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INTERPRETABLE JURISPRUDENTIAL ASPECTS OF PIMPING, CHILD PORNOGRAPHY AND BLACKMAIL

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Abstract:
Child pornography, sexual exploitation of various vulnerable persons, trafficking in minors and human beings in general are crimes whose number has increased exponentially throughout Europe and particularly in countries considered poor - Romania and the Republic of Moldova being considered, unfortunately, to be among the "leading" countries in terms of perpetration of such antisocial acts.
Our study wishes to analyze some nuanced aspects related to the way some of these crimes and the ways of committing them are interpreted in the case law, this article being based on a relatively recent case where different interpretations were given to the same facts, and in the appeal appeal a change of legal framework was made which we rejected and which we wish to criticize in this way.
Keywords: *Minors, child pornography, human trafficking.*

Introduction

Pornography itself is a growing phenomenon in postmodern societies and carries with it a wide range of information that directly or indirectly affects those affected by this type of crime. It has become increasingly evident that it has a significant impact on the psychosocial structure of the subject who comes into contact with pornographic material [1].

The problem arises, therefore, when unhealthy stimuli become the paradigm of sexual intercourse. Today's widely circulated pornographic content is based on an overestimation of the vulnerability of women and the female body. A logic of consumption, in its destructive connotation, follows the vexatious perspective of imposing the subordinate role of women, because this is what excites the target audience [2].

"The consumption of pornographic images of children is not new". In the 1970s "there was a great explosion of child pornography produced", mainly in Denmark, the Netherlands and Sweden, which had "liberal laws concerning sexuality. In these countries movies, magazines and books containing pornographic images of minors were sold legally "[3], [4].

‘Currently Directive 2011/93/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, sets out the European actions in this area. This directive, together with the Budapest Convention (Convention on Cybercrime of 23 November 2001) and the Lanzarote Convention (Convention of the Council of Europe for the protection of children against sexual exploitation and abuse, Oct. 25 2007) have been the basis of the recent reforms implemented in Spanish criminal law in combating this type of crime’[5].

As follows from Art. 2 lit. (c) of Directive 2011/93/EU6, child pornography comprises any material which visually depicts a child engaged in real or simulated sexually explicit conduct, any depiction of the genitals of a child primarily for sexual purposes, any material which visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct, or any depiction of the sexual organs of a person appearing to be a child primarily for sexual purposes or realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child primarily for sexual purposes [6].

Phenomena of this type are occurring more and more often in Romania, which, more recently, has become a rich source of young people without opportunities who, being tempted by a quick and easy gain, fall very quickly into the net of pimps and human traffickers. The preferred target of such criminals are people from single-parent families, disorganized families or people in foster care or in the care of social workers, lacking affection and easily influenced and manipulated, as was the case here.

“Romania is recognised as one of the primary countries of origin for human trafficking across Europe; in 2021, 71 per cent of identified victims were of sex trafficking. Moldovan women are often trafficked through Romania and there are reports of traffickers working in both countries to exploit Moldovan women”. Despite the strides by both governments to improve the situation, trafficking in Romania and Moldova is a “longstanding issue, in part due to the incidence of poverty. Women living in poverty are especially vulnerable to becoming victims, as they are often desperate to escape poverty and believe they are being presented with an opportunity to do so”.

Both countries grappled with communist authoritarianism until the late 1980s and have struggled to build stable economies since. Romania has the highest poverty rate in

the EU, while Moldova, now a candidate country since the war in Ukraine, remains among the poorest countries as a whole {[7}.

"According to the Organization for Security and Co-operation in Europe (OSCE), despite only 19% of THB victims being trafficked for sex, sexual exploitation makes up to 66% of the global profits associated with human trafficking, at around $99 billion/year. In 2020, the average annual profits generated by each victim of forced sex was at around $100.000/year, six times more than the average profits resulting from other trafficking forms, worldwide - this helps sex trafficking yield investment returns between 100% to 1.000%".[8], [9].

"Romania remained the profile country of origin for the sexual exploitation of women and children in Europe. The vulnerable population, predisposed to low levels of well-being and in shortage of real long-term economic prospects, ventured outside the country and turned towards mass migration". On top of it, the high levels of poverty and insufficient labour opportunities have pressed individuals to assume highly risky decisions. Despite the growing number of awareness-raising campaigns provided by governmental agencies (mainly the National Agency AgainstTrafficking in Persons, ANITP) and non-profit organizations, human and sex trafficking are still regarded as taboo activities, with collective prejudice stereotyping the nature and context of the registered victims" [10] [11].

Short description of the case

Initially, the defendant was indicted for child pornography, attempted trafficking in persons, sexual act with a minor in a continuous form, extortion in a continuous form and instigation to theft in a continuous form provided for by art.374 para.1,2 of the Penal Code, art. 32 of the Penal Code to art.211 par. l, para. 2 lit. a. Penal Code with reference to art. 210 par. l lit. a Penal Code, art. 220 par. l Penal Code with application of Art. 35 para. 1 of the Penal Code. and art.207 of the Penal Code with application of art.35 para.1 of the Penal Code and art.47 of the Penal Code with reference to art.228 para.1 of the Penal Code with the application of Art.38 (1) Penal Code.

His actions consisted in the fact that on 16.08.2021 the workers of SCCO Vrancea were notified ex officio that the named X.P. has sexually explicit images with the minor

A.C. aged 14. The minor has been having conversations with the defendant through Facebook Messenger and Whatsapp applications since approximately April 2021, also since then considering that she has a friendly relationship with him. On July 17, 2021, the two engaged in normal sexual intercourse and did not use any protective measures, with the minor claiming that the defendant was the first man with whom she had sexual intercourse.

From the beginning of the relationship, the defendant asked her for sexually explicit pictures, and the minor agreed, considering that during the relationship she sent him about 100 pictures. After having sexual relations with the defendant the ldefendant started asking her to make videos with implicit sexual content. There were instances when the minor refused to comply with the defendant's instructions and he threatened to block her on all social media applications and stated that if she did not send him pictures he would leave her [12].

On the offence of attempted trafficking in minors provided for by Art. 32 of the Criminal Code reported to Art. 211 para.1, para.2 lit. a. of the Penal Code with ref. 210 (1) (a) of the Criminal Code also held against the defendant in the indictment, by the conclusion of 20.09.2023, the Court held that the criminal activity charged against the defendant (pressuring the minor on several occasions to have sexual relations with other persons in exchange for money) would be more in line with the provisions of Article 213 (1) of the Criminal Code. 1, 2 and 3 of the Criminal Code, since it has been taken into account that the theft material submitted in the case does not reveal, beyond any reasonable doubt, the presence of the purpose provided by law for the existence of the offence of trafficking in persons/minors, namely that of "exploitation" of the injured person. It has thus been shown that the defendant cannot be said to have forced the minor A.C. to engage in prostitution within the meaning of Article 182(1) of the Criminal Code, letter of the Criminal Code [13].

For these reasons, the above-mentioned conclusion ordered a change in the legal classification of the accused from the offence of attempted trafficking in minors provided for by Article 32 of the Criminal Code to Art. 211 para. 1, para. 2 letter a of the Criminal Code with reference to Art. 210 para.1 lit. a of the Criminal Code to the offence of

attempted procuring under Art. 32 of the Criminal Code in relation to Art. 213 para.1, 2 and 3 of the Criminal Code [14].

As regards the charge of attempted procuring, according to which the defendant X.P. attempted to induce the minor victim, by means of moral coercion emotional/emotional blackmail), to engage in prostitution in order to obtain income, as mentioned above, the Court considers that it has not been proved beyond reasonable doubt.[15].

However, the Court finds that this discussion is a singular one, and the rest of the evidence in the case does not reveal that the defendant subsequently took any other step that would convince us that he tried to induce the injured person to start practicing prostitution

In this evidentiary context, the Court considers that the discussion between the defendant and the injured person may include the explanation that the defendant gave to the courts, namely that he only wanted to know the opinion of the injured person.

Therefore, the evidence of the case does not clearly support that the defendant's intention was to induce the injured person to start practicing prostitution for his own benefit, in order to obtain income easily and how according to the provisions of Article 103 para. 2 final sentence of the Code of Criminal Procedure, conviction is ordered only when the court is convinced that the charge has been proven beyond reasonable doubt, the doubt benefiting the defendant, the Court considers that the defendant must be acquitted of the offence of attempted procuring, provided for in Article 32 of the Criminal Code in relation to Article 213 para. 1, 2 and 3 of the Criminal Code.

In the light of these considerations, with regard to the offence of attempted procuring, provided for in Article 32 of the Criminal Code in relation to Article 213(1), (2) and (3) of the Criminal Code, the Court finds that the offence of attempted procuring is not covered by Article 213(1) and (3) of the Criminal Code. 1, 2 and 3 of the Criminal Code, the decision to acquit the accused must be adopted on the basis of the provisions of Article 16 para. 1 letter c Code of Criminal Procedure, as there is no evidence that the defendant committed the crime [16].

In our opinion, the first legal framework made by the Court was correct, so we opted to respond to the change of legal framework. In the following aspects that we will

expose and analyse we will show why we considered (just like the representative of the Public Prosecutor's Office) that the minor victim was the victim of a crime of attempted pimping and even attempted trafficking in minors.

Critical analysis regarding child trafficking and trafficking in human beings

According to Article 211 (1) of the Criminal Code, recruiting, transporting, transferring, harbouring or receiving a minor for the purpose of exploitation constitutes a criminal offence, the amount of the penalty being higher under the aggravating circumstances provided for in paragraph 2 (a) when the acts were committed by coercion, abduction, misleading or abuse of authority.

The offence of trafficking in minors is carried out in the form of direct intent qualified by purpose, the essential condition being the existence of the purpose with which the perpetrator attempted to commit the act being that of exploitation of the victim within the meaning of Article 182 of the Criminal Code.

From the evidence administered both at the criminal prosecution and during the trial, it appears that the defendant committed sexual acts with the minor A.C., a situation admitted by him over a long period of time, cultivating in the victim the feeling that he likes her, encouraging her to maintain the relationship but with certain conditions that border

From the content of the defendant's conversations with the victim, found on pages 75 to 79 (screenshots), it appears that the victim asked him to have sex with a friend in exchange for money or to satisfy his own pleasures in the presence and contribution of another man. Although the minor tells him in several circumstances that she does not agree, the defendant insists that she must do whatever he says, exploiting her vulnerability, i.e. the attraction and feelings she has towards him [17].

Returning to the concept of exploitation, the term is defined as follows: "Exploitation of a person shall mean: including compelling a person to engage in prostitution, pornographic performances for the production and dissemination of pornographic material or other forms of sexual exploitation.

Another way of exploiting people is by forcing them into prostitution by coercing a person to engage in sexual acts with various persons or by forcing them to engage in pornographic acts with a view to producing or disseminating pornographic material in

order to obtain financial or other benefits for themselves or another person. In this case, the offence of trafficking in human beings provided for in Article 210 of the Criminal Code will be committed in actual concurrence with the offence of procuring provided for in Article 213 of the Criminal Code [18].

In this case, it is clear that the defendant, when he committed the crime, tried (at least) to use the victim for the purpose of practicing prostitution with various acquaintances in order to take advantage of the sums of money, which, moreover, he obtained from her through other occult means - he instigated her to steal some family jewellery and to steal some money from the maternal assistant who had her in his care.

Exploitation itself, as a way of working, can intervene here in the discussion as long as the minor victim (she was 13 years old at the time of the commission of the offences) was subjected to numerous pressures to engage in sexual acts with the defendant and his insistence that these acts be performed with various other persons in exchange for money. Moreover, money was the motive throughout the consummation of the relationship between the two and, although the amounts obtained from her were not necessarily substantial, the manner in which they were obtained leads us to believe that the defendant used the sentimental ascendancy he had over the naive victim in order to obtain these amounts.

As such, we consider that in this case there was a certain type of recruitment of this minor (through social networks) with a view to attracting her and a future explanation in order to obtain sums of money, so that the classification made by the first instance relating to attempted trafficking in persons and sexual act with a minor in continuous form should be upheld and sanctioned as such.

Trafficking is also characterised by: taking advantage of a person's inability to defend him/herself or to express his/her will, or of a person's apparent vulnerability;

As far as trafficking (in human beings) is concerned the methods of trafficking differ from one case to another, but looking at the phenomenon as a whole, we can outline how traffickers operate and the stages they go through before actually exploiting people. In carrying out their criminal activities, traffickers take into account several aspects in their choice of victims, namely lack of a satisfactory standard of living, lack of education,

demand for victims' services, and also lack of criminal law or lack of diligence in its implementation.

It is obvious that in this case the defendant, older than the victim and having a somewhat more consistent life experience, took full advantage of her state of vulnerability (consisting of lack of affection, lack of an organized family and naivety of age), which strengthens even more the frame of the crime retained by the court.

Proxenetism / Proxenetism and blackmail

With regard to the commission of the offence of procuring in this year's case law of the national courts it was held that the defendants induced the victims to engage in prostitution by starting an amorous relationship with them, and during this relationship, persuaded them to engage in prostitution. For example, in one case it was found that the defendant had cohabiting relationships with three women, who he induced into prostitution and then facilitated their activity by providing them with protection [19].

Taking into account the above considerations, as well as those in the above mentioned decision, it can be concluded that the social value protected by the criminalisation of the offence of procuring under Article 213 of the Criminal Code is the freedom of the person, and the holder of this freedom is the "exploited" person, who thus becomes the passive subject of the offence. Based on the group of offences in which the offence of procuring has been included in the new Criminal Code, the main legal object of this offence consists in social relations relating to the fundamental attributes of the person, relations which presuppose the procurement of means of subsistence through work, in conditions of respect for the rules of morality and the assurance of human dignity, excluding any act of acquiring financial gain from the practice of prostitution by another person" [20].

It is true that the court of appeal did not follow up on the classification of attempted pimping, but we consider that in this case there was also an abuse of an obsessive nature against the minor who was repeatedly instigated to have sexual relations with other male persons known to the defendant in order to obtain possible sums of money that he was going to offer her, there being evidence in the case file of statements and interceptions of the DIICOT in this regard.

A similar situation is presented by the indictment number 1721/P/2012 of the Prosecutor's Office of the G. Court, the defendant was sent to trial for committing the crime of "pimping", provided for by Article 213 paragraph (1) of the Criminal Code, with the application of Article (5) and Article 43 paragraph (1) of the Criminal Code.

Not having her own accommodation, in September 2008 the suspect agreed to stay at the home of the defendant K.D.P. in the town of R., where the two were to share the proceeds of prostitution. The suspect claims that the defendant asked her to "produce" the sum of 500 lei every day, and if she did not have enough clients during the week, she was obliged to make up the shortfall on other days. P. D. estimated that between 2008 and 2001 she made approximately 100,000 lei from prostitution. With the money he earned, the defendant bought a car and a plot of land on which he built a house. The suspect claims that she spent only a small part of the money she made, to buy food and cigarettes [21].

As it regards child pornography, initially mentioned in the case by the Court of First Instance, on the merits, it was not reanalysed in the appeal, the latter court making a strict reference to the other three offences, which in our opinion was wrong based on the jurisprudential and doctrinal considerations listed below.

It should be noted that it has been pointed out in doctrine that the purpose of the legal rules on child pornography is to criminalize the production and possession of images of children engaged in sexually explicit activities [22], [23}.

On the occasion of a previous study, in the context of the analysis of the offence of child pornography in the version provided for by Art. 374 para. (11) of the Criminal Code as a form of exploitation of a vulnerable person, we pointed out that: "the purpose of obtaining financial gain gives the offence a character specific to the crimes of trafficking and exploitation of vulnerable persons, in which the exploited person is a commodity in the hands of the perpetrators‘ [24], [25].

As regards to blackmail certain courts have held that The fact that he defendant threatened the injured person, aged 12, with the disclosure of a real, compromising fact for the injured person, namely the bringing into the public domain of videos in which the two had different types of sexual relations, in order to unfairly acquire a patrimonial benefit for himself, namely a sum of money, the injured person succeeding in handing him the

sum of 10 lei meets the typical elements of the offence of blackmail in the assimilated variant and in the aggravated variant revised by Art. 207 para. (2) and para. (3) of the Criminal Code; not of the typical offence and the aggravating variant of this offence provided for by Art. 207 para. (1) and para (3) C. pen Criminal Division {26}.

Otherwise, the main legal object of the offence of extortion consists of social relations relating to a person's mental freedom; the secondary legal object is social relations relating to a person's physical integrity, property relations or relations relating to a person's non-patrimonial rights or interests [27].

According to the case law on the subject, the subjective aspect implies direct intent, because the perpetrator commits the act with the aim of unjustly gaining a benefit for himself or for another. The use sought by the perpetrator may be of any kind, for himself or for another person, and may come from any person, not only from the person who was coerced, because the purpose of the law is not to harm the victim, but to gain a benefit [28].

In fact, in another case, it was held in the writ of summons, in essence, that between 12.08. …20, the defendant A.A.A. exerted continuous psychological pressure (repeated phone calls, intimidating text messages, unannounced visits to the victim's home) and physical violence (repeated blows with his fists and feet, as well as with the handle of an axe; spraying the victim with fuel; siccing large dogs on the victim) on the injured person C.C.C. with the aim of unjustly obtaining for oneself pecuniary benefits consisting of the sum of 70 euros and 1000 lei, which represents the alleged debt accumulated by the injured person as a result of loans granted with interest [29].

There are many similarities between all these cases and the case analyzed by us, as in the case analyzed there were repeatedly threatening messages and attitudes towards the victim who was easily manipulated and impressed, considering that she had not had previous similar relationships. The purpose was for the defendant to obtain for himself various benefits, in particular sums of money, all with direct intent. As such, here too, in our opinion, the existence of an offence of blackmail in a continuous form can be retained.

