaches to legal responsibility, we could apply the following logic: if it is true that the objective right cannot be realized without the subjective right, because then it loses the meaning of its existence, then we must recognize that the importance of the responsibility legal as a punishment will be reduced to zero if it lacks the form of legal obligation to bear the respective measure of coercion by the state for the crime committed. [10]

Therefore, it can be stated that the variants, presented previously, of the perception of legal responsibility are not mutually exclusive, but on the contrary, they complement

each other, presenting an important direction and step in its knowledge. These two variants reflect nothing but the levels of the actual manifestation of legal liability as a legal way of regulating people's behavior in the field of law.

Legal liability in administrative law

The rule of law, par excellence, represents a rule of conduct, so a set of correlative rights and obligations, which may be respected or may be violated. Violation of the rights of other subjects of law, non-compliance with the obligations incumbent on a subject of law, naturally raises the problem of the consequences of such conduct.

As shown in the doctrine, the culpable violation of official duties by civil servants attracts disciplinary, contraventional, civil or criminal liability, as the case may be. The four forms of liability are not mutually exclusive, they may be applicable simultaneously, if the deed meets the conditions of some forms of legal liability at the same time. [11]

For a long time, the liability specific to administrative law was traditionally interpreted by referring to notions and institutions specific to civil law, or, as the case may be, criminal law. For example, the patrimonial liability of the public administration was qualified by referring to tortious civil liability, the administrative violations committed by the administration staff represented violations of labor law, sanctioned as such.

Practically, the forms of liability specific to administrative law have not defined their identity for a long time, there are even now authors who challenge them and controversies, at the doctrinal level, but sometimes also legislatively and jurisprudentially, regarding their existence and the legal regime that governs them .

Administrative legal liability is explained by some theorists of public law starting from the concept of coercion. Thus, administrative coercion represents the set of measures taken by the public administration authorities under the law, with the use of state power and, if necessary, against the will of some people, in order to prevent the commission of antisocial acts, to defend the rights of citizens, as well as for to sanction the violation of the rules of administrative law. [12]

If administrative coercion aims at self-regulation of the social system, liability aims at restoring the violated normative order, as well as condemning the negative act and its author.

Legal liability is defined in Romanian legal literature as a complex of rights and obligations which, according to the law, arise as a result of the commission of illegal acts and which constitute the framework for the implementation of state coercion, through the application of legal sanctions in order to ensure stability social relations and guiding the members of society in spiritual respect for the rule of law. [13]

Depending on the type of legal rule violated, a distinction is made between illegal acts that constitute the basis of a certain type of liability and legal sanction. So, the violation of a legal norm of administrative law attracts administrative liability for the author of the illegal act.

In the current legislative regulation, we can speak of three large categories of administrative illegality: the actual administrative illegality, the contraventional illegality and the illegality causing material and moral damages.

According to them, there are two forms of liability characterized by repressive sanctions - administrative liability in the narrow sense and contraventional liability as well as a form of liability characterized by reparative actions - the liability of public administration bodies for the damages caused by their illegal acts or administrative-property liability.

By *administrative liability in the narrow sense*, we understand the legal situation that consists of the complex of related rights and obligations, content of the sanctioning legal relations, established, as a rule, between a public administration body or, as the case may be, a public official and the author of an administrative offense (state body, civil servant, non-state structure, natural person) which does not constitute a contravention. [14]

We are still in the situation of administrative liability in case of violations of the criminal law norms, which by their concretely reduced social danger justify the application of administrative sanctions, provided by the criminal code.

When in the sanctioning legal report the active subject and the passive subject are in the sphere of public authorities, civil servants, dignitaries, as the case may be, we are in the case of *administrative-disciplinary liability* or *disciplinary liability*, which has its objective foundation in the violation by a legal subject of a administrative disciplines, in

general of the state discipline, respectively of the discipline in the administrative apparatus of the local community. [15]

The name of the administrative-disciplinary sanctions is diverse, it can be *fine, reprimand, warning, salary reduction, demotion, dismissal, termination of mandate*, etc.

The administrative-disciplinary liability is distinct from the liability arising from the conclusion of an employment contract, even if some sanctions have the same name in labor law. [16]

In the doctrine, the sanction is defined as a consequence of violating a rule of conduct prescribed or sanctioned by the state. All measures taken in the event of violation of the norm, regardless of whether they have a punitive, preventive or reparative character, bear the generic name of "sanctions".

The importance of the nature of the measure, in the case of administrative liability, is related to guilt and the personal nature of liability. Punitive sanctions (such as a fine) are applied only in the case of illegal conduct committed with guilt (intention or fault) and must be considered as having a personal character, so that they cannot be transmitted according to the model of civil obligations. Sanctions of a reparative nature (payment of the amount due and penalties, restoration of the land to its original state, etc.) are also applied in the case of committing a culpable violation of the rules, but they are transmissible according to the model of civil obligations if it is a matter of repairing a damage. Sanctions of a preventive nature (obligation for medical treatment, application of customs seals, etc.) are usually objective in nature, so they can be applied in the absence of any fault and cannot be transmitted to other people since their purpose is to stop the person to which the sanction was applied from the exercise of a certain dangerous behavior for others. [17]

Administrative sanctions, other than contraventional ones, must respect the principle of legality, a fundamental principle of the entire activity of the public administration. The sanctions, the violations of the rules for which they apply, the competent authority to apply the sanction as well as the procedure for applying the sanction and the possibilities of challenging the applied sanction must be expressly mentioned in the normative acts.

Examples of administrative sanctions are administrative fines, penalties or increases, withdrawal of an advantage obtained illegally or an advantage obtained without having met certain requirements, stopping the manufacture of certain products, unavailability of certain vehicles, etc.

The administrative sanction is applied through an administrative act issued in compliance with all conditions regarding legality, competence, procedure, form. The procedure for contesting in court the sanctioning administrative acts is the one described by Law no. 554/2004 of administrative litigation, if no other procedure is expressly specified in special normative acts.

Aspects regarding the deontology of the civil servant

The phrase "deontology" comes from the Greek words „deon", „deontos" which means „what is right" and „logos" which means „science". Initially, it was identified with morality and we find it in the work Deontology or the science of morality by the philosopher and jurist Jeremy Bentham.

Deontology, by the specificity of its research object, is at the interference between law and morality. It can be defined as representing *the set of norms that outline a certain type of private professional behavior*.

The deontology of the civil servant can be defined as representing *the totality of the norms that govern the professional and private behavior of the civil servant, by virtue of his status as holder of public authority*. [18]

The exercise of a public office falls into the category of those professions that present the greatest potential risk that, by the way they take place, affect those with whom its holder comes into contact. Most of the public functions assume a direct, continuous and immediate relationship with the beneficiaries of public services.

In his activity, the civil servant carries out the provisions of the law, which are not always properly understood by those who fall under them. From here arises a first problem, which concerns the different way in which the law is perceived by those who implement it and those in whose consideration it is implemented.

Thus, as far as the liability of the civil servant is concerned, it intervenes both for the violation of the professional obligations deduced from the public office report, but also for

the violation of the norms of behavior, inside and outside the institution. Disciplinary misconduct is conceived as an act committed with guilt, which violates both professional obligations and obligations that are directly or indirectly related to them, aimed at his socio-professional and moral status.

The norms that govern the professional and private behavior of civil servants are in turn structured according to the social relations that are taken into account, as follows: [19]

1) relations within the public service (with hierarchical heads, with other civil servants, with the entire staff and with subordinates);

2) relations with the other legal subjects, outside the public institution, beneficiaries of the civil servant's action;

3) relations with the staff of public institutions and other legal entities with which the institution where the civil servant is employed collaborates;

4) relations with civil society, as a whole;

5) relations with other state institutions

Addressing the matter of responsibility, the interwar authors analyzed the responsibility of the state and its officials as one of the forms of manifestation of responsibility in administrative law. It started from the thesis that the activity of the administration can often be a cause of damage for individuals who come into contact with it, which determines the intervention of their material liability alongside the disciplinary one, which is attracted by the violation of some norms of professional behavior , of order and discipline in a public service.

The administration bases its entire activity on the application and observance of the law, the principle of legality being a basic one in the administration.

Liability, in each of the forms it takes, is determined by the commission of an illegal act, by the violation of the value system established by the city and legally consecrated, and it is natural that the one who violates the right should answer for his act because the right is the representative of a sacred ideal , is the bearer of the highest aspiration that society possesses, that of justice and morality.

The legal regime of the public office also includes the issue of its liability, the purpose of which is to repress the mistakes committed by public agents. But this is only one of the purposes of liability.

We retain the thesis expressed by the current doctrine of public law [20], that in whatever branch of law we place ourselves, liability has two purposes:

a) to restore the violated legal order, determining the return to the state of equality, disturbed as a result of the commission of an illegal form;

b) to express a negative reaction from the authority towards the author of the illegal act, with the aim of making him aware of the meaning of the act, to regret it and not to repeat it in the future, to eliminate it from his behavior.

Thus said, through liability, both the preventive and the punitive purpose is achieved.

The legal status of the official is established in a general and impersonal manner by laws and regulations. [21] If every subject of law must show responsibility in what he does, the official must be fundamentally responsible in fulfilling his prerogatives. Liability precedes liability and can eliminate it.

The civil servant must make him receive, in his behavior, responsibility. For him, there is no more important value than the fulfillment, with a conviction resulting from a rational understanding of the phenomena, of his tasks. He must complete his duties, not because he is required to do so, but because he is convinced that they represent his professional purpose. [22]

As for the civil servant's liability, it intervenes exclusively when an antisocial act has been committed, but it must be distinguished between two categories of antisocial acts: [23]

a) those committed as a simple citizen, which are not related to the service and which attract the common right of liability;

b) those committed in the exercise of the prerogatives of the service and/or in connection with it, as an employee or civil servant, which determine the intervention of the forms of liability specific to the employee and civil servant.

In order to identify the forms of liability of the civil servant, the first element that must be taken into account concerns the source of the obligations violated by the act committed, being:

1) about obligations arising from the job report;

2) about obligations that exceed the public office report.

The main element that distinguishes the liability of the civil servant from the liability of the employee is the following: the liability of the employee intervenes exclusively for acts that are committed during the service or in connection with the service, by violating some obligations arising from the individual employment contract.

Specific to the facts that attract the intervention of the civil servant is their cause, the fact that they can intervene:

1) during the exercise of public office;

2) in connection with the exercise of the public function;

3) by moving away from certain norms that do not have a direct, immediate connection with the function, but which affect the image and prestige of the respective civil servant.

Any legal liability intervenes, as I have already specified, when a certain form of illegality has been committed, that is, when an act has been committed that violates a rule of law.

Since we are talking about the branch of administrative law, this act bears the generic name of administrative illegality.

Depending on the committed deed and its consequences, in doctrine [24] three major forms of liability specific to administrative law were identified.

A. The commission of the actual administrative offense, which is called disciplinary misconduct, determines the intervention of the first form of liability from administrative law, namely disciplinary liability.

B. The second form of administrative illegality is called contravention and determines the intervention of the second form of liability specific to administrative law, namely contraventional liability.

C. The last form of illegality is the illegality causing material or moral damages, the commission of which also attracts the last form of liability belonging to the branch of administrative law, namely administrative patrimonial liability.

We say „material and moral damages” because Administrative Litigation Law no. 554/2004 provides for the first time in Romanian legislation the possibility that the

plaintiff's action may aim, equally, both at the request of compensation for the material damages suffered, and at the repair of the moral damages suffered by the plaintiff. Thus, art. 18 paragraph (3) provides: "In the case of settling the claim, the court will also decide on the compensations for the material and moral damages caused, if the plaintiff requested this".

We specify that not all contemporary authors recognize the three forms of liability, whose existence, in the current doctrine, was substantiated by Professor Iorgovan, and whose conception we rely on. Thus, professor Rodica Narcisa Petrescu, analyzes only two forms of liability, contraventional liability and patrimonial liability of public administration authorities, in order to recognize, within the liability of civil servants, the existence of a disciplinary liability specific to them. [25]

Conclusions

The legal-administrative relationship is a social relationship regulated by the rules of the administrative law that takes place in connection with the executive function of the state. It is characterized by the fact that at least one of the subjects of the legal relationship is a public authority having a superior position to the other subject of the legal relationship, based on the exercise of public power. Due to the lack of equality of positions between the subjects of the administrative legal report, it differs essentially from the private law (civil law) legal report.

Legal liability is a constantly evolving phenomenon. Analyzing the forms of legal liability, we can capture the trend regarding the analysis of legal liability: currently, the modern conception of legal liability consists in recognizing the liability before the law not only of the person but also of the state, its organs, and civil servants.

According to the provisions of art. 52 of the Constitution "the person harmed in his right or in a legitimate interest, by a public authority, through an administrative act or by the non-resolution of a request within the legal term, is entitled to obtain recognition of the claimed right or legitimate interest , canceling the act and repairing the damage (...)". This represents the constitutional basis for the liability of public authorities for the injuries caused to citizens by violating their rights or legitimate interests, in conjunction with art. 21 of the Constitution regarding free access to justice.

References:

[1] Levi Al., Teoria generale del diritto. Padova: CEDAM, 1967, p.136-138
[2] Decenciere-Ferrandiere A. La responsabilite des Etats à raison des dommages subis par des etrangers. Paris: Rousseau, 1925, p.11
[3] Boboş Gh. Teoria generală a statului şi dreptului. Bucureşti. 1983, p.86-87
[4] Popescu S..Teoria generală a dreptului. Bucureşti: Lumina Lex, 2000, p.146
[5] Deleanu I. Drept constituţional şi instituţii politice. Tratat. Vol. I. Bucureşti: Europa Nova, 1996, p.199
[6] Avornic Gh., Aramă E., Negru B. Teoria generală a dreptului. Chişinău: Cartier, 2004, p.7
[7] Băieş S., Băieşu A., Cebotari V. ş.a. Drept civil. Drepturile reale. Teoria generală a obligaţiilor. Vol. II. Chişinău: Cartier juridic, 2005, p.403
[8] Ceterchi I., Craiovan I. Introducere în teoria generală a dreptului, Bucureşti: All, l996
[9] Stătescu C., Bîrsan C. Tratat de drept civil, Teoria generală a obligaţiilor. Bucureşti: Editura Academiei, 1981, p.320
[10] Muraru I. Drept constituţional şi instituţii politice. Ediţia a 7-a. Bucureşti: Actami, 1997, p.312-315
[11] Drăghici C., Drept administrativ. Note de curs. Craiova: Scrisul Românesc, 2017, p.153
[12] Iorgovan A. Tratat de drept administrativ. Ediţia a 2-a, revăzută şi adăugită. Volumul II. Bucureşti: Nemira, 1996, p.313
[13] Bălan E., Instituţii administrative. Bucureşti: CH. Beck, 2008, p.194; Costin M. Răspunderea juridică în dreptul RSR. Cluj: Dacia, 1974, p.31-32
[14] Fodor M. Drept administrativ. Note de curs. Cluj Napoca: f.ed., 2008, p.60
[15] Iorgovan A. op.cit., p.360-361
[16] Fodor M. op.cit., p.62
[17] idem
[18] Vedinaş V. Statutul funcţionarului public. Bucureşti: Nemira, 1998, p.173
[19] Prisăcaru V.I. Funcţionarii publici. Bucureşti: All Beck, 2004, p.144
[20] Bălan E., Instituţii administrative. Bucureşti: CH. Beck, 2008, p.197
[21] Drăghici c., op.cit., p.128
[22] Iorgovan A. op.cit., p.614
[23] Brezoianu D., Oprican M. Administraţia publică în România. Bucureşti: CH. Beck, 2008, p.368
[24] Apostol-Tofan D. Drept administrativ. Ediţia a 2-a. Volumul II. Bucureşti: C.H. Beck, 2009, p.175-177
[25] Petrescu R.N. Drept administrativ. Cluj Napoca: Accent, 2004, p.503-504

FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION, "RESIZED" BY THE PERSPECTIVE OF REGULATION OF A "RIGHT OF THE SOUL" - TRANSDISCIPLINARY ANALYSIS

Legal advisor Diana Maria ILIE, PhD.
Legal Direction,
Politehnica National University of Science and Technology of Bucharest
University Center Pitesti, Romania
dianamaria.ilie@yahoo.com
ORCID ID: 0009-0009-2487-1648

Assistant lecturer Ramona DUMINICĂ, PhD.
Faculty of Economics and Law,
Politehnica National University of Science and Technology of Bucharest
University Center Pitesti, Romania
duminica.ramona@gmail.com
ORCID ID: 0000-0002-3416-2329

Abstract
A "journey into the realm of fundamental human rights and freedoms" awakens in the soul and inner experiences of any researcher a special sensitivity, a depth in analysis and creation, but also a trace of vulnerability, especially in a global socio-economic context so fragile, in which people's suffering reaches levels of horror difficult to represent. These successive and partially interconnected crises, generated by the pandemics and the war, transposed over the reintensification of geopolitical competition for regional or global supremacy, or over the transformative technology revolution of digitization, have revealed the "strength" and "fragility" of right as two mirrors of the same reality, but also the "critical" urgency to re-evaluate the issue of human rights and respect for human values and the human being. There is, however, "a force at the heart of fragility", which takes the form of solidarity, and which we have experienced especially during the humanitarian crisis.
The general context of the humanitarian crisis "unleashed all-out" in Ukraine, more recently in Israel and Gaza, has put us in front of a paradox of our security based on the expansion and hard core of international human rights regulations, the undeniable progress reached in regulating human actions and in protecting life on earth "falling abruptly into helplessness". The impact of these realities awakens a profound awareness and reflection on the intangibility of fundamental rights and freedoms.
Through our research, we aim, on the one hand, to capture this critical point of the conscience of the human being reflected in the freedom of thought, conscience and religion, freedom often restricted "subtly", imperceptibly, and on the other hand, to reflect on the principle of the prevalence of the "general interest" to which we relate in identifying the "perimeter" of the sovereignty of each individual, a sovereignty that the "brave voices" in international research and beyond call "soul". This reflection on the possibility of shaping a right of the soul by extending the interpretation of the sovereignty of an individual to what means feelings, inner feelings or emotions, which are manifested in the conscience and thought of each man, comes to "break down", in all aspects, the corollary of freedom of thought, conscience and religion, so that this freedom of conscience becomes more than a symbolic value, as it is perceived at present. And no, it is not a philosophical approach, nor a religious one, but it comes from the reality of some studies that demonstrate that thoughts can be read, can be manipulated, memories can be modified, eliminated or even recovered. Thought is certainly connected to the "soul", to emotions and feelings so personally manifested, and an

impermissible alteration of our thoughts and conscience triggers the need for further clarity about the legal content and scope of this freedom. On a closer look at freedom of thought, conscience and religion, we will find that to determine exactly what should be covered by these regulations, it may be more difficult than we thought, being rather obscure, abstract and "cold" regulations.
Focusing on the idea that the evolution of mankind was one of awareness and starting from the need for interaction between law, science and spiritual beliefs, we will try to open the "door of coexistence" between disciplines in an inter and transdisciplinary vision, with the aim of "enriching" this matter in interpretation and awakening in human conscience the importance and complexity of approaching freedom of thought, conscience and religion.
Keywords: *fundamental rights and freedoms, freedom of thought, conscience and religion, Universal Declaration of Human Rights, European Convention on Human Rights, Charter of fundamental rights of the European Union, outlining a right of the soul, legal restrictions on the exercise of rights.*

"Bridge" between science, law and spiritual beliefs – from interdisciplinarity to transdisciplinarity

We cannot deny that man is by nature a complex being, evolving in an even more complex world, which imposes an overall, integrative perspective but also a capacity to synthesize, in order to adapt and achieve a balance between the needs of the human being, the society seen as a whole with the specific implications of economic, legislative, social, political, administrative, but also the environment characterized by its own universal rules. That is why we are talking about a rigorous path of knowledge, which starts with the deepening of type *disciplinary*, segmented, with the aim of understanding the essence of the object subject to research, then comes the *multidisciplinary, pluridisciplinary* approach, of juxtaposition of information, which translates into *interdisciplinary* analysis*,* with the role of providing an integrative vision, of synthesizing, so that in the end, the research is crowned by the analysis *transdicipline,* what involves overcoming disciplinary boundaries and the ability to work with concepts, theories or methodologies that are actually non-specific to any discipline, branch, being surprised the flow of information that circulates between them. [1]

The need for excellence in research requires an interdisciplinary, pluridisciplinary and transdisciplinary analysis of the sciences in general, disciplinary research being characterized by a "scientific rigidity". The interdisciplinary approach stimulates innovation, creativity, the ability to analyze and connect concepts and ideas from different, even contrasting perspectives, developing new research areas that correspond to current social, economic and political interests.

The right is a dynamic phenomenon, configured and resized by the social, historical, cultural, moral, political and economic context, a phenomenon that has gradually left the hypostasis of an autonomous, closed system, and has inevitably moved towards an open, flexible, integrative, interdisciplinary, complex system, features which, in fact, are related to our century, a century of complexity. This vision is based on actual reality, complexity being "a state of the natural, social, human world". [2]

Although we tend to start from the premise that interdisciplinarity is an abstract, purely theoretical, philosophical notion, we cannot deny its profound, marked imprint on society in general, since man, by his nature is a complex being, who lives, creates, builds and evolves by making a big picture, a multidimensional picture in which thoughts, information, needs and ideas intersect and intertwine in an attempt to create perfection.

In essence, in such a fragile world, which faces a high degree of pollution, ecological disasters, financial, economic, political crises, diseases untreatable by the development of bacteria, uncontrollable viruses and especially wars and armed conflicts that "weaken" the protection of human rights and freedoms, an interdisciplinary approach is obviously required, through a multitude of perspectives and through the incorporation of visions belonging to even diametrically opposed fields. [3]

This so captivating "nuance" of research, transdisciplinarity, once discovered, becomes part of your way of being, becomes a "way of life" of the researcher, through the search for "intensity and color" in his creations, awakening a spirit of innovation, another level of conscience and awareness in the analytical spirit, in the decoding of legal regulations, in their correlation and integration into the absolute, that is, everything that means universal harmony. This high level of knowledge actually offers the opportunity to be able to respond in a favourable way to such complex global challenges. In the spirit of promoting transdisciplinarity, the Centre International de Recherces et d'Etudes Transdisciplinaires - CIRET was also organized, elaborating in collaboration with UNESCO "*The Transdisciplinary Evolution of the University"*. At the same time, today we are happy to create a *Global Transdisciplinary Networks*, at whose World Congress, personalities from all over the world manage to introduce in the same "blender" of analysis and research, peace, the universe, the human spirit, the human being, the biosphere, the intelligence, the culture, art and the perspective of the future.