Conclusions

As can be seen from the above analysis, the intensity and seriousness of such acts is very high, as the minor victims may remain forever psychologically affected by their effects and by the way their exploiters act. It is possible that at the moment they do not acutely feel what has happened to them, but the undesirable effects are felt much later, in adulthood, when they find that they cannot organize a coherent family life, cannot have serious and lasting relationships, children, etc. I believe that the presentation of such cases and how they are resolved by the courts are useful both from a criminal jurisprudential and sociological perspective, the phenomenon being one of widespread in both Romania and Europe.

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THE RELEVANCE OF THE STRATEGIC COMPASS AS THE NEW COMMON DEFENSE POLICY OF THE EUROPEAN UNION

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Abstract:
The "strategic compass" is a newly emerged concept that is used in the European space. The phrase refers to an action guide that sets an ambitious way forward for the EU's security and defense policy until 2030. The goal of creating a strategic compass is seen as a great one, helping to take on security responsibilities. The starting point was the more hostile security environment, which led to an increased EU capacity and willingness to act, to strengthening resilience and increasing investment in defense capabilities.
Keywords: *strategic compass, security, defense, resilience, partnerships, accountability*

Preamble

The process of developing the document known as the "Strategic Compass" was the result of the simultaneous manifestation of two directions: one at the national level, of each member state, and another at the European level. Analyzing the national or the state level, it is known that the main actors involved in addressing this subject were the member states of the European Union, who decided, at the Security and Defense Council in June 2020 [1], to start the reflection process on the Strategic Compass, a document that was approved in March 2022 by the European Council [2]. The discussions held in the summer of 2020 took into account, in broad terms, the current situation of the security environment and the need for such an approach on the part of the European Union.

It was appreciated that "the strategic compass will define policy directions, as well as specific targets and objectives in areas such as crisis management, resilience, capacity building and partnerships"[3]. This communication also stated the stages to be followed in the process of initiation, elaboration and implementation of the document by the European institutions.

One problem that arose was related to the financing of this commendable initiative. It was established, thus, that the sources will be provided, equally, by the

European Union and the member states, which should allocate the necessary financial resources for security and defense at the European and national level, thus achieving important steps in consolidating the economic recovery, especially in critical sectors in the EU.

European and national approaches to the strategic compass

The first version of the Strategic Compass [4] was presented by the High Representative in November 2021, based on the first analysis of the threats reported by the internal structures of the 27 EU member states and a dialogue phase between these states, the EU institutions and experts. Successive versions were discussed in February and March 2022, to reflect on the debate between the Member States and to take into account the Commission's defense and space package (from 15 February 2022) as well as the latest international developments, including Russia's military aggression against Ukraine.

The whole effort to make the *EU a stronger and more capable security provider [5]* was completed by the adoption, in March 2022, of the Strategic Compass. An important role also belonged to the initiatives started in 2016 through the EU Global Strategy [6], which outlined a set of principles designed to reflect and react to the profoundly transformed context inside and outside the Union: unity, involvement, responsibility and partnerships [7]. This also emerged from the Communication of June 2020, when the Council referred to this strategy [8] and the need to continue the activities already launched. It should be noted that in this document the phrase *strategic autonomy* was used, as an objective towards which the European Union should strive.

Another European document that was used in the development of the Strategic Compass was the EU Strategy regarding Security Union [9]. The period covered by the strategy is 2020-2025 and it promotes a deeply oriented approach to strengthening security in pressing areas in the following years: critical infrastructures in economy and society, cyberspace, democracy, the European way of life [10]. In other words, priority areas are considered where the EU can help Member States to promote security for all those living in Europe, while respecting European values and principles.

As stated in the Council press release, the strength of the Union lies in unity, solidarity and determination. This allows the EU to protect its citizens and contribute to international peace and security, in a context where war has returned to Europe, following Russia's unjustified and unprovoked aggression against Ukraine, and also at a time of major geopolitical transformations. This Strategic Compass is expected [11] to strengthen the EU's strategic autonomy and its ability to work together with partners in order to protect its values and interests [12].

The doctrine [13] talked about a *two-dimensional approach* that can contribute to greater support for the content of the Strategic Compass from the actors involved in its approval and implementation, starting from *the four priorities identified* by the Council in June 2020: *crisis management, resilience, development of capabilities, partnerships*. The specialized literature also provides clarifications regarding the use of the concept of resilience, a term borrowed from the technical field, then taken over by other disciplines. "Resilience is a fluid, adaptable concept, with nuanced approaches and evolutions of conceptual developments. For any system that presents at least one vulnerability and that is exposed to risk or threats, resilience can define and measure its ability to continue its existence through solidity in maintaining vital functions and flexibility in other respects" [14].

The finalization of the European document was the result of inter-institutional cooperation. Thus, at the European level, the following were involved in the drafting of the document: the Council of the European Union, the Commission, the High Representative of the European Union for Foreign Affairs and Security Policy. At the same time, the member states constantly participated in the elaboration of the final form of the document by offering suggestions and comments.

Thus, the Commission has set strategic cybersecurity priorities meant to ensure that the EU can anticipate and respond to evolving threats [15]. In addition, the establishment of a common cyber unit is aimed at as a platform for structured and coordinated cooperation.

In the same context, the Council expressed its support for the intensification of strategic, operational and technical cooperation between the European level and the member states, for the consolidation of the single market of cyber security products,

services and processes, as well as for the consolidation of the Union's technological and industrial capacity to protect against cyber threats [16].

The entire approach then continued with the consultation of Member States and the initiation of a Strategic Dialogue in early 2021, in which the European External Action Service contributed with a study entitled Scoping Document: preparing the Strategic Compass. As the study shows [17], the first part of the Strategic Compass contains the threats and challenges the EU faces and how it "contributes to the development of the common European security and defense culture, based on the EU's common values and objectives".

The Content of the EU Strategic Compass

The document reflects, on the one hand, two levels of threat manifestation: the global and the regional level, and, on the other hand, a separate category is identified: threats to the EU.

The public part of the document [18] comprises six main sections of the Strategic Compass. The first is a general section, where threats and challenges are presented or assessed, as well as strategic planning, followed by crisis management and resilience (sections detailing some of the challenges), and the final sections mention capabilities and partnerships as tools needed to achieve the goals proposed.

In the foreword of this document entitled "A strategic compass to transform Europe into a security provider", the High Representative of the European Union for Foreign Affairs and Security Policy stated that the purpose of this Strategic Compass is to enable the European Union: "to become a provider of security for its citizens, protecting our values and interests" [19] and prevent the risk of 'strategic restraint'. Thus, the main objective of the Strategic Compass is to contribute to a more coherent and politically motivated approach to topics in the security and defense sectors.

It was appreciated in the doctrine that, from this perspective, the Strategic Compass: “provides a joint assessment of our strategic environment, of the threats and challenges we face and their implications for the EU; brings greater coherence and common purpose to security and defense actions already underway; establishes new ways and means to improve our collective ability to defend the security of our citizens and

the Union; specifies precise objectives and milestones for measuring progress".[20] In order to achieve these desired goals, the methods by which they can be carried out were also mentioned: faster action; ensuring the security of citizens in the face of threats; investments in capabilities and technologies; building partnerships [21].

The adoption of this document shows the firm assumption of a more coherent and dynamic position of the member states in terms of ensuring greater cohesion and solidarity in the face of present and future threats to their security in an increasingly competitive and fragmented international environment [22].

By virtue of Article 42 paragraph (7) of the Treaty on European Union (TEU), the Strategic Compass aims to increase the EU's capacity and willingness to act, to strengthen resilience and ensure mutual solidarity and assistance. As such, it seeks to enhance the EU's presence, effectiveness and visibility in its neighborhood and on the world stage through joint efforts and investments, and the EU's contribution to shaping the world's future by pursuing a strategic course of action.

The EU's quality as a strong and coherent [23] political actor is required to support the values and principles underlying European democracies, to assume responsibility for the security of Europe and its citizens, and to support international peace and security, as well as human security, together with partners, recognizing at the same time the specific character of the security and defense policy of certain member states.

The compass covers all aspects of security and defense policy and is structured around *four pillars* [24]*: action, security, investment and partnership*.

Related to the first pillar – *action*, the steps to be taken to be able to act quickly and firmly whenever a crisis breaks out, together with partners, if possible, and alone when necessary, have been established.

The second pillar – *security*, gives the EU the opportunity to strengthen its capacity to anticipate, deter and respond to current and rapidly emerging threats and challenges, as well as to protect its security interests by establishing a cyber defense policy, developing a set of tools for handling information and external interference; developing an EU space strategy for security and defense, and also by further developing the cyber diplomatic toolkit.

Regarding *the investment* pillar, the Member States have committed to substantially increase their defense spendings in order to meet the collective desire to reduce critical gaps in military and civilian capabilities and strengthen the European defense industrial and technological base.

To address common threats and challenges, under the fourth pillar – *partnerships* – the EU aims to strengthen cooperation with strategic partners such as NATO, the UN and regional partners, including the OSCE, the AU and ASEAN; develop better-tailored bilateral partnerships with like-minded countries and strategic partners such as the US, Canada, Norway, the UK, Japan and others; develop tailored partnerships in the Western Balkans, the Eastern and Southern Neighborhood, Africa, Asia and Latin America, including by strengthening dialogue and cooperation, by promoting participation in Common Security and Defense Policy (CSDP) missions and operations, and supporting the strengthening of capabilities.

Conclusions

In addition to the attributions and working methods of the decision-making mechanisms, to which mutual relations and interactions are added, the European Union was established and matured within an evolutionary historical process. The Strategic Compass, the European Union's new common defense policy, provides a joint assessment of the strategic environment in which the EU operates and the threats and challenges it faces. It is a document that, for the first time, makes concrete and actionable proposals, with a very precise implementation timetable [25], to improve the EU's ability to act decisively in crises and to defend its security and its citizens.

The compass also clearly underlines the importance of the transatlantic relationship and NATO's role in collective defense, as a stronger and more capable EU in the field of security and defense will contribute to strengthening transatlantic security and NATO. Embracing one scenario or another naturally contains a significant subjective element, but in reality any political decision is subjective because it represents a desirability of those who are responsible for its realization. The question of the future of Europe should be approached in such a way that we are aware of the core of national

interests in a heterogeneous integrative system, which clearly includes economic interests in addition to cultural and institutional perspectives.

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LEGAL REGIME APPLICABLE TO PROFESSIONAL CULTURAL WORKERS

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Abstract:
This paper aims to highlight the hasty manner in which Romanian lawmakers have been regulating certain areas, driven by the idea of meeting certain milestones without identifying the best solutions that would allow for the harmonious development of the field in which they are intervening. The author does not propose an in-depth analysis of the status of a new profession, as it is not possible to speak of such a profession, but rather to highlight certain aspects of interest to the beneficiaries of the regulation.
Keywords: *professional cultural workers, urgency; status, legal and fiscal regime*

Introduction

In a market economy governed by the principle of free competition, the actors of economic life in general, but also those who act in the culture industry, fight in various ways to gain and maintain clientele. In order to survive, but also to identify solutions that lead to the maximization of profits, businesses (professionals) must quickly adapt to changes in the market, some of which are even generated by the rapid evolution of technologies. In this context, most of the time, "the law" is the one that has to keep up with the changes in society, although, ideally, it would be to anticipate them and regulate social relations before imbalances appear in society.

The field I am focusing on - that of the cultural industry - is one full of contrasts and in continuous change generated by an unprecedented technological development. Moreover, the restrictions imposed during the COVID-19 pandemic hit it hard, destabilizing it. This is also the reason why, at the level of the European Union, the emphasis is placed on culture, arts, cultural heritage and cultural diversity, being considered "particularly valuable for European society from a cultural, educational, democratic, ecological, social and economic point of view, as well as from the point of view of human rights". In this sense, they should be promoted and supported because they "contribute significantly to our collective European identity and our values, to our mental health and economic well-being and, in the long term, to the creation of an

European public space"[1]. Considering this desire, each of the member states of the European Union should identify and implement easy tools to benefit the actors of cultural life, including programs and projects subsidized from the state or European budget, through non-reimbursable funding. I do not deny the fact that some of them are successful cultural projects, which generate impressive incomes (such as Untold, Neversea, Electric Castle, etc.), but most cultural projects cannot be seen as businesses in themselves, but have need for financial support precisely for the arguments cited above.

With the expansion of the internet and especially with the use of artificial intelligence, the artists, in general, have more than ever the need for support, through legislative interventions, ensuring them a legal and fiscal framework adapted to the needs and conditions in which they carry out their activity and connected in reality, as well as a series of social protection measures, to allow them to "transition" to the new era that takes place more in the on-line environment.

Critical analysis of the adoption of the emergency ordinance

As we have become accustomed to, regardless of the government, the easiest tool to use for legislating is the emergency ordinance, especially when it comes to transposing European legislation or, in this case, European commitments [2]. Invoking "the need to quickly establish a coherent legal framework that will allow the implementation of reforms and public investments" in this case established by the National Recovery and Resilience Plan (NRRP), Component 11 - Tourism and Culture, as well as "the pressure of the deadline assumed by the Romanian Government for the adoption of Reform of the cultural sector financing system, provided for, in the reform through which the Statutes of cultural workers will be updated / created" (first quarter of 2023) ", the Government proceeds to adopt the EO no. 21/2003 in less than 2 months (launches the draft ordinance for public consultation on February 15, 2023 and adopts it on April 5, 2023, although the NRRP was submitted to the European Commission as early as 2021). How can the "objective, quantifiable fact, independent of the Government's will, which endangers a public interest" to which the Constitutional Court refers in its decisions be justified [3]? How is it that in various fields, such emergencies appear after the time available for the transposition of a directive or the assumed commitments is on average 2 years?

Sphere of the concept of a professional cultural worker

The concept of a "professional cultural worker" is defined by art. 21 par. 1 lit. k) of EO no. 21/2003, as such: "the author or performer, as they are defined in Law no. 8/1996 on copyright and neighbouring rights, republished, with subsequent amendments and additions, and /or the natural person carrying out a supporting or auxiliary cultural activity, among those listed in Annex 1 to this ordinance [4], which have been registered, as such, for tax purposes, for a period of three years ".;

We observe that the legislator places in the sphere of the concept of "professional cultural worker" two categories of professionals involved in the cultural and creative industries, with different skills and professional training: (1) the author or performer, on the one hand, and (2) the professional who carries out a supporting or auxiliary cultural activity.

If, as far as the first category is concerned, Law no. 8/1996 on copyright and neighbouring rights [5], as well as legal doctrine [6], establish the sphere of the concepts of author and performer [7], outlining the portrait and the sphere of their concerns, in the case of the second category, the situation is much more complicated. Here I find a multitude of people "who carry out an auxiliary or supporting cultural activity" such as: technicians and production personnel, support and artistic management personnel, audiovisual specialists, event organizers, exhibition curators, specialists involved in editing books, magazines and periodicals, etc. These, although they do not have an artistic performance, still have a significant role in obtaining a "show" or other cultural product. In order to delimit the sphere of these, EO. no. 21/2003 establishes the limits of "cultural activity", referring to certain NACE codes (Nomenclature of Economic Activities) and the associated activities [8].

Thus, the concept of "professional cultural worker" includes an amalgam of professionals (authors of works, performers, technicians or specialists), who have one thing in common, namely: they carry out a cultural activity or contribute to the realization of a cultural activity. Starting from this hypothesis, we can affirm that the legislation did not aim to regulate a new professional status, as can be deduced from the title of the emergency ordinance. This error of the legislator has generated waves of criticism from the artistic environment, in the period preceding its adoption [9]. In fact, the initiator of the

ordinance started from the need to establish "the foundations and procedures for regulating the financial, fiscal and social status of professional cultural workers on the Romanian labour market" by proposing a normative framework "which will ensure their professional stability, in the sense of being able to carry out their activity and develop their professional career independently of contractual and income fluctuations inherent in the cultural sector, thus reducing the incidence of abandoning artistic or cultural practice" [10]. In this sense, EO no. 21/2003 regulates the procedure that must be followed and the conditions required to obtain a tax identity [11].

According to the provisions of art. 2 para. 2 of EO no. 21/2003, a "professional cultural worker" (...) cannot be a natural person who exercises a regulated or liberal profession, who is a civil servant or who carries out his cultural activity in the form of salaried work performed under an individual employment contract". Therefore, they cannot register as a professional cultural worker: (1) professionals whose legal status is regulated by other normative acts, (2) civil servants (considered lato sensu, i.e. including those with special status), as well as (3) employees, regardless of the position they hold, who have an individual employment contract for an indefinite or fixed period [12]. This legal rule underlines the legislator's intention to establish a tax and social protection regime, and not a professional status.

In the course of his activity, the professional cultural worker can conclude either contracts for the transfer of property rights resulting from copyright or neighbouring rights [13], or contracts for the performance of cultural activities. The latter are defined by EO no. 21/2003 as being those agreements concluded for a fixed period of time between a beneficiary of cultural activities [14] and the professional cultural worker, on condition that they have as their object the performance of a cultural activity [15]. As it results from reading the text of the law, these should complete the sphere of copyright assignment contracts or service contracts with which these professionals are already familiar. However, I do not see their usefulness as they are currently regulated. I believe that such a contract should be one in the sphere of labour law, not civil law. It should be closer to a fixed-term individual employment contract, and which, due to its specificities, should have a special regulation within the Labor Code. An argument in this sense would be the French model, which we have followed so many times, namely the "le contrat de travail à durée

déterminée d'usage" [16] regulated by the French Labor Code, a contract which also applies to categories of workers, professionals in the field of culture, to which our law refers. Moreover, according to art. 9 para. 2 of EO no. 21/2003, these contracts "are assimilated to individual employment contracts with respect to the award of public procurement contracts or service framework agreements". In addition, the legal regime applicable to professional cultural workers is similar to that of employees, as we shall see. Should we ask ourselves why our legislator did not proceed in the same manner? Could the urgency with which he legislated be excusable?