The starting point of this "legal and spiritual journey" was the discovery of a recent transdisciplinary research and analysis [4], a truly unique, profound, original, reflective research that opens "*a door to what could be the pillar of legal science in the future, something that could help humanity heal from its immunity"* and it potentiates the need to reform the legal norms regarding fundamental rights and freedoms, or at least opens a new "window of analysis" on them, by "touching" the sacred area of feelings, emotions, inner feelings, as spiritual realities of every human being, realities that although intangible, imperceptible or devoid of exteriorization, require regulation. Why? Because the law is "lived", "felt" and applied through the filter of the beliefs and values of each individual, this is not the first philosophical or religious concept that manages to be translated into a legal concept.

Discovery of the work "*Towards a right of the soul and the biofields of life forms*", not accidental discovery, but "hunted" by the desire to deepen and discover the unique manner of the author in the analysis of lthe right from a transdisciplinary vision [5], it was like a *revelation* on the awareness of the degree and intensity of the protection of human rights and freedoms, which finally brought us to this "destination" in analysis and research. Our analysis is thus found at the point of identification of a deep connection between the vision of the regulation of a right of the soul and the freedom of thought, conscience and religion, as a possible intersection point towards the reformation of this freedom, without denying the potential for the development of a self-contained right, a right of the soul, outlined on the basis of its own principles of functioning.

Moreover, the vision of a right of the soul is also shared and promoted at international level, especially by the French doctrine [6], transposed here at national level in a unique manner and approach by our author and researcher Cristina Elena Popa Tache, whose works are recognized worldwide and which opens new horizons of analysis and research, being a perspective that we "embrace" in turn, which we value and which, we believe, must be "promoted", "dissected" and developed through several "imprints" of the creative act.

As stated by the author of this pioneering work at national level, Cristina Elena Popa Tache, reaching a certain degree in the evolution of humanity inevitably leads to institutional and legal mutations, merged into a legal matrix that concentrates our

physical, emotional and mental dimensions, believing that “there, somewhere, there is a scientific solution that can unify in communication all the disciplines of the world”. This transdisciplinary dialogue, this “jump together” of specialists, ensures a global vision on the human being, the right coexisting with all aspects and phenomena of socio-economic life, being shaped by the necessity of natural adaptation to the new forms of interdependence and global awareness. The right is primarily a humanistic science, which evolves at the same time as people, creating strong links with sociology, psychology, history, philosophy, morals and even religion. Let us not forget that the forms that civilization dressed in its historical evolution were family, property, state and religion, elements that gained value as regulation. That is why the power of the law remains in the capacity of permanent adaptation to the complexity of our world, and this can be achieved through what we call transdiciplinarity, a phenomenon capable of creating the necessary bridges between science, law and morals or faith, through a complex vision of reality. Moreover, the Transdisciplinarity Charter adopted in 1994 had in mind the idea of opening all disciplines to what they have in common and to what lies beyond their borders, in the hope that a higher degree of analysis is reached, capable of interpreting the planetary complex dimension, in order for humanity to face the contemporary danger of *the material and spiritual self-destruction of our species.* What the Preamble of the Transdisciplinarity Charter points to is the idea of a double belonging of the human being, namely, to a nation, *but also to the ground*, this last aspect outlining the universal values and the need for balance in which the human being must find themselves with them, the right can contribute to the harmony between man, nature, the universe, values disturbed throughout history by political or military interests, perhaps crossing another path to the legal instrument.[7] After all, we must give the law the “right” to permeate all aspects of life, so that life in all its forms, nature, animals, human beings, can enjoy respect, evolution and protection. In reality, these legal norms represent the “business card” of humanity, since from them our spiritual and moral values or the degree of civilization reached transpire, which is why, ideally, it would be to fight for them, for their reform, without waiting only for the suggestion of the forms of government.

That is why, although we are talking about increasingly rich legal systems, more and more complex, law being after all a process dedicated to life in all its forms of

manifestation, they are often perceived as “cold” and “abstract”, “alien” to human values or to the perception of an individual. No coincidentally Rafael Domingo wrote “Why Spirutuality Matters for Law – an Explanation”. [8] The fact that “rules of law need a rule of love”, metaphorical construction that we interpret precisely in the idea of the need for flexible regulations, especially those regarding human rights and freedoms, the center of gravity of which is the uniqueness of the human being. Why? Because we feel differently, we perceive differently, and therefore we apply the law and relate to it through the filter of our own conscience, through the filter of our “soul”. It is a kind of symbiosis of human inner virtues and emotions with the law, with nature and even with society. This shift from traditional, rigid regulation to a “hybrid” approach represents a tortuous and thorny path towards the regulation of a law of the “soul” as a legal science, an area that will certainly generate new approaches in the sphere of human rights regulation. Consequently, in order to avoid a forced legal order based solely on the character of coercion, society must ensure a balance of justice and grant rights beyond the public interest.

In an ideal world, “*it is not the “self” that must be at the service of society, but society and its institutions that must be at the service of individuals as their own creators*”. [9]

It is not by chance that we have evoked in our research the idea of transdisciplinarity, materialized by creating these bridges between science, law and spiritual beliefs, but in the idea in which legal systems evolve through spiritualization, by respecting all forms of life for the benefit of humanity. Proof that the law “weaves” its way into all aspects and phenomena of life, coexisting and evolving with them, is the very junior law of nature, or animal law, canon law, ecclesiastical law, the happiness law, the personality law, branches of law that together with other sciences, such as bioethics or neurotechnology, can inspire and contribute to *legal construction* called the right of the soul, or at least to the reformation of human rights and freedoms through the filter of free will and the recognition of the inner power proper to the soul of a human being, over which another entity cannot exert impermissible influence.

It is essential to overcome the rigid stage of regulation of human rights and freedoms, regulations that relate with priority to the organization of society, to the general interest, and less to unpalatable, imperceptible aspects, such as the inner ego of each

human being, the aura, the energy field or the chakras, elements untouched by the legislative area, but only by that of science. For example, resonant field imaging can provide detailed scientific information on aura and bioenergy, being the first such technology that can create bioenergetic diagrams of animals, plants, objects, read and interpret the functioning of the brain, aura and chakras or brain waves in the air. [10] The interconnection of these studies regarding the psychosocial status, the self of the human being, personality or conscience, "crowned" by social rules, by the principles of functioning of a society, as transposed by law, can give rise to a series of studies, which will claim the need for regulation.

Without delving too deeply into philosophy, we must realize that invisibility does not equate to non-existence. Thus, although brain cells are visible, conscience, inner feelings, emotions, energy, remain invisible, which does not make them less important. And they need effective regulation. At the same time, let's not forget that neurotechnology has advanced so far that it can read, decipher thoughts in strictly controlled laboratory conditions.

The question remains whether society is ready to cope with neurotechnology, artificial intelligence, machine learning, all of which have a major and multifaceted impact on freedom of thought, on our conscience.

Such sensitive issues are superficially "touched" by domestic legislation, in effect aligning themselves with international law. For example, the Romanian civil code regulates personality rights in the spirit of constitutional provisions. Moreover, we must recognize that we identify an increase in the degree of interest on the intangible aspects of the corollary of human rights and freedoms, aspects related to the personality and thinking, moral integrity and living of the human being. In this sense, *personality rights* represent an institution newly introduced by the Romanian civil code, through Chapter II – "Respect due to the human being and its inherent rights", the notion of personality rights appearing in the marginal name of article 58 of Book I – about persons [11]. The concept of "personality rights" is found in most continental jurisdictions, including Switzerland, Austria and Japan, being characterized as an "umbrella of human rights to dignity, privacy and self-determination" in light of the European Convention on Human Rights. [12] In our opinion, this regulation on the rights of personality is a timid and too abstract attempt to

identify a kind of protection of something related to that inner, sacred "temple", something related to the quintessence of the human being, but it represents, at the same time, a step towards the "compression" of a road towards the regulation and consolidation of a right of the soul that encompasses all these abstract norms spread in various domestic or international legal acts/instruments. As the Romanian doctrine states, [13] the current civil code "*it fits into the modern trend of civil law, which sees in the individual not only legal abstraction-holder of civil rights and obligations, but also the man regarded as an object of legal protection",* we would say, man regarded as a unique being. Why would it be necessary to "incarnate" these rights and freedoms concerning personality, freedom of thought, conscience, self-determination, creation, dignity, etc., into a single, self-contained law? We find the answer in the need to maximize the degree of research, development, deepening, dissemination and understanding, by virtue of the fact that a self-contained right, such as the right of the soul, would create its own principles and institutions of functioning, increasing in nuances, degrees and intensities of regulation and application. As the international doctrine states, for now "*there is no comprehensive personality right that covers all aspects of one's personality*". [14] Such non-patrimonial prerogatives are intimately attached to the human being, unique in its turn.

The great philosophers [15] defined personality as that "*structure in which are primarily elements borrowed from the culture of the social environment, being therefore a crystallization of trends and traditions that arise from the biological life and extend to the social life... personality is the self, laid in the structure of social life...the self is the ferment of personality*". In this sense, in an order of evolutionary occurrence, organic individuality precedes conscience, conscience precedes the self, and the self precedes personality, all of which interconnect in a process of unifying synthesis. As stated by C. Radulescu Motru "*the personality, built on the self, bears its characteristics imprinted, so that on a primitive, mystical and emotional form will be built a personality of diffuse structure, the primitive structure of the simple man...on the contrary, the self with an intuitive self-awareness, gives a new personality structure... the self as self-conscience, does not mystically pour out but recoils and invents*".

A mosaic approach is needed and the courage to resize the "legal architecture" on human rights, in a context in which international jurisprudence has already paved the way

for a different approach to the human being. In fact, also timidly were affirmed environmental law or animal law, regulations that not long ago seemed abstract, fruitless, almost impossible to structure and apply. Of course, the degree of codification does not equate to the force of propagation of the codified regulations, being needed legal instruments of the type *hard law.* In this sense, the Universal Declaration of Animal Rights, proclaimed by UNESCO in 1978, takes shape in domestic legislation, in May 2021 the UK announcing that animals will be recognized by British law as beings with rights, who have the ability to feel hunger and pain, but above all to be aware of what is happening to them.

And because we are talking about this vision of universal harmony, and especially about the need for connection, inter- and transdisciplinary analysis, recently, more precisely December 1-2, 2023, took place *COP28 World Climate Action Summit*, held in Dubai, United Arab Emirates, among the ambitious goals of world leaders "*putting nature, people, lives and livelihoods at the heart of climate action*" [16].

In relation to the principles of life, we recall here also the *Universal Declaration of the Rights of Mother Earth*, a Declaration adopted in 2010 at the World Conference on Climate Change and Earth Rights. It was through this international document that the rights of nature were enshrined for the first time, being recognized in the preamble the *dependence of human rights on prior respect for ecosystem rights* but also the fact that *the Earth is considered a living entity*, a source of life, the symbiosis between humanity and nature being essential. As Cristina Elena Popa Tache states in her work "Towards a right of the soul", "*conscience is not only human, but exists at human and plant levels and most likely must be latent or function in some form, in molecule and atom...and all these diverse and, in a sense, hierarchical ways in activity and conscience should be seen, integrated and perhaps transcendent through an all-encompassing planetary conscience".*

The EU Council conclusions on *European Union priorities for 2023,* exposed in the UN forums on human rights, they aimed to actively engage with UN resolutions on the link between human rights, climate and environment, reiterating the position that "the full exercise of all human rights is a prerequisite for achieving sustainable and inclusive development. In this spirit, the EU will continue to contribute to the implementation of the

UN 2030 Agenda for Sustainable Development by applying a human rights-based approach to development cooperation". [17] *Agenda 2030* it is a global action programme that promotes the balance between the three dimensions of sustainable development, namely economic, social and environmental.

The central piece of this "universal puzzle of regulations", concepts, mutations and substantiations of rights, remains the human being, whose values represent the core of development and branching of any institution, science, etc. For example, bioethics, a new science based on a multidisciplinary research on possible threats to human life created by applications of biomedical sciences, such as assisted reproduction, human cloning, organ transplantation, appears as a "lineage link" between science and human rights, created, on the one hand, by the respect due to man as a whole (fragmented today into gametes, embryos, transplant organs, etc.) and on the other hand, by the need to avoid any abuses of human freedom of expression. [18] Although it is a legal instrument *soft-law*, non-binding, the *Universal Declaration on Bioethics and Human Rights,* adopted in 2005 at the UNESCO level, emphasizes the prioritization of the principles of individual responsibility, consent, respect for the integrity of the person, privacy, confidentiality, equality, equity, non-discrimination, non-stigmatization, respect for cultural diversity and pluralism, protection of future generations and protection of the environment, biosphere and biodiversity. Unfolding the chronological thread, we will find that the *Universal Declaration on the Human Genome and Human Rights* was the first of three declarations adopted at UNESCO level in the field of bioethics, specifically on 11 November 1997. Indeed, the research carried out on the human genome outlines real prospects for improving the health of people, but also of humanity as a whole, but at the same time it develops a dangerous potential for human rights violations, especially from the perspective of discrimination of certain individuals or groups, on genetic grounds. Knowing that the total genetic characteristics of each human being is unique, an individual should not, however, be reduced to these characteristics alone, a priority aspect in the analysis and justification of the prohibition of cloning. As the Convention states, "although genetically the cloned being is identical to the source of the cloned material, personality and individuality as a human being are conferred by education, experience and social interaction, which leads to essential differences, even between the cloned being and the

clone". This conclusion confirms that the human genome is a potentiality that can be exploited differently, relative to the context in which a human being develops as an individual, which may be subject to natural mutations, as the generic human being evolves. Reflecting on the degree of complexity and depth of normative interference and the substantive correlations that can branch the link between such medical, biomedical research and human rights, we find that an interference analysis requires a generous allocation of time and space, which will be the subject of a separate work, which is why we synthesize for now the idea that no research, especially in the field of biology, genetics and medicine, should prevail over respect for human rights, fundamental freedoms and human dignity. [19]

The doctrine invokes more and more the interaction between law and spirituality, especially the increase of respect for law when legal systems evolve through spiritualization, which implies "dematerialization of the legal system, limitation of domination, reduction of constraints, communication and consensus in society" [20].

The doctrine [21] also invokes the theory of natural law as a landmark in reforming human rights and freedoms, according to this theory all people having inherent rights, conferred "by God, nature or reason" and not by a legislative act. In the light of these ideas, natural law can become a source of law for the right of the soul, as a lever by which the right itself objectively derives from the nature of human beings, norms operating in accordance with moral standards and human behavior, and not by the arbitrary will of a legislator.The Kantian thesis brings up a possible bivalence, namely: "*human being is his own creator of the moral laws to which he chooses to obey out of conviction, or morals allow the individual to aspire to a supersensible world within which the fulfillment of the attributes of being becomes a gift*". [22] Natural rights are rights protected by the Charter of fundamental rights and freedoms based on the Universal Declaration of Human Rights and the European Convention on Human Rights.

Natural law has its source in canon law, through reflection on divine law, natural or positive. Canon law had a special role in the transmission of Greek and Roman jurisprudence, as well as in "shaping" some legal regulations from the theory of obligations, the institution of marriage, wills, etc., the interface between *religion, law and morals* being very sensitive and in close contact.

Between law and religion there is an infrangible, eternal bond, in the sense that law governs society, and *religion governs personal conscience.* Given that law is the creation of man, it implicitly follows that this creation of law also arises from a dimension, religious value, promoted through men. Moreover, values such as justice, mercy, tolerance, dignity, equality, etc.are promoted by religious beliefs, being materialized in the regulations at the level of state and international structures. For example, The Ten Commandments of the Orthodox Christian Decalogue contain rules for the protection of human rights, the difference being materialized in the fact that their observance is guaranteed by the religious conscience and not by the coercive force of the state, the observance from the personal conscience of the individual of the norms of law representing perhaps the ideal to be achieved of a law. The authority of a law comes from the omnipotence of its creator, authority outside the material world, represented perhaps by the gods in ancient cities, then by God himself in the Judeo-Christian tradition. It is that "eternal law" which, par excellence, ensures for all beings and things the natural and moral order, "its existence being indisputable, since it is found in the conscience of all peoples and in all times". [23]

Christianity has left a deep "mark" in people's thinking and behavior, the Christian vision promoting not only the love for God, but also the love and respect for those around us, as evidenced by the Christian message "*Love your neighbor as yourself".* Moreover, the recognition of the uniqueness of the human being but also of the equality of people, we find them in Christian messages such as "*all men are equal before God".* These are precious milestones in shaping the fundamental values and norms regarding people's rights and freedoms.

It is very interesting how in Islamic law, the Qur'an, the sacred book of Muslims revealed by the deity and defined as a synthesis of ethical and spiritual perceptions, represents the main source of Muslim law, human rights being presented in close connection with the Islamic religion. Muslim law is distinguished worldwide as a legal system with its own legal characteristics and sources, like the "common law" system, being constituted by Islamic law *Sharia*, the main source of which is the Qur'an.

The conscience of people is a kind of understanding of personal existence and its integration into the universe, but conscience is beyond law, faith, religious affiliation,

customs, culture, elements that must not obstruct the way to our interior, to our own states and emotions. Although respect for the person has grown progressively throughout history, enjoying today an effervescence of regulations that shape human rights and freedoms, C. R. Motru noticed in a real manner the fact that "no matter how magnified the human personality rises on the heights of centuries of culture, it seems that the human heart does not rejoice too much. (...) if the personality is so great, if its power is so real, then its hymn of glory should be heard everywhere, in any occasion. (..) Is there a fatal dualism that prevents man from enjoying the result of his successes? (…) *The power of man is told by the exteriorized products of culture, but not felt by man's soul*. The giant in the outside world is the dwarf in the inside world". [24]

Human rights and freedoms involve a material part, but especially a spiritual part. For example, according to statistics from the World Happiness Report 2023, [25], elements such as health, freedom to make key decisions in life, generosity and the absence of corruption play an important role in supporting life assessments, all of which contribute to the happiness spiral, happiness that can be confused in our analysis with what we call the right of the soul, that is, the self of the human being, their own emotions and feelings as they have metamorphosed as a result of the "encapsulation" of the rules drawn from the outside, by law.

The questions remain: How will we manage to build such legal regulations closer to human conscience? And how can we protect conscience? These inner feelings of human being, which the doctrine calls the soul, need protection, protection that can only be achieved through regulation. Reflecting on these issues, superficial at first glance, actually leads to a deeper awareness of human rights and freedoms and the need for clarity about their content and legal field.

Although it is at the center of interest of international human rights documents, the right to freedom of thought remains a legal enigma, being such a nuanced freedom that transcends so many other subjects and with echoes in so many scientific ramifications such as religion, psychology, sociology, medicine, etc. Superficiality in regulation, interpretation, and application decreased the doctrine's interest in developing a deeper theory of analysis. Questions such as – *What exactly constitutes thinking, conscience?*

What forms of thought benefit from absolute protection? What is the boundary between permissible influence on the thinking of another person and impermissible manipulation?

Transdisciplinary research and gaining a holistic understanding of the scope of *freedom of thought, conscience and religion* become essential for this freedom not only to have a symbolic value. As Jean Carbonier said, "*right is not the absolute we dream of*", the protection of human rights and freedoms being less validated in the last period marked by the attack of Ukraine by the Russian Federation or by the Israel-Hamas war, a period in which the application of international humanitarian law was activated circumstantiated by the existence of an armed conflict. [26]

Although we are still in the stage of an aspirational vision, we aim to capture in our inter and transdisciplinary research, the awareness of the philosophical foundation of human rights, rights with complex social-economic, political and legal valences and with a variable content, by reference to time and space, in the sense of values, traditions and specific experience, this study reflecting the expression of our beliefs on the line of constant evolution of humanity. In any case, the ethical dimension, more precisely the philosophy and morals of human rights, is an essential source of the legal formulation and promotion of these rights.

Freedom of thought, conscience and religion through the filter of international, regional and national legal instruments. Reflections on the legal restriction of the exercise of rights and the identification of the balance between the sovereignty and the manifestation of the personality of the human being in relation to the prevalence of the general interest

We could "encapsulate" freedom of thought, conscience and religion in the motto "*Man, in himself, is his own government*" [27], a short motto that says a lot and from which multiple interdisciplinary reflections on the legal content and scope of this fundamental right can spring, a right with nuances and interpretations so complex that the legislator has not managed to "capture" its essence until today. Freedom of conscience and thought is, in reality, the indispensable matrix of any other form of freedom, the matrix that connects our physical, emotional and mental dimensions. The complex issue of freedom of conscience, thought and religion stands out through the psychological, religious,

philosophical and ethical aspects that it calls into question, giving rise to prerogatives that merge the most personal feelings, searches, questions or hesitations of the human being, intimately related to his spirituality and personality.

Is this legal framework subject to our analysis sufficiently comprehensive? Can it be conceptualized in other ways? What does this freedom of thought, conscience and religion mean for us people? How do we perceive it? Is the thought "connected" to the soul? We will find that the first impulse in providing an answer will be the one related to the freedom to choose our religion, forgetting to reflect on what is actually most important, namely the freedom of our conscience, the freedom of our thoughts, rights so sacred and so intimate to us as human beings, but subtly "shaped" by the society in which we live, that we are shy to externalize them in order not to get out of the template drawn by the general interest that always tilts the balance, even in the case of the hard core of human rights. It is a kind of "sense" of self-identification with the society to which we belong. It is the religious dimension of this freedom that has found practical application in international and national jurisprudence, the conscience and thinking dimension of the human being being left in a shadow cone. To determine exactly what should be "covered" by the right to freedom of thought, conscience and religion, may be more difficult than we thought.

What we propose through this research is precisely the idea of awareness of this freedom, freedom that needs legislative reform in order to overcome the stage of "reduced attention" and symbolic value at international and regional level. In reality, the scope of legal protection is very small in relation to the fact that the absolute nature and content of freedom of thought or conscience cannot be reached by the legislator, an aspect which, moreover, undermines its practical application.

Our analysis aims to overlap this unmanifested thinking, which should enjoy absolute legal protection, with the idea of outlining a right of the soul, a corollary of the feelings, spiritual beliefs and emotions of the human being. They are interrelated and certainly require special attention and a reformation of freedom of thought, conscience and religion, by resizing the hard core of human rights and freedoms from another perspective, much deeper and not unreal at all, but materialized in cognitive science and philosophy of mind.

We will submit to the analysis this inner "sanctuary" of the human being after a brief foray into the history of the regulation of freedom of thought, conscience and religion, in order to juxtapose the regulations, jurisprudence and interpretations of researchers in the matter, in an inter- and transdisciplinary vision. The goal remains to discover the complexity and effervescence of this maze of meanings and understanding of a freedom without outline, which claims the need for legislative reform in an era of digitization, in which artificial intelligence makes vulnerable mental mental integrity through the impermissible alteration of thoughts. The need for legislative reform also comes from its size susceptible to limitations, a challenge on which we will lean in this section, being essential to establish the relationship between power and individual in a democratic society.