Procedural aspects

To benefit from the rights recognized through EO no. 21/2003 and the more favourable fiscal and social status, people who work in the cultural sector have the option (not the obligation) to register as professional cultural workers. The procedure includes the registration phase in the Register of professional cultural workers (public database, administered by the Ministry of Culture) [17] and then the phase of obtaining the tax attestation certificate from the National Agency for Tax Administration at their fiscal domicile.

To register in the Register of professional cultural workers, certain conditions must be met in relation to the fiscal year prior to the registration request: the natural person must have obtained at least 50% of the income subject to income tax, cumulatively, from: the assignment of copyright or neighbouring rights; independent activities (from those listed in the annex to the ordinance); fixed-term individual employment contracts, for cultural activities and in the cultural field, which have expired by the date of submission of the registration application. Those incomes obtained by the person in question from the exploitation of copyright or neighbouring rights acquired by assignment or inheritance, as well as those from the assignment of copyright for scientific works or for computer programs, are not taken into account [18].

The registration as a professional cultural worker is valid for three consecutive fiscal years. The term starts from the date of registration in the register. It can be extended, provided that at least 50% of the income subject to income tax, realized in the previous interval, as an annual average, comes from activities carried out as a

professional cultural worker [19]. At the same time, the legislator also establishes the conditions under which the registration is suspended or ceases, either by law or at the request of the person.

It is also worth noting that the legislator attaches notable importance to the registration of the person as a professional cultural worker, conditioning the validity of the contracts for the performance of cultural activities on the mention of the date and the unique registration number of the professional cultural worker from the register of professional cultural workers. The same sanction (nullity of the contract) intervenes in the case of the absence from the contract of the conditions for ensuring health and safety at work during or in the course of the activity.

Fiscal and social protection legal regime

The Ordinance includes a series of norms that regulate the social protection system during and in the course of its activity [20]. This aims at: ensuring safety and health at work, access to social health insurance, i.e.: sick leave, benefits for temporary incapacity for work, maternity leave and benefits, maternal risk and for the care of a sick child. Also, professional cultural workers can benefit, under certain conditions established in art. 14 of EO no. 21/2003, from unemployment benefits, as well as the right to participate and be represented collectively or the right to form or join a professional association. Moreover, the period in which the natural person was registered as a professional cultural worker represents seniority in work and in specialty.

Under EO no. 21/2003 (art. 9 par. 3), a professional cultural worker who does not have his domicile in the locality where the performance institution or concerts with which he contracts carries out his activity, can receive, for the entire duration of the contract, from the budget of the respective institution a monthly non-taxable lump sum amounting up to 50% of the average net salary in the economy, to ensure his accommodation.

As far as the fiscal regime is concerned, we can also speak of a more favourable treatment than that applied to other income from independent activities. Thus, cultural activity contracts will be subject to a lump-sum deduction of 40%. The tax will be withheld at source by the payer of income at the time of payment of the income and represents the final tax. Professional cultural workers owe tax and compulsory social contributions, like

all those who earn income from independent activities or from intellectual property rights, as the case may be.

Given that the cultural field is one that is dependent on funding, with the idea of also referring to the "professional career" of this category of workers (since we cannot speak of a "profession"), the legislator allocates a large space to the way of financing these activities through the National Mobility Program and local mobility programs. If the first one is viable being financed from the state budget, through the National Cultural Fund Administration [21], the local mobility programs remain at the disposal and resources of the local authorities, often unable to ensure the financing of current operating needs, which will generate either underfunding of these activities or territorial discrepancies in terms of financing.

We consider it a positive provision that allows (art. 26 of EOU no. 21/2023) local public administration to grant "the right to use performance and concert halls or other spaces, owned by the public or private property of the administrative-territorial unit and administered by public institutions, for the purpose of carrying out professional training activities, such as, but not limited to, rehearsals, exercises, workshops, courses". This right can be granted for a period of no more than 60 days within a 12-month period, for each beneficiary. It represents real help for professionals in the cultural field, especially those at the beginning of their professional career, but not exclusively.

Through the National Mobility Program and the local mobility programs of the local authorities, professional cultural workers can individually apply for non-reimbursable funding for one of the following activities: (a) their international and national mobility for participation in conferences, workshops, exhibitions, exchanges of experience, camps and creative residencies, as well as others, for professional training and qualification; (b) the acquisition of new skills, for the diversification of forms of artistic expression and public communication of works, artistic performances and other protected objects; (c) the costs of transport and insurance of works and other protected objects, as well as the necessary equipment. Non-reimbursable funding is not full, but refers to a fairly significant part (80-90%) of the eligible expenses listed.

Conclusions

The creation of a regulatory framework to ensure professional stability and independence and to allow for career development for actors in the cultural industries is commendable. It will allow them to recover financially and access the main financing instruments used in the cultural field, thus reducing the incidence of abandonment of cultural activity.

Although it had the opportunity to follow the model of legislation with tradition in the field, the legislator chose to regulate this field through a separate legal act, using a sometimes-uninspired legislative technique. The disparate treatment, in various normative acts, of aspects related to labour relations, even intermittent ones, can only lead to a disruption of the "workers" in the field, an aspect that ultimately has repercussions on cultural activity. We note in the ordinance a mix of civil law, tax law, administrative law and labour and social protection law, but we cannot speak of a real status, because we cannot speak of a new professional category, but rather, as we have shown, rather of a regulation of the fiscal and social protection regime of specialists in the cultural field who carry out such an activity regularly. Although they work in the same field, they belong to different socio-professional categories or perform different professions that support cultural activity.

Despite its limitations, the EO no. 21/2003 represents a first step towards improving the working and social conditions of cultural workers in Romania. However, in order to achieve a truly effective and sustainable regulation, it would be necessary to adopt a comprehensive approach that addresses the specific needs and challenges of this sector, taking into account the diversity of professions and activities that it encompasses.

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[4] The Annex includes, on the one hand, the fields of cultural activity, ancillary activities and support for cultural activity, proceeding to the enumeration of the NACE codes, as well as cultural management and cultural project management activities, education through culture, film education, cultural dissemination, film/visual arts/performing arts curation, stunt work, cultural festival production activities, specific technical activities for offline and online cultural production.
[5] Republished in the Official Journal of Romania, Part I, no. 489 of June 14, 2018, pursuant to art. III of Law no. 74/2018. Subsequently to the republication, the law has undergone a number of amendments and additions.
[6] See Roș.V., Bogdan D., Spineanu-Matei O., Copyright and Neighbouring Rights, All Beck, Bucharest, 200, pp.33 and following; Ungureanu G., Intellectual Property Law, Mustang, Bucharest, 2021, pp. and following.
[7] The legislator proceeds to enumerate the categories of persons who fall within the scope of this notion of "performers": actors, singers, musicians, dancers and other persons who fall within one of the following criteria: present, sing, dance, recite, declaim, play, perform, direct, conduct or perform in any other way a literary or artistic work, a performance of any kind, including folk, variety, circus or puppetry. Therefore, from the literal interpretation of the legal text, we can conclude that the scope of these is limited, even if the expression "and other persons" would have led to the idea that the scope of these is wider, because the enumeration of the criteria is a limiting one ("present, sing, dance, recite, declaim, play, interpret, direct, conduct or perform in any other way"). For details, see Roș V., Bogdan D., Spineanu-Matei O., op. cit., pp. 465-466; Ungureanu G., op. cit., pp. 75-76.
[8] By cultural activity we understand "the creation of a literary or artistic work or a protected object and/or the performance or execution, non-fixed or fixed, as defined in Law no. 8/1996 on copyright and neighbouring rights, protected or capable of being protected by copyright or neighbouring rights, as well as the activities provided for in the annex which is an integral part of this emergency ordinance". (art. 2 para. 1 lit. a) of EOU no. 21/2023).
[9] See the letters of the UNITER Association of March 9, 2023, addressed to the Ministry of Culture in the article by Demeter C., PNRR also strikes at artists. The Ministry of Culture hides in the fog a strange body of inventory of the cultural act, published in Jurnalul, https://jurnalul.ro/editorial/ministerul-culturii-pnrr-artisti-organism-inventariere-927747.html; Open letter from director Theo Herghelegiu in Revolt of a director against the new status of the "professional cultural worker": "We do not want ANAF to decide whether or not we are professionals". The response of one of the authors of the legislative act, article by Șerban A. and Ungureanu L., published in Libertatea https://www.libertatea.ro/stiri/revolta-unei-regizoare-fata-de-noul-statut-al-lucratorului-cultural-profesionist-nu-dorim-ca-anaf-sa-decida-daca-suntem-sau-nu-profesionisti-raspunsul-uneia-dintr-4458083
[10] EOU no. 21/2023 uses an unprecedented technique to regulate the status of the professional cultural worker and allocates only one article to this effect, which is added to the definition of art. 2 para. Lit. k) mentioned above, specifying who cannot be a professional cultural worker.
[8] In the sense of the ordinance, the beneficiary of cultural activity is "the legal person, the authorized natural person, the individual enterprise, the family enterprise, for which the professional cultural worker carries out remunerated activities on a contractual basis, other than the individual employment contract".
[9] In the case of performing artists who perform a non-fixed performance or execution, the assigned patrimonial rights are provided for, as a distinct object, in the contract for the performance of cultural activity.
[10] See the statement of reasons.
[11] See the following sections.
[12] O.U.G. no. 21/2023 uses a novel technique to regulate the status of the professional cultural worker and allocates a single article in this sense, which is added to the definition in art. 2 para. LIT k) above-mentioned, specifying who cannot be a professional cultural worker.
[13] For more details, see Roș V., Bogdan D., Spineanu-Matei O., op. cit., pp. 371 et seq.
[14] In the sense of the ordinance, the beneficiary of the cultural activity is "the legal person, authorized natural person, individual enterprise, family enterprise, for which the professional cultural worker carries out remunerated activities on a contractual basis, other than the individual employment contract".

[15] In the case of performers and performers who carry out an unfixed interpretation or performance, the assigned patrimonial rights are provided, as a separate object, in the contract for the performance of the cultural activity.
[16] https://www.legalplace.fr/guides/cdd-usage-cddu/
[17] The register includes the identification information of natural persons registered as professional cultural workers: the unique registration number, the date of registration as a professional cultural worker and the date of termination of this registration, the mentions regarding the suspension of the quality of professional cultural worker, including the termination of the suspension and, as the case may be, the date of legal termination.
[18] In the calculation of the income threshold taken into account for the registration of the professional cultural worker for the years 2023 and 2024, the legislator provides an exception (art. 71). Dividend income, distributed by companies with a single shareholder, which carry out their activity, based on the main NACE code, in one of the cultural fields referred to in the annex to the O.U.G. no. 21/202, as well as those incomes from other sources about which the applicant submits a declaration on his own responsibility regarding the fact that these incomes come from cultural activities.
[19] The extension of the registration is requested with a minimum of 60 days and a maximum of 120 days before the expiration of the term.
[20] We do not propose a detailed treatment of them, but only an enumeration.
[21] The amount allocated will be established annually, by May 15 of each year, by order of the Minister of Culture.

DIGITALIZATION IMPACT ON RIGHT TO EDUCATION IN ROMANIA. OPPORTUNITIES AND CONSTRAINTS

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Abstract:
The world has transformed significantly in recent years, especially during the 2020 pandemic, and concepts such as 'digital transformation,' 'the workforce of the future,' 'alternative channels,' 'virtual consulting,' 'online onboarding,' etc., are now part of our daily discussions. Evidently, the question arises: How prepared are organizations for this new era of remote interactions? How digitalized are companies? Can they survive in the current context?
This paper aims to provide a comprehensive analysis of the challenges, advantages, and wide-ranging impact of digitalization on the Romanian educational sector, highlighting the need for a professional approach focused on innovation and adaptable to the real needs of society and students. By understanding the complexity and implications of digitalization on education, we will be able to develop and promote effective educational policies and strategies that fully leverage the advantages offered by technology and ensure an appropriate educational framework in the digital era, where access to information and quality educational resources is a fundamental right of every young Romanian citizen.
Acknowledging that digitalization has a significant impact on the right to education in Romania, with evident benefits such as increased accessibility to information and administrative efficiency, but also constraints related to the socio-economic disparities in the country, we conclude that, for the future, promoting digital inclusion in the public education system is crucial, through continuous investments in digital infrastructure, ongoing training of teaching staff, and strong collaboration between the public and private sector.
Keywords: *digitalization, public service, public educational system, 4th industrial revolution*

Introduction. General aspect regarding digitalization

Digitalization is considered the fourth industrial revolution. If we recall the major changes the previous ones brought to social life at the time of their emergence, we understand that it is a one-way path and that all involved actors are compelled to act. And if we also consider (and we cannot do otherwise!) the element that differentiates this revolution from the previous ones – the speed at which it propagates! – the constraint of time immediately arises. Therefore, *action must be taken Now*!

As with any major change, inertia is significant. New concepts such as Technology of Things (ToT) or the Internet of Things refer to the connection between devices and

objects; a combination of several technologies through which various objects can utilize and multiply their "force." [1]

Although digitalization is a relatively new process in the context of education and is based on advanced and continuously evolving technologies, it is essential to understand and objectively evaluate its consequences in order to identify and implement the most effective solutions and educational policies for the benefit of all students in Romania.

By understanding the complexity and implications of digitalization on education, we will be able to develop and promote effective educational policies and strategies that fully leverage the advantages offered by technology and ensure an appropriate educational framework in the digital era, where access to information and quality educational resources is a fundamental right of every young Romanian citizen[2].

The world has transformed significantly in recent years, especially during the 2020 pandemic, and concepts such as "digital transformation," "the workforce of the future," "alternative channels," "virtual consulting," "online onboarding," etc., are now part of our daily discussions. Evidently, the question arises: How prepared are organizations for this new era of remote interactions? How digitalized are companies? Can they survive in the current context?

In a study conducted by one of the world's leading consulting and audit firms [3], digital capabilities were analyzed and grouped into a set of 23 competencies, thus creating the framework of what we call "being digital." There is a very valid reason when we say that "being digital" represents the highest level of maturity a company can achieve.

The process begins with "digital exploration," where traditional technologies are used to automate existing capabilities.

It continues with the "build the digital ecosystem" stage, where traditional technologies are employed to extend existing capabilities, in an endless illusory loop of doing digital things but without significant real changes – this is the step where most companies get stuck.

The next step is "becoming digital," where changes are visible within business, operational, and customer interaction models.

And it culminates with "being digital" as the ultimate goal, where the aforementioned models are optimized for the digital world and are profoundly different from the previous way of working.

Moreover, digital skills are compared to chromosomes deeply embedded in an institution's DNA, defining the company, containing specific instructions that make it a living, unique entity.

The Industrial Revolution and the Necessity of Digitalization in the Educational Process

The Necessity of Education as a Fundamental Right

Education is widely recognized as an absolutely essential fundamental right, which must be unquestionably and categorically ensured for all citizens, regardless of origin, social status, or available financial resources. As a member country of the international community, Romania has the duty and responsibility to strictly adhere to and implement an accessible, completely free education system characterized by exceptional quality, fully complying with the rigorous standards of relevant global organizations. Education, without any doubt, constitutes the absolutely necessary and vital foundation for the individual development of each person [4], facilitating social inclusion and significantly contributing to the overall improvement of quality of life in our ever-evolving contemporary society [5]. Therefore, it is fundamentally important that, in the current context of rapid technological advancements, digitalization is implemented with optimal rigor and increased efficiency so that this process actively and justly contributes to ensuring equal and equitable access to exceptional and high-quality education for all the delightful and talented students of our beloved and proud Romania [6].

The fourth industrial revolution – or Industry 4.0 – is transforming economies, jobs, and even the society we live in today. Technologies of all kinds, especially digital ones, are merging using data analytics, artificial intelligence, cognitive technologies, and the Internet of Things (IoT) to create digital enterprises that are not only interconnected but perfectly capable of making informed decisions. In short, this revolution incorporates intelligent technologies, connected to each other, surpassing the organizational framework and interfering with our daily lives.

We have all been thrown into a new global paradigm and have the possibility of turning everything into a story of great magnitude or a lethal one. The way we choose to respond to such a change requires knowing our strengths and improving them while at the same time being aware of our weaknesses and overcoming them. Being unprepared while trying to navigate a storm at sea is not the recipe for success.

Already at the European level, many countries have good practices in operating and developing distance learning programs [1], which have become an integral part of learning processes, and in the era of the new economy, the educational space is rapidly growing and expanding due to the development of the digital environment: electronic models of universities are being formed, electronic textbooks are being created, and educational platforms are being created and developed [7].

Advantages, Benefits, and Opportunities

Digitalization in education brings numerous benefits, including increased accessibility to information. Through digital technologies, students can access various resources and educational materials from anywhere, regardless of location or available resources. This eliminates geographical and economic barriers, making access to education much more democratic and inclusive. Additionally, through online platforms and digital libraries, students have the opportunity to study anytime and find updated and diverse information, contributing to the diversification and enrichment of the educational process. With the help of digitalization, the teaching and learning process can be significantly improved. Students can have access to interactive multimedia content, which helps them better understand subjects and consolidate their knowledge. Specialized applications and software can also be used, offering personalized exercises and immediate feedback, thus contributing to the development of students' skills and competencies. Besides these aspects, digitalization in education opens new opportunities for collaboration and communication between students, teachers, and specialists from different fields. Through online learning platforms, students can work in teams and collaborate on joint projects, thus developing teamwork skills and the ability to communicate effectively. Moreover, by using digital technologies, the assessment process can be improved and diversified. Online assessment systems offer the possibility

to monitor and evaluate students' progress in real time, facilitating interventions and improving results. Additionally, technology can be used to create and administer online tests and exams, thus reducing the costs and resources required for their organization. In conclusion, digitalization in education brings numerous advantages and possibilities, improving access to information, the learning process, collaboration, and assessment. However, it is important that these technologies are implemented responsibly and in accordance with educational objectives and values, to ensure a quality and equitable educational experience for all students.