Freedom of thought, conscience and religion is recognized in all world doctrines, being enshrined in fundamental international and regional instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union.

Moreover, the European Court of Human Rights points out that freedom of thought, conscience and religion is one "*of the foundations of a democratic society within the meaning of the convention. This relates to the idea of pluralism - an idea that has hardly been acquired over the centuries – inherent in such a society*". [28]

In the content of the Universal Declaration of Human Rights is stipulated in the fullness of its component elements, the freedom of thought, conscience and religion, art. 18, explaining it in the following coordinates: everyone has the right to freedom of thought, conscience and religion, which implies the freedom of man to change his religion or beliefs, as well as the freedom to manifest his religion or individual or collective beliefs, both publicly and privately, through education, practice, worship and the performance of rites. We mention that the Universal Declaration of Human Rights was adopted by Resolution 217/A/III of 10 December 1948 during the 3rd Session of the UN General Assembly, being considered "*the common ideal to be achieved by all peoples and all nations*". At the same time, Eleonor Roosevelt, President of the commission that drafted the Universal Declaration of Human Rights, describes it as the "Magna Carta of

Humanity", being of particular importance for the elaboration and development of the concept of human rights at international and national level.

The year 2023 marks the 75th anniversary of the Universal Declaration of Human Rights, an occasion for the European Union to submit its conclusions on priorities for 2023 within the UN human rights fora. On this occasion, the Council reaffirmed its unequivocal commitment to respect, protect and guarantee all human rights by defending their universality, the European Union being a firm promoter of the United Nations system and an active promoter of these international actions. In this regard, the EU expressed its strongest condemnation of Russia's war of unjustified aggression against Ukraine, which has led to violations of international human rights law and international humanitarian law, while also recalling its concern for the deepening human rights crisis in Afghanistan, especially with regard to women, girls, persons belonging to minorities and ethnic and religious groups who are systematically denied human rights. At the same time, during this meeting, the EU maintained its commitment to the promotion and protection of *right to freedom of religion or belief* to all persons worldwide, condemning discrimination, intolerance, violence and persecution against or by any person on the basis of religion or belief, and assuming the promotion of the right of all to have or not to have a religion or belief, to manifest or change their religion or belief, through active collaboration with the UN special rapporteur on religious freedom or his conviction and support of his mandate. [29]

Continuing the analysis of the international legal basis of freedom of thought, conscience and religion, we will invoke the *International Covenant on Civil and Political Rights*, which regulates this right in the content of the provisions of art. 18, which come to develop the possibility of limiting such freedom, meaning that the freedom of manifestation of religion or belief may be subject only to the restrictions provided by law and necessary for the protection of security, public order and health, or of morals or of the fundamental freedoms and rights of others.

At regional level, *European Convention on Human Rights* provides by art. 9 that every person has the right to freedom of thought, conscience and religion, which includes freedom to change his religion or belief, individually or collectively, publicly or privately, through worship, education, practice and the performance of rituals. The convention

mentions the same framework of limitation, restriction of this freedom, as the aforementioned international pact. The vulnerability of these regulations results from the fact that they are abstract, on the one hand, and on the other hand, from the fact that it is left to the states to assess the concrete interpretation of the situations in which these measures are required, the text of the convention not providing a legal qualification of the concepts of "public safety", "public or moral order". These become interpretable elements on a case-by-case basis, depending on the specific situations found at the level of each state.

At European Union level, the *Charter of fundamental rights* regulates freedom of thought, conscience and religion through the provisions of art. 10, according to which "(1) *Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance. (2) The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right to freedom of thought, conscience and religion".* The guaranteed right corresponds to the guaranteed right in Article 9 of the European Convention on human rights and art. 18 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Tights. It is necessary to highlight here paragraph 2 of art. 10 of the Charter, which regulates an innovative right related to this prerogative of freedom of thought, conscience and religion, namely *right to object* on the grounds of conscience. In response to this regulation, an increasing number of states have provided for in domestic law exemption from compulsory military service for citizens who, by virtue of religious, spiritual beliefs prohibit such practices. We mention that the elaboration of a European Charter of Fundamental Rights was decided at the European Council in Cologne, from 3-4 July 1999, being proclaimed at the Nice summit, from December 2020. The strengthening of its legal force, however, was achieved by the 2007 Treaty of Lisbon, which included it in an annex declaration in order to have the same legal value as the treaty.

Nationwide, *Constitution of Romania* guarantees "freedom of conscience" by the provisions of art. 29, according to which: "(10) *Freedom of thought and opinion, as well as freedom of religious beliefs, cannot be restricted in any form. No one may be compelled*

to adopt an opinion or to adhere to a religious belief contrary to his or her beliefs. (2) Freedom of conscience is guaranteed; it must be manifested in a spirit of tolerance and mutual respect. (3) Religious cults are free and organized according to their own statutes, in accordance with the law. (4) In relations between cults, any forms, means, acts or actions of religious strife are prohibited. (5) Religious cults shall be autonomous from the state and enjoy its support, including by facilitating religious assistance in the army, in hospitals, in penitentiaries, asylums and orphanages. (6) Parents or guardians have the right to ensure, according to their own convictions, the education of minor children whose responsibility lies with them". At the same time, the Criminal Code criminalizes art. 381 "preventing the exercise of religious freedom", and *Law no. 489 of 28 December 2006 on freedom of religion and the general regime of cults* [30] comes to develop the dimension of religious freedom and the conditions for its exercise.

We find that freedom of thought, conscience and religion can be broken down into three freedoms, namely freedom of thought, which implies the right to adopt an ideology, freedom of conscience, which implies rights to personal beliefs of any kind, and freedom of religion, which implies the creation of one's own religious identity. [31]

What draws our attention following the review of international, regional and national regulations, which outline freedom of thought, conscience and religion, is, on the one hand, the emphasis on the religious dimension and the placement of the other two dimensions regarding freedom of thought and conscience in a certain shadow cone, and on the other hand, the ambiguity of the degree of protection in case of the need to limit this freedom in relation to the public interest, order, safety or public morals.

It is certain that in concretizing this freedom, the state authorities have both positive obligations, concretized in measures aimed at removing the possibility of occurrence of disruptive situations, and negative obligations, in the sense of not taking actions such as to restrict the effective exercise of freedom of thought, conscience and religion. [32] When it comes to the development of the content of this freedom, however, we will find that the doctrine leans mainly on the religious dimension, which has also found practical application. In this sense, the freedom of conscience of the individual is superimposed as an interpretation over the freedom of religion, meaning in which it is recorded in most researches that the state authorities have no right to interfere in the field of freedom of

conscience of man by researching his religious beliefs or by forcing him to manifest his beliefs regarding divinity.

For example, in one case, the European Court of Human Rights concluded that a person who had to justify before the court the refusal to perform the religious oath because he was not an Orthodox Christian, thus wishing to sum it up to a solemn declaration, determined the violation of his freedom not to manifest his religious beliefs. [33] On the other hand, in another case the social interest prevailed, namely the professional one, in the sense that, in the case *Eweida and Others v. the United Kingdom* [34], the Court held that the employer's interest in projecting a particular image to the airline, which prohibited employees from wearing a crucifix at work, was undeniably legitimate. This last case further deepens the uncertainty in interpretation, going beyond public safety, the protection of public order, health or public morals, reaching a social and professional interest. And here comes the question – *What are the limits of our freedom?* The answer could be summarized in the statement of Jean Jacques Rousseau in the work "The Social Contract" made in 1762, respectively "*Man is born free and everywhere he is in chains",* as well as in the statement of Rivarol – *"Freedom means being what you want from what you can".* [35]

The reality is that it is society that imposes a set of legal norms that guide our actions, these representing the expression of the general interest and the manifestation of the chain of fundamental social, historical, political, economic, religious determinations, etc. This spiral - *general interest - legal or moral norms – liability – freedom – particular interest*, becomes difficult to manage and requires multiple perspectives, of a philosophical, sociological, political, economic, legal and ethical nature. The divergence of society's general interest versus private interest becomes perhaps the most sensitive approach to human rights. The reality is that legal norms provide us with an ideal pattern of behavior. Do we all perceive it as ideal? How do we relate to this ideal, in the context in which legal norms address the recipients "diffusely and impersonally"? [36] After all, "*each being has in itself a law, a law of formation and development...it is born with an unseen but very real frame, in which it grows and which it seeks to fill. When an organism reaches the form that represents the ultimate goal of its faculty of development, it reaches perfection and has idealized itself*" [37]. It is what we mean by the "internalization of the

law", its application from conviction, since it is passed through the filter of the individual's conscience, which vibrates in unison with the law and then we speak of the ideal of the law-human being symbiosis. From that perspective, "*each of us would become more sovereign than ever before*", as ideally captures Cristina Elena Popa tache in her work "Towards a right of the soul and of the biofields of life forms", the human being having "*the joy of knowing that it is unique among living things, in an environment that would no longer seek to subdue or exploit it mercilessly, but to love, respect and protect it*".

The conception perpetuated and "absorbed" as such by the human conscience was that of the absolute prioritization of the general interest, the exercise of fundamental human rights and freedoms being fully consistent with it, in the idea in which the right remains the perfect instrument of social control through its normative function. But we follow the opinion expressed by Hegel in the work "Principles of the philosophy of law", according to which the essence of the state consists in the requirement that the Universal be consistent with the particular, the philosophy of law consisting in establishing a perfect balance between individual interests and the general interest of the state. [38] This approach reinforces the idea also promoted in the current international doctrine, in the sense that "*it is not the individual self that must be at the service of society, but vice versa*". [39]

All the international and regional legal instruments that we have outlined above, recognize freedom of thought, conscience and religion to all citizens, but do not grant man, a unique, individual being, sovereignty over himself, being put in the first place the common will over the individual will. Before being a citizen, with correlative rights and obligations, man is a unique, irreplaceable being, the only one capable of appreciating exactly his feelings, emotions, memories, choices and ideals, the sum of which outlines what the doctrine calls "a right of the soul".[40] This right of the soul claims its place in the corollary of fundamental human rights and freedoms, or even its detachment from them by creating a right in its own right, borrowing through sources, principles and even object from international humanitarian law.

Legal systems can assign rights and duties to individuals without their express consent, [41] and here we are talking about a double dimension, on the one hand, the assignment of rights and obligations without the consent of the individual, and on the

other hand, the limitation of rights against one's own conscience and convictions. Compared to our vision expressed and supported throughout the research, we achies to the idea that "*the soul, the virtuality of human being, is not only a matter of public interest, but must be granted rights*".[42]

It is also true that the realization of the rights and freedoms circumscribed to the legal status of the person is carried out in society, and society in turn has the right to protect itself from possible abuses hidden under the invocation of the exercise of certain rights and freedoms, by drawing barriers to exercise them. The restriction of these rights is justified, of course, by the observance of certain principles, namely the *principle of legality*, which implies the exact observance of the legal provisions and procedures governing such prohibitions or restrictions, e.g., the *principle of equity,* which involves adapting the rules to concrete contexts, in the sense of interpreting the rules in relation to the factual situation, personal circumstances, the uniqueness of the case or the legitimate purpose. We also speak of the *principle of proportionality,* which became an almost universal principle by which the powers of the state are limited, in the sense that its actions must not exceed the purpose of their exercise, being necessary a balanced ratio between the means used and the legitimate aim pursued, in order to avoid excess power". [43]

The potentiality of restricting the exercise of certain rights or freedoms is enshrined in the international, regional and national legal acts, which we mentioned above and which we will "dissect" in the following, such regulations confirming and recognizing implicitly the relative character of human rights and freedoms and the fact that they cannot be manifested absolutely.

From the theory promoted and affirmed by all international, regional and national legal instruments that incorporate fundamental rights and freedoms, transposes the general idea that the restriction of fundamental rights can be carried out only with exceptional character and only in cases and conditions expressly provided by law. Of course, the establishment of legal coordinates for the exercise of rights, to which are added the moral, political, confessional, ethical or philosophical ones, become just and corresponds to the need to ensure the security of the exercise of the rights of others, in the perspective of achieving the common good and achieving national interests. According to the international provisions mentioned above, the general interest becomes

the supreme reason in favor of which the state can act by restricting the rights and freedoms of a person, the doctrine invoking the idea of social and not political general interest. [44] At the same time, the idea promoted is that this contradiction between the prioritization of the general interest and the full, absolute exercise of human rights is only an apparent one, given the possibility of identifying a balance between particular and general interests in a democratic society. We believe that this is an ideal that can be achieved by reforming the rights and freedoms from a much deeper perspective, at the center of which is the unique human being, and not just the man regarded as a citizen, a citizen with the rights and obligations related to the "on the track" of the society. This balance can be achieved by ensuring the transparent manifestation of the human personality and the absolute protection of his conscience, and by promoting and developing tools and institutions that contribute to such goals on a constant basis.

Rights whose exercise may be restricted fall under the category of conditional rights, i.e. those rights or freedoms which enjoy relative protection and are susceptible to restrictions or derogations of an exceptional nature. Among them is freedom of thought and expression. [45]

The Universal Declaration of Human Rights prohibits by the provisions of art. 30, abuse of law, meaning that no provision of this international document can be interpreted as implying for a state or a person the right to engage in any activity or to carry out any act leading to the abolition of the fundamental rights and freedoms thus regulated. At the same time, according to art. 29, paragraph 2, in exercising the rights and freedoms set forth in the Declaration, each person is subject only to the restrictions established by law for the sole purpose of ensuring the recognition and respect of the rights and freedoms of others, as well as in order to satisfy the just requirements of morality, public order and general welfare, in a democratic society.

Also, the *International covenants* contain provisions authorising states to set limits on the exercise of their rights, in this regard the *International protocol on civil and political rights* stipulating in art. 4 that, where an exceptional public danger threatens the existence of the nation and is proclaimed by an official act, states may, within the strict limits of the requirements of the situation, order measures derogating from the obligations laid down in the Covenant, provided that such measures are not incompatible with their other

obligations under international law and that they do not result in discrimination based solely on race, colour, sex, language, religion or sexual origin. We must emphasize here that the protocol does not authorize any derogation from certain rights and freedoms, among which we also find freedom of thought, conscience and religion, in addition to the right to life, the right not to be subjected to torture or cruel, inhuman or degrading punishment, etc. At the same time, according to art. 18 of the Covenant, "*freedom of expression of religion or belief may be subject only to restrictions on morals or the fundamental freedoms and rights of others*".

The Human Rights Committee provides us with certain interpretative guidelines relating to article 18, paragraph 3 of the International Covenant on Civil and Political Rights, establishing that "*the freedom not to be coerced into adopting a religion or belief and the freedom of parents and guardians to provide religious and moral education cannot be restricted (...) the limitations imposed must be laid down by law and must not be applied in a way that would infringe the rights guaranteed in article 18. The Committee notes that paragraph 3 of article 18 must be interpreted strictly: restrictions are not allowed for reasons not specified (...). Limitations may be applied only for those purposes for which they were prescribed and must be directly correlated and proportionate to the specific needs on which they are based. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner. The Committee notes that the concept of morals derives from many social, philosophical and religious traditions; consequently, the limitations of the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles that do not derive exclusively from a single tradition*. [46]

Regarding the *European Convention on Human Rights*, we mention that it also contains provisions related to the extent of the exercise of the rights, establishing in art. 15 that in the event of war or other danger threatening the life of the nation, any high contracting party may take measures derogating from the obligations laid down in the convention, to the strict extent that the situation so requires, and provided that such measures are not inconsistent with other obligations under international law. We find, moreover, a marked similarity between art. 18 of the International Covenant and art. 9 of the Convention, the latter stipulating in par. (2) that "*the freedom to manifest one's religion*

or beliefs may not be subject to restrictions other than those provided for by law, which, in a democratic society, constitute necessary measures for public safety, the protection of order, health, public morals, the rights and freedoms of others".

From these international legal provisions, we deduce that we relate to two different dimensions of manifestation of freedom of thought, conscience and religion. On the one hand we are talking about *forum internum,* which constitutes the inner sphere of the person in its absolute fullness, the manifestation not being externalized. On the other hand, we speak of *forum externum,* which involves the externalization of thoughts, beliefs by relating to the belonging society. In the case of freedom of religion this is manifested, for example, in the fact that each person is free to adhere to a particular religion as a spiritual manifestation.

Also, in *The Charter of Fundamental Rights of the European Union,* we find provisions on *the strength of the rights guaranteed, the level of protection and the prohibition against abuse of rights*. Thus, with regard to the force of rights, the Charter stipulates that any limitation on the exercise of the rights and freedoms recognized by it must be provided for by law, the essential content of the rights being respected. The Charter invokes the principle of proportionality, in the sense that limitations can only be applied if they are necessary and effectively respond to the general interest recognised by the Union or to the need to respect human rights and freedoms.

Under the "auspices" of international and regional regulations, national law has drawn up its own provisions on legal restrictions of rights, the *Constitution of Romania* stating in art. 53 - Restraining of the exercise of certain rights or freedoms, the fact that the exercise of certain rights or freedoms may be restrained only by law and only if it is necessary, as the case may be, for the defense of national security, order, health or public morals, for the conduct of criminal instruction or for the prevention of the consequences of a natural disaster, a disaster or a particularly serious damge. Following the idea of applying the principle of proportionality, the Romanian Constitution states that "*the measure of restraint must be proportionate to the situation which caused it, applied in a non-discriminatory manner and without prejudice to the existence of the right or freedom*". It is worth noting that art. 53 of the Constitution does not specifically indicate the rights whose exercise can be restricted and does not provide a legal qualification of the concrete

situations in which such measures would be required, aspects that reinforce what we are trying to emphasize through our research, namely the insecurity and the existence of abstract norms, lacking certainty and transparency in an area where such hesitations and gaps should not be allowed.

Far from floating in this captivating sphere of the philosophy of law and morality, the freedom we are considering has so many social, intellectual and conscience nuances that it becomes difficult indeed to outline and encompass in uniform regulations the limits and restrictions of such freedom as that of thought, conscience and religion, restrictions that can be reflected in dominant opinions, in the suffocating power of the mentality of the community, in institutional politics, in the often abusive interventions of forms of power or in bureaucracy. All this certainly affects the individualistic liberal attitude, being necessary a development and acceptance of the culture of diversity, through the crystallization of what is called *modus vivendi,* by recognition of *human nature and the irreducible diversity of persons, in the sense that we each face an "individual trajectory as a unique life experiment or as an adventure of the manifestation of personality*". [47] It is precisely this diversity that should guide public intervention and shape moral and legal norms, avoiding the exaggerated amplification of public power over the individual, exercised both by the force of public opinion and by the force of normative act. This mechanism subtly "dressed" in the idea of public interest and good morals "weakened" and "stifled" the inner power of the individual. There is perhaps a sphere of action in which society has no interest, and that sphere is shaped by the "inner universe" of the human being, their feelings, emotions, that part of the existence of man that only "touches" themselves. This is the absolute dimension of man's right to freedom of thought and spirit, as the inner domain of human conscience. After all, the individual cannot be accountable to society for what they feel and think, as long as their externalization does not affect the interests of other people.

Perhaps the harshest restrictions of freedom of religion in Romania manifested in the years of democracy took shape in the context of the Covid_19 pandemic, more precisely in 2020, by limiting the participation of believers in religious events such as pilgrimages, restrictions related to Easter holidays, special rules for officiating of liturgy services or limiting the number of participants in the situation of officiating marriage and baptism services, topics that generated great controversy at the level of Romanian

society. The conclusion of the courts was that the reactions of the authorities were in accordance with the principles of proportionality and necessity, and the excessive use of force in achieving the health protection objectives was excluded.

This divergence of religious freedom, manifested in its dimension *forum externum* and the imperative of protecting public health, as the ultimate collective value, has triggered a real challenge worldwide in the mission of maintaining a legal balance, since, as we mentioned in our research, the norms are quite abstract about possible restrictions of rights, leaving room for interpretation. For example, in this context of the pandemic, the Supreme Court of the United States of America held that the measures advanced by the Executive Order of the governor of the State of New York were excessive in relation to the objective pursued, namely that of protecting public health. This Executive Order concerned public health protections that particularly affected the organization of religious gatherings. Thus, the Court held that such measures, although justified by the protection of public health, must not be intrusive in the sphere of the freedoms of individuals, the extraordinary circumstances created by the Covid-19 pandemic cannot constitute a pretext for the non-necessary limitation of human rights, both the protection of public health and religious freedom being equal in importance. [48] Incidentally, *Special rapporteur on freedom of religion or belief* drew attention to the phenomenon of increasing anti-semitism since the outbreak of the COVID-19 crisis, with the Rapporteur also expressing concern that certain religious leaders and politicians have exploited the difficult times during this pandemic to spread hatred against Jews and other minorities. [49] In response to such behaviour, the World Health Organisation has also developed an *Interim guidance on practical considerations and recommendations for religious leaders and faith-based communities in the context of COVID-19* [50], which provides guidance on appropriate conduct for religious leaders in order to ensure the prerequisites for the correct management of a pandemic, including the idea that such isolation requirements can dramatically affect the intra-psychic life of people who will want to take refuge in spiritual institutions in order to regain mental comfort.

Going beyond the religious dimension of freedom of thought, conscience and religion, we will turn our attention to the other two dimensions of this freedom, less addressed in the literature and less anchored in practice and propagated in national or

international jurisprudence. Indeed, respect for freedom of conscience, for which there should be no limits as long as personal beliefs are not imposed on others and do not harm them, is very difficult to achieve, even more so in a world globalized and "invaded" by artificial intelligence.

When freedom of conscience and freedom of thought predominate, a human being can live according to their own idealization, it is conscience that shapes human choices and that distinguishes them from other beings. "Browsing" the literature on rights and freedoms, we will find that freedom of thought, conscience and religion is treated mainly by the dimension of the right to religion through the freedom to choose, change and practice one's own faith, to confess it or not, freedom of conscience being also outlined in the developments of the doctrine also by reference to freedom of religion. In reality, we forget, in fact, the essence of this freedom, freedom of conscience being imperative and much more comprehensive than freedom of religion. Conscience covers all the values that a human being values, whether they are religious in nature or not. In 2023, the UN Special Rapporteur on freedom of religion or belief reported that there are alarming challenges that undermine efforts on conflict prevention, other human rights, including the capacity for expression and the ability of minority groups to participate in public life. [51]

We should mention that in 2021, the Special Rapporteur on freedom of religion or belief, Ahmed Shaheed, presented at the United Nations General Assembly the "*Freedom of Thought Report*" [52], this representing the first moment of bending and reflecting on the content and scope of freedom of thought since its consecration in 1948 through the Universal Declaration of Human Rights, but also the first moment of awareness on the fact that freedom of thought has received extremely little attention in jurisprudence, legislation and studies, national or international, the reasons for historical neglect being the consideration of this freedom as a right more symbolic than practical.

This first awareness manifested at the international level represents an important impetus in the reformation of this freedom "covered in dust", which could be resized by reference to the multifaceted nuances that it entails, incorporating here also what the doctrine calls "a right of the soul", because freedom of thought, conscience and religion can not be interpreted rigidly, but in a unitary vision of what the "inner universe" of the human being implies.

The “Freedom of Thought Report” was the result of interdisciplinary analyses and reflections, through the interconnection of analyses in the fields of law, psychology, psychiatry, neuroscience, digital technology, etc., which once again demonstrates the complexity of this freedom and the need for a “spider” vision. Thus, the Report identified four possible attributes of freedom of thought, namely: man must not be forced to reveal their thoughts, must not be sanctioned for their thoughts, thoughts cannot be altered impermissibly, and the need to promote an environment conducive to freedom of thought by states. But the question remains whether such a conceptualization is sufficiently comprehensive and convincing, all the more so since we do not even possess the absolute truth or a rigorous common understanding of what we mean by “thought”.

At the same time, the Special Rapporteur on freedom of religion or belief examined this freedom in relation to potential violations of freedom of thought, identifying the following seven ramifications: cruel, inhuman or degrading torture or punishment, surveillance, coercive proselytism, efforts to combat blasphemy, intellectual freedom and education, existing and emerging technologies, mental health and conversion practices. These ramifications of reflection demonstrate the “echo” and complex potential range of application of freedom of thought. And when we say freedom of thought, we can also refer to freedom of conscience, which has similar, almost identical shades of interpretation.

With regard to the reason for the neglect of freedom of thought, the researchers also invoked the fact that the interests falling within the sphere of protection of this freedom were covered and protected by other rights, such as freedom of expression or the right to privacy.

Perhaps the very fact that it is very difficult to decipher the absolute nature of freedom of thought has made it difficult to establish in concrete terms how and when this right can be violated, but we consider that freedom of thought and conscience cannot be identified with freedom of expression, where we speak only of *forum externum,* not the *forum internum,* that is, those intimate beliefs of the human being, which in turn need protection through regulation. Moreover, freedom of thought and conscience remains the essential pillar of the support and realization of other freedoms, including that of expression. Until now it seems that the legislator perceived the idea of thoughts only in relation to their manifestation, externalization through speech or behavior, but the

freedom of thought, conscience and religion presents a real labyrinth of meanings and reflections, thought and expression being distinct from a conceptual and practical point of view. The Rapporteur summarises this link in the idea that "*they engage in a perpetual feedback loop in which expression becomes a vehicle for the exchange and development of thoughts, while thoughts in turn fuel expression*". There is even a point of clash between freedom of thought and freedom of expression, in the sense that freedom of expression could be "frozen" by an absolute freedom of one person's thoughts, thoughts that could thus be affected, "shaped" by another person's free expression. This analysis also gives rise to other nuances of interpretation and makes the process of comprehensive regulation of freedom of thought difficult.

From a pshihological perspective, there have been voices [53] who have argued that thinking begins with a social act, which is internalized by people, although, in our opinion, such an approach would nullify the independence and freedom of man in thought and conscience, to which we aspire in our analysis.

Perhaps the lack of interest in the content of this freedom also lies in the fact that thoughts or conscience are intangible, just as the "soul" of the human being is. Precisely in this idea, the mentioned report also includes a neuroimaging study, in the idea of demonstrating the existence of thoughts, according to which suicidal thoughts can be read with an accuracy of 90%. At the same time, there are studies that demonstrate the possibility of altering, eliminating or recovering people's memories, as well as manipulating their thoughts.[54] In this so vulnerable context, the dominant view in the literature on the fact that freedom of thought *forum internum* (unmanifested) is an absolute right, it loses credibility. The potential to become a powerful legal instrument that provides adequate protection, however, remains in the regulatory modality and the importance given to this "lost" freedom in the corollary of human rights and freedoms.

In a very complex manner captures the concept of freedom of thought the researcher and representative Rene Cassin, one of the important figures in the introduction of freedom of thought, as well as Lebanese representative Charles Malik, [55] both of them emphasizing the "metaphysical significance" of "inner" freedom of thought. Thus, "thinking" can be understood and interpreted as summing up all forms of unmanifested mental activity, including "*deliberation, imagination, belief, reflection,*

reasoning, thinking, remembering, feeling, questioning and desire".[56] What must be pointed out is that once these thoughts, feelings, reasoning are externalized, limits and barriers arise triggered by the protection of other rights and freedoms. Thought, in turn, can be a product of a mix of feelings, emotions, life principles. In any case, the philosophy of mind and soul is difficult to penetrate the legal world towards an ideal legal foundation, the boundaries between mind and world not being clear either. Incidentally, there are many recent philosophical discussions that create points of connection between expanded knowledge and the attributes of freedom of thought.

A very sensitive element remains the possibility of "alteration" of thinking and conscience, artificial intelligence being visualized on the map of possible factors of "manipulation" of people's thoughts and conscience. Moreover, the relationship between digital technologies, big data, artificial intelligence, neurotechnology and people's rights is a highly sensitive and intensely debated topic at global level, requiring increased attention in AI regulation and a solid framework for the protection of people's rights and freedoms, especially vulnerable people such as children. 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 a "artificial intelligence law", a law in its own right, built by virtue of its own principles and functioning institutions, as we argue in our research the creation of a "right of the soul".

Although in the view of the actors of global strategies the artificial intelligence (AI) has a fabulous potential to improve people's lives, let us not forget the risks of AI on man, on his rights and freedoms, which can generate and multiply existing prejudices at the level of society. Careful consideration is needed 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 about the fact that these AI systems can perpetuate social biases, can manipulate online behaviors of children, elderly people or

other categories of consumers, by exploiting perceived vulnerabilities based on advanced data and algorithms, massively forcing commercial, electoral decisions, etc.

In this respect, the EU Digital Services Regulation which entered into force in November 2022 [57] seeks, for example, to harmonise the approach of member states in their efforts to create "a safe, predictable and reliable online environment", an environment that ensures respect for the fundamental rights set out in the Charter. From the perspective of our analysis, art. 25 par. 1 is a point of interest and focus, as it prohibits deceptive and manipulative practices, known as "dark practices", bringing to the fore the prohibition of online platform providers from "designing, organizing and exploiting their online interfaces in a way that would mislead or manipulate the recipients of their services, or in a way that would distort or otherwise materially impair the ability of the recipients of their service to make free and informed decisions".

Entering into this "time loop of AI", we must also recall that in November 2021, the 193 member states of UNESCO adopted the "*Recommendation on the ethics of artificial intelligence*", this becoming a first global agreement in the ethics of AI, a first "set" of common, universal standards, arising 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.[58] The bases of this Recommendation were, of course, the instruments of the international framework of human rights, namely the Universal Declaration of Human Rights, the International Convention on the Elimination of all Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, etc.

At the European Union level we are already talking about the proposal of an EU regulation on artificial intelligence, [59] under which AI systems 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 behavior by bypassing users "social scoring", systems that exploit individuals' vulnerability, and systems that allow public authorities to create profiles or scores based on social behavior, the ultimate goal being to ensure a human-centered law guided by ethical principles.

The artificial intelligence practices mentioned in the draft Regulation will certainly have a significant impact on the rights to freedom of thought and mental integrity. For example, art. 5 par. (1) letters A) and B) of the Regulation prohibits the use of AI systems

that "*uses subliminal techniques without the persons being aware of it, to meaningfully distort the behavior of a person in a way that brings or may cause physical or psychological harm to that person or another person, or that exploits any of the vulnerabilities of a particular group of persons due to age, physical or mental disability, to meaningfully distort the behavior of a person belonging to that group in a way that brings or may cause physical or psychological harm to that person or another person".* And here we have in mind the identification of key components of human thinking or conscience, such as reasoning, reflection, cognitive or affective vulnerabilities, etc., which AI has the potential to exploit.

We believe that a rethinking of traditional human rights and freedoms is imperative in the light of (r)the evolution of AI, which outlines its supremacy through interdisciplinary and technological advances such as robotics, nanotechnology, biotechnology, quantum computing, fifth generation wireless technologies (5G), etc.

Outlining a "Right of the Soul" in the corollary of the legislation of fundamental rights and freedoms through an in-depth approach to freedom of thought or conscience

Eleanor Roosevelt, President of the Commission that drafted the Universal Declaration of Human Rights, said that "*Human rights must be understood through the world of the individual, through the immediate environment of his life (the place where they live, the place where they work or learn, etc.). If such rights are emptied of meaning in these places, they have no value anywhere. Without concerted action by citizens to secure these rights in the immediate framework of their lives, we will vainly look for signs of progress in the universe in which they live".* [60]

What is this "world of the individual"? Can this "inner world of the human being" be summed up to the current legal content of freedom of thought, conscience and religion? We have observed that researchers have attempted to translate "thinking" or "conscience" as summing up all forms of mental activity and mental perception [61] unmanifested, nonexteriorized, including "deliberation, imagination, belief, reflection, reasoning, thinking, remembering, feeling, questioning, and desire".

The doctrine of the soul dates back to a period before the great scientific discoveries, and there has always been a major interest in the research and discovery of this mystery. From the very beginning, the great philosophers considered the human body as a matter inferior to the “treasures” of memory, the mystery of creative thinking, the depth of human feelings and the glory of the mind being associated and attributed to the soul, regarded as a “divine spark”.

Descartes, also called the “father of modern philosophy” because of his revolutionary approach to philosophical investigation, outlined such a dualistic position *mind-body*, according to which, unlike other physical systems, people are created, uniquely constituted “*from an immaterial substance-the soul*”, essential characteristic that breaks away from the idea of the physical body. By the term “mind”, Descartes actually intended to emphasize a very wide variety of mental states and processes, including beliefs, desires, intentions, reasoning, linguistic ability, and emotion”. We thus understand that the “mind” as described by Descartes, identifies with what we call the “soul”. In other news, we consider that all this means more than “thought’ or “conscience”, as we see from freedom of thought, conscience and religion.

The idea of regulating a “right of the soul” in reality complements this freedom currently lacking in content and depth. Although it seems a philosophical approach, freedom of thought should be protected both to the extent that it relates to the process, the reasoning by which we come to these beliefs, feelings, thoughts, etc., and to the extent that it relates to the beliefs that we come to retain, to “encapsulate” them in our conscience as products of this process.

In our opinion, freedom of thought, conscience and religion “claims” the right of legislative reform by “broadening” the scope and interpretation that would aim to merge with the vision [62] of a right of the soul, a soul which though intangible is not abstract and nonexistent at all. How this would materialize in regulations, in norms of law, remains a difficult topic to figure out. Based on Rumi’s statement in the Beirut declaration “*There are as many paths to God as there are souls on this Earth*”, [63] we realize, in fact, the uniqueness of each human being, the diversity of the way of approaching and perceiving the meaning and vision of regulating human rights and freedoms. In his work “Towards a right of the soul...”, author Cristina Elena Popa Tache talks about a first stage which is the

affirmation of a right of the soul and of the biofields of life forms by moving from phenomenon to legal norm, the second stage being materialized by the need to set up institutions to deal with the observance of these special rights.

Also, Rene Descartes reflects on the sense and meaning of the statement *"I think, therefore I exist". ("Cogito Ergo Sum*"), one of the most famous theories in philosophy. Trying to "unravel" this philosophy of life of Descartes, we find that the mind and body of the human being condition one another, he affirms that if he were to question his existence, then comes the thought that cancels any trace of doubt about his existence, and therefore, the thought confirms his existence. We could go further, by extending the theory to the idea outlined in our research, respectively "*I think, I feel, therefore I exist*". This "I feel" comes to certify the idea of "soul" which in our opinion takes the form of "emotion" and which cannot identify with thought or conscience, but can only "shape" them, being in symbiosis with them, all shaping the "inner, intimate universe" of the human being, which requires a higher degree of regulation and protection, through a deeper reflection and emphasis on this matter and on human rights and freedoms.

This mind-soul identity and overlap established in our culture comes even from the definition offered to the soul in linguistic dictionaries. According to the Explanatory Dictionary of the Romanian language, the soul means "*the totality of the affective, intellectual and volitional processes of man, character trait, spiritual substance in its own right, independent of the body, which gives Man life, individuality and personality, and which is of divine origin and with eternal essence, breathing, breath (lat. sufitus means breathing)*". We see that it is an interweaving of concepts, from those specific to the human mind, conscience, thoughts, intellect, to those of a religious order, perhaps hence this association of elements in the constitution of freedom of thought, conscience and religion. An association that still represents a legal conundrum, difficult to decipher. This dualism *mind-soul,* synonymized by the legislator, however, it must be nuanced. The idea of "soul", which represents the principle of life, must be "cut off" from the idea of "mind" which takes the form of thoughts and conscience, the latter being unable to incorporate the feelings, emotions of a human being, which together with thought and conscience shape the personality and uniqueness of man. This separation also results from the conception of Christianity, which adopted the view of the Greek philosopher Plato,

according to which man consists of a mortal body and an immortal soul, death leading to the separation of the soul from the body.

On the same line of ideas, Georges Burdeau gave a distinct nuance to human rights, qualifying them "*abstract prerogatives*", recognized to human nature as being opposed to public freedoms as "*effective prerogatives*", likely to achieve, that is, guarantee and legal protection.[64] Although the doctrine today gives the same legal value to both rights and freedoms, confirming that they have the same content and that they all designate a single legal category, namely the fundamental right, we consider that the idea promoted by Georges Burdeau finds its application even today. Why? Because certain rights or freedoms have remained at the stage of "abstract prerogatives", and here we are especially considering freedom of thought and conscience.

Francis Crick, a Nobel laureate for his discovery of the molecular structure of DNA, argued in his work "The Astonishing Hypothesis", published in 1994, that the soul is an illusion, perpetuated only by our faith, meaning, "*joys and sorrows, memories and ambitions, a sense of personal identity and free will, all this is nothing more than the behavior of a huge number of nerve cells and their associated molecules*". In this sense, it is attempted to demonstrate the fact that the damage to different regions of the brain leads to the change of essential aspects of the mind, which can destroy our emotional capacity, language, memories, creativity, qualities that many attribute to the soul.[65] On the other hand, the American doctor Stuart Hameroff and the British physicist Sir Roger Penrose have developed a quantum theory, according to which the human soul is found in cells called microtubules, which are in turn located in the brain, in the sense that "*our conscious state is thus the result of the effects of gravity in microtubules...when a person is on the verge of death, microtubules lose their state of affairs, but the information in them is not destroyed, but scattered. In other words, the soul does not die, but returns to space*". [66] At the same time, the Spanish neurologist Joaquin Fuster developed the theory that both memory and soul transpire from the great neural network of the brain, being connected to each other. [67] If we go back to the Renaissance period, we will find that Leonardo Da Vinci also claimed that the soul is located in a deep area of the brain, more precisely above the optic chiasm. No matter where the soul is, which most of the time we perceive at the level of the chest, stating that "we have a void in the stomach"

when the emotion is of a very high intensity, it remains a complex phenomenon that scientists continue to study and research, and the connection between the human brain and faith is a real fact that “unveils” an interdisciplinary branch of science, called neurotheology. Even serotonin is called the “molecule of faith”, the outstanding professor and neurosurgeon of our days, Alexandru Vlad Ciurea, asserting that the essence of the soul lies in the central part of the brain, and not at the level of the heart. It brings into discussion the brain-heart dualism, the brain representing the “jewel” and the essential element of inter-human communication, of living, love and faith. [68]

Because we do not intend to carry out an exhaustive analysis of the brain-mind-soul connection, we will sum up to highlight the fact that neuroscientists say that it is not an exaggeration when we say about the human brain that it is the most complex thing discovered in the universe. It no longer matters where the soul is, but that somewhere, in this human body, it exists within us.

The fact that the brain cells are visible, but the conscience, thought or feelings of the human being are invisible, does not equate to non-existence, and this is also reinforced by the judgment delivered on April 20 by Judge Marc-Andre Blanchard of the Superior Court of Quebec, according to which “the human soul exists”. In the present case, the subject of the judgment was whether a religious person could be asked to remove their religious symbols during working hours, and the Court’s answer was a negative one, in the sense that “this violation would reach the very soul or the very essence of that person”. [69] On the other hand, in our research we observed how in the jurisprudence of other states, the social interest prevailed, more precisely the professional one, in the interpretation of freedom of thought, conscience and religion. It’s about the cause *Eweida and others against United Kingdom*, in which the Court held that the employer’s interest in projecting a particular image to the airline, which prohibited employees from wearing a crucifix at work, was undeniably legitimate. From here it results in a diversity in interpretation and materialization of this freedom, applied and respected differently from one state to another. In reality, the “shoulders” of jurisprudence carry this mission of interpreting and identifying certain presumptions or theories “connected”, of course, to the culture and values of the respective community, theories integrated in the motivation of such court decisions.

Starting from the idea captured by the Quebec judge, namely that the soul is the essence of a person, we turn our attention to its conceptualization in the view of the current doctrine, which describes the soul as "*the spiritual and philosophical reality of every human being...it constitutes the guiding principle of his life and implies either the development or sclerosis of his personality...but to simplify, the soul can be summed up by the meaning of the life it gives itself, by the relationship with the world it has founded*". [70] In this context, the chosen religion, the confession practiced or the practice of spiritual development, the elements in the view of the legislator, doctrine and jurisprudence, become irrelevant, in the sense that all that matters becomes the perception of the human being on his soul environment but also on the "soul environment of other life forms", which gives rise to the idea of the need to identify unified regulations and an efficient legislative system, towards a spiritual evolution. Alternative or complementary medicine needs legislative support, for example, according to a report by the World Health Organization, [71] 88% of member states recognizing the usefulness of these therapies, and some of them even develop regulations in this regard. It is about the therapeutic interventions, such as acupuncture, acupressure, Reiki, Tai Chi, Chi Gong, etc., that influence the disorders of the biofield. For example, in 1937, in Romania, was founded the Romanian society of acupuncture, officially recognized by the Ministry of Health 22 years later. Researchers are talking about intangible aspects of the human being, with the director of the Center for Biofield Sciences referring to the vital energy believed to flow through the human body. A uniform and safe use of these therapies also involves the development of policies and regulations that integrate such practices into health systems. It is obvious that we need to create bridges between science, man's spiritual beliefs and the law, for the benefit of mankind, since these developments in the research of the human body and spirit, in the life sciences, involve increasingly complex valences that require the provision of an effective legal regime. We are talking after all about a property law that people have over their own biofields. These therapies are based solely on human energy and have a close connection with the soul. Let's not forget about the idea of "aura" or "chakras", intensely debated and deepened in multidisciplinary style, both by philosophers, doctors, priests, scientists, stating that people hold an energy that can have a good or bad influence on the health of the people around them, and the color of the aura can vary from

person to person depending on the way of life, the “human atmosphere’, as it is also called aura, and which can be used in medical diagnosis and prognosis. [72]

We consider that in addition to the need to reform the freedom of thought, conscience and religion, a scenario we have contemplated in our interdisciplinary analysis, a profound reset of human rights and freedoms is required by assimilating the new national and international vision, namely the regulation of a right of the soul, as a distinct branch, through which the legislator to attach special importance to the spiritual area of the human being, the road being already opened with mastery and soul by researchers with vision.

The French doctrine [73] defines the person as “*the Union of soul and body, to which life is added*”, an idea taken and transposed internally by the Romanian legal doctrine [74]. Let us “stretch” our minds to horizons wider than those with which we are familiar and “open the doors” to disciplines, branches of law innovative and necessary, at the same time, such as the regulation of a right of the soul environment, including energy, configured as a set of norms “*which regulates patrimonial and non-patrimonial relations between all forms of life, on the basis of their legal equality before such subjective rights* (...) *the rights as a whole, which have to do with the soul and with the energy fields of life forms, are prefigured as having opposable power, meaning in which they appear as absolute rights, which can have both a patrimonial and a non-patrimonial nature, and which, as a degree of autonomy, are principal rights that offer their holders complete security since they produce their effects immediately, definitively and irrevocably, being pure ans simple rights*”.[75] In this sense, the “right of the soul” can be framed in the corollary of the absolute rights recognized so far, inseparably linked to the human person, such as the right to health and physical or mental integrity, the right to honor and reputation or the right to property. Moreover, extrapolating civil law to a right of the soul, we can consider the non-patrimonial relations, of a moral nature, which can, in turn, form the object of regulation and interest for such a law, the international law, especially the humanitarian one having perhaps the greatest potential to develop the sources, principles and mechanisms of regulation in sedimenting this new law that would give more legal force to the current palette of codifications on human rights and freedoms.

Conclusions

Transdisciplinarity remains the science capable of offering diverse methods that eliminate the obtuseness and rigidity of our vision and keep pace with the evolution of humanity, by merging complex and multifaceted regulations on the way to spiritual evolution. In a globalized era, "shaken" by industrial revolutions, digitization, robotics but also spiritualization, law, as a science in itself, does not allow itself to "hibernate", to stagnate. The law is creation, a creation not only in the service of man, but in the service of balance, harmony with everything around us and gratitude for life, which we owe to the universe, or in other words, to God, the creator of this universe, as we perceive and understand each of us, being unique.

Let us contribute together to the contemporary architecture of human rights, an architecture in which freedom of thought, conscience and religion occupy a special place. Each legislation evolves through the prism of its beliefs, through the prism of its moral and cultural values. Let us not forget that our legislation "stands" on the foundation of Christian values. The official formula with which we conclude any oath is "*So Help Me God*", which awakens in us the awareness of justice, equity, but above all love and forgiveness, mutual respect in the idea of the law of the boomerang, according to which everything returns to you as you have transmitted, after deed and reward. The same happens in the case of this dualism between the self, the human being and the outside world, understood through everything that surrounds us, nature, plants, animals. It is a process, a permanent flow of mutual exchange that must remain in perfect balance. Let us not forget the latin dictum "*nihil sine Deo*", translated as "nothing without God", which dates back to the nineteenth century and which for almost eight decades, between 1866 and 1947, was the symbol and creed of our political system, becoming a symbol of royalty.