In summary, we can say that digital learning is "an education with technology that offers a series of advantages. In the educational process, there is an element of control over time, location, direction, and/or speed. Learning is no longer limited to a fixed schedule. The internet and the multitude of internet-connected computers have given students the freedom to learn at any time. On the other hand, learning is no longer restricted to a certain space – it can take place from any space with internet access; and it is no longer limited to the teacher's pedagogy. Software programs, most of them interactive and adaptive, can come to aid and complement, allowing for versatility, adaptation, and personalization of learning.

Digitalization is a tool for collaborative and creative learning (an advantage but also a weak point – a danger, even if digital education providers are not properly prepared!).

Constraints

One of the main impediments, at least initially, is the technical resources that are mandatory for conducting the digital educational process [8]. This is because technology is a tool for delivering content. Digital learning requires a combination of technology, digital content, and training.

In this context, technology facilitates students' access to content. It provides access to the Internet and equipment that can be used by any internet-connected computer – from a desktop to a laptop to an iPad to a smartphone. Therefore, technology is a tool, not an instruction. The question rightly arises: ‘How prepared are leaders in both the public and private sectors to harness the full potential of Industry 4.0 and bring benefits to customers, people, organizations, communities, and society in general?’ A

recent study [3] analyzes four important areas for organizations and the impact of digitalization on them:

- Social Impact: Stability versus capacity to influence. While CEOs expect a stable future with fewer social inequalities, they are increasingly less convinced of their or their organizations' influence on today's society.
- Strategy: Passivity versus action. CEOs recognize that they are not prepared to capitalize on the transformations associated with Industry 4.0. However, company leaders have not adjusted their current strategies to be more prepared for the future.
- Workforce: Evolution versus revolution. CEOs believe they do not have the right people to succeed in Industry 4.0. Although they say they are doing their best to build the appropriate workforce, their responses show the exact opposite, namely that the talent issue is not a priority for them.
- Technology: problem-solving versus prevention. Executives know they need to invest in technology to transition to new business models. However, necessary investments are delayed due to a lack of strategic alignment and short-term vision.
- Type of tools influencing the exclusion of certain categories of people due to lack of resources.

European Regulation

According to the European Commission, digital technology, when used skillfully, equitably, and effectively by educators, can fully support the goal of high-quality and inclusive education and training for all learners [9].

In recent decades, many initiatives and investments have been made in educational technology and the development of digital skills. Despite progress and excellent examples of innovation, these initiatives have often been short-lived or limited in scale, having a marginal impact on the system. This could be partly due to the fact that the potential of digitalizing education was not widely visible and understood. The crisis caused by the COVID-19 pandemic put us in a situation where there were not many options available to provide education and training outside of digital technology [10]. We learned a lot, and many teachers, students, and parents faced a steep learning curve. At

the same time, the pandemic exposed deficiencies that need to be addressed to successfully integrate digital technologies into education and training systems.

At the European Commission level, the approach to digital education was first made in 2018 within the first Digital Education Action Plan, when the EU addressed digitalization in education through a series of measures [11]. As the digital transition continues, and the public health crisis brings new challenges to the forefront, the new Action Plan focuses on longer-term digital change in education and training.

Recent events related to the emergence and persistence of the pandemic worldwide have increased the speed of action for leaders and administrations in all systems. Thus, at the EU level, the Digital Education Action Plan for 2021-2027 was adopted – a document titled "Resetting Education and Training for the Digital Age" – a European Commission document adopted in Brussels in September 2020 and communicated to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions.

Based on the work of the European Parliament [12], the Council [13], and the Commission, the Action Plan aims at measures for high-quality and inclusive digital education and training, which will require a combination of actions and policies to be effective. It sets out priorities and corresponding actions where the EU can add value.

At the European level, two action directions have been identified:

- Increasing the range of digital technological products – educational platforms, educational software – including online, distance, and blended learning.
- Acquiring digital skills (knowledge, attitudes, and aptitudes) among users to conduct social activities in a world increasingly influenced by technology.

The public consultation conducted by the EU found that 95% of respondents consider the crisis caused by the COVID-19 pandemic a turning point for how technology is used in education and training. This highlighted the need for high-quality digital content to be available and accessible to learners and educators. It also increased the need to involve all individuals and all parts of the education and training system in a joint effort to ensure that technology is used effectively, thus becoming a driver of high-quality and inclusive education, rather than an obstacle.

National Regulation

- National Education Laws 198/2023 and 199/2023 – who replaces the old Education Law no. 1/2011 [14];
- Law 55/2020 on some measures for the prevention and combating of the effects of the COVID-19 pandemic, with subsequent amendments and completions;
- Government Decision 394/2020 regarding the declaration of the state of alert and the measures that apply during it to prevent and combat the effects of the COVID-19 pandemic;
- Government Emergency Ordinance no. 70/2020, regarding the regulation of some measures, starting with May 15, 2020, in the context of the epidemiological situation caused by the spread of the SARS-CoV-2 coronavirus, for the extension of certain deadlines, for the amendment and completion of Law no. 227/2015 on the Fiscal Code, the National Education Law no. 1/2011, as well as other normative acts.
- OMEC 5767/15.10.2020 regarding the accreditation, organization, and conduct of continuous training programs intended for teaching staff in pre-university education in the 2020-2021 school year – OMEC no. 4135/21.04.2020 approving the Instruction regarding ensuring the continuity of the learning process at the pre-university education system level. OMEC 5767 prohibits face-to-face activities of training programs, as well as the activities of completing these programs previously accredited face-to-face. It also regulates the transformation of direct activities into online activities with "synchronous audio-video" [15] online evaluation, with the specification that schools already accredited until the date of the order will need to obtain the CSA (Specialized Accreditation Commission) approval, with the obligation of the training provider to reorganize the curriculum. In all regulatory activity, a commendable primary concern is noted, namely: activities must continue. However, the real and effective focus on how this actually happens has not been demonstrated. There were many proposed variants, we might even say a confusion of the institutions with responsibilities in the field.

But let's follow the conditions set for training providers to ensure the quality of training and the real acquisition of competencies:

- At least 50% of the time budget allocated to activities included in the curricula should be conducted in an online meeting system;

- Reorganization of curricula;
- Groups of a maximum of 35 trainees;
- Scheduling of groups in an online meeting system without overlapping activities (!);
- Ensuring the archiving of documents related to the implementation of programs.

The methodology for accrediting and periodically evaluating continuous training providers and the programs offered by them, approved by OMEC 5564/2011 [16]. The program evaluation will consider measuring the impact of the program on the quality of teaching and other specific activities of the education system, in line with the thematic area.

- Order of the Minister of Education and Research no. 4649/2020 regarding the establishment of measures related to the accreditation, organization, and conduct of continuous training programs intended for teaching staff in pre-university education, in the context of the COVID-19 pandemic. It was appreciated that the order by which the Ministry of Education regulated online courses (an extremely necessary step), appeared very late and did not include a plan of concrete, long-term measures [17]. Furthermore, the order disadvantages vulnerable communities, particularly those in rural areas, by violating all children's right to education through its regulations. The figures clearly show that the gap between rural and urban schools remains profound, with poverty and social exclusion being twice as high in rural areas compared to cities.

According to a 2018 study [18], 62% of rural households lacked internet connectivity, and 58% had neither a computer nor a laptop. Moreover, about 96% of respondents said they had a mobile phone, but not necessarily smartphones. Digitalizing education is one of the major priorities, and these times, especially how this year has unfolded, clearly show that it must be a national priority. Existing digital equipment in schools is insufficient, and Romania ranks among the lowest in Europe regarding digitalization.

Most parents and teachers still show a rather dismissive attitude towards using technology in classrooms and for homework. On Wednesday, the Ministry of Education issued a ministerial order with instructions for conducting online classes in pre-university

education, while the university environment organized itself according to the principle of university autonomy.

MEN's Attempt

We will further present an attempt by the National Ministry of Education in the field of educational digitalization. The goal was for students in digital classes to interact with professionals from fields such as social media, personal branding, personal development, technology, artificial intelligence, or financial education. Thus, the Ministry of Education and Research launched a module of digital classes in collaboration with the NGO Narada as part of the "Reaction for Education" initiative.

In the Naradix digital class module [19], students from across the country have an hour online to learn about topics such as social media, personal branding, personal development, technology, artificial intelligence, or financial education. Students will have the opportunity to interact with top professionals from these fields. The NaradiX digital classes will feature famous vloggers, business people, or well-known trainers.

In Romania, due to the situation caused by the COVID-19 pandemic, face-to-face courses were suspended starting November 9, 2020, and all schools moved their classes online. A survey conducted between November 18-23, 2020, on a sample of 9,401 students, 3,265 teachers, and 4,965 parents, shows that although the pandemic forced the digitalization of education, and teachers improved their digital skills while students became accustomed to using various online platforms, only 23% of students and 36% of parents believe that digital elements will continue to be used in face-to-face education. The only optimists are the teachers, 60% of whom consider that face-to-face education will integrate digital elements after returning physically to school.

Although there are premises for participation in online education, with most teachers organizing classes, the quality of these classes becomes questionable from the perspective of the three targeted groups – students, teachers, and parents," the survey "Perceptions of the Quality of Online Education" shows.

Thus, 26% of teachers and 26% of students, and these are only those who have internet access, say that classes are partially conducted through video platforms and individual work materials are transmitted. "Thus, one of the students' and parents'

complaints is that teaching methods have not been adapted to the specifics of online education, and teachers often dictate information or students have to summarize/copy lessons from textbooks," the survey shows.

Students consider that teachers only partially manage to adapt educational content and teaching to students' needs, with the most appreciated category of teachers being those who use innovative teaching methods (games, quizzes, projects).

"Some teachers have adapted very well to online education and strive to facilitate the educational process for students, also becoming an emotional support for them. On the other hand, in the view of students and parents, some teachers are rigid in conducting online activities: marking students absent if they do not have their cameras on or if they get disconnected from the internet, giving low grades if students have technical problems, not going over information that was not understood or noted by students, etc.," the survey also reveals.

Constraints. Educational Content Is Not Adapted

On the other hand, the survey results show that teachers face their own difficulties in organizing and conducting online classes, which require digital skills and adaptation of educational content, more preparation time, innovative testing and evaluation methods, and administrative activities that have arisen suddenly.

Thus, the ability to adapt educational content to students' needs requires time and emotional well-being, which is often lacking for teachers as well.

Due to the difficulties encountered by teachers in conducting online classes, they are perceived by students as boring by 29% and useless by 17% of students.

A proportion of 27% of students consider online classes interactive, most likely due to teachers' involvement and interest, while for another 17% of students, online school is relaxing, as it takes place at home, in their own comfort.

The remaining 10% of student respondents gave other answers than the preset ones, one of the most frequent being that online school is "tiring"; other characteristics attributed to online school were: "stressful," "difficult," "exhausting," or that its efficiency depends on the subject and the teacher.

In this context, the majority of students (54%), teachers (57%), and parents (62%) consider that the quality of education provided in the 2020-2021 school year to date is lower compared to the quality level in the 2019-2020 school year.

According to the survey, teachers consider that the lack of educational content adapted to the online education system constitutes a difficulty in effectively conducting online classes.

"Teachers are making efforts to improve their digital skills and adapt educational content, some of them are looking for materials on the internet on their own, others have enrolled in various free courses, but there is no unified approach regarding the materials that should be used. Additionally, teachers had to allocate much more time, perhaps even double, to preparing online classes," the survey "Perceptions of the Quality of Online Education" shows.

Data collection was carried out between November 18-23, 2020, through an online questionnaire distributed via the communication channels and networks of the two organizations that initiated the survey. The analyzed sample consists of 9401 students, 3265 teachers, and 4965 parents from all counties in Romania and is non-random and non-probabilistic. Although the number of respondents is quite large, the results of this survey are not representative at the national level; respondents completed the questionnaire based on availability and access to technological means and the internet. Moreover, one of the limitations of this survey is that the majority of respondents are from urban areas: 85% students, 68% teachers, 68% parents, so the presented results should be interpreted within the methodological limits mentioned here.

In conclusion, we observe that interactive methods contribute to the development of skills, prioritize personality development, capacity, and aptitude development, are action-centered, encourage independent work, initiative, creativity, critical thinking, and the teacher's main task is to create the opportunity for the student to "find themselves," to affirm, be original, ingenious, and different [20].

Implementing digitalization in Romania's public education system faces various constraints, such as internet availability and the necessary equipment for accessing online education. There are also difficulties in providing technological resources in schools located in rural or disadvantaged areas. These issues can lead to a significant

discrepancy between students who have access to technology and those who do not. The difference in access to technological resources can negatively impact the academic performance and personal development of the involved students. Additionally, there is a need to invest more in infrastructure and teacher training in digitalization to ensure quality education. Allocating adequate funds and partnerships with the private sector can play a crucial role in improving access to technology and developing educational infrastructure [21]. It is important to promote an equal and inclusive approach in the digitalization process of the public education system so that every student has the opportunity to fully develop and reach their maximum potential.

Conclusions. Proposals

Digital education is largely an innovation of recent decades, although it already existed in various forms a little earlier. In other words, the educational system's environments are anticipated as a mitigation of unforeseen natural and artificial pandemics [22]. Digital transformation in education identifies an advantage in the progress made in the field, specifically in the use (and multiplication) of IT devices and applications on an increasingly large scale.

The difficult experience we are going through, the coronavirus pandemic, the suspension of courses for over a month, the state of emergency, and social distancing measures lead to the conclusion that, for a while, our lives have inevitably moved online – communication, learning, informational support, a solution to avoid intellectual stagnation.

In this context, digitalization becomes an essential condition, an irreversible process that involves clarification, a succession of stages, the transition from digitizing information to its digital use, the necessary preparation, regardless of age, profession, work environment. The concept of digital life is an integral part of the modern world, and the current epidemiological crisis has accelerated the awareness of this reality and the need for expertise and preparation to have a relatively functional society in difficult times. From arguments, explanations, explorations, digitalization becomes an essential component of society, fields of activity, our lives; therefore, logically, education and schools must integrate the concept with all necessary implications and measures [23].

We need to outline legislative support, a coherent strategy with stages, measures, and consistent steps to generalize digital skills, thoroughly preparing the educational system for substantial changes in mentality, organization, content, equipment, methods, and teaching procedures. Integrating digital approaches in the educational process currently implies at least two aspects.

We must conceive a didactic approach where applications, the internet, computers, educational films, interactive didactic games and exercises, and the simulation of abstract scientific processes and modeling complex phenomena are teaching/learning forms that complement theoretical presentation, textbooks, books, workbooks, worksheets, activities, and interactions in the classroom. Thus, information is translated into digital format, a difficult process, often undertaken with great effort. Achieving a coherent approach to the digitalization process involves a conceptual basis in this direction, a curriculum for digitalizing courses, and teaching-learning-evaluation methods. We must not neglect the teachers' specialized training, which currently benefits from various, often improvised, support, and even less in an organized, systematic, institutionalized, generalized manner.

Digitalization in education, as it has been conceived and put into practice for years in developed countries, involves the complex, integrated, and unitary integration of technology in teaching activities, evaluation, communication, school administrative activities, extracurricular activities, homework, and the relationship with students and their families.

Taking into account the realities of the public education system in Romania, the general introduction of digitalization in this field requires planning, both in terms of infrastructure development and the preparation of teachers and students. There is a need to identify available resources and plan necessary investments to ensure an equal opportunity for all students to benefit from quality digital education.

The following proposals could help improve the digitalization process in the public education system in Romania:

- Developing a national strategy for the digitalization of the public education system that includes clear objectives, measurable indicators, and timelines for achieving them.

- Investing in infrastructure, especially in rural or disadvantaged areas, to ensure internet access and necessary equipment for students and teachers.
- Providing specialized training for teachers in using digital tools and developing digital educational content.
- Developing and promoting the use of digital teaching methods and resources, such as educational platforms, interactive applications, digital textbooks, and online libraries.
- Encouraging partnerships with the private sector to provide technological resources and expertise in developing educational infrastructure.
- Ensuring the involvement of all stakeholders (students, teachers, parents, and local communities) in developing and implementing the digitalization strategy.
- Promoting an inclusive and equal approach in the digitalization process to ensure that every student has access to quality education, regardless of their social or economic background.

Finally, we can say that digitalization in the public education system in Romania is an essential step towards modernizing education and adapting to the requirements of the 21st century. However, the process requires coherent planning, adequate investments, and the involvement of all stakeholders to ensure equal access to quality education and to develop the necessary digital skills for the future.

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PUBLIC ORDER AND ADMINISTRATIVE AUTHORITIES IN THE MODERN ERA. THE POLICE OF BUCHAREST IN THE MID-19TH CENTURY

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Abstract:
Our study intertwines information and bibliographic sources specific to the history of public administration and the history of the Romanian police, bringing to the attention of interested parties two fundamental concepts of these fields: public order and administrative authority, which we examine through the lens of a practical case: the police of Bucharest. In this context, we aim to briefly analyze the evolution of the structure and organization of the Bucharest police in the mid-19th century, taking into account the role and functions of the police in maintaining public order in Bucharest during this period, as well as the influence exerted by the political factors of that time on the public order authority.
As a research method, we chose the comparative analysis of concepts associated with ”public order” and the qualitative analysis of the documents we had access to, starting from the historical study of the political context specific to the period analyzed: the mid-19th century.
Keywords: *public order, good governance, administrative institution, modern era, police*

Introduction

The topic we aim to analyze explores the essential transformations within Romanian social and administrative structures in the context of modernization. The 19th century marked a period of profound changes in Europe, and Bucharest was no exception. As the city rapidly developed, the need to maintain public order and efficiently manage urban congestion became imperative.