In a society where freedom of conscience, freedom of thought, freedom of religion prevail, but also the right to expression of every man according to their own infusion of values, their own idealization and spiritual faith passed through the filter of pure conscience, and shaped by faith in God and the universal ideal, development and growth are inevitable. Freedom of thought and conscience is the foundation of freedom of expression, that expression that confers value on words. It is said that many people speak before they think, but words can sometimes be the "avalanche" of our inner turmoil, which

can “heal our soul”. It is not for nothing that they say “think positively”, because this leads to acting positively, to exteriorization, that is, that *forum externum* which we talked about in our analysis. As Tesla said, we are energy, frequency and vibration, in the sense that, based on our thoughts, the soul emits a frequency, a frequency that based on the energy of the human being externalizes vibration. After all, “we are what we think”, let us build a conscience in accordance with the universal law of love, because we build happiness through inner power, as Dale Carnegie subtly interpreted it: “*Remember that happiness does not depend on who you are or what you have. It depends only on what you think*”.

Freedom of thought, conscience and religion, reformed by the idea of “coagulation” with a right of the soul, can become an absolute right but also “blunt” in interpretation. In its present form, this freedom, as regulated and developed in the literature and jurisprudence, is too simplistic and fails to capture the complex range of ways in which it can be metamorphosed.

We need to consolidate a strong global perspective, by developing and implementing legislative instruments and standards that are grounded 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 and interconnection with everything around us have been strengthened.

References:

[1] Nicolescu Basarab, The Transdisciplinary Evolution of the University - http://cds.cern.ch/record/365269/files/SCAN-9809055.pdf.
[2] Craiovan, I., Exigențele Demersului Științific - Repere Majore Pentru Configurarea Ramurilor Dreptului, in Dreptul no. 3/2017, p. 24 and seq.
[3] Ilie, Diana Maria Ilie, Efectele insolventei asupra mediului economic si social din Romania in contextul globalizarii, Chapter 2.1. Insolvency - possible transposition into interdisciplinary/multidisciplinary models of analysis, Universul Juridic Publishing House, Bucharest, March 2021, pp. 57-65
[4] Popa Tache, Cristina Elena, Spre un drept al sufletelui și al biocâmpurilor formelor de viață, Adjuris, Bucharest, 2021, also published in France, see - auteur Cristina Elena Popa Tache,
préface de Jean-Luc Martin-Lagardette, "Vers un droit de l'âme et des bioénergies du vivan", Ed. L Harmattan, Collection: Logiques Juridiques, 2022.
[5] In this sense, author Cristina Elena Popa Tache is also an active researcher member in CIRET Paris-Centre International de Recherches et Études Transdisciplinaires, as early as 2022. For development in the area of transdisciplinarity see also Cristina Elena Popa Tache „Le dynamisme du droit international public contemporain et la transdisciplinarite”, Ed. L'Harmattan Paris, collection „Le droit aujourd'hui”, septembrie 2023, Cristina Elena Popa Tache, Cătălin Silviu Săraru, New Transdisciplinary Directions in International Law?, Lex Humana, nr. 4/2023 - https://seer.ucp.br/seer/index.php/LexHumana/article/view/2705.
[6] See Philippe Bilger, États d'âme et de droit, Cherche Midi 9 Avril 2009, POPA TACHE, Cristina Elena, MARTIN-LAGARDETTE, Jean-Luc, Après les droits de l'homme, le droit de l'âme et du Biochamp des

êtres. Notes théoriques et d'acceptabilité, în Terra Hn, Réseau scientifique de recherche et de publication - http://www.reseau-terra.eu/article1450.html., precum și Nathanaël Dupré la Tour, Politique des droits de l'âme. La Charte 77 et ses échos français, Esprit 2009/2 (Février).
[7] Popa Tache, Cristina Elena, Săraru, Cătălin Silviu, Lawfare, Between its (Un)Limits and Transdisciplinarity, PRECEDENTE 2023 VOL. 23 / julio-diciembre, 37-66. CALI – COLOMBIA, https://doi.org/10.18046/prec.v23.5889.
[8] Domingo, Rafael, Why Spirutuality Matters for Law – An Explanation, Oxford Journal of Law and Religion, Volume 8, Issue 2, iunie 2019, p. 343*, apud* Popa Tache, Cristina Elena, op.cit., p. 18.
[9] Touraine, Alain, Penser autrement, Fayard, Paris, 2007, *apud* Popa Tache, Cristina Elena, op.cit., p. 12.
[10] Popa Tache, Cristina Elena, Spre un drept al sufletelui și al biocâmpurilor formelor de viață, op.cit., p. 48
[11] See art. 58 of the roman Civil Code: rights of personality – „(1*) Everyone has the right to life, to health, to physical and mental integrity, to dignity, to his own image, to respect for private life, as well as other such rights recognized by law.2. These rights shall not be transferable".*
[12] See Maftei, Roxana, Drepturile personalității și oportunitatea consacrării lor legislative în diferite state, 17 februarie 2020 - https://www.universuljuridic.ro/drepturile-personalitatii-si-oportunitatea-consacrarii-lor-legislative-in-diferite-state/.
[13] Chelaru, Eugen, Drepturile personalității în reglementarea noului Cod civil, in Dreptul no. 10/2011, pp. 30-31.
[14] Lauber-Ronsberg, A., The Commercial Exploitation of Personality Features in Germany from the Personality Rights and Trademark Perspectives, The Trademark Reporter, vol. 107, no. 4, July-August 2017, p. 803-847. HeinOnline, p. 809, apud Maftei, Roxana, Drepturile personalității și oportunitatea consacrării lor legislative în diferite state, op.cit.
[15] Eugenia Speranția, in Viața și Opera Prof.univ. C. Rădulescu-Motru, Omagiu Profesorului C. Rădulescu-Motru, Societatea Română de Filosofie Bucharest, Revista de Filosofie, Volumul XVIII, 1932, pp. 90-93.
[16] COP28 World Climate Action Summit, Dubai, United Arab Emirates, December 1-2 2023 - https://www.consilium.europa.eu/ro/meetings/international-summit/2023/12/01-02/.
[17] Council conclusions on EU priorities for 2023 at UN human rights forums, Council of the EU, press release, 20 February 2023 - https://www.consilium.europa.eu/ro/press/press-releases/2023/02/20/council-conclusions-on-eu-priorities-in-un-human-rights-fora-2023/
[18] Drepturile personalității și Bioetica – Interferențe normative și corelații de fond - https://www.beckshop.ro/media/product/documents/6648_fp_3485_Extras%20dreptul-persoanelor-dreptul-obligatiilor_cuprins.pdf
[19] Dobozi, Veronica, Declarația Universală asupra Genomului Uman și Drepturilor Omului, 11 noiembrie 2021 - https://www.hotnews.ro/stiri-specialisti_stoica_si_asociatii-25172495-declaratia-universala-asupra-genomului-uman-drepturilor-omului.htm
[20] Domingo, Rafael, Why Spirutuality Matters for Law – An Explanation, Oxford Journal of Law and Religion, Volume 8, Issue 2, iunie 2019, p. 343, *apud* Popa Tache, Cristina Elena, op.cit., p. 76.
[21] Kelsen, Hans, General Theory of Law and State. The Lawbook Exchange, 2007, p. 392, *apud* Popa Tache, Cristina Elena, op.cit., p. 126.
[22] See Voiculescu, Nicolae, Berna, Maria-Beatrice, Drepturile omului și dreptul umanitar în timpul conflictelor armate. Privire specială asupra Ucrainei, 2 March 2022 - https://www.universuljuridic.ro/drepturile-omului-si-dreptul-umanitar-in-timpul-conflictelor-armate-privire-speciala-asupra-ucrainei/
[23] For development, see Duminică, Ramona, The divine foundation of the law, Agora International Journal of Juridical Sciences, no. 2/2011, pp.76-79.
[24] C. Rădulescu Motru, Personalismul energetic și alte scrieri, Editura Eminescu, 1984, pp. 198, 229, 230*, apud* Popa Tache, Cristina Elena, op.cit., p. 81.
[25] World Happiness Report 2023 - https://worldhappiness.report/ed/2023/.
[26] The norms that make up international human rights law are applicable in peacetime and the provisions of international humanitarian law are circumstantiated by the existence of armed conflict - for development see Voiculescu, Nicolae, Berna, Maria-Beatrice, Drepturile omului și dreptul umanitar în timpul conflictelor armate, op.cit;

[27] Georges, Roux, Paroles du Guerisseur, G.R. Editeur, 1950, *apud* Popa Tache, Cristina Elena, op.cit., p.8.
[28] Judgment of 14 December 1999 in the case Serif c. Grecia, &49.
[29] Council conclusions on EU priorities for 2023 in UN Human Rights fora - https://www.consilium.europa.eu/ro/press/press-releases/2023/02/20/council-conclusions-on-eu-priorities-in-un-human-rights-fora-2023/.
[30] Published in the Official Gazette No. 11 of 8 January 2007 and republished in the Official Gazette No. 201 of 21 March 2014.
[31] See Purdă, Nicolae, Diaconu, Nicoleta, Protecția juridică a drepturilor omului, Ediția a III-a, Universul Juridic, București, 2016, pp. 232-233.
[32] See Voiculescu, Nicolae, Protecția internațională a drepturilor omului, Editura Hamangiu, 2017, pp.91-92.
[33] ECHR judgment of 21 February 2008 Alexandridis c. Grecia, $38.
[34] ECHR judgment of 15 January 2013 in the case Eweida and other c. United Kingdom.
[35] See Purdă, Nicolae, Diaconu, Nicoleta, Protecția juridică a drepturilor omului, op.cit., p. 21, p. 33.
[36] Popa, Nicolae, Teoria generală a dreptului, Ed. All Beck, Bucharest, 2002, p. 140.
[37] Nordau, M., Minciunile convenționaleale civilizației noastre, translation after the 14th German edition by M. Cantianu, Bucharest, Ed. Librăriei Socec & Co., 1921, pp. 68-69, *apud* Popa Tache, Cristina Elena, op.cit., p.73.
[38] Ibidem 33.
[39] Popa Tache, Cristina Elena, préface de Jean-Luc Martin-Lagardette, "Vers un droit de l'âme et des bioénergies du vivan", op.cit.
[40] Ibidem, p. 10.
[41] „Omul sau *natural person* este o ființă umană vie, posesoare de drepturi și obligații. Sistemele juridice pot atribui drepturi și îndatoriri persoanelor fizice fără acordul lor expres" –Cornel Law School – https://www.law.cornell.edu/wex.
[42] Popa Tache, Cristina Elena, op.cit, p. 64.
[43] Marian, Octavian, Restrângerea drepturilor și libertăților fundamentale – garanție juridică a respectării statutului juridic al personalității, Revista Națională de Drept, nr. 10/2014 - https://ibn.idsi.md/sites/default/files/imag_file/Restrangerea%20drepturilor%20si%20libertatilor%20fundamentale%20%E2%80%93%20garantie%20juridica%20a%20respectarii%20statutului%20juridic%20al%20personalitatii.pdf
[44] See Purdă, Nicolae, Diaconu, Nicoleta, op.cit., p. 263.
[45] Ibidem, p. 264.
[46] UN Human Rights Committee (HRC), CCPR General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion), 30 July 1993, CCPR/C/21/Rev.1/Add.4 - https://www.refworld.org/docid/453883fb22.html [accessed 6 December 2020], adopted at the forty-eighth Session of the Human Rights Committee.
[47] For development, see Mill, John Stuart, Despre libertate. Cum ne apărăm de tirania majorității, tradusă din engleză și prefață de Adrian-Paul Iliescu, Ediția a III-a, Ed. Humanitas, București, 2014, pp. 9, 14, 41, 51, 60-68, 178-179.
[48] For development, see Voiculescu, Nicolae, Berna, Maria-Beatrice, Exercitarea libertății religioase în contextul pandemiei COVID-19: între responsabilitate și reacții emoționale, 23 decembrie 2020 - https://www.universuljuridic.ro/exercitarea-libertatii-religioase-in-contextul-pandemiei-covid-19-intre-responsabilitate-si-reactii-emotionale/.
[49] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25800&LangID=E.
[50] The guide is available by accessing https://www.who.int/publications/i/item/practical-considerations-and-recommendations-for-religious-leaders-and-faith-based-communities-in-the-context-of-covid-19?gclid=Cj0KCQiA8dH-BRD_ARIsAC24umYO9IDK1RFVKUtXHOVE7RfGHEWTd1gC62OdIYYb1VQHJ8qjiW1QfgUaAuwAEALw_wcB.
[51] United Nations Human Rights, Office of the High Commision, Module 1: Freedom of conscience, https://www.ohchr.org/en/faith-for-rights/faith4rights-toolkit/module-1-freedom-conscience.
[52] O'Callaghan, Patrick, Olga Cronin, Brendan D. Kelly, Bethany Shiner, Joel Walmsley & Simon McCarthy-Jones, The right to freedom of thought: an interdisciplinary analysis of the UN special

rapporteur's report on freedom of thought, The International Journal of Human Rights, 29 iunie 2023, https://www.tandfonline.com/doi/full/10.1080/13642987.2023.2227100.
[53] L.S. Vygotsky, Mind in Society: The Development of Higher Mental Processes, Ed. Michael Cole and others, Cambridge, MA: Harvard University Press, 1978, *apud* O'Callaghan, Patrick, Olga Cronin, Brendan D. Kelly, Bethany Shiner, Joel Walmsley & Simon McCarthy-Jones, The right to freedom of thought: an interdisciplinary analysis of the UN special rapporteur's report on freedom of thought, op.cit.
[54] Ahmed Shaheed, Interim report of the Special Rapporteur on freedom of religion or belief: Freedom of Thought. A/76/380. United Nations, Geneva, 2021, https://www.ohchr.org/sites/default/files/Documents/Issues/Religion/A_76_380_AUV.docx
[55] UNECOSOC, Commission on Human Rights, Third Session, Summary Record of the Sixtieth Meeting, 10.
[56] Lucas Swaine, 'Freedom of Thought as a Basic Liberty' Political Theory 46, no. 3/2018, pp 405–425, 411, *apud* O'Callaghan, Patrick, Olga Cronin, Brendan D. Kelly, Bethany Shiner, Joel Walmsley & Simon McCarthy-Jones, The right to freedom of thought: an interdisciplinary analysis of the UN special rapporteur's report on freedom of thought, op.cit.
[57] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance) - https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065
[58] For development see Duminică, Ramona, Ilie, Diana Maria, Ethical and legal aspects of the development and use of robotics and artificial intelligence. Protection of human rights in the era of globalization and digitization, Journal of Law and Administrative Sciences, No.19/2023 - https://jolas.ro/wp-content/uploads/2023/06/jolas19a3.pdf.
[59] Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN HARMONISED RULES ON ARTIFICIAL INTELLIGENCE (ARTIFICIAL INTELLIGENCE ACT) AND AMENDING CERTAIN UNION LEGISLATIVE ACTS, COM/2021/206 final, https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX%3A52021PC0206.
[60] „The Draft Declaration of Human Rights", New York Times, June 19, 1948. ProQuest, EBSCO, Indiana University, Bloomington.
[61] According to the 2009 Romanian Explanatory Dictionary and DOOM 2, "*mintal*" and "*mental*" have different meanings. "*Mintal*" means "concerning the mind". So, we will say "mental calculation", "mental disorders", etc. "Mental" means "concerning mentality", "mental change" (adjective), but also "collective mental" (noun).
[62] POPA TACHE, Cristina Elena, MARTIN-LAGARDETTE, Jean-Luc, Après les droits de l'homme, le droit de l'âme et du Biochamp des êtres. Notes théoriques et d'acceptabilité, op.cit. - http://www.reseau-terra.eu/article1450.html
[63] United Nations Human Rights, Office of the High Commissioner, Countdown to Human Rights Day - https://www.ohchr.org/en/faith-for-rights/faith4rights-toolkit/module-1-freedom-conscience
[64] Burdeau, Georges, Les libertes publiques, L.G.D.J., Paris, 1966, p. 12, *apud* Purdă, Nicolae, Diaconu, Nicoleta, Protecția juridică a drepturilor omului, op. cit., p.25.
[65] https://www.descopera.ro/stiinta/11324088-au-oamenii-suflet-iata-care-este-raspunsul-stiintei
[66] https://stirileprotv.ro/stiri/stiinta/cercetatorii-au-dovda-sufletul-exista-si-se-gaseste-in-creier.html
[67] Jose Roldan, Maria, Sufletul se află în rețeaua creierului, 10 august 2020 - https://www.recursosdeautoayuda.com/ro/el-alma-esta-en-la-red-del-cerebro/.
[68] See Ciurea, Alexandru Vlad, Sănătatea creierului pe înțelesul tuturor, Bookzone, Bucharest, 2022, p. 147.
[69] Popa Tache, Cristina Elena, op.cit., pp. 69-70.
[70] Ibidem 60, p. 10.
[71] WHO GLOBAL REPORT ON TRADITIONAL AND COMPLEMENTARY MEDICINE 2019 - https://iris.who.int/bitstream/handle/10665/312342/9789241515436-eng.pdf?isAllowed=y&sequence=1
[72] Steiner, Rudolf, Creeger, Catherine E., Theosophy – An introduction to the Spiritual Processes in Human Life and in the Cosmos, Hudson, New York, 1994, p. 159, sau Walter John Kilner, Atmosfera umană, *apud* Popa Tache, Cristina Elena, op.cit., pp. 49-50.
[73] Terre, D., Les questions morales du droit, PUF, Paris, 2007, p. 66.
[74] Chelaru, Eugen, Chelaru, Marius, Drept civil. Persoanele, Editura C.H. Beck, București, 2023, p.6.
[75] Popa Tache, Cristina Elena, op.cit., p. 70, p. 90.

Journal of Law and Administrative Sciences
No.20/2023

CONCERNS AND PERSPECTIVES ON COMBATING AND MITIGATING CLIMATE CHANGE

Lecturer Mihaela Cristina PAUL, PhD.
,,Titu Maiorescu" University of Bucharest, Romania
av.mihaelapaul@yahoo.com

Associate Professor Mihaela Adina APOSTOLACHE, PhD.
Petroleum-Gas University of Ploiesti, Romania
mihapostolache@yahoo.com

Abstract
Climate change is an imminent threat to the entire world and represents a change in the properties of the climate system.
The threats of climate change affect both the environment and the social and economic framework.
,,Climate change is the biggest and most massive failure to date"[1].
Climate change at the global level causes climate disturbances, the erosion of biodiversity and amplifies the effects on people's health, therefore, the climate crisis is increasingly the subject of legal regulations and correlative theoretical reflection.
We thus find the theme of climate change in numerous international documents: the United Nations Convention on Climate Change, the Kyoto Protocol, the Paris Agreement.
Keywords: *climate, climate change, right to a stable climate, climate emergency, health.*

1. Climate and climate change – common concern of humanity

The term ,,climate" has its origin in Greek antiquity. The word ,,climate" has been used since the 6th century BC by the disciple of Pythagoras, to differentiate five terrestrial zones, depending on the inclination of the Sun's rays on the Earth's surface.

In the 2nd century CE, Ptolemy expanded to seven climate zones based on latitude.

In modern times, the concept of climate is viewed differently. Today, climate is considered a holistic system, functioning globally through synergistic feed-back interactions.

Climate is made up of the atmosphere, hydrosphere, cryosphere and biosphere, together with all the component processes and activities.

Throughout time, the climate has been the target of many attempts at conquest, out of humanity's desire to subdue and control it. [2]

Since the climate represents a global public good, an all-encompassing legal regulation appropriate to the present is required.

Currently, taking into account the fact that climate disruption is global and its impact is highly localized, the problem of proper perception and adequate capacity to formulate reactions, on the part of all states, through the implementation of legal – legislative regulations more concrete, regarding the challenges of climate change.

The notions of ,,climate" and ,,climate changes" can be said to have several elements in common, on the one hand the cause of globality to which they refer, and on the other hand, even if the climate represents the prevailing meteorogical conditions, calculated in average for several years, a notion that belongs to the vocabulary of the natural sciences, it is also analyzed from a legal point of view, as it is subject to an increasingly relevant legal regime, at an international level, a fact that emphasizes its common conection with climate change.

The notions of ,,climate" and ,,climate changes" remain an object still imperceptible to law. [3]

Climate change tend to become the structuring factor of today's world.[4]

The problem of global warming, but also the impact of human activities on the climate is becoming more and more pronounced in the daily life of society, their consequences becoming more frequent and more intense.

In a vast and interdependent ecosystem like Earth's, any radical change in climate triggers a ripple effect on all life forms.

Global warming has its own history.[5] So, climate change is a complex issue or our time. The responsibility for protecting the climate belongs equally to all countries. Only through the construction of a non-uniform law was it possible to establish a multilateral system of action against climate change.

The qualification of the climate as a ,,global public good" allows the legal approach of the problems of its defense and conservation in the general interest.[6]

We must take responsability and accelerate change by establishing an appropriate institutional regulatory regime.

2. Legal regulations in the matter

a. The 1992 United Nations Framework Convention on Climate Change represents the fundamental tool for managing this issue. This Convention was adopted

with the aim of reducing greenhouse gas concentrations in the atmosphere to a level that would interfere with the climate system and have less disastrous consequences.

The convention was signed by 154 states who agreed that the alarming state of the planet is ,,a common concern of mankind."

In 1992 Framework Convention (UNFCCC) operated on the concept of shared but differentiated responsibility, meaning that some states had more to do than others.

The burden of responsibility for climate change rested with developed countries, as they became rich as a result of using fossil fuels and thus are already in a better economic situation with the resources and technology avaible to take action.

The basic collective obligations of all countries were: promotion of education, public awareness of climate change and cooperation between states.

b. The Kyoto Protocol [7]

Through the Kyoto Protocol of 1997, legal steps were taken to continue and implement the United Nations Framework Convention. Under this Protocol, obligations to reduce greenhouse gas emissions over a specified period have been established for developing countries.

Developing countries at the time (China, India, Brazil) still had no emission reduction obligations.

Through the Kyoto Protocol, two new elements were introduced: the collective goal of reducing carbon dioxide gases by 5% compared to the level of emissions in 1990 and an international carbon market where gas certificates with greenhouse effect.

In 2009, the Copenhagen Summit determined that the target of reducing emissions by 5% compared to 1990 was low, as China's increased technological and industrial globalization displeased the US, wich no longer wanted to be part of a treaty in which developing countries such as China had no obligations to reduce greenhouse gas emissions.

Thus, the two states, through the Copenhagen Agreement of December 19, 2009, left the previous formula, the newly assumed objective being ,,strengthening long-term concerted action" to act against climate change. [8]

We can notice a large gap between the commitments of the States Parties and the IPCC assessments (reduction, in 2050, by 50% of GHG emissions), the difficulties related

to the refusal of China and India to impose responsibility on them by the US, to reduce much more gas emissions.

The Kyoto Protocol was considered a failure, but two important things were foreshadowed: taking the initiative of global action on the US – China axis and changing the approach persepective.

c. The Paris Agreement [9] was concluded on 12 December 2015 by 195 participating States Parties at the XXI Conference of Parties (COP 21) to the UN Framework Convention on Climate Change.[10] (Decision EU 2016.1841 of Paris Ageement adopted under the United Nations Framework Convention on Climate Change).