By the mid-19th century, Bucharest's authorities began implementing reforms inspired by Western models to address the challenges posed by urbanization and population growth. The Bucharest police played a very important role in this process, being responsible not only for maintaining public order but also for preventing and combating crime, ensuring the security of citizens, and regulating the daily aspects of urban life.

The analysis of this period highlights how administrative and police structures evolved to meet new requirements and challenges. The study will shed light on both organizational and legislative aspects, as well as the impact of these measures on the daily life of Bucharest residents, offering a comprehensive perspective on the city's development during a time of transition and modernization.

Regulation for the Reorganization of the Capital's Police

The return to native princes in 1822 did not bring significant changes in public administration due to the body of civil servants who had been trained during the Phanariot period. [1] The reforms that were anticipated, including in public administration, were slow to materialize [2]

On July 6, 1850, a Regulation for the reorganization of the capital's police came into force. It stated that: "The Police oversees everything concerning the prevention of police-related evils as mandated by this Regulation, namely: the defense of public and private rights concerning any residence, the city's security against fire and other such dangers as well as against theft and crowding caused by evildoers or vagrants, the removal of beggars, ensuring good and unadulterated quality of provisions, fair measurement and sale of essential items, preventative measures against breaches of police regulations, initial investigation of misdemeanors and crimes, arrest of such suspects, and their referral to competent courts according to the country's Regulations [3] when such a measure is deemed necessary after a summary investigation conducted by the Police", as stated in Article 1.

According to the Regulation, the Police Department depended on the Ministry of Internal Affairs and was composed of the High Police, which had authority over the entire country, and the Ordinary Police, which in the city of Iași was represented by the Agie, and in the counties by the prefects. In turn, the Ordinary Police was divided into three branches: the Police overseeing peace and good governance, the Municipal Police, and the Judicial Police.

The Police's Vigilance Over Peace and the Maintenance of Order

"The police's vigilance over peace and the maintenance of order" was an administrative authority responsible for intervening in any incidents that disturbed the peace and safety of citizens, as well as serving as an auxiliary means for the administration (officials) when requested. From the beginning, attention was given to the recruitment of personnel, their relationship with citizens, and the principle: "It is easier and better to prevent than to combat". It is easier and better to prevent than to combat." Social value acquires a different status compared to what it had been until then. [4]

In this regard, Article 6 stated: "Police officers, in fulfilling their duties, shall conduct themselves with dignity, modesty, without harshness in words or deeds, being obligated to prevent prohibited actions through their diligence rather than to punish them in all occurrences". The right to property could not be violated: "The police are obliged to respect the domicile of citizens; they may only enter in cases of clear wrongdoing, when called for assistance, or when explicitly mentioned by the competent authority within the laws". [5]

The most important duty entrusted by the Governance was uncovering those who would conspire against it by drafting proclamations, posters, creating armament and ammunition depots, plotting, and inciting rebellion through unauthorized public gatherings. If street demonstrations could not be prevented, the police would request military assistance, with the role of mediator falling to the commissioner of the respective division, who, in turn, had to warn the demonstrators three times by beating a drum, informing them that the assembly was illegal and that they must disperse. If the warnings had no effect, the military would intervene by force, using firearms if necessary, and the leaders would be arrested and referred to the competent courts. To prevent such manifestations from becoming particularly serious, the police controlled the sale of gunpowder in "appropriate quantities" and only to trusted individuals. It was prohibited for merchants to sell ammunition without police authorization, as well as firearms or edged weapons, specifically mentioning stilettos, stiletto knives, bayonets, and canes with swords.

The police also had the responsibility of implementing measures to prevent and extinguish fires, fining those who did not follow the established rules in this regard.

Although firefighters extinguished any fire that occurred, the role of the police was quite important, with the police commissioner and his subordinates being required to be present at the scene of the disaster, to prevent panic and collaborate with the firefighters, to request help from private water carriers and the public present if the situation demanded it, and to ensure the protection of evacuated goods against theft or intentional destruction [6]. The police were also responsible for the traffic on public roads, the control of foreign subjects, various guild craftsmen, and servants.

The Municipal Police and the Judicial Police – Institutions of Public Administration

The ”Municipal Police” represented the second branch of the so-called Ordinary Police and had responsibilities in the area of ”cleanliness oversight” and rules regarding the beautification of cities, ensuring the freedom and security of movement of people on public roads, the protection of monuments and public buildings, taking specific measures for fire prevention, regulating the circulation of carriages and cabs, and supervising markets and tariffed objects.

Regarding supply, the barrier inspectors had the obligation to allow access to the city for food producers, with the note that these had to be sold in specially designated areas (markets). In all markets and halls of the city, police officers were assigned with the main responsibilities of: prohibiting the sale of products before the fixed time in the market’s operating schedule, withdrawing perishable products from sale, preventing fraud between seller and buyer, both by verifying measuring instruments from a metrological point of view and by checking payments from buyer to seller [2], ensuring these were made in good faith and with respect to the maximum prices imposed by the market’s pricing.

The ”Judicial Police” involved duties in investigating the circumstances in which laws were violated, drafting documents (journals), identifying criminals, arresting them, and bringing them to justice. Special attention was required for evidence [7], especially in cases of murder or attempted murder and assault, which were submitted to the courts in sealed bags or packages with the police seal, together with the completed journals (minutes) and the interrogation of the accused person.

The investigation of detainees by the Police and their referral to the competent court for ”minor cases” was to be done within three days after their discovery, while for ”criminal and complicated cases”, the detention of the accused could be extended up to eight days.

The ”guilt” was divided, according to the severity of the act, as follows: in violation of police rules, in faults, and in crimes. The first two types of guilt were judged by the Rectifying Police Courts, and the latter by the Criminal Courts. At a later date following the publication of the Regulation, a legislative provision was to make a distinction between the cases to be judged by the two courts. At this time, the basis for the Criminal Record Service was also established, meaning that all detainees had to be recorded in a register, indicating the name and surname of the detainee, the accusation, the case, the place and date of their arrest, the investigation conducted, and the day of their release or referral to the courts.

The Police of Bucharest

During the 17th-18th centuries, the police force in Bucharest was in its early stages, organized to ensure order and safety in the capital of Wallachia. It was known as the ”Agie” and was led by an ”agă”, appointed by the ruler.

The Agie was responsible for patrolling the streets, preventing thefts and other crimes, and maintaining public order. At that time, Bucharest was a developing city with active trade and a growing population, necessitating an efficient police structure. In addition to public order duties, the Agie played a significant role in managing markets and supervising taverns to prevent disturbances. This early form of policing reflects the authorities’ concerns about controlling and organizing urban life in the context of an expanding capital.

The head of the Capital’s Police had various duties, such as setting the prices of goods, overseeing the distribution and sale of merchandise, and closely monitoring merchants who ”used dishonest measures”. He also had to supervise coffeehouses and public establishments, ensuring that shops were not open on holidays. He was responsible for the city's cleanliness, ordering it as he saw fit.

Furthermore, he commanded zapcii and strejari. They had to guard the city with fixed posts and through patrolling. Over time, different guards operated under the command of either the ”marele spătar” or the ”vel aga”, depending on the period. During the 17th-18th centuries, the public order and security of Bucharest were entrusted to the vel aga.

Public Order in Bucharest in the Mid-19th Century

In the mid-19th century, Bucharest faced multiple challenges related to public order. The main issues were increased crime, including robberies, thefts, and public violence, as well as disturbances caused by social and political conflicts. As the city expanded and the population grew, these problems became more pronounced.

Dishonest people, ”at odds with the law”, were imprisoned in the Agie jail and later brought to trial before the ”vel aga”. These public functions were mentioned earlier.

To maintain public order, authorities implemented various strategies and measures. The police were restructured and modernized, introducing regular patrols in high-risk areas. Additionally, guard posts were established, and checks in markets and crowded places were intensified. Anonymous reports were also encouraged to facilitate the identification and capture of criminals.

The effectiveness of police interventions varied. On one hand, regular patrols and the visible presence of police officers helped deter some crimes and increased citizens' sense of safety. On the other hand, corruption and inefficiency among some members of the police force limited the positive impact of these measures. Additionally, a lack of resources and insufficiently developed infrastructure were significant obstacles in maintaining public order to the desired standards. Nevertheless, the reforms initiated during this period laid the foundation for the subsequent development of a more efficient public order system in Bucharest [8].

Organization of the Bucharest Police as an administrative institution

We discover in certain documents information about the breadth of the Bucharest Police or about the Regulation for the improvement and guardianship of good order in the Bucharest Police. Both the police and the city of Bucharest were demarcated by barriers

and many other signs such as crosses, roads, alleys, houses, stones. The police of the city of Bucharest was divided into 5 districts, each district into 3 ”people/ethnic group”. Each district in turn was administered by a commissioner, appointed from the noble ”caftanlâi”, chosen men known for their good and worthy character, so that through them the Holy Police might serve in its duties. Both at the headquarters of the Holy and at the 5 precincts, a flexible number of gendarmes were stationed, according to the territorial extent and importance. Moreover, at the headquarters of the Holy and at each precinct, there was a taller booth where a foot gendarme was permanently stationed. Another, mounted on horseback, was always ready to alert the firefighters and even the aga himself [7].

The surface of the Capital was divided into 2 concentric regions until around 1774: 'The Domain of the Holy', which encompassed the center of Bucharest and was under the jurisdiction of the Vel Aga, and ”The Peripheral Domain”, which fell under the jurisdiction of the Great Steward, overseeing the city's neighborhoods. ”The Domain of the Holy” was further divided into five districts, each led by a ”vătaf de plasă” or ”zapciu”. Later on, the term ”plasă” was changed to ”vopsea/paint”, and the ”zapciu” in turn became known as ”comisar” or ”pristav”. Subsequently, in 1852, the ”vopsele/paints” (districts) were given color names, fixing five colors in Bucharest: red, yellow, black, blue, and green. Each color was overseen by a commissioner.

Each ”comiție” (district) was divided into three parts, led by a deputy commissioner, and each part contained several neighborhoods (82 in total in Bucharest), overseen by an ”epistat”, an assistant, and three ”vătășei”. The night watch of the Capital was ensured by 40 mounted ”dorobanți”, while the traders provided 12,000 night guards (400 per night) to the Holy.

District commissioners had the right to propose amicable reconciliation of the involved parties [8], but if people refused this method, commissioners were obliged to send them under police guard to the Police Court. At that time, cases presented to the Police Court were judged very quickly and in the absence of lawyers.

Conclusions

This study offers a detailed insight into the evolution and functioning of the Bucharest police within the specific social and administrative transformations of the period. From our analysis, it is observed, among other aspects, that during the reorganization of the capital's police force, its role as a guardian of public order and good governance was crucial. The police not only supervised daily activities of citizens but also focused on crime prevention and maintaining a climate of safety. This aspect was pivotal in fostering a stable and functional urban environment, facilitating the transition to a modern society [9].

Another significant conclusion concerns the distinction between municipal police and judicial police, which reflected a clear delineation of administrative responsibilities. The municipal police concentrated on maintaining local public order, while the judicial police handled tasks related to crime investigation and resolution. This functional separation allowed for greater efficiency and specialization within the personnel, contributing to the development of a more organized and accountable public administration.

Regarding the Bucharest police or the Capital police, as encountered in some studied documents, it is noted that in the mid-19th century, public order in Bucharest was influenced by several factors, including population growth, rapid urbanization, and political and social changes. The capital’s police played a central role in managing these challenges by implementing measures and regulations to ensure the city's safety and stability. During this period, surveillance and control mechanisms were strengthened, adapting to the needs of an expanding city.

As an administrative institution, the organization of the Bucharest Police underwent significant reforms that targeted both internal structure and relationships with other public authorities [10]. Institutional reform enabled better coordination between different departments and more efficient resource allocation. Through the professionalization of the police force and the introduction of modern management practices, the capital's police became a pillar of modern public administration, capable of addressing the complex challenges of the era.

In light of the foregoing, it can be affirmed that the study of public order and administrative authorities in mid-19th century Bucharest highlights the importance of police reforms in the modernization of Romanian society. The Bucharest police not only contributed to maintaining public order and safety but also played an essential role in transforming public administration into an efficient structure adapted to the demands of a changing society. These efforts of reorganization and professionalization laid the foundation for the subsequent development of public law enforcement institutions in modern Romania.

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THE NEED FOR BUSINESS ETHICS IN THE ERA OF ARTIFICIAL INTELLIGENCE

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Abstract:
It is said that all is interconnected in the Universe, and Artificial Intelligence (AI) shows us every day this need for interference and integration into a system of "all disciplines, eras and minds". Inevitably, we go beyond the narrow framework of monodisciplinarity in favour of innovation and creation "reborn" from transdisciplinary approaches, this being the new reality in which legislation is taking shape and reforming. The acceptance and deepening of these interrelationships and mutual influences between human rights, digitalisation, technological transformation, economy, artificial intelligence and data security will generate a significant impact on the evolution of mankind, by re-establishing the constitutional models of states and adapting to the new socio-economic landscape. Moreover, in a context in which the rapid progress of AI has captivated the world, it was urgently necessary to regulate a transparent, safe and human-centered trajectory, which is why the EU Parliament voted in plenary, on 13 March 2024, the EU act on artificial intelligence, hailed as the first "hard law" legislation on AI at global level..
Keywords*: artificial intelligence, business ethics, transdisciplinary vision in research.*

Introduction - new "horizons" for analysis

"*Any sufficiently advanced technology is indistinguishable from magic*" [1]. Magic or not, these words awaken in us the same "spark of wonder" even in the year 2024. AI reveals its fantastic potential to revolutionise the world, a world whose future lies under the "magic wand" of transformative technology. The last few years have been marked by an intense and permanent concern that concerned the ethical, legislative, social and economic dimension of AI, preoccupations that will materialise in the shortest time in an artificial intelligence law and certainly in an AI right in its own right, capable of potentiating the capacity of AI in achieving its objectives to bring benefits to humanity.

Moreover, according to the proposal of Regulation of the European Parliament and of the council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislation, [2] "*AI is a fast-evolving family of*

technologies that can bring a wide array of economic and societal benefits across the entire spectrum of industries and social activities". It is essential to mention that the vote in plenary of the EU Parliament on this proposal for a regulation took place on 13 March 2024, in brief AI Act, which aims to protect fundamental rights, democracy, the rule of law and environmental sustainability in respect of high-risk AI systems. The legislative act will ensure a leading role in the field for Europe, imposing obligations depending on the potential risks of AI and the expected impact [3].

AI has acquired complex valences and has "invaded" all aspects of life, from the socio-economic, to the political and legal, this "spider" domain that will be found "in everything and everywhere" urgently requiring the provision of an ethical, legal, security and dialogue framework. Humanity almost feels "small and powerless" in the face of creation and also the greatness of the AI "universe". *„What is a man in infinity"? (Blaise Pascal) Has AI become capable of reproducing the essence of intelligence: human thought?* No matter how great the tendency to reproduce human behaviour, we must realize, however, that AI is not endowed with human emotion, critical thinking or morality, and the need for ethics in regulating AI remains a key landmark open to research, in order to reach a safe and reliable area.

Creative thinking, the emotional aspect of all relationships and authenticity, remain the qualities of a human manager, not an AI robot. Taking decisions when talking about the business world involves a dynamic and interdisciplinary analysis, which certainly requires human reasoning. AI systems can analyze large databases but cannot guarantee nuanced decisions like human managers, who have the ability to "navigate" through "emotionally charged" situations, which AI cannot do. After all, human judgment, empathy or adaptability are qualities deeply rooted in the business world. But the future of the economy may well be shaped by a "harmonious blend" between AI and human expertise. There will be a strong link between competitiveness and a company's ability to use and absorb digital innovation, and security and trust must be the foundation of this new digital economy.

The need to strike a balance between ethics and the use of AI in business

Today we are talking about a new socio-economic landscape, “metamorphosed” by emerging and disruptive technologies, with the potential to radically change the way an industry or society works, by creating new business opportunities and the development of a digital economy. Let’s not forget about cyberspace, cloud computing, blockchain, “Internet of things”, quantum communication or smart contracts, Big Data, ChatGPT, Technology-Assisted Review (TAR), electronic business, electronic seals, computer security or the possibility of creating a virtual world through the so-called metaverse, a kind of 3D rendered internet that will incorporate aspects of our lives, such as traveling online, trying on digital clothes through our own avatars or attending virtual concerts with the help of augmented reality glasses and VR headsets. Emerging technologies analysts point out that this “is the next evolution of connectivity, where all these things begin to come together in a perfect, parallel universe, so that you live your virtual life in the same way that you live your physical life” .

We must be aware that AI does not only involve automation, but the ability to mimic human cognitive abilities, an aspect metaphorically captured by researchers [4] from the University of Pennsylvania, according to which “AI is not just the design of a robot that will put a screw in a machine on a production line, but the design of a robot that knows how to interpret that the machine has broken down or that the screw is crooked and that will be able to react, offer solutions and make decisions in this unexpected situation”.

In addition to the wars in Gaza and Ukraine, the global economic crisis and climate change, the revolution caused by artificial intelligence was a key theme at the Annual Meeting of The World Economic Forum 2024 in Davos. Thus, according to the report unveiled at Davos, generative AI will this year boost manufacturing efficiency by 79% and innovation by 74% in high-income economies. Indeed, many companies are increasingly interested in generative AI, but issues of ethics, data security and accountability still create barriers and challenges in implementation, but not for long.