As a structure, the Paris Agreement starts with a 16 – paragraph with 29 articles that can be divided into three parts: principles and objectives, action strategies and implementation techniques.

Through the Paris Agreement [11] , individual reduction targets were no longer imposed, separate obligations were no longer created for the different categories of states. A transparency mechanism has been establidhed [12] to ,,create mutual trust and to promote an effective implementation" of Agreement, thus it was decided that each signatory state would assume a part of the reduction (voluntarily, as it considers).

Romania is represented by the EU in the Paris Agreement. The Eu has committed to reducing greenhouse gas emissions by at least 55% by 2030 compared to 1990.

Romania generates 3% of the total EU greenhouse gas emissions.

There is an intense global race between countries, states and companies, at the declarative level, on the urgency with which climate change warnings must be treated.

Each of these aims to reduce gas emissions as much as possible to 0. But what are the consequences of these commitments?

Article 15 of the Paris Agreement provides for the existence of an Evaluation and Implementation Committee with the role of evaluating the performance of states, warning and formulating recommendations.

To date, none of the biggest emitters of greenhouse gasess – China, India, the US, the EU – have reduced their emissions enough to meet the targets of the Paris Agreement.

Therefore, there are no clear consequences for non-compliante with obligations, no fines, embargoes or other coercive forces to ensure the correct implementation of the commitments assumed, so emit greenhouse gases at alarming trates knowing that there are no clear sanctions against them.

3. The need to adopt measures to adapt to the inevitable consequences of climate change

All of humanity is already living under the effect of climate change, a change that will increasingly affect all socio-economic sectors in the future.

The pace of change is very fast and, in addition to efforts to reduce greenhouse gas emissions, efforts to adapt to the changes already produced are also necessary.

Already, globally, human-made climate change has caused widespread negative effects and significant damage to nature and human society (IPCC, 2022).

Ecosystems are close to the limits of their natural adaptive capacity, and many more will soon reach their limits due to intensification of global warming.

The scientific community in the field of studying climate and assessing its impact on natural and human systems has the responsanbility to generate and transfer scientific knowledge as quickly as possible, so that society is informed in time, to be able to plan and assume a socio-economic development, in order to reduce the potential costs of the effects of climate change.

In February 2021, a new EU adaptation strategy was presented. This strategy pursues three main objectives and proposes a series of actions to achieve them.

The first objective concerns smart adaptation by improving knowledge and managing associated uncertainties and strengthening and expanding Climate – ADAPT as a European platform for scientific knowledge of adaptation.

The second objective aims at systemic adaptation by supporting policy development at all levels and all relevant sectors.

The third objective of the EU strategy concerns the speed of adaptation.

In the futur, climate change will influence the frequency and intensity of natural phenomena (floods, heat waves, droughts, etc), increasingly affecting the dynamics and services of ecosystems, people’s lives and their material goods.

Therefore, the consequences of climate change will become more and more serious both at the socio-economic level and on the environment.

In order to protect ourselves to some extent from the effects of climate change, we need an adaptation to them. Adaptation to the effects of climate change is the ability of natural and anthropogenic systems to respond to the effects of current or future climate change, including climate variability and extreme weather events.[13]

The first step in the adaptation process is to assess current and future climatic and socio-economic conditions. For this stage, climate monitoring systems are need to permanently collect observations, which will later be used in the analysis of the current state of the climate and the estimation of future ones, not only globally, but also regionally or locally.

There is also a need for the development of databases that can be coupled with climate information to assess risks and opportunities related to climate variability and change.

The goal of adapting to climate impacts is to reduce potential damage, take advantage of opportunities, and react appropriately and concretely to them.

The severity of the effects of climate change varies from one region to another, depending on exposure, socio-economic development, natural and human adaptive capacity, health services and disaster monitoring mechanisms. Adapting to the consequences of climate change is a complex process.

The measures that humanity will take to adapt to climate change will maximum benefit from the positive effects generated by the global warming process.

A Climate Change Adaptation Mission has been established at EU level, which focuses on supporting EU regions, cities and local authorities in their efforts to build resilience against the impact of climate change (Climate – ADAPT). [14]

For effective adaptation, it is necessary to take measures to prepare and adapt both to the current effects of climate change and to the impact they will have in the future.

Our way of life must change, we must step up action to reduce greenhouse gas emissions, but we must also strengthen our resilience.

Even if measures were taken by the countries of the world to reduce the effects of greenhouse gas emissions, according to the Paris Agreement, we still remain on an

upward trend of global temperature increase (increase of more than 2 degrees) until the end of this century.

Adaptation actions will take decades to be implemented, so it is vital that regional and local authorities and communities act now with maximum urgency and responsibility to prepare for the inevitable effects of climate change.

Romania will also have to adapt to a new climate order, along with the whole world. It is a challenge, but also a chance we have in the fight against climate change.

According to recent studies, the climate changes that affected Africa several million years ago may have influenced the evolution of our ancestors.

Evidence of very rainy episodes have been identified in the sediments of African lakes in the east of the continent, episodes that concide with key stages in the evolution of hominids.

Only by looking into the past of our species can we better intuit the paths of success in the future. In the conditions of the new climate changes, communication and cooperation can be adaptation mechanisms to ensure our evolution.

Adapting to life in a changing climate involves reducing risks related to the harmful effects of current or future climate change.

People can adapt to climate change by reducing their vulnerability to its impacts, such as moving to higher ground to avoid flooding, planting new crops that will thrive in yhe new climate, planting trees in cities and on deforested land or the use construction technologies, represent adaptation strategies.

Conclusions

Climate change is no longer a future scenario, it is happening now, all over the world.

We can say that climate changes is no longer harmless statistics of scientists, it represents a real danger to our life and health.

The climate crisis is the defining challenge of our generation. So the challenges are immense, but we also have reason to hope for a better future in terms of combating climate changes.

References:

[1] N. Stern, Head of the British Government Economic Service and former Chief Economist of the World Bank, 2006
[2] Huntington, *Civilizație și Cli*mă, 1915.
[3] A. Bandu, J. Senechal, *La conduit du changement climatique: entre contraintes et incitations,* LGDJ, Paris, 2018, pp. 155-156.
[4] M. Duțu, *Ce drept pentru schimbarea climatică? O perspectivă unional-europeană*, in the vol. ”Dreptul și schimbările climatice – Răspunsuri, preocupări, perspective” by A. Duțu – Buzura, Universul Juridic Publishing House, Bucharest, 2021, p. 16.
[5] M. Duțu, Preface to: A. Busuioc (coord.), *Variabilitatea și schimbarea climei în România*, Pro Universitaria P.H., Bucharest, 2010, pp. 9-10.
[6] M. Duțu, *Dreptul Climei. Regimul juridic al combaterii și atenuării încălzirii globale și adaptării la efectele schimbărilor climatice*, Universul Juridic P.H., Bucharest, 2021, p. 42.
[7] The Kyoto Protocol, adopted on December 11, 1997, entered into force on February 16, 2005; ratified by Romania through Law no. 3/2001, published in the Official Gazette of Romania, Part I, no. 81 of February 16, 2001.
[8] C.R. Mitroi, *Globalizarea și mediul. Protecția juridică internațională referitoare la schimbările climatice*, in the volum of International Conference ”Globalization and intercultural dialogue: multidisciplinary perspectives”, first edition, Tg-Mureș, Arhipelag XXI P.H. , 2014, p. 312.
[9] The Paris Agreement, adopted on December 12, 2015, entered into force on November 4, 2016; ratified by Romania through Law no. 57 / 2017, published in the Official Gazette of Romania, Part I no. 276 of April 20, 2017.
[10] The Paris Agreement (www.europa.eu)
[11] M.Duțu, A.Duțu*, Acordul de la Paris – etapă decisivă în formarea și afirmarea noului drept internațional al climei,* in ”Studii și cercetări juridice” no. 2/2017, pp. 130-131.
[12] A.I. Dușcă, *Regimul juridic internațional al combaterii, atenuării și adaptării la efectele schimbărilor climatic*, in ”Dreptul și schimbările climatice” by A. Duțu - Buzura (coord.), Universul Juridic P.H., Bucharest,, 2021, p. 79.
[13] www.mmediu.ro/categorie/adaptarea –la-schimbarile-climatice/101, accessed at 16 octombre 2023.
[14] www.climate-adapt.eea.europa.eu/, accessed at 17 octombre 2023.

EDUCATION IN NATIONAL MINORITIES LANGUAGE IN ROMANIAN LEGISLATION THROUGH NON-TERRITORIAL AUTONOMY (NTA) - BETWEEN REGULATION AND SCHOOL PERFORMANCE [1]

Associate Professor Flavia Lucia GHENCEA, PhD.
Ovidius University of Constanța, Romania
fghencea@hotmail.com

flavia.ghencea@365.univ-ovidius.ro

Associate Professor Laura IACOB, PhD.
Spiru Haret University, Bucharest, Romania

laura.patache@spiruharet.ro

Abstract
The educational public service is one of the largest services organized and offered by the state to its citizens. Because it reaches every home, it becomes a topic widely used in political disputes. It is an eternal theme of minority parties accentuated (if not exaggerated) in the election campaigns but also an instrument of the NTA which, properly managed, can lead to the reduction of interethnic conflicts and peaceful coexistence.
Representatives of minorities rightly wants both equal opportunities for their children in school and the preservation of their cultural and linguistic identity because their mother tongue is a defining element of a person's identity. And within the nation-state - it is necessary for the majority to ensure, through concrete regulations, the right of minorities to study in their mother tongue.
The present paper aims, first, to analyze the existing legal regulations in Romania, which ensure for national minorities the right to education in their mother tongue, as an instrument of NTA arrangements.
Secondly, we present the analysis of a study carried out in a multicultural territorial area - Dobrogea, where 17 minorities live, which follows the perception of the population belonging to different minorities regarding the use of mother tongue in education and their implications in further personal development.
The study is conducted by implementing a survey among members of national minorities in Dobrogea, parents with children in primary and secondary school (0-14 years), starting at three directions: education exclusively in the mother tongue, bilingual education - mother tongue-official language and mother tongue - optional subject of study in the educational curriculum.
At the end of the paper, based on the research done, subject to the multicultural specificity of the interviewed area, we notice a trend of changing the perception of minority members in the sense of orientation towards an education with at least bilingual teaching and increasingly abandoning the desire to study exclusively in the mother tongue.
Keywords: *education in minorities language, public service, national minorities, educational system, NTA*

1. Introduction

Non-territorial autonomy (NTA) is a concept that refers to the ability of a group or community to manage their own affairs and have control over decisions affecting them without depending on a centralized authority. As the doctrine remarks [2], the concept can be applied in various contexts, such as ethnic, religious, or cultural communities, or even within companies and organizations. Applied in different situations, it successfully contributes to reducing social conflicts, offering advantages to the groups that implement it directly and to society.

In the field of education, non-territorial autonomy can be used to provide a greater degree of freedom and autonomy to schools and educational institutions, giving them greater control over resources and how they are used [3]. Non-territorial autonomy can provide benefits in education systems by encouraging innovation and adaptation to the specific needs of each school or educational institution. It can also encourage greater social responsibility and civic participation on the part of schools and educational institutions.

We aim, in this study, to analyze a special aspect in this framework, which is represented by minority language education, field where non-territorial autonomy can be a powerful tool to support minority language education. This because the possibility of minorities to study in their mother tongue and administer their own educational systems is the declared dream of minority representative organizations and used to a great extent especially during election periods.

In Romania, education in the language of national minorities is guaranteed by the Constitution and by law. In accordance with these legal provisions, national minorities have the right to education in their mother tongue, both at the level of primary and secondary education, as well as at the level of high school education.

In Romania, schools and educational institutions offer education programs in the language of national minorities, such as schools in Hungarian, German, Serbian, or Romani. The government funds them but enjoys greater freedom in terms of structuring study programs or choosing assessment methods.

However, education in the language of national minorities can face certain challenges in Romania, such as a lack of financial resources, insufficiently qualified staff,

or inadequate infrastructure. There may also be discrimination in favor of education in the Romanian language, which may limit access to education in the language of national minorities. This aspect can also be observed from the results of the study that we will present in the second part of our paper,

However, it is important that the education in the language of the national minorities is supported by the government and society, with the state creating a legal framework so that the national minorities can benefit from the same level of education as the majority.

2. Methods

Our study is based on mixed methods. First, on an analytical method, which means a dogmatic analysis of the regulation that ensures, for national minorities, the right to education in their mother tongue as an instrument of NTA arrangements.

Secondly, we analyze a study carried out in a multicultural territorial area - Dobrogea, where 19 minorities live, which follows the perception of the population belonging to different minorities regarding the use of mother tongue in education and their implications in further personal development.

This part of our analysis has been based on a survey conducted among members of national minorities in Dobrogea, parents with children in primary and secondary school (0-14 years), starting at three directions: education exclusively in the mother tongue, bilingual education - mother tongue-official language and mother tongue - optional subject of study in the educational curriculum.

3. Research and results

3.1. Regulation of education in national minorities' language in Romanian legislation

3.1.1. The constitutional framework

The Constitution of Romania emphasizes right from its first title [4], reserved for general principles, the right to identity by which it recognizes the right of persons belonging to national minorities to preserve, develop and express their ethnic, cultural, linguistic and religious identity, assuring them the possibility of using their mother tongue

in relation to administration and justice, as well as education at all levels in the minority language.

Besides, the fundamental law has a tradition in this regulation, there are provisions regarding education in the language of minorities in the texts of the constitutions from 1948 [5], 1952 [6], 1965, 1991 and in the revised form from 2003.

In the content of the right to education, in the content of art. 32, the fundamental law guarantees the right of persons belonging to national minorities to learn their mother tongue and to be instructed in this language. We can note here, the particular concern of the constituent legislator in "guaranteeing" these rights, compared to the "softer" expression observed in the first paragraph, when the term "ensures" is used for the right to education, the manner of expression reinforcing, once more, the importance that the Romanian state understands to give to this subject [7]. As noted, moreover, in the doctrine, these provisions reflect the legislator's openness to the principle of protecting the rights of persons belonging to national minorities, given that these rights are inherent in the recognition, affirmation and maintenance of their identity as part of the respective minority, completing the right to identity and recognition everyone's belonging to an ethnic group

Another argument in this sense is represented by the observation that, from the implementation of the regulation that ensuring the right of persons belonging to national minorities to learn or be trained in their mother tongue is a constitutional principle, along with: providing education in the Romanian language, free education, supporting socially disadvantaged categories, university autonomy and freedom of religious education.

3.1.2. The legal framework

By ratifying the international regulations regarding the general framework for the protection of minorities [8] and the fundamental documents related to regional languages [9], in Romania, people belonging to national minorities are constitutionally recognized and guaranteed the right to be trained in their mother tongue, at all levels, types and forms of pre-university education. Romania assumes and transposes into legislation all the international conventions to which it has acceded [10].

The main normative act that includes regulations regarding education in the language of national minorities is the National Education Law [11].

The law defines a series of terms with which the entire system of regulations subsequently operates: one of them is education with teaching in the languages of national minorities, i.e., the type of education in which all subjects are studied in the mother tongue, with exception for the subject Romanian language and literature. Another refers to the type of education for students belonging to national minorities who attend educational units taught in Romanian or in a language other than their mother tongue and who are provided, upon request, as subjects of study, the mother tongue and literature, the history, and traditions of the minority respective national and musical education.

According to the Law, persons belonging to national minorities have the right to study and train in their mother tongue, at all levels, types and forms of pre-university education, under the conditions of the law [12] and According to local needs, at the request of parents or legal guardians and under the conditions of the law, groups, classes or units of pre-university education with teaching in the languages of national minorities are organized. Moreover, students who don't have, in their hometown, the opportunity to learn in their mother tongue are supported by the transport bill to the nearest school with teaching in the mother tongue, or they receive free accommodation and meals in the boarding school of the educational unit with teaching in native language.

Students belonging to national minorities who attend educational units taught in Romanian or in a language other than their mother tongue are provided, upon request and under the conditions of the law, as a subject of study, their mother tongue and literature, as well as history and traditions the respective national minority, as part of the common trunk. The programs and textbooks of the subject History and traditions of the national minority are approved by the Ministry of Education [13].

In pre-university education, admission and graduation exams can be taken in the language where the respective subjects were studied under the law.

All students and teachers in state education and accredited/authorized compulsory private education benefit from free school textbooks, both for education in Romanian and for education in the languages of national minorities, under the conditions of the law.

In the efficient implementation of legal regulations, we must note that the organizations of national minorities can play an extremely important role. However, unfortunately, we note that they have no legal obligations in this regard. A ferenda law proposal could be expressed in the sense of regulating some concrete obligations for these institutions, which, at the moment, represent more of a tool used in parliamentary games to obtain the majorities necessary to adopt some laws.

4. ANALYSIS - Case study: The use of minority language in the Romanian education system

4.1. General consideration

Among the 20 national minorities registered in Romania, 11 benefit from education in their mother tongue (Bulgarian, Czech, Croatian, Italian, German, Hungarian, Polish, Romanian, Serbian, Slovak, Ukrainian) and 14 benefit from the study of their mother tongue (Hungarian, Romanian, Ukrainian, German, Russian, Neo-Greek, Bulgarian, Serbian, Slovak, Czech, Turkish, Armenian, Croatian, Polish).

In the case of a few minorities, the teaching of the mother tongue is provided by the national minority organizations at their headquarters. – the role of local administrations in promoting minority cultural programs

Thus, in general, we encounter two very different situations:

- formal education and

- non-formal education organized by national minority organizations in some Saturday/Sunday schools, as is the case with Armenians.

Formal education itself has two variants:

- the study of the mother tongue with schools or sections within schools with teaching in one of the national minority languages, such as Italian, German, Serbian, Hungarian, etc., and

- the study of the mother tongue, e.g. to Lipovi-Russians.

According to these realities and legal considerations, we start our study from the hypothesis that a minority language may become:

- a language of instruction and may also be
- a second language of instruction (in bilingual education) or

- a non-compulsory subject.

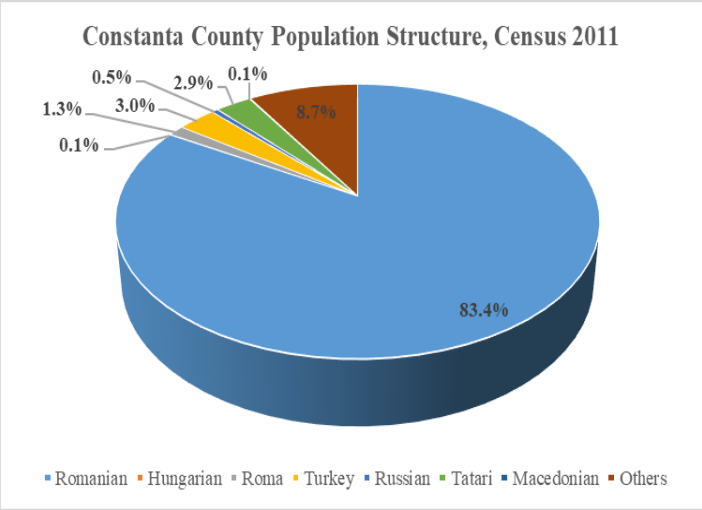


Figure 1. Constanța County population structure

Source: Authors' own elaboration based on National Census 2011 results given by National Statistical Institute .

We asked what the most appropriate solution for the Romanian education system is: to teach in or of national minority languages. Otherwise, can teaching in the mother language become a disadvantage? What is the perception of students regarding the exclusive use by minority members of the mother tongue in education?

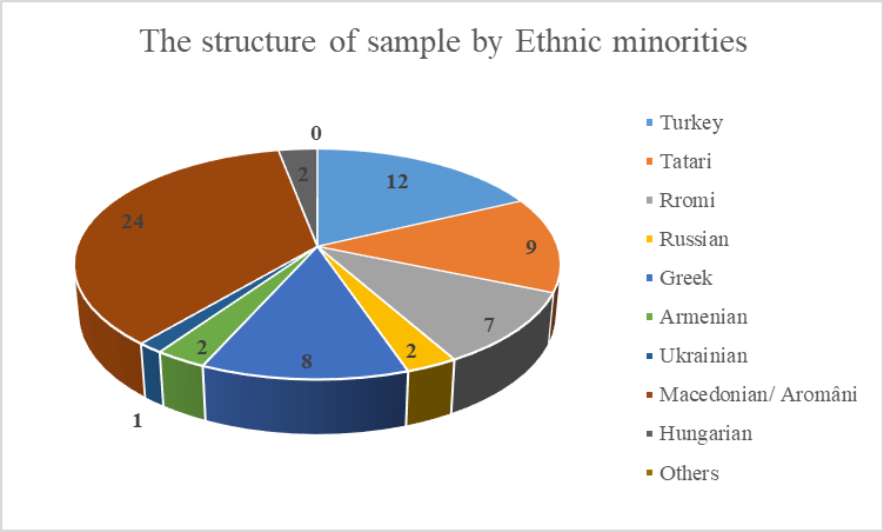


Figure 2. The structure of sample by Etnic. Minorities in Romania

Source: Authors' own elaboration based on official dates on National Statistic Institute

4.2. Short survey presentation

4.2.1. Study design

The study is a quantitative one, based on the questionnaire approach that enables explorations of the participants' perceptions about the researched issues. It is also a very time-efficient method for the data collection.

4.2.2. Participants

Our study was conducted in the period October 2021-February 2022 (first Semester of 2021-2022) and regarded students between 10-18 years old (preuniversity public and private system) from Constanta County.

In the study, there were included 67 persons who identified themselves as part of a national minority who live and go to school in Romania.

4.2.3. Instrument and procedure

The survey was applied online based on a ***Google form questionnaire*** with 20 items**,** using the parents' email of the respondent because of their age (under 18). They have been validated with 67 responses.

On the whole study, all participation in the survey was voluntary; the minorities had no problem asserting their ethnic identity and they had equal access and knowledge of information and communications technology (ICT).

4.2.4. Ethics statements

All survey participants were informed about the details of the study. Participation was totally voluntary. At the same time, the participants were aware that they could opt out at any time without any consequences. Consent for participation in the study was obtained from all participants by electronic mail. In the article, participants' first and last names have been used to ensure their confidentiality. The study design met the ethical requirements of the authors' academic institution and the Declaration of Helsinki.

5. Results

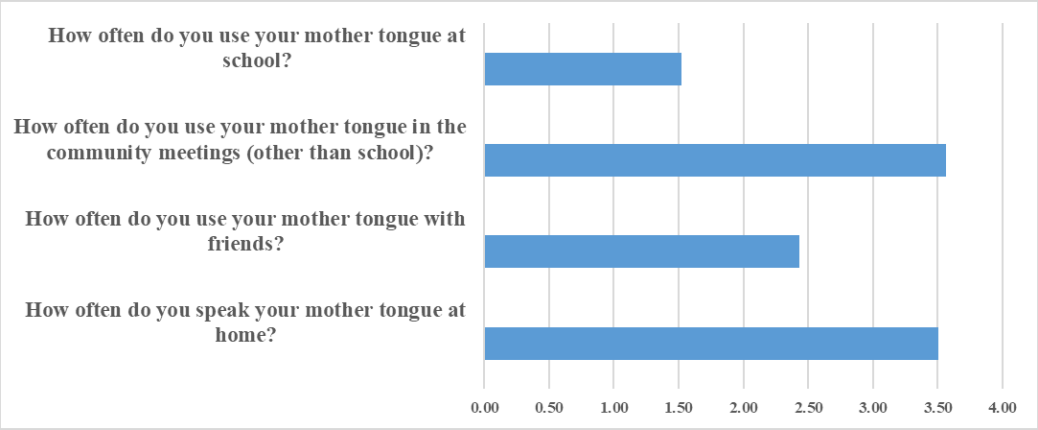


Figure 3. Jurisdiction of the dispute: civil, administrative, and criminal law

Source: Authors' own elaboration .

Note: Based on a scale from 1-5, where 1 is Never and 5 is Almost always

- What kind of education are you in?

Answer:

- If you had the opportunity, would you choose to pursue an EXCLUSIVE form of education in your mother tongue?

Answer: No - 76.12%

- To what extent are you aware of the legal provisions regarding education in the language of minorities?
- Answer: Weighted arithmetic mean is 2.51.
- To what extent do you consider the regulations on minority language education sufficient?

Answer: Weighted arithmetic mean is 2.90.

- How many other languages do you speak besides your mother tongue and national language?

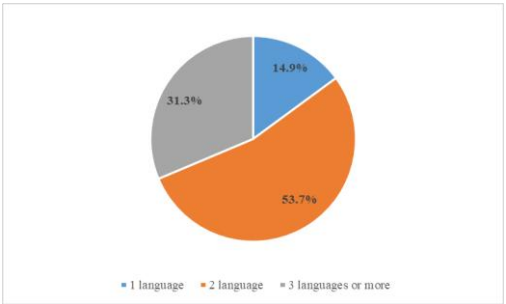


Figure 4. Jurisdiction of the dispute: civil, administrative, and criminal law

Source: Authors' own elaboration

• 88% of respondents are from a public school, and 12% are from a private education system. The children from the private education system are studying 5 only in English and 2, both in English and Romanian.

• According to the interest in studying in their mother tongue the following subjects: Geography, Technical disciplines, Biology, Mathematics, History of Romania or of his Minority, the highest score was registered in case of History of National Minorities (4.03 from 5).

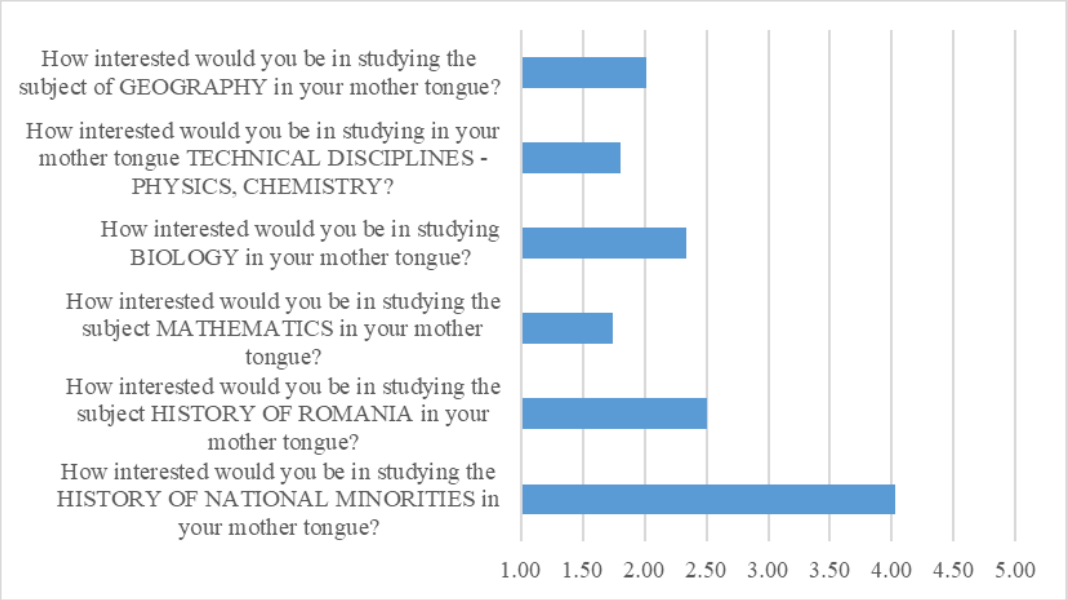


Figure 5. Jurisdiction of the dispute: civil, administrative, and criminal law

Source: Authors' own elaboration

• To what extent is the importance of education in the mother tongue discussed in your community?

Answer: The weighted arithmetic mean is 2.80.

• How important do you think mother tongue education is?

Answer: The weighted arithmetic mean is 3.86.

6. Discussion and conclusions

The languages in Europe in the strict sense, belong, for the most part, in terms of kinship to one language family: the large Indo-European family, which accounts for over

95% of Europe's geographical population. This distinguishes Europe in a narrow sense from the other continents (except Australia), where there are many language families.

Some languages are protected only locally/ regionally in different waives; some of them are allowed in parliamentary debates in court, or they may be "national languages" for the protection of which special provisions have been adopted but which are not official.

In some cases, the qualification as an official state language does not cover the same reality, especially in the case of states that have more than one official language: the co-official languages of the same state can be, in principle, on the same plane from the point of view of the rights granted to them or may be subject to a certain hierarchy and,

In other cases, they may have a somewhat different role at the level of the functions performed, either territorially.

The analyses showed that the instrument of non-territorial autonomy can encourage linguistic diversity and preserve the cultural identity of minorities. It can also encourage greater social responsibility and civic participation on the part of linguistic minorities.

However, as the results of the study proposed in this paper show, non-territorial autonomy in minority language education can create problems, such as greater fragmentation of the system and greater inequality between schools, which is why a consistent part of the population minorities opt for educational programs in the language of the majority. Perhaps also because it can sometimes be difficult for schools benefiting from non-territorial autonomy to stay within the national curriculum framework and meet minimum academic standards.

It is, therefore, important that non-territorial autonomy in minority language education is granted responsibly and accompanied by mechanisms for collaboration and conflict resolution.

In Romania, education in the language of national minorities is guaranteed by the Constitution and by law. In accordance with these legal provisions, national minorities

have the right to education in their mother tongue, both at the level of primary and secondary education, as well as at the level of high school education.

In Romania, schools and educational institutions offer education in the language of national minorities, such as Hungarian schools, German schools, Serbian schools, Arabic schools and Roma schools. The government funds them but enjoys greater freedom in terms of structuring study programs, setting academic standards and assessment methods.

However, education in the language of national minorities in Romania may face certain challenges, such as a lack of financial resources, insufficiently qualified staff or inadequate infrastructure. Equally, there may be discrimination in favor of education in the Romanian language, which may limit access to education in the language of national minorities.

That is why it is important that education in the language of national minorities is supported by the government and society so that national minorities can benefit from the same level of education as the majority. Furthermore, studies consistently show that a multilingual education reduces tensions in a community and increases understanding, tolerance, and, ultimately, well-being.

We encourage **the government's initiative to raise awareness of the linguistic rights of citizens belonging to national minorities** it is essential for the development of the community as well as the preservation of its identity.

Our legislative proposal concerns the introduction of a regulation providing for **the obligation** to carry out educational activities by the organizations belonging to the minorities (for now, this obligation does not exist despite of the fact that organizations are financed by the state).

References:

[1] This paper represents a study developed in one COST Action – AC18114 – ENTAN. Part of this Action, as a member of Working Group 1– *Non-territorial autonomy - Legal and political aspects*, and MC member (Flavia Ghencea) and member of Working Group 2 (Laura Patache), we were able to present some aspects regarding the Romanian approach regarding minorities at the Conference organized by the

Action in May 2022, at Constanța: *Realising Linguistic, Cultural and Educational Rights through Non Territorial Autonomy*. So, we are proud to thank, with deference, to the scientific committee of the conference, and his Chair, Professor David Smith and to Professor Ivan Dodovski, Chair of ENTAN; thanks for the support and for the opportunity to be part of a high-level event.

[2] Osipov Alexander, *Can "Non-territorial Autonomy serve as analytical term? Between "Thick" and "Thin" approaches*, in International Journal on Minority ang Group Rights, vol 25: Issue 4, Brill/Nijhoff, 2018, pp.621-646. Also: Markku Suksi, Non-territorial autonomy – The. Meaning of (Non-) Territoriality, in Minority accommodation through non-territorial autonomy, Tove Maloy, Francesco Palermo (ed), Oxford University Press, 2015, pp.83-116
[3] Kyriaki Topidi, Faith Education in Britain: A Normatively Pluralist Scenario in the Making, in Non-Territorial Autonomy and Decentralization. Ethno-Cultural Diversity Governance, Tove Malloy, levente Salat (ed), Routedge, 2021, pp 215-239.
[4] Art. 6 of Romanian Constitution.
[5] Art. 24 of the Constitution of Romania from 1948 ensures the cohabiting nationalities the right to use the mother tongue and the organization of education at all levels in the mother tongue;
[6] Art. 52 of the Romanian Constitution of 1952: "national minorities are guaranteed the free use of their mother tongue, education at all levels in their mother tongue, books, newspapers and theaters in their mother tongue";
[7] Selejan-Guțan B. in Muraru I., Tănăsescu E-S., (coord), Constituția României – comentariu pe articole, second edition, C.H.Beck. Publishing House, București, 2018, p.270.
[8] of the Framework Convention for the Protection of National Minorities - Council of Europe, on November 10, 1994 - ratified by Romania on May 11, 1995.
[9] The European Charter of Regional or Minority Languages, adopted by the Council of Europe in Strasbourg on November 5, 1992 - signed by Romania on July 17, 1995 and ratified by Law no. 282 of October 24, 2007.
[10] Ghencea F.L., Drumea M.C. (2020), *Implementing Regulation regarding Minority Rights in Romania Special Overview of the Legal Frame of Romanian Law and Constitution*, in Journal of Economic Development, Environment and People, JEDEP, vol. 9, issue 2/2020, p.77.
[11] Law no. 1/2011 on National Education, published in Official Gazette no. 18/10.01.2011.
[12] Art 45 from National Education Law.
[13] Art 46 from National Education Law

Journal of Law and Administrative Sciences
No.20/2023

TRAINING AND DEVELOPMENT OF HUMAN RESOURCES IN SERBIA'S PUBLIC SECTOR

Associate Professor Snežana MAKSIMOVIĆ, PhD.
University MB, Faculty of Business and Law, Belgrade, Serbia
galena.mcl@gmail.com
ORCID: 0000-0001-9928-1292

Gorica JEROTIJEVIĆ, PhD.
University MB, Faculty of Business and Law, Belgrade, Serbia
goricavidic.ts@gmail.com

Abstract
This article discusses the relevant institutional arrangements for human resource management in the public sector in Serbia in the context of the their impact on achieving efficiency. The importance of learning and knowledge, as well as the role of human resources and their contribution to the achievement of business goals at all levels of management, is considered in particular, and the aspect of internal transformation and quick reaction to the challenges and of formulating appropriate strategies. In the article are analyzed key challenges and different approaches to managing employees and their roles in public administration, the management culture, accountability as "an approach to public management in which managers are held accountable for results and for the usage resources for achieving those results by assigning the responsibility to them. Following the recommendations of the state audit institution from the register of recommendations for the previous year, we can conclude that the new management context and organizational culture are not yet well established in the institutions of the public sector in Serbia. It's encourages that on the basis of actions on their recommendations, there is a desire for positive transformation and changes in the existing organizational culture of the public administration, as well as the readiness of employees for education.
Keywords: *human resources, public administration, knowledge management, strategic management*

Introduction

Application of the concept of modern human resource management in public sector organizations requires planning, engagement, management of employees, including evaluation of individual performance of employees in public administration. Taken in the broadest sense, the personnel function includes: assessment of current and future personnel needs, identification of personnel resources, recruitment and selection of personnel, preparation and guidance, deployment and promotion, adjustment of working conditions, education, further training and retraining, stimulation and evaluation of work results.

Analyzing the prerequisites for the successful implementation of public sector reforms, we are noted that the emphasis is placed on the importance of improving human resources and their management. Therefore, sustainable development and satisfaction of the principles of effective and efficient business must be imbued with efforts to ensure an adequate personnel structure and to create conditions for its efficient use.

Support to management structures in order to achieve the desired performance outcomes is connected with the trainings of workers in public sector institutions so that, on the one hand, employees are aware of the need to focus on various aspects of the system's effectiveness and on the other hand, to provide management structures benchmark for evaluating effectiveness. In a word, we need to be able to determine which combination of assets provides the best performance when it comes to the objectives we want to achieve. In developed countries, there is a whole range of instruments and tools for managing the performance of employees at different levels. Within the general management culture and organizational context in each individual institution, comprehensive analyzes are needed in order to evaluate performance at the individual level.

Furthermore, in this article, we assume that individual performance appraisal can work and deliver the intended benefits if properly implemented, but not as an isolated process without other performance management tools.Thus, the focus is on the fact that implementation (including planning and practice) is very important, especially in the context of management reforms to improve performance capacity, including the evaluation of individual performance of public administration employees[13].

The authors emphasize that human resources are a key factor in improving managerial responsibility and strengthening institutional efficiency expected from public administration.In practice, there is a lag in the application of management tools, because civil servants often do not have formal autonomy in implementing the defined goals of their own organization, which is certainly an important tool of management based on results. In addition, individual performance evaluation systems of employees have been formally introduced, but they are not connected to the general management context and/or professional development activities, and in some cases they are not implemented in practice, or implemented only as a formality.

In this context, this article pointed out that the aim of the management reform is to determine the needs for professional training of employees in the public sector, in order to raise the capacities of employees (knowledge and skills) needed for good and efficient performance and defined tasks. One of the key reform challenges is changing the business culture and changing the awareness of employees in public administration, as well as citizens.

The research in the article moved in the direction of deconstructing "good" public administration from the point of view of the implementation of European values that as incentives for reform processes in the sense of the synthesized relationship of values and rules. Values are viewed as an attitude towards the acceptance of new management tools, and thus the need for professional training and the behavior of employees accordingly, and norms as an informal understanding that governs the behavior of employees in public sector organizations. Values significantly influence the formation and change of norms, while the norms themselves do not act according to the same principle [25]. Given that values viewed in this way represent variable categories, and that in a certain period, or in a certain organization of the public sector, values do not have to be qualified as values, the authors of this paper pay attention to the triggers of values on the way in which these changes occur in the context of management human resources.

In the article, we deal with the acceptance of the need for professional development and whether it employees in the public administration consider them useful for achieving efficient business. Mostly employees have resistants to change and generally accept a new way of working and training only if they have to. For this reason, the role of management is important in terms of emphasizing the positive effects of changes for the benefit of the whole society.

Political elites, that is, public policy holders who introduce reform processes have the greatest responsibility not only in providing conditions for the implementation of reforms, but also in devising mechanisms that will ensure and further improve reform solutions. In the domain of creating efficient public administration, it is first of all important to improve the function of human resources management by building an adequate system of professional development, which applies both to employees in public administration

and also to decision makers, for the exchanging examples of good practice, knowledge and experience in this area.

Theoretical framework

Human resource management has evolved a lot from its inception, when it was a function with little impact, to today when it is seen as a function of strategic importance for the development of the organization. In global business, nothing is predictable or constant anymore. While in the last century the importance of technology prevailed, and the role of employees was marginalized, today it is inevitably considered that production, globalization, competitiveness and better performance cannot be achieved without a comprehensive knowledge of human resources. As a scientific discipline, human resource management aims to determine the legality of employee behavior and create basic scientific assumptions, methods and procedures for successfully integrating and developing human potential for achieving organizational goals on the one hand and individuals on the other [23].

Apart from the scientific character, human resource management has its practical dimension and application with the aim of improving the organizational practice of using the maximum of human resources and improving the efficiency and effectiveness of business.

The business function of human resources consists of operational tasks related to planning, recruitment, positioning and socialization, training and development, remuneration, employee health care, management and leaving the organization. It is a specific managerial task that is not only handled by the human resources management function, but managers at all hierarchical levels also deal with it in a certain way [16]. The domains of human resources management are: improving working conditions, increasing employee satisfaction, improving the professional skills of employees, accepting changes, and these include [14]:

- designing the scope of work, ie defining work tasks,
- organizational development,
- providing a favorable climate to facilitate business and introduce the necessary change,
- planning to define staffing needs,

- relations with the trade union (creating conditions for trade union activity),
- recruitment and selection,
- harmonization of abilities and individual characteristics of individuals with nature

business,

- payment system, i.e. the introduction of an objective and fair payment system,
- information activities for the purpose of forming a unique database o

employees,

- helping employees through solving personal and organizational problems,
- training and development,
- identification of professional competence and planning of the training process.

Looking at the management of human resources in the context of public sector organizations, which are the subject of research in this work, it would be wrong to claim that the skills and knowledge of employees do not face the challenges of time and problems, as in all other jobs.In order to fulfill their goals, public sector organizations must employ certain people, and in this sense personnel management begins with the selection of new associates.

The approach to personnel planning must be based on the specificity of the jobs for which personnel are needed, the way in which the management must fit skills of personel into the philosophy and business ethics of the institution, the readiness to be trained to provide specific public services, depending on the area in which they work and readiness to be replaced if necessary.

By employees in the public administration, we mean all employees in public institutions that are under the jurisdiction of the government [7] that have jurisdiction over the entire territory of the state, i.e. civil servants under the jurisdiction of Labor Law and/or the Law on civil servants, employees under fixed-term contracts, etc. These institutions perform an executive function and are usually responsible for policy formulation. Their employment rules differ from the rules for employees in the private sector, and are usually regulated by a specific law or legal measures.

Since resources for employees in public sector organizations are limited (budgetary funding), the management must combine the activities of employees in the best way so that the productivity and efficiency of each of them is at the highest possible level. It is very difficult to ensure a balance between material and personnel factors. In some organizations of the public sector in Serbia, certain administrative jobs are traditionally better paid, such as in cultural institutions, and jobs related to artistic talents are less well paid, and this leads to the practice of relying on the occasional hiring of unemployed artists to fill the planned program activities. In other public sector organizations, for example in education, teaching staff are better paid than administration.

There is a broad consensus that the management and development of human resources in public sector institutions is a key factor for sustainability and long-term survival. Organizations that achieve top performance in their operations are those that have opened the way for the ideas and abilities of people at all organizational levels. In this context, it is also assumed in the public sector that human resources are a key factor in successful business and as such require the creation of a long-term investment strategy. Contemporary research speaks of the "learning organization" system as a new pattern of behavior that represents a major universal change in traditional management culture.

The new management approach in public sector institutions requires personnel planning, which must be based on an understanding of a number of components that arise from the nature of the human factor, but also from the conditions of engagement, the most important of which are the following [15]:

- The work performed by an individual is inseparable from the personality and as such carries the characteristics of that personality, such as the level of education (professional and general), temperament, gender, age, etc.
- It is difficult to determine the conditions under which certain categories of personnel would behave equally. Each of the employees with certain abilities wants to be in the center of attention (both the archivist in the library and the editor of the literary forum...or the professor at the university), so this imposes on the management the task of creating conditions so that each individual can maximally express his talents and to perform his regular/usual work tasks

properly, also to have a sense of obligation and responsibility necessary to achieve quality in the provision of public services.

- Personnel management requires and enables training and advancement in the profession, also, gaining new experiences and every success of an individual should be appropriately rewarded and marked and at the same time considered as the success of the institution to which that individual belongs, because this is how a sense of belonging and togetherness is created.
- The missed time of using the engaged personnel potential cannot be compensated.
- The ever-expanding processes of work modernization lead to an increase in the number of administration (planners, organizers, experts in public procurement or in the field of project management...), but they are required to have a good knowledge of the entire business process of a public institution.
- Although the human factor is relatively immobile, in the sense that it is tied to a certain areas: family, environment, climate..., it is not rare that some other moments overcome these components, leading to the transfer of staff from one institution in another, so it is extremely delicate the task of the management is to know the family situation of important personnel, without encroaching on the privacy of the individual, showing concern for the employees and giving a sense of security, important to every person in order to create preconditions for loyalty to the business philosophy and culture of the public institution.

Through the personnel planning process, the public sector organization is in a situation to assess the conditions for ensuring an optimal personnel structure, as well as to identify problems that may arise due to discrepancies between personnel and material resources. The fact that it is not possible to ensure an optimal structure at every moment, nor to always achieve harmony between the goals and capabilities of the institution and the aspirations of all employees, should not discourage management in its efforts in the area of personnel planning. Therefore, personnel planning is a continuous process of forecasting personnel needs, selecting programs and organizing their development in order to ensure harmony between the scope and structure of jobs and tasks on the one

hand, and the abilities and other characteristics of employees on the other. Since personnel are the main factor in the business of public sector organizations, their planning must be an integral part of the general development strategy.

In this way, the development of human resources represents a "medium" that guides the process between training and learning, which is not a one-time procedure, but a set of organized processes with a clearly defined learning goal [17]. In such a system, an individual way of learning is enabled, which potentially meets the needs of the organization. Such a development framework sees employees as an asset of the company in which they work and whose value will grow in the development process. As Elwood, Olton and Trott state, the primary focus is on the growth and development of employees, it also emphasizes the development of the individual's potential and abilities [5]. According to Becker, the main problem that managers in public sector institutions see for the lack of competent employees is the lack of efficiency of human resources services, which is why the company is unable to ensure the fulfillment of expected business goals and more efficient delivery of services to citizens [1].

The essence is that greater effectiveness and efficiency of public administration is expected, but also other elements that are key to good governance, such as a greater level of democracy in the work of political and administrative institutions, greater openness in the work of administration, as well as greater transparency in the unfolding of political and administrative processes, the important role of citizen participation in political and administrative processes, and the stronger engagement of civil society associations in the process of public management.

Research context

In order to achieve efficient and economical functioning of the public administration, it is necessary to have an official system based on a high level of ability, knowledge and competence of employees, adequate personnel planning and established records that provide analytical monitoring of the application of regulations as one of the conditions for quality decision-making in implementation and improvement of the personnel policies.