Artificial intelligence (AI) has already begun the process of socio-economic transformation, and if at Union level we are about to enjoy a regulatory instrument of the type hard-law, we will find that there are highly rated states that do not yet have a specific AI regulatory framework, such as, for example, Canada. However, Canadian companies

and researchers are positioning themselves at the forefront of this transformation, Canada being a founding member of The Global Partnership on Artificial Intelligence (GPAI) [5], a multi-stakeholder initiative to promote the responsible development and use of AI based on respect for human rights, inclusion, diversity, innovation and growth. Incidentally, in September 2023, François-Philippe Champagne, Minister of Innovation, Science and Industry announced the implementation of the Voluntary Code of Conduct on the Responsible Development and Management of Advanced Generative AI Systems (Loi sur l'intelligence artificielle et les données, 2023) [6], which gives Canadian companies, on a temporary basis, common standards and allows them to demonstrate, voluntarily, that they develop and use generative AI systems responsibly until official regulations come into force, respectively Artificial Intelligence and Data Act (AIDA). This is nothing more than an important step towards strengthening Canadians' confidence in its systems. AIDA provides a balanced approach to AI regulation that will support responsible innovation and ensure international market access for larger Canadian businesses, while taking into account the needs of small and medium-sized enterprises and propelling the full potential of AI into the business environment.

In this immersive "maze" of AI, ethics and legislation play an essential role in maintaining a balance, with a deep and accelerated interest of international and Union bodies in this direction. We remind you here in summary and as example [7] some steps in this regard, respectively European Ethical Charter on the use of artificial intelligence in judicial systems and their environment, adopted on 4 December 2018 by the European Commission for the Efficiency of Justice (CEPEJ), through which five ethical principles were drawn up in the form of a guide on the approach to AI for decision-makers, as well as the "Recommendation on the ethics of artificial intelligence", a first global agreement on ethics adopted in November 2021 by the 193 member states of UNESCO, thus becoming a first "set" of common, universal standards, stemming from the phenomenon of globalization. Moreover, on 30 March 2023 UNESCO again called on governments to implement much stronger ethics rules in AI, the director-general of the UN education, science and culture body, Audrey Azoulay, stating in Paris that "this is the challenge of our times". As we mentioned in our research, the first legal instrument of this type being on the table of European leaders is legal instrument of hard law on AI, which relies on

perfect coordination and “supple” legislation, technologically neutral, proportionate and adapted to the demands of the future, but above all human-centred and guided by ethical principles. At national level, too, numerous steps were taken, on 4 May 2023 the Romanian Committee for Artificial Intelligence being founded, its main objective being to create an artificial intelligence ecosystem based on excellence, trust and respect for ethical principles.

The prospects are numerous, but challenges remain. As the co-rapporteur of the Civil Liberties Committee, Dragoș Tudorache says: “The EU has achieved results. We linked the concept of artificial intelligence to the fundamental values that underlie our societies. However, we will have much work to do outside the AI Act itself. AI will force us to rethink the social contract (...) AI is a starting point for a new governance model built around technology. Now we need to focus on putting this law into practice”.

The transdisciplinary approach – a requirement for efficient regulation of AI in business

In fact, this research highlights the deep awareness of the “mixer” of information in which we are all engaged every day, in a kind of “whirlwind” of globalisation, interconnectedness, transdisciplinarity, innovation, the fulminant evolution of technology, which we try most of the time to slow down or at least to understand its meaning, to accept it and to enter openly into its scope, because this is the way, this is our future, that of humanity. And yes, technology has begun the process of “re-laying” legislation, “invading” every segment of the law branches and revolutionising their structure. New technologies, which subtly and surely penetrate everything that means legislation, economy, business environment, education, research fields and disciplines, have made their way to transdisciplinarity, given the omnipresence of the technical component in our lives.

It is not by chance that we “savour” more and more often such “cocktails” of research, and we say “cocktails of research” in a positive and deeply admiring sense, the development of “multifaceted” views on disciplines and the tendency to interconnect them becoming part of the need for progress, part of the mission of research as support for knowledge and adaptation of the law. And we use this plastic, metaphorical language, precisely to reinforce the idea that the encounter with such research approaches and

trends, arouse in us, researchers, “an even greater thirst” for knowledge, exploration and penetration into somewhat “untangled research areas”. This is also the beauty of research... to enter paths barely “glimpsed” by doctrine, “unpaved” and to open in your turn new ramifications and “intersections” of analysis and research, arousing interest and call to that road on which you have just stepped. In the light of this inter- and transdisciplinary approach we have recently identified in the literature an in globo and of perspective research of the legislative future under the influence of digital transformations, the author [8] creating a perfect symbiosis between international cooperation, digitalisation and security. The same author, who relies on the idea of transdisciplinarity in research and even the implementation of an international chair of transdisciplinarity, brings to the attention of the national education, echoing also at international level, the subject Law of communications and new technologies [9], a subject still “discreet” in the presentation palette of the subjects in the National Higher Education Plan, as an urge to adapt specialists to the latest trends of the society in which we live, a society deeply imprinted by elements of interconnection. In fact, we are also talking about the promoter of international investment law in Romania [10].

Such research opens horizons to new subjects such as artificial intelligence law, which “insistently” claims its own regulation, by revealing the facets, legal implications and risks of technology. In reality, interdisciplinarity and transdisciplinarity are only answers to the diversity of social changes, and the “decompartmentalisation”, the “decomposition” of a subject or even the “assembly” of a new one, as a milestone in the progress of science, implies an analysis passed through the filter of the challenges of the globalized world, the law being “a living instrument”, “shaped” and “reshaped” constantly by the given context. In respect of AI challenges, there are numerous legal reactions and attempts are made to coagulate regulations in this area, which hardly take shape due to the complexity of the field, French professors- researchers of the University of Paris or Sorbonne anticipating not long ago the crystallization of an “Artificial intelligence law” – “Droit de l'intelligence artificielle” [11], a stand-alone law built by virtue of its own principles and institutions of operation, which leans on areas such as ethics, law of persons, liability and insurance law, autonomous vehicles, justice, criminal law, intellectual property,

personal data, labour law, health law, military law, administrative decision making and cyber security, civilian drones and even international law.

We must give the law the "right" to permeate all aspects of life, and the future alongside AI is inevitable. 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 Charter of Transdisciplinarity, adopted in 1994, took into account the idea of opening all subjects to what they have in common and to what lies beyond their borders, in the hope of reaching a higher degree of analysis, 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, including through an uncontrolled evolution of AI [12].

How else could we talk today about technological transformations, artificial intelligence, law, business and national and cross-border insolvency, all merged into a single argumentative "picture"?

In this large "picture of answers and questions", AI has become a global priority, being defined by the organization for Economic Cooperation and Development (OECD) as being that "machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments aimed at responding to a certain set of objectives. It uses computer-generated and/or human-input data and inputs for the purpose of (i) perceiving real/virtual environments; (ii) producing an abstract representation of these perceptions in the form of models; and (iii) using model inferences to formulate different outcome options".

Conclusions

A restart is also required in research, through the transdisciplinarity approach, defined by what is between, over and beyond any discipline. If we accept the idea of transdisciplinarity, we realize, in fact, the complexity of this "legislative world" but also the subtle links between disciplines, reconfigured by AI. After all, "*imagination is the true land*

of scientific germination" [13]. Indeed, AI Act UE is a precondition for hedging risks, but "*the rest remains free for creativity and positive thinking"* (vice-president of the European Commission, Vera Jourova).

All that remains is to embark on this fascinating journey to the digital future and embrace innovation and AI, with enthusiasm and inspiration, for a successful "journey" through the "business world", changing for the better the culture of the economy.

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SOME CONSIDERATIONS REGARDING THE LIMITS AND CRITICISM OF THE SEPARATION OF POWERS IN THE STATE

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Abstract:
The principle of separation of powers constituted the basis of the state organization of all bourgeois states, it being explicitly or implicitly enshrined in the constitutions of these states. From a political point of view, the principle of the separation of powers was considered a generator of political freedoms through the balance and collaboration of the separate powers as competences necessarily belonging to the constitutional state, where the dignity of the person is ensured and where there is "the rule of law." As specified in the doctrine, the separation of powers in the state does not exclude their collaboration. Thus, on an organic level, ministers can be parliamentarians and are responsible before the parliament. Functionally, each party is charged with the main title of a function, but participates equally in the function exercised by the other. The parliament and the government exert a constant reciprocal action on each other. They collaborate in an intimate manner in the implementation of the general activity of the state, but they collaborate in different forms in the same cause of structural diversity.
Keywords: *rule of law, separation, power, competences, law, balance, collaboration*

The principle of the separation of powers, from a historical point of view, appeared as a principle of national sovereignty, as a weapon of war directed by the ideologues of the bourgeoisie against the absolute power of the monarch. In its beginnings, the bourgeois revolution saw in the separation of powers the means to dismantle absolute monarchical authority. As Leon Duguit mentions, Montesquieu never presented a theory of the separation of powers "implying an absolute separation of the bodies exercising the executive and legislative function". He considered that it is necessary to have a continuous action of the two powers, one on the other, a true collaboration. [1]

The collaboration of the powers is the consequence of the struggle of the people who gradually, through sustained efforts and energy, manage to send their representatives to the parliament. The collaboration of powers, in the conception of Laubadère, another constitutionalist, finds its expression in the participation of the

government in the legislative activity in the form of the legislative initiative, participation in the discussion of draft laws and their voting, in the promulgation of laws and in their completion by issuing regulations. Regarding the participation of the parliament, in the executive activity, Laubadère can only illustrate it by referring to the granting by the parliament to a minister of the powers to conclude loans. This balance is interpreted by him as "the equality of both powers before the nation". [2]

Regarding the attributions of the parliament and the government, Laubadère believes that some derive from these bodies' own functions in accordance with the principle of separation of powers, and others from their functions exercised in accordance with the principles of parliamentarism, that is, collaboration and balance between powers. In this sense, Maurice Duverger recognizes that the balance of power is very unstable. One body usually prevails over another, and at the same time the predominance of legislative assemblies is a rare phenomenon, on the contrary, the predominance of the executive body is a more frequent phenomenon. [3]

The executive bodies have the right to regulate through their own acts areas that in the past were reserved for the law. [4] Such a practice has a permanent character and is not susceptible to any control, nor does it involve the ratification of acts issued by the parliament. In certain situations that are appreciated by the parliament as exceptional, it gives the government, for the entire duration of the maintenance of such situations, the right to regulate instead of the parliament. [5]

Guetzévitch mentions that in the conditions of current life "a decree, a regulation, an ordinance presents more elements" to realize the program than a law, than a legislative measure. In his conception, the legislative power is able to play the role of a decision-making and action body. The government must be the engine of the state. It is his role to push the legislature and at the same time to ensure through a spontaneous and continuous intervention the very life of the state. The number and importance of enforcement regulations have increased continuously, even in countries such as England and the USA, which had some reservations about the concept of enforcement regulations.

A feature of our contemporary system of government, says Maurice Amos, resides in the practice now followed by parliament of giving ministers the power to make

regulations having the force of laws, for the purpose of specifying the details of existing laws and even of to develop their importance. [6]

As Emile Giraud stated, there was "the substitution of the action of the legislature by that of the executive". [7]

Regarding the development taken by the regulation, it has been explained and justified in a manner that generally does not differ from one author to another. Emile Giraud appreciated that the regulation eases the legislator's work. In fact, it was found that the development of the regulatory power operated naturally, without any opposition from the legislative power, jealous of its prerogatives. [8]

Regarding the practice of delegated legislation, the specialized literature presents either general considerations, or regarding the legislative activity of the parliament. [9] Jacques Théry believes that the responsibility of the members of the assembly composed of hundreds of people is a divided responsibility, too diluted. [10] They do not personally have the necessary information elements and that is why they trusted the government, better placed than them to judge and analyze. Other authors explain the genesis of the predominance of the executive through the need to strengthen the role of the state and its effective intervention in economic and social activity, as a result of the complexity of economic life, which calls for energetic and operative measures from the state.

Trying to demonstrate the necessity of reducing the role of parliament, Jacques Chastenet resorts to some historical considerations. [11] The principle of separation of powers is sometimes used in order to concentrate as much power as possible in the hands of executive bodies. Although the principle of separation of powers is specific to democratic states, being considered as a panacea to maintain stability and freedom, sometimes attempts have been made to circumvent it and switch power into the hands of the executive bodies. As A. Vanderbilt pointed out, individual freedom and the progress of civilization can only be achieved if "each of the three powers conforms to the constitutional principles of the separation of powers." [12]

It is openly acknowledged that the principle of separation of powers was used as a doctrine in the struggle of the bourgeoisie against monarchical absolutism. During the struggle of democracy against the royal power, the center of gravity was the control of the parliament - the struggle of the parliament against the royal power. In a modern

democracy this struggle does not exist. The true meaning of the democratic regime requires the strengthening of the executive, as stated by Georges Bourdeau, "which becomes from this fact stronger than the power of the old kings and the old royal ministers. [13]

There are also authors who tried to create a parallel between the increase of executive power and the need for social reforms. In their opinion, only the executive power would be competent to realize them. As stated by S.B. Chrimes the state has taken over the continuous growth of social and economic reforms and these require a complex administration and a constant interference with the daily problems of the people. Such reforms are not possible to be debated in the parliament or even in its committees. Inevitably, therefore, parliament tends to debate only the general principles of legislative work and confer power on the government. [14]

André Tardieu stated: "Assemblies seen in their multitude are incompetent and unskilled. This parliamentary mediocrity affects legislative work." Laws are passed slowly. The only viable solution, said Tardieu, is to put the parliament under guardianship, to constitutionally restrict its powers, and especially its legislative power. [15]

From the doctrine, there are also theories that affirm the uniqueness of power, but with a meaning that argues for the strengthening of executive power. [16]

The doctrine regarding the separation of powers has also known cases of categorical rejection of this principle, approaching the thesis of the uniqueness of power, and some constitutionalists of the 20th century even proclaimed the end of this theory of the separation of powers. Thus, Marcel de la Bigne de Villeneuve, referring to the powers of the state, said: "This authority, this power, whose role is to melt into an immense and simple synthesis all the diverse needs and legitimate interests of the state community, must in necessarily unique." [17]

S. Lessona, referring to the theory of the separation of powers, mentioned that such a "mystical" theory threatens to destroy the organic unity of the state and fragment its life into a multitude of bodies with equal rights and independence. At the same time, he noted that in the contemporary state we are no longer witnessing a dismemberment of sovereignty, nor an absolute mechanical separation of the state functions entrusted to separate bodies, but a separation of the functions conferred on bodies that collaborate

with each other. [18] Of course, today, as in the past, there is still talk about the separation of powers in the state and in many constitutions of the states of the world, the separation of powers is provided for, but its meaning is completely different, namely: "separation of functions, supreme power" belonging to the state. Lessona states that the supreme power must remain in the hands of a single body which, according to his opinion, must be the head of state. [19]

Georges Burdeau, giving another justification for the uniqueness of power, states that its uniqueness finds its justification both in its origin and in its exercise. "In its origin, because it finds its foundation in the idea of law whose instrument is the state apparatus. In its exercise, because it represents the legal force of this idea of law." [20]

All these opinions end with the accreditation of the predominance of the government function and this not only for historical considerations, considering the priority of the government function in the state, but also for the fact that the government function is asserted as the most important and irreplaceable. [21]

Similar conclusions are reached by the author I. Jennings, who, proceeding to an analysis of the functions of parliament, administration and justice, reports that neither according to the nature and content of the activity, nor even according to the procedure of this activity, it is not possible to establish a precise and determined limit between these organs. "Separation of powers - in Jennings' opinion - is reduced in fact only to the requirement of the independence of the judiciary and the relief of the parliament from the activity of applying the general principles established by it in the law and by the current administration." [22]

We must observe the attempt to consider the independence of judges as the more stable element of the separation of powers, for the reason that the judicial function would be less of a political function. [23] Burdeau says, however, that through judicial control the judge is drawn into the sphere of politics and this control prevents the development and enrichment of the idea of law. Although the principle of separation of powers has found wide application in the constitutional practice of Western countries, it has been criticized by a number of thinkers and politicians, including Woodrow Wilson, who estimated that the application of this principle makes any idea of accountability in governance.

The German doctrine (Laband, Jellinek) considered Montesquieu's theory as illogical and impossible to achieve in practice. Thus, it was appreciated that it would only represent a method of organization designed to weaken the omnipotence of the state to defend the individual. German jurists strongly influenced by statist ideas pointed out that "pursuing the weakening of political power by distributing powers to different bodies juxtaposed, quasi-independent of each other, each having its own field of activity, even though they work on the same general work, the impotence of the state has been reached to create a new order, to satisfy the needs of a society in full transformation." [24]

From a legal point of view, the principle of separation of powers has been enshrined in numerous constitutional law documents. It is also found in the well-known Declaration of the Rights of Man and Citizen from 1789 (France) as well as in the documents of the American Revolution. One of the fathers of the current US constitution, James Madison, showed that: "the accumulation of all powers - legislative, executive and judicial - in the same hands, regardless of whether they belong to a single person, a few or many, or whether it is hereditary, self-appointed or elective, may justifiably be regarded as the true definition of tyranny." [25]

It is remarkable that totalitarian political regimes of all shades have criticized the principle of separation of powers, arguing that in fact power is unique and that it belongs to the people and, consequently, could not be divided. In reality, however, by willfully ignoring the principle of the separation of powers and by its practical elimination from the constitutions of the former socialist states, the concentration of power in the hands of some individuals and the practical denial of any collective leadership mechanisms was favored. The principle of the unity of power paved the way for some dictatorships, but it also subordinated the entire system of political organization to the dominance of a single political party, a circumstance that had the effect of liquidating the political opposition, denying the principles of pluralism and finally, moving away from the great democratic principles of constitutional law validated of a whole historical experience. [26]

The principle of separation of powers is enshrined in many modern constitutions, such as: the Constitution of the Canton of Jura in Switzerland, the Constitution of the Republic of Moldova of July 28, 1994, the constitutions of Germany, Spain, Italy,

Denmark, Greece, Finland, Portugal, the Constitution of the USA and other states, as well as in the current Constitution of Romania. [27]

Conclusions

The principle of the separation of powers has been criticized by some authors, as it is considered either outdated or outdated, or reflecting a certain stage of constitutional development. All critics of the separation of powers omit, intentionally or unintentionally, the fact that the separation of powers was never conceived, not even by its theorists, as an artificial separation or isolation between the powers of the state. We rally to the idea that the separation of powers represented and represents a guarantee against the usurpation of power by totalitarian forces and a means to ensure the balance between the powers of the state. Moreover, regarding the content and meanings of the separation of powers in the doctrine, it was stated and is stated more and more often that it is less about separation than about the balance of powers. Important in the state organization is the independence of the state authorities, which cannot be total, but must be very broad. State bodies must depend on each other only as much as is necessary for their formation or designation and possibly the exercise of certain powers.