In recent years, in Serbia, we have had a real epidemic of various trainings for civil servants, all under the pretext of Serbia joining the EU and, of course, the

necessity of public administration reform. When talking about the reform of public administration, it is generally stated that it is necessary to, in accordance with the so-called European principles for public administration, build a reliable, responsible, efficient and economical administration, capable of providing high quality services to users i.e. to citizens, businesses and other subjects.

Decentralization, depoliticization, professionalization, rationalization and modernization are defined as key principles for reform [12]. One of the main challenges in the implementation of decentralization is, according to the Public Administration Reform Strategy in the Republic of Serbia, the establishment of an appropriate level of competence of local self-government bodies to independently assume the exercise of new responsibilities [18].

There are local self-government units that do not lag behind the republican level in terms of the organization of the professional training function, but there are also those in which this function practically does not exist. Nevertheless, it can be stated that in the majority of local self-government units as well as public companies and institutions, the general level of quality and quantity of activities on the professional development of officials is very low and that there is no systematic approach in solving the issue of professional development.

The mentioned problem stems from the fact that in a large number of public sector institutions, the basic organizational prerequisite is not met, i.e. there is no official who, along with other jobs, would professionally deal with this field [3]. Staff training is mostly handled exclusively within the organization of the Standing Conference of Towns and Municipalities and is completely dependent on donors[9]. In the last few years, we have also had a pronounced trend of neglecting the training of local personnel, who, due to constant changes in regulations at the central level, are often the subject of negative audits by the SAI (*state audit institution*) and budget inspections.

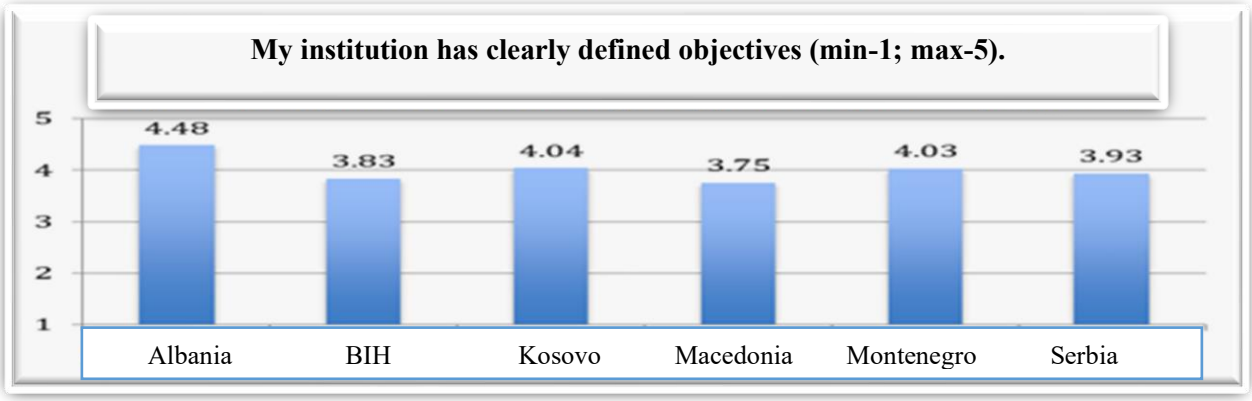
The management of human resources in the public administration in Serbia within the normative framework, fully defines the state's approach and policy to the management of human resources. However, what is worrying is the application of the regulations in practice, but also the non-compliance of the regulations. Depoliticization

and professionalization have been identified as key principles of public administration reform, but there are major deviations from the imagined and legally shaped process of depoliticization of state administration. The professionalization of public administration implies the autonomy of the head of the organization in formulating the goals of his own organization in that context, management responsibility.

Starting from the premise that the measurement and achievement of organizational goals is a key tool for management based on results and management responsibility, the authors of this paper reviewed the data from the last available annual consolidated report on the state of financial management and control that all budget users submit to the central unit for harmonization of the Ministry of Finance of the Republic of Serbia [2].

As in previous years, there is a lack of knowledge and skills of managers and employees identified as a key obstacle in the process of establishing and developing a financial management and control system, which includes management responsibility [11].

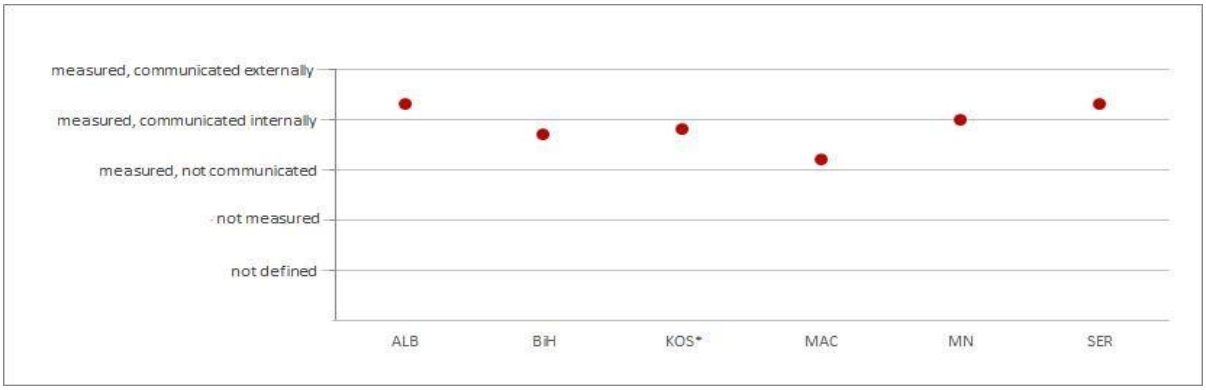
In fact, the use of measurable objectives in managing an organization makes the difference between a bureaucratic approach that focuses on inputs such as formal compliance with the law and a managerial approach that focuses on performance and results. Management by goals requires not only the existence of organizational goals, but also their distribution to different levels of the organization and the distribution of responsibilities. Ideally, the organizational goals are then translated into the individual goals of the managers themselves. Comparing the countries of the Western Balkans in the research conducted by the Regional School of Public Administration (ReSPA) there is a formal practice of setting goals and all countries meet this requirement[22].



Graph 1.Existence of goals, Source: *research conducted by ReSPA* [22]

Differences between countries are relatively small, and the rate of compliance is relatively high: Albania has the highest rate of setting goals in individual institutions, and North Macedonia thelowest, while all other countries are somewhere in between [22].

Qualitative evidence according to the same author [22] shows that the goals in public institutions are mostly related to their formal and legal competences and are often copied from previous years, rather than the result of strategic and operational plans, which means that the essential relevance of these goals is low if it exists at all. Goal setting is not even recognized as a practice by managers in public sector institutions. In that context, managers should recognize the necessity to measure formally stated goals in development plans. In the following graph, we can see that measuring the achievement of goals is less common in Macedonia and Montenegro, where 20% of institutions do not measure the achievement of goals at all [22]. In other countries, the measurement of goals is much higher, especially in Albania where 53% of surveyed institutions measure the achievement of goals and communicate the results internally and externally to the public[22].



Graph 2. Monitoring the results of the set goals by the countries of the Western Balkans, *Source: research conducted by ReSPA* [22]

In addition to measuring the achieved results, it is also important to establish the connection of goals with the general management framework within the reform processes, which will enable the cascading of goals from the level of the institution to the level of the individual, as well as the connection of the results of the institution with the results of individuals in performance evaluation. In developed European countries, in addition to this vertical connection between the institution and individuals and established the horizontal connection between human resources are facilitated central management in the decentralized public sector. Therefore, HRM in Europe has moved from a legalistic status-based approach, which focuses on qualifications, to a competence-based approach that takes into account the attitudes and patterns of behavior (both positive and undesirable) that underpin the way people do their jobs [21].

It is believed that aligning people's competencies with the organization's mission and vision (vertical) can contribute to improving organizational performance and at the same time provide a platform for integrating aspects of human resource management (horizontal) workforce planning, recruitment and selection, performance management, training and development, etc [20].

In Serbia, as well as in the countries of the region that are undergoing reform processes, a holistic approach to competence management has generally not been established. In addition to the fact that all countries have some elements of this approach, the biggest problem in all of them is the understanding of employees of this complex network of relationships between all actors. It is an approach in which not only civil

servants, but all employees are aware and contribute to the realization of the vision, mission and goals of the organization. Performance appraisals are used to agree on goals that all employees should achieve collectively as a team, aligned and coordinated to the best of their abilities. Therefore, most practitioners and academics today agree that performance appraisal is not only about measuring work performance, but also about motivation, communication and overall relationships within the organization.

Analysis and discussion

Based on the previous considerations, analyzing the challenges faced by managers in the public sector during reform processes, in this paper the authors want to point out that changing the management culture in the conditions of the knowledge-based economy and adequate human resource management contributes to the improvement of organizational performance and that employees are important factor in formulating organizational strategy and defining goals. In the developed countries of Europe, in the context of management responsibility in public sector institutions, there has been a shift from a formal approach based on status and a focus on qualifications to a competency-based approach that takes into account attitudes and behavior patterns (positive and undesirable) that influence the way people do their work. We analyzed the key challenges, different approaches to managing employees and their role in public administration, management culture and management accountability as "an approach to public management in which managers are held accountable for results by assigning them responsibility with decision-making authority, as well as autonomy and necessary resources for achieving those results.

Following the recommendations of the state audit institution from the register of recommendations for the previous year [2], we can conclude that the management context and culture are not yet well established in the institutions of the public sector in Serbia, but on the basis of acting on the recommendations, it is encouraging that there is a desire for positive transformation and changes existing organizational culture of public administration. In the last consolidated annual report on the state of financial management and control, which also incorporates managerial responsibility in public sector institutions of Serbia, the conclusion is that additional and constant improvements

are necessary in this sphere, as well as the lack of knowledge and skills of managers and employees [2].

According to register of recommendations[19], it was identified that the most important direct budget beneficiaries at the central level (ministries) do not monitor the realization of the set goals within their jurisdiction. The situation at the bar is somewhat more favorable, but still unsatisfactory[19]. We can conclude that additional training of managers and employees is necessary in order to train and acquire the competences of people from the creation and implementation of policies to the realization of goals, which would strengthen the supervisory function, as well as the levels of compliance and efficiency of the work of everyone in public sector organizations.

In order to eliminate perceived weaknesses, the state audit institution first of all made recommendations that managers as key actors engage and allocate adequate resources, in terms of the time of their employees and work organization, and that with the help of the methodological guidelines by the Central Unit for harmonization and with the various trainings, which demonstrate positive effects and value for the organization if employees have aware and wants to contribute to the realization of the vision, mission and goals of the organization.

In this context, new dimensions of management and the establishment of mechanisms for organizational learning and knowledge management are required from management. Introducing a knowledge management system is a strategic decision of the organization's management and concept "*life-long learning*" has become a necessity.

An organization learns through individuals who learn. Individual learning does not mean organizational learning, but without it, organizational learning does not exist. For human resources management, this means enabling employees to regularly attend organized trainings and continuous monitoring of the implementation of plans.

Contemporary concepts of public administration require new management methods that are not only related to human resource management, but also to knowledge management. The challenge for knowledge managers is twofold. On the one hand, they should implement a system that will regulate the flow of information so that public officials can access specific knowledge important for their work. On the other hand, quality knowledge management should enable public administration officials who have

undergone certain training to be able to practically use the acquired knowledge and share it with other officials in their work environment [10].

Successful management of human resources must integrate the knowledge, skills and motivation of all employees in achieving the strategic goals of the public sector organization, while achieving the best business performance and establishing standards of comparison with the best in the industry. The basic element of management are goals. It is logical, therefore, that one of the most critical tasks of managers is to ensure the employment of professional, talented and motivated people who should enable the organization to achieve its goals [4].

Adequate engagement of people means understanding their individual and organizational needs in order to use their potential. This aspect of human resources management indicates the necessity of harmonizing the utilization of individuals with changes in personnel and organizational needs. In addition, it is necessary to connect and include processes and activities of human resources management in comprehensive strategic management, formulating and implementing organizational and business strategies, directing all processes according to the strategic requirements of business and in accordance with the long-term development strategy of the public sector organization.

In order to establish the limits of the competence of the administrative and political elite, it is necessary to reform the system and policy of planning the employment of civil servants with an emphasis on the clear identification and separation of the rights and powers of the representatives of these elites and the mechanisms of warning and sanctioning. Civil servants are expected to treat public resources in a responsible manner, that is, not to abuse them for personal gain [6]. In this way, not only is the responsibility of the functioning of the public administration not enabled, but it also prevents the end user, i.e. the society, from functioning smoothly. Using new concepts, public administration more successfully connects its employees with their work, with users of their services, suppliers and other interested partners. It is important to note that the application of new tools enables employees, service users and managers to gain insight into a huge amount of complex data.

The quality of human resources and good management of human resources is particularly significant and visible in the administration, which is characterized by an increasing number of new tasks, functions, arrangements with other sectors (private, civil and non-governmental) where success and the achievement of goals depend to a much greater extent than in the corporate world directly from employees and management. The success of any public administration directly depends on the good management of human resources and on the optimal use and improvement of the potential of employees. The purpose of human resource management in the public sector is to improve the efficiency of employees, and thus the overall organization, and in this context it is necessary to engage the total work potential to achieve the optimal target function of public administration.

What is needed to determine training needs is to investigate the causes of problems and identify those that can be solved by acquiring new knowledge and developing skills. In doing so, they should be distinguished from areas that require other changes or specific modifications. Also, it should be noted that uncritically accepting the requests of public administrations could expose them to unnecessary obligations (financial and organizational) or even lead them to unfavorable consequences (in cases where the desired knowledge isn't actually adopted). In the field of improving the function of human resources management, training can be viewed through two components [9].

- The first is the establishment of a sustainable system of professional training for employees of public administrations through a top-down and bottom-up approach to the analysis of the needs for professional training, which should lead to a comprehensive overview of the needs from the public sector organizations for professional training.
- Second - standardization of general and special training programs, accreditation of training providers and establishment of teams for professional training of employees in public sector organizations will achieve the goal of ensuring the principles of efficiency and integrity of the professional training system.

Essentially, similar to technical systems, the professional development of employees in public administration as a whole is reduced to two basic types. The first type includes corrective training, which appears in situations of minor changes in legal

regulations and observed certain difficulties in practice, which should be performed in a timely manner in these situations [24].Another type of professional training of a developmental nature appears in moments of major changes in legal regulations to which certain subjects of public administration need to be systemically adapted - which obviously refers to situations of passing completely new laws or the fundamentally changed of the work technologies or the social relations and with major investments[8].

Regardless of the fact that they essentially represent two different processes, the basic purpose of creating and managing knowledge is to improve, that is, to increase organizational knowledge in public administration. Since human resources have been identified in this article as key organizational resources, achieving a competitive advantage is impossible without the active involvement of management practices that strengthen the competitive capabilities of employees.

We can conclude that the approach of decision-makers in the public sector to this topic should follow strategic goals in terms of human resources that are based on the basis of international principles and standards, such as professionalism, leadership, training, career development, planning, etc. Special care should be focused on working conditions and health at work. Guidelines for managers should be based on establishing a connection between employee satisfaction with citizens' satisfaction with services and their trust in the public sector through awareness raising and continuous training.

Conclusion

Following the reform processes in the public sector of Serbia, the human resource management function should be organized in accordance with the goals and services that should be provided by the public administration in the context of the influence of this resource to achieve efficiency. This requires a clear definition of the role and scope of employees' activities, as well as selection, knowledge, skills, competence and knowledge transfer at all levels of administrative management. Proven knowledge, skills and competences, including experience, should be the main criteria by which success in this field will be measured.

The article particularly emphasizes the necessity to establish the connection of goals with the general management framework within the framework of reform processes, as well as the connection of the results of the institution with the results of individuals in performance evaluation. The biggest problem of applying these principles of management in the public administration of Serbia is the lack of skills and knowledge of managers and employees, which we mentioned through this research, also through the recommendations of the state audit, beside the resistance to changes and misunderstanding of the complex interaction between all actors to achieve success and the absence of management responsibility.

In this context, it is necessary to make changes in the policy of resource management in such a way as to encourage the inter-organizational transfer of knowledge, but also to improve certain internal processes and to anticipate the necessary educations and investigate relevant views on educational programs, in order to plan the future activities based on them in this area. Human resources management in public administration, in addition to the above, should also identify institutions, organizations, agencies and non-governmental organizations that provide services in the field of education of public administration bodies. Many education programs, which are organized by public administrations from the aspect of their efficiency, talk about minor changes. These are the reasons that there should be a synchronized approach to training and educational projects that are interconnected and that affect the essential problems and needs of public administrations.

The authors want to highlight the importance of effective planning of human resources and the establishment of a special value system of state administration based on professionalism, competence and integrity in order to achieve the public interest. This principle means above all the professionalization of public administration, a clear framework of competences in terms of format, content, level of detail and use. The application of the competency framework in the public administration of Serbia would contribute to employees understanding the value for the organization and the expected behavior during work in the same way. In this way, the competency framework would

serve as a tool through which organizations inform employees about the behaviors that are required, valued, recognized and rewarded within specific jobs and work tasks. All this requires a proactive approach to human resource management in public administration institutions.

In order to fulfill the criteria and standards in the field of public administration reform, issues related to the civil service system are of particular importance, and it is necessary to point out that education should not be understood as a burden and pressure on employees, but as a necessary step in order to demonstrate readiness and interest for achieving efficiency in work, for cooperation and cooperativeness. Finally, we would like to point out that the coming period, special emphasis must be placed on checking and evaluating competences, as well as other abilities and skills that are necessary for work in state bodies, and if the trend of positive experiences from education is established, we can expect better interaction and the willingness of employees to participate in adequate and targeted training programs that will strengthen their competencies, knowledge and skills for performing jobs and tasks.

References:

[1] Becker,B.E.,Huselid, M.A., i Ulrich, D. The HR Scorecard (2010): Linking People, Strategy and Performance. *Boston: MA: Harvard Business School Press.*
[2] CUH (2022). Consolitated annual report for 2021 on the state of internal financial control in the public sector in teh Republic of Serbia, Central unit for harmonization.Avaliable from: https://mfin.gov.rs/sr/ominist arstvu-1/konsolidovani-godinji-izvetaj-1.
[3] Dašić, D. (2017).NATIONAL ACADEMY FOR CIVIL OFFICERS. DO WE NEED IT? AND WHY NOT. Avaliable from: https://www.biramkogabiram.rs/blog/reforma-javne-uprave-i-nacionalna-akademija-za-drzavne-sluzbenike-da-li-nam-je-neophodna-i-zasto-ne/
[4] Đuričin, D., Janošević, S. (2009). Strategijska analiza ljudskih resursa. Ekonomske teme, Niš
[5] Elwood,F., Holton, I., James, W., Trott, Jr. (1996). Trends Toward a Closer ntegration of Vocation Education and Human Resources Development. University, Tun Hussein Onn Malaysia: Journal of Vocational and Tehnical Education; , Vol.12., No2.p7.
[6] EPuS. (2016). Principles of good public administration in the Republic of Serbia. Research Forum, Belgrade, EpuS Serbia
[7] EU- Regulation no. 549. (2013). *Regulation (EU) No 549/2013 of the European Parliament and ofthe Council of 21 May 2013.* Preuzeto sa https://lexparency.org/eu/32013R0549/
[8] H*amdouche, A., Nyseth, T., Demaziere, Ch., Forde A., Serrano, J., Aarsæth N.(2016). Creative Approaches to Planning and local development,. Routlege,*
[9] Jovanović, A., Vlaškalin, J. (2017).*Human resource management in local self-governance and establishment of a system for professional training of employees in Republic of Serbia. Belgrade,* SKGO, POLIS.
[10] Ketelaar, A.(2007). Improving Public Sector Performance Management in Reforming Democratizers, . Newsletter DAIdeas, 83-98.

[11] Maksimović, S.,Jerotijević, D. (2023), Financial Management and Control- trends and practices in Serbia, Journal of Law and Administrative Sciences, No.19/2023, ISSN 2392 – 8298 ISSN–L 2392 – 8298
[12] Maksimović, S., Lunjić, A., Parojčić, D.(2020) New Management Concept in the Context of the Serbian Public Sector“, Megatrend revija, ISSN 1820-3159)
[13] Maksimović, S., Paunović, D.,(2023). Human resources and training as a component af integrated border management“ Thematic Compendium, International Scientific Forum “Danube – River of Cooperation”, ISBN- 978-86-82825-24-1, pp. 146-168.
[14] Mićić,R., Arsić,Lj.(2010).Human resource management in organizations. *Economic views, No. 2, pp. 29.*
[15] Milisavljević.G. (2008).Training and development,. Belgrade: Faculty of Organizational Sciences.
[16] Milojković, R., Đorđević, B. (2012). Management of human resources.Niš: Faculty of Economics.
[17] Nadler. (1984). L. Ed.The Handbook of Human resources. New York: John Wiley : John Wiley and Sons.
[18] Official Gazette of RS", no. 42. (2022). *STRATEGY of public administration reform in the Republic of Serbia for the period from 2021 to 2030.* Preuzeto sa https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/sgrs/vlada/strategija/2021/42/1/reg.
[19] SAI, (2022), Register of recommendations, State Audit Institution, Belgrade, Serbia, Avaliable from: https://dri.rs/storage/dokumenta/Registar%20preporuka%2026%2006%202023.pdf
[20] Stamatović, M**.,** Maksimović, S., Sućeska, A.(2020) „Risk Management as a part of the Internal System of financial controls- practice in the public sector of Serbia“ Panevropski univerzitet Apeiron, Fakultet poslovne ekonomije„Economy and Market Communication Review – Časopis za ekonomiju i tržišne komunikacije,“, Vol.2,2020 ISSN 2232-8823 (Print); ISSN 2232-9633
[21] Staroňová. (2017). *K., Performance Appraisal in the EU member States and the European Commission. Study commissioned under Slovak .* EC Presidency and EUPAN.
[22] Storonova. (2020). *K, Individual performance Appraisal of Employes in Central Public Adminiistration in Western Balkans*. Avaliable from: https://www.zbw.eu/econis-archiv/bitstream/11159/414408/1/EBP076259943_0.pdf.
[23] Stefanović, *V.,Vojnović B., Urošević, S.,* (2019).*Management of human resources-contemporary strategies and controversies,.* Belgrade: nstitute for Agricultural Economics.
[24] Vukonjski, I., Šartije, T, Polin, K., Hefer, H., Borojević, T.,Radosavljević.K.,Barber, J.,Terijen, O.,Rambo, T. (2012). *Handbook for human resource management. Belgrade: Council of Europe.*
[25] Žarin.I. (2016). *Applicability of European principles of good public administration in the Republic of Serbia.* Belgrade: Research Forum, European Movement, Serbia.