In conclusion, it can be appreciated that the principle of separation of powers in a flexible and dynamic sense remains an essential element, indispensable for the existence and functioning of the rule of law. It is no coincidence that numerous theoretical works, documents of political parties, opinions of some specialists, refer to the necessity of the separation of powers.

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LEGAL FRAMEWORKS FOR ARTIFICIAL INTELLIGENCE: A COMPARATIVE ANALYSIS OF ROMANIA, THE EUROPEAN UNION, AND INTERNATIONAL PERSPECTIVES

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Abstract:
Artificial intelligence (AI) is already transforming society, and has potential for even greater influence in the future. The field is multifaceted and extensive, encompassing machine learning, robotics, natural language processing, and computer vision, among other disciplines. Currently, limited artificial intelligence (AI) systems are extensively employed, whereas achieving full general intelligence still represents a challenging objective. Governments prioritize AI due to a minimum of three underlying factors. First of all, it may help government itself run better and promote economic development. Second, if not created defensively, it can provide authority and compromise national security. Third, it begs moral questions about how sentient artificial intelligence systems should be treated and how AI will affect employment. Public policies are necessary to facilitate the advancement and implementation of AI technologies that optimize their societal and economic advantages, including improving the transparency, reliability, and responsibility of AI systems. Legislation can serve as a means to support special interests that are unable to safeguard their own interests. This includes vulnerable customers or the general public that may experience job loss or reduced income as a result of AI applications. The regulatory challenge is to design rules that protect the public interest and the interests of the affected parties while at the same time permitting the process of technological innovation to flourish and not hindering the productivity growth that AI potentially brings about.
Keywords: *Artificial Intelligence, Innovation, AI Regulation, Trustworthy AI, EU AI Act.*

Introduction

Artificial intelligence (AI) has immense promise as the upcoming wave of technological progress. It possesses the capacity to improve several areas of the economy through the augmentation of efficiency, precision, and operational skills. Nevertheless, artificial intelligence (AI) also presents new and unique regulatory obstacles that governments must confront and address. From an economic standpoint, if there are no horizontal spillovers, industry-specific restrictions, or remedies for externalities, there is no need to create public policies to direct the overall growth of AI. However, these types of market imperfections or distorting effects characterizing the use of AI are likely to be present and call for regulatory intervention. Ex ante regulation in the field of AI is required for preventing market failures or undesirable outcomes.

"The global race to establish technological leadership in artificial intelligence (AI) is escorted by an effort to develop trustworthy AI". [1] Different approaches exist, many researches are developed to regulate a possible AI market. The European Commission, one of the few institutions that are perceived as competent in this respect, takes different other documents on the subject, having a position of a sort of initiatives hub. However, it is the need of the internal market that drives the concern. In Romania, The Romanian Ministry of Research, Innovation and Digitalization (MCID) has published in decisional transparency the updated version of the National Strategy in the field of Artificial Intelligence (SN-IA) 2024-2027, accompanied by the draft Government decision for its adoption and the supporting note. [2] As the scientific and technological progress goes on, different innovations pop up in different areas. Research, either alone or following challenge-based or mission-oriented research approaches, produces both amazing successes and sometimes unexpected outcomes, and even failures with catastrophic effects. Legal frameworks are established in different fields, winding the possible effects of these novelties. With a juridical design, not too easy to draft, taking into account many different aspects, sometimes regulating innovations which have not yet materialized. This pattern is currently characterized in the field of artificial intelligence. In the end, it is for all of us, humans, to make the best use of the boon that technology is.

Background and significance of AI regulation have a special legal standing and have certain implications. "For all these innovations, the digital democracy literature has made limited theoretical advances in recent times." [3] On one hand, like any other expertise, the IA should not be presented to a low-exert, application task that does not have significant deontic aspects before expertise reports that threshold of specialization. The purpose of legislation is to establish the structure of the low-level deliberative system framework in which political actions occur. Preserving the political authority to make judgments about significant adverse consequences in regulation would facilitate effective public policy implementation, establish trustworthiness, and legitimate these decisions within the larger community of those being controlled. It will also delineate political authorities in a controversial and prolonged process of problem-solving. Transforming legislation raises at least two special questions. What laws are needed in terms of substance? In what ways should this law be structured and formulated in order to shape

the environment reflecting democratic values, to be acceptable and functioning policies with increasing benefits, and to structure decisions made by the governance system?

The topic of AI has become one of the most pressing topics worldwide. Low-level tasks are already performed with the help of automation. Furthermore, Machine Learning also allows repetitive tasks to be done with less expenditure of human resources. Political choices in the past were solved within the framework of government or civic action. The more important the decisions, the higher the level of public deliberation. AI places these choices under dispute. The decisions should be taken beforehand, before technical expertise reaches a high level of specialization.

National Laws and Regulations

Artificial Intelligence represents a more and more important reality whose effects must be regulated. The European Union's high regulatory standards have contributed to the necessity of keeping EU Member States and their legislative measures up to date. In this respect, the measures and instruments at Member State level must reach the set standards, having to support both the respect of various rights and ensure the appropriate reinforcement of such rights. At national level, just a few laws explicitly refer to AI and regulate matters related to AI fields. AI laws, when naming such technology, usually refer only to investment measures in University Research and Development Institutes. Legal frameworks are, however, needed to raise awareness among customers and trigger demand.

Romania

"The national strategy in the field of Artificial Intelligence is based on the concrete actions proposed at the level of the European Union, but it is also anchored in the current situation and the Romanian context, both in terms of AI and the main related fields: research and development, innovation, the competitiveness of the economy, education, the digitization of the administration and society" [4], says a press release from the Ministry of Research, Innovation and Digitalization. "Furthermore, the solutions provided by the artificial intelligence tools will help in creating better communication with the public administration and finding better solutions to citizens' problems." [5]

"We made sure that Romanians' rights will be protected online. The strategy benefited from an extensive public consultation, starting from September 2023. The proposals of the Romanian Committee for Artificial Intelligence and of the other organizations were thoroughly analysed and are being integrated. AI is the future of the global digital economy, and Romania will be part of this future, capitalizing on the country's extraordinary potential in IT and emerging technologies", said Bogdan Ivan, Minister of Research, Innovation and Digitization, quoted in the press release.

Romania primarily follows the European Union's regulations regarding AI. On March 19, 2024, the legislative proposal on Artificial Intelligence was registered for debate in the Senate. The present draft law [6] aims to lay the foundations for the implementation, use, development and protection of Artificial Intelligence in Romania, in the context of the development of new technologies and the implementation of increased security measures for cyber space at the national and European level.

European Union

The European Union has been actively engaged in ongoing discussions on the regulation of artificial intelligence. These discussions began in 2020 and explored the potential and risks posed by this technology. A first set of conclusions is found in its White Paper on Artificial Intelligence, launched in February 2020. This document advances three regulatory options: maintaining the status quo, strengthening existing legal frameworks, or creating a new legal framework exclusively for artificial intelligence.

In April 2021, the European Commission proposed the first EU regulatory framework for AI. It provides that AI systems that can be used in different applications are analysed and classified according to the level of risk to users. Different levels of risk require more or less regulation. Once in force, these will be the world's first rules on AI.

On 13 March 2024, the European Parliament formally approved the Artificial Intelligence Act (the AI Act). [7] "An AI system is a machine-based system designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments". [8]

The AI Act implements a risk-oriented strategy for regulating AI, categorizing AI systems into several danger levels, each requiring a distinct degree of legal action.

Regarding generative artificial intelligence, which has the ability to generate text, sounds, or images as needed, regulations will be enforced on all users to ensure the quality of the data used in developing the algorithms and to ensure compliance with European copyright laws. Furthermore, developers must explicitly indicate that the sounds, visuals, and words generated by AI are of artificial origin. In addition, systems categorized as "high risk" in sectors such as critical infrastructures, education, human resources, and public order will be required to fulfil certain obligations. These obligations include ensuring that the machine is under human control, preparing technical documentation, and establishing a risk management system.

The provisions of the law are ambitious and are inspired by four principles: the protection of fundamental rights, the guarantee of safety and quality, enforcing non-discriminatory treatment, and fostering a fresh market dynamic. These principles are reflected in objectives comprising definitions, sustainable upgrade sectoral ambitions, risk level definitions, risk assessment at Union and national level, specific obligations, transparency, data governance, market surveillance, conformity assessment and supervision regimes, complaints and remedies, coercive measures, funding and liabilities, ensuring freedom of speech, and the impact of human capital.

International Perspectives

“Artificial intelligence (AI) has become a global policy issue that is actively governed by international actors producing governance indicators.” [9] One of the most important international perspectives on the AI issue is the one developed by the OECD and its member countries, which are among the largest economies in the world. Many of the conclusions of the international projects refer to the idea that AI – especially when it comes to ethical issues – cannot be also addressed at the level of legislative actions taken by some states, drawing attention about the need of cooperation between states in this regard. In line with this rationale, the OECD has developed the AI Policy Observatory, and the AI Policy Observatory network. The network is designed to be a forum for dialogue

about AI policies and challenges and brings together researchers, practitioners, and participating countries to foster collaboration and the exchange of information.

A significant number of initiatives and projects on AI have emerged over the years, at an international level. It is important to note that the international attention on AI ethics is not new; a United Nations agency, the United Nations Educational, Scientific and Cultural Organization (UNESCO), organized its first international consultation on ethical guidelines for AI in 1978. In 2016, the EGE presented a Declaration of the International Global Bioethics Initiative (G7) that focuses on AI, robotics, infectious diseases, water scarcity, and disaster response.

The implications of AI extend beyond the realm of technology and innovation. They have deep implications for society as a whole. The questions surrounding the ethical dimensions of AI are complex and multifaceted. Issues such as data privacy, algorithmic bias, and autonomous decision-making raise concerns that require careful consideration and international collaboration.

With the exponential growth of AI applications and their increasing integration into various aspects of our lives, it is crucial to ensure that these developments align with ethical principles and respect fundamental human rights. International cooperation, dialogue, and the exchange of ideas and best practices play a vital role in shaping the trajectory of AI and its impact on society. As we continue to navigate the evolving landscape of AI, it is crucial to prioritize ethical considerations and foster international collaboration to shape an AI-powered future that benefits all of humanity.

Key Legal Principles in AI Regulation

Legal theory underscores the existence of numerous legal principles which should guide the formation of legal rules with the aim of obtaining a fair balance between the benefits and the dangers of artificial intelligence. These principles, such as the precautionary principle, the principle of respect for private and family life, home, and communication, the principle of proportionality, the principle of differentiation, the principle of access to data and information, the principle of fair administration and partnership, the principle of transparency, the principle of decentralized ethics, the principle of accountability for decisions, and proper preparation for disputes, are often contested in

relation to AI regulation. Although the principles must necessarily be made specific in relation to AI, it is important to consider them as they play a role in the general framework of legal obligations. “As AI technologies progress, there will be further (and even amplified) legal issues, vulnerabilities and impacts on human rights that will need further monitoring and research.” [10]

An AI framework should require monitoring and transparency obligations upon operators of AI, as well as an obligation to provide the competent authority with customary records on the measures put in place for the control, calibration, and stability of the algorithms, including in case of self-learning mechanisms. Transparency obligations go hand in hand with legal liability. Liabilities for harm caused by AI are crucial for protecting the individuals and businesses that rely on this technology. They likewise have a deterrent effect on operators conducting inadequate testing.

An extensive transparency and accountability obligation set out by the relevant authorities and targeting AI developers or operators, alongside the fact that the obtaining of information on AI's limitations reverts to the user seeking the information and not to the owner selling or leasing AI products, would ensure the right to information on the part of consumers and employees, and of generally all individuals relying on an AI technique. Such a transparency obligation will have property or copyright law implications, but it is generally a necessity. The GDPR goes in this direction, by dealing with automated individual decisions and personal data processing. The general data protection regulation set out specific rights that enable the data subject to have complete and transparent information on the logic involved, on the consequences that might arise from such processing, and particularly on the automated processing. It also allows a certain control, and in certain cases a right to question the decision.

International cooperation is critical in AI, and governments must work together to keep everyone safe and competitive. Some of the proposed principles touch on issues related to robotics, however they do not address them in a unitary manner. The development of artificial intelligence cannot yet be organized legally, but the inclusion in definitions of some principles and objectives, which can guide us toward the use of transparency-enhancing technology and help to resolve the responsibility of the various actors involved. With the advent of massive processing capabilities, parallel data

processing, and a variety of algorithms associated, we are now talking only about a tool that processes data and, in conjunction or not, can produce direct legal effects, decisions, or materials with significant legal implications. Potentially all processed data can be analysed, and behavioural predictions can be drawn from them, apparently motivated by an ethical approach, very modern, and no less interested in the risks of profiling and possible automation bias.

Ethical Considerations in AI Development

The international community has started to make efforts not only in establishing minimal safety requirements for AI, but also in providing direction for higher level principles, including those referable to the field of ethics. The U.N. is looking at ethical issues of AI and the European Council set up a dedicated ethics body for AI development. Its main goal proposed principles to be uniformly applied by all actors involved. The European Union has launched an Artificial Intelligence regional development strategy which includes funding for data-driven Artificial Intelligence. The European Economic and Social Committee has published an opinion on AI, focusing on the ethical, legal, and socio-economic implications of AI. “The stated aim was to define policies and regulatory frameworks that ensure fair use of AI, with respect for human rights, built around four values to support ethical AI: respect for, protection of and promotion of human rights and fundamental freedoms and human dignity, environmental and ecosystem prosperity, ensuring diversity and inclusion, and living in peaceful, just and interconnected societies.” [11] Romania has also prepared a law on Artificial Intelligence. The paper establishes important ethics guidelines for AI development. The guidelines propose to establish hard law mechanisms including liability regimes for when things go wrong, as well as soft law mechanisms for them not to. Finally, the European Commission has already published a report with ethical guidelines for a trustworthy AI. The guidelines include product safety directives, data processing procedures, and transparency.

As it currently stands, the international and the EU legal framework do not have specific rules directed at AI ethics. However, this must be taken into consideration when discussing any new legislation, and legislative initiatives are already in place. Ethical AI development is not only the right thing to do, but its neglect could bring unwelcome legal

consequences to the parties involved. Encouraging responsible AI development should be an important concern to any national or international authority, both to protect consumer rights but also to ensure fair competition among companies.

AI applications tend to build both positive and negative dependencies of human activity and interaction. With this in mind, decision-makers, engineers, and users must collectively acknowledge and also study the limitations and negative consequences of implementing AI-based decision support and autonomous decision-making technologies. Knowing the limitations and potential weaknesses of real-time automation can generate values regarding the right to information, dialogue, and education from a technology-ethical perspective. The cost of justifying significant error rates as an unavoidable but inevitable price for an AI intervention is to create a discriminatory and unequal society, and any "only black box or only white box AI" discussions are a dangerous oversimplification of AI issues that must be addressed. Justifying significant error rates with arguments such as "humans make mistakes too" could provide a strict alibi for the source and repeat-loop of AI discrimination responsible for training foundation training data with a built-in gender, racial, or ethnic bias. The combination of technological, legal, and organizational modeling can make a difference in establishing and implementing standard tools to mitigate the bias and discrimination generated by AI.

AI systems can reflect or enhance existing biases and inequality in society. For example, machine learning models trained on historical data may incorporate biases present in the training dataset and processes. Moreover, the algorithm can "learn" from behavioural triggers, committing deviations that induce or further deepen bias. There is substantial evidence of biased automated decision-making systems being used in justice, education, employment, marketing, and banking integration. This impact can be direct, resulting in biased decisions. They can be indirect, for example, when machine learning algorithms reinforce existing biases and prohibit voice and opinions from specific groups. The development and deployment of AI systems that can continue and exacerbate biases or discrimination against individuals or groups may lead to a violation of national and international legislation as to the protection of fundamental human rights. “These harmful outcomes, even if inadvertent, create significant challenges for cultivating public trust in artificial intelligence”. [12] The potential impact on the right to non-discrimination and the

respect for diversity, on the rights to social protection and exclusion, on the right to effective judicial protection, on the right to freedom of expression and participation in civic and political life, and access to public services represents justified ethical and moral implications.

Enforcement Mechanisms

The truth of the matter is that enforcement stands out as a prerequisite at any level of the artificial intelligence (AI) regulatory process, and although it may solicit penal remedies, they belong to the last stage of the remedial sequence acknowledged in almost every legal system. Between warnings and sanctions, the law accommodates a variety of regulatory measures, enforced by a panoply of entities. Consequently, if the problem of prevention concerns (in the first instance) juridical actors, the problem of compliance (in the second instance) regards juridical subjects. To the first category pertains the capacity to express eradicative motives, and to the second, the actual resistance to environmental stimuli that promote aberrant behaviour. In practical effect, a new regulatory framework will not produce the respect of the rules by its mere existence, but only if (more or less effective) enforcement mechanisms are created.

The concept of enforceability is at the antipodes of international law, which lacks a central authority to subjugate compliance. The main reason is the resistance of states to international authority, as they wish to keep it within the domestic sphere. However, the domestic sphere has also made inroads in the international sphere as the philosophy of law can be converted into a coherent rationale for an original enhancement of the enforcement powers of international institutions, which can generally shed light on the problem of regulation of the global artificial intelligence networks.

The AI Act introduces a new framework to ensure the compliance of AI systems with the requirements of the proposed regulation. Importantly, the AI Act obliges economic operators to introduce an internal monitoring system in order to monitor compliance with the new framework before an AI system is put into service, while the provider is also required to appoint a member of the board to establish and maintain the internal monitoring system. The AI Act thus contains the first authorization system for AI on the market. This is a significant departure from the approach of the GDPR, which

predominantly relies on a system of notified data processing. “In GDPR language, the company would be the ‘data controller’ and the main focus of duties. In the Act, it remains the sole responsibility of company to obtain conformity assessment before the system is put on the market.” [13]

The AI Act promotes compliance by notifying and consulting the relevant supervisory authority if a provider is planning to introduce or amend an internal compliance monitoring system. The supervisory authority will then make a preliminary assessment of the notified system to ensure that it complies with the provisions of the AI Act. The supervisory authority also has the power to consult and be consulted on the principles proposed by the provider which ensure continuous operation under normal conditions. However, the AI Act only refers to "qualified people" who have been appointed by the providers to perform conformity assessments. The supervisory authority considers these principles to be adequate and directly relevant to the AI Act in order to minimize innovations and improve the legislative framework.

Conclusion and Future Trends

To achieve such regulation, the first challenge to international law is to gain consensus from various international actors of different backgrounds. Although various international groups have engaged in discussions on AI issues, the speed and concreteness of progress are quite low. In the future, new technologies (brain-computer interfacing, generalized machine learning) could arise that change the estimation about what AI technology is, in comparison to already widely held conceptions. In light of these facts and considering the increasing levels of sophistication and risks of AI technologies, the idea of drafting and adopting an international legal framework on AI to govern potential harmful use or misuse of such technologies is timely, and perhaps even urgent.

Importantly, both the European Union and Romania have taken a leadership role in crafting and implementing these regulations. Specifically, Romania has encapsulated within its national legal frameworks key EU-level legislation on AI. Moreover, in the process of preparing the pre-national white paper proposals for the "Romania AI Strategy", all aspects are covered. Efforts within AI legal parameters are expected to continue and might lead, at some point, to the filling of gaps or re-evaluation, possibly at

the international level. “However, while regulators are rushing to adopt their own set of requirements for Trustworthy AI, today these are still primarily based on voluntary guidelines and hence not enforceable when actual harm ensues.” [14]

However, even though AI is a thematic with international implications, there is no global approach regulating it. A major impediment in adopting such regulatory initiative is the level of available expertise and resources that states are willing to allocate. Several regions have started considering AI regulation, based on different regulatory approaches: unilateral, bilateral, and regional. These different approaches are, at the same time, limited in their regulatory reach, and they present deficiencies in addressing what are called the Black Box Problem, when AI utilization presents risks and harms that are known to occur, but human operators still are not able to regulate it properly, as well as the Human Moral Problem, when AI is used in positions or too important roles.

There have been numerous issues emerging in relation to AI and their ethical, societal, and legal implications have become a topic of interest for academic and non-academic communities. As the potential applications of AI seem boundless, it is likely that its legal regulation will also need to be complementary, while trying to resolve some of the most pressing issues. AI regulation will, therefore, shape the development of this technology in the years to come. The United Nations has also suggested that the international cooperation of states in the area of AI is essential.

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ADMINISTRATIVE CONTRACT IN LEGAL SYSTEM OF THE REPUBLIC OF SERBIA

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Abstract:
An administrative contract, as a special type of contract, which represents a bilaterally binding contract by the nature of its conclusion, represents one of the administrative matters provided for by the Law on General Administrative Procedure. The administrative contract, as a specific legal institution belonging to administrative law, was introduced into the legal system of the Republic of Serbia by the adoption of the Law on General Administrative Procedure ("Official Gazette of the RS", No. No. 18/2016 and 2/2023 - Decision of the RS RS. See: Authentic interpretation - 95/2018), and in accordance with the tendency of harmonizing our legislation with the legal system of the European Union. The law itself (Art. 22-26), through five articles that were determined for this institute, regulates the concept and permissibility in terms of conclusion and content, the method of modification, the authority's right to terminate the contract, the right to object and the application of other regulations. as well as the law regulating obligation relations. This type of regulation of contractual relations, which act erga omnes (toward all - contracting parties), with the aim of representing a means by which a certain public interest will be achieved, has its specificity in relation to other contracts of the civil law system, which is reflected in the fact that one the contracting party is always a subject under public law. Bearing in mind that the administrative contract represents a novelty in the legal system, the effects of its application in practice will be subject to consideration and further improvement of the normative framework for its practical application.
Keywords: *administrative contract, Law on General Administrative Procedure, concept, definition, conclusion, changes, termination, objection, Law on Obligations, European Union.*

Introduction

The administrative contract, as a specific type of contract concluded by the administration, which is concluded in administrative matters, represents a special type of

contract that belongs to administrative law, which regulates the performance of administrative activities, and was introduced as a special institution in the legal system of the Republic of Serbia, by the adoption of the Law on General administrative procedure (hereinafter ZUP), which was published in the Official Gazette of the Republic of Serbia No. 8/2016 dated March 1, 2016. year, which entered into force on 09.03.2016. year, and applies from 01.07.2016. year, with the exception of the provisions of art. 9, 103 and 207 of this law, which began to be applied after 90 days from the date of entry into force of this law [1].

The administrative contract is governed by the provisions of the ZUP (Art. 22-26), and the legal provisions themselves begin with its definition, after which the conditions for the permissibility of the conclusion are prescribed. From the legal definition of the administrative contract, which defines it as an administrative matter, i.e. an individual situation in which the authority directly applies laws and other acts, which legally and factually affect the position of the party, it follows that it creates, changes or terminates legal relations. This makes a difference in relation to the administrative act, which according to the legal definition is an individual legal act, by which the authority directly applying the regulations decides on the right, obligation or legal interest of the party or on procedural issues. Therefore, the basis of the differences is that the administrative contract represents a bilateral binding legal act, and the administrative act represents unilateral administrative action. The main difference between these two institutes is in the way they were created.

Term and definition of administrative contract

The term administrative contract comes from the French legal system (contrat administratif), which means specific contracts concluded by the administration, which in translation would mean "administrative contract", because in France the term "administration" is used for administration, while in our language the term is used "administration", which belongs to the German legal system [2].

The administrative contract, as an entity, is prescribed by the ZUP "(1) The administrative contract is a bilaterally binding written act which, when determined by a special law, is concluded by the authority and the party and which creates, changes or

terminates the legal relationship in the administrative matter. (2) The content of the administrative contract must not be against the public interest or the legal interest of third parties" [3].

From the very definition of this institute in our legal system, it follows that the subjects of the conclusion of the administrative contract are, on the one hand, public subjects - state administration bodies or other public bodies entrusted with public authority, while on the other hand, legal or natural persons who meet the conditions prescribed by law can performance of certain work in the public interest. Therefore, the basic purpose of administrative contracts is to realize the public interest. The subjects of the conclusion and the purpose of the conclusion represent the basic difference between an administrative contract and a civil law contract. Administrative contracts create, change or terminate a legal relationship in the area of public law, while civil law contracts achieve the same goal in the area of private law. The common feature of all contracts is the agreement of the wills of two or more subjects on the essential elements of the contract. As for the conclusion procedure, administrative contracts are represented by a public competition or written offer, and civil contracts by consent of the will. In terms of effect, administrative contracts work inter partes and towards third parties, while civil contracts only work inter partes.

ZUP defined the term "organ" in the article of the law defining administrative procedure "Administrative procedure is a set of rules that state bodies and organizations, bodies and organizations of provincial autonomy and bodies and organizations of local self-government units, institutions, public enterprises, special bodies through which regulatory function and legal and natural persons entrusted with public powers (hereinafter referred to as authorities) apply when acting in administrative matters" [4]. Considering the context of the term "organ", it can be concluded that a wide range of subjects can be found as one contracting party.

The authentic interpretation of the National Assembly of the Republic of Serbia, which was published in the "Official Gazette of the RS", no. 95/2018 from 08.12.2018. year, in order to interpret the provisions of Article 22 of the ZUP, it was stated: "These provisions should be understood so that contracts concluded in accordance with special laws, if those special laws are not expressly provided as administrative contracts, are not

considered administrative contracts in the sense of the Law on general administrative procedure and the legal regime of the Law on General Administrative Procedure cannot be applied to them" [5].

Bearing in mind that the legal definition of an administrative contract does not provide fully and precisely what is considered or can be considered under that institute and in which spheres of public interests the same can be concluded, a special emphasis is given with regard to the further elaboration of this institute on the existence of special laws , which are needed in this situation, because, as can be concluded, if administrative contracts are not expressly prescribed as such by a special law, they will not be considered contracts within the scope of the ZUP application.

The main goal of concluding an administrative contract is reflected in the spectrum of ensuring the functioning of the body - public service, that is, the conclusion of a certain public job in the public interest. The authority concludes an administrative contract acting in the public interest, in the area of public-private partnership, concessions, public works, public services, as well as in other areas provided by law [6].

Conclusion of administrative agreement

The administrative contract is concluded in mandatory written form between the "authority" and the "party", which regulates the administrative and legal relationship of the signatory parties. According to subjects who conclude an administrative contract, two situations can occur, i.e. two models, one of which is concluded by an authority and a party and the other which is concluded by two or more public law subjects-authorities in the process of regulating mutual relations of public importance (e.g. an administrative contract between two local self-government bodies regarding the regulation of the construction of a local road).

The most important elements of the administrative contract are the contracting parties (subjects), cause, subject, content, execution, possibility of modification and termination and legal protection [7].

The administrative contract is concluded in individual situations, i.e. in administrative matters. The term administrative matter is defined by the ZUP "(1) An administrative matter, in the sense of this law, is an individual situation in which an

authority, directly applying laws, other regulations and general acts, legally or factually affects the position of the party by passing administrative acts, passes guarantee acts, concludes administrative contracts, undertakes administrative actions and provides public services. (2) An administrative matter is also any other situation that is determined by law as an administrative matter [8].

An administrative contract creates, changes or terminates relations in an administrative matter. According to the above, the conclusion of the administrative contract is preceded by an administrative procedure in which it is assessed whether the conditions of legality and expediency for the conclusion of the administrative contract have been met. Bearing in mind that the administrative contract is concluded in the public interest, the question arises of the framework of freedom of contract and equality of the contracting parties, given that the authority has special powers established by law (authoritative). The specificity of the administrative contract is reflected in the deviation from the general regime of contract law, because it strengthens the powers of the public-law entity in relation to the other contracting party, in order to achieve public interest. The public interest is placed before the individual interest, and for what reason there is a prevailing position of the public law entity that represents that interest.

The content of the administrative contract must not be against the public interest, nor the legal interest of third parties. The administrative contract, which is in written form, is signed by the contracting parties or their representatives. An administrative contract is void if it was not concluded for the purpose of achieving public interest, as well as in a situation where other conditions for its validity prescribed by law are not met. The nullity of the administrative contract can also be foreseen in other cases that are defined by law as a basis for the nullity of the administrative act. This is a general principle that applies to all types of contracts [9].

Public interest refers to the common good that forms the basis for making decisions that are in the interest of society as a whole, not individuals or groups. It covers various fields, such as economy, politics, justice, health, education, environment and the like. Public interest is important for maintaining general welfare, equality and stability in society. Decisions made in the public interest must be objective and transparent.

As stated, the cause of the administrative contract refers to the achievement of some public interest, such as, for example, highway construction through a concession contract, performance of public works through a public procurement contract, provision of public services, such as public transport, water supply, electricity through a public-private partnership contract. For the specificity of certain types of administrative contracts, appropriate special (special) laws, which are referred to by the ZUP, are authoritative. If certain segments of the application of administrative contracts are not regulated by the ZUP, as well as by special laws, they will be applied by subsidiary application of the rules of the Law on Obligations [10].

Amendment and termination of the administrative agreement

The administrative contract, as a special category of contract, represents a type of contract in which subjects, as signatories, looking at the nature and purpose of only the contract that aims to achieve the public interest, can be viewed in the context of unequal subjects, as indicated by the provisions of the ZUP- and which refer to the amendment of the administrative contract. Therefore, if circumstances occur after the conclusion of the contract that could not have been foreseen at the time of the conclusion of the contract, and which make the execution of the contract difficult and which would make the fulfillment of the obligation for one contracting entity (contracting party) difficult (an event of an economic, political or social nature occurs - a flood , monetary crisis, confiscation of property, shortage of raw materials, landslides and the like), she can ask the other contracting entity (contracting party) to amend the contract and adapt it to new circumstances. In that situation, the authority can reject the request of the other contractual party by decision, if it considers that the conditions for amending the contract have not been met or if such a modification of the contract would cause damage to the public interest, which would be greater than the damage that the party would suffer, which is prescribed by the article 23. ZUP. This formulation of the legal norm clearly indicates the importance of the public interest, which is placed before the interests of the contracting parties. Looking at legal protection, the question arises as to what legal means can be used by the other contracting party when the authority rejects its request to amend the contract due to changed circumstances for it [11].

The aforementioned norm refers to legal consequences and represents the traditional "rebus sic standibus" clause, which refers to circumstances that arose after the conclusion of the contract, which could not be foreseen at that moment (force majeure and case), and which are of essential importance for fulfillment of contractual obligations [12].

The authority, as one contracting party, can unilaterally terminate the administrative contract: "1) if there is no consent of the party to amend the contract due to changed circumstances; 2) if the party does not fulfill contractual obligations; 3) if it is necessary to eliminate a serious and immediate danger to the life and health of people and public safety, public peace and public order or to eliminate disruptions in the economy, and this cannot be successfully eliminated by other means that are less harmful to the vested rights. The authority terminates the administrative contract with a decision in which it explicitly states and clearly explains the reasons for termination" [13]. Considering the mentioned legal norm, it can be concluded that in the event that the authority does not fulfill its contractual obligations, the party cannot terminate the administrative contract, but has the legal possibility to file an objection, as a legal means of protection. On the occasion of the stated complaint, a decision is made which must be explained, along with a legal remedy - the right to appeal, which is regulated by Article 151 of the ZUP.

The body, that is, the administration as the bearer of the public interest, has powers that can be used when performing contractual obligations, but also when the situation arises that the contract is not performed.

The party's objection due to failure to fulfill contractual obligations

The legal remedy that the party can use in case of non-fulfillment of contractual obligations by the authorities is the declaration of custody, as a remonstrative legal remedy, whereby the party thus struggles to realize its rights and interests in order to fulfill the contractual rights and obligations, because the party does not have the right to terminate the contract. The right to object is prescribed in Article 25 of the ZUP.

Objection can be declared within six months from the failure of the authority to fulfill the obligation from the administrative contract. The complaint is submitted to the head of

the authority whose action it refers to, who decides on the complaint within 30 days of receiving the complaint. The head of the body decides on the objection with a decision against which the party can file an appeal. Regarding the merits of the reported appeal, the authority that decides on the appeal has the same powers as the authority that decided on the complaint. The decision made by the authority that decided on the appeal can be challenged further in an administrative dispute, by filing a lawsuit with the Administrative Court [14].

By introducing a complaint, as a legal remedy, the authority is given the opportunity to, in the event of irregularities in the fulfillment of the contract for which the authority is responsible, correct them and avoid the initiation of an administrative dispute, which would make the procedure more economical and faster than if regarding that situation, led a dispute before the Administrative Court.

Subsidiary application law on obligation relations

The ZUP stipulates that both the provisions of this law and the subsidiary provisions of the Law on Obligations [15]. This norm is applied in all legal systems that recognize the institution of the administrative contract.

The administrative contract, by its legal nature, represents a type of specific form of activity of the administrative body, which primarily relies on the general administrative legal system and at the same time refers to the subsidiary application of the regulations of the law of obligations. According to the ZUP, special laws more closely regulate the matter of individual administrative contracts, which provide for the specificity of certain types of administrative contracts, and which cannot be in conflict with the basic principles of the ZUP.

However, as can be seen from the legal wording, the law did not more precisely define the scope of application of the provisions of the obligation law to the administrative contract.

The Law on Obligations regulates the obligations arising from contracts, damage caused, acquisition without grounds, management without warrant, unilateral declaration of will and other facts established by law [16].

Therefore, a certain problem presents the way in which the institutes of private law will be applied to one institute of public law. Also, the method of obtaining legal protection in terms of compensation for damages to the contracting parties is under a dual legal system, because the administrative bodies they exercise this right before the courts of general jurisdiction, while the other contracting party can exercise this right before the administrative court [17].

Institute of administrative contracts in France and of the German legal system

If we were to draw a parallel between the French and German legal regime of administrative contracts, their source can be singled out as a basic difference. In France, the foundations of administrative contracts were laid by judicial practice, while in Germany, administrative contracts are established by law. In addition to the mentioned difference, there is one very important similarity between the French and German legal systems when it comes to administrative contracts, which similarity is reflected in the fact that in both legal systems administrative courts are competent for disputes arising from administrative contracts.

The above is a basic indicator that the legal regime of administrative contracts is separated from the legal regime of private law contracts.

For the legal regime of administrative contracts in the French legal system, it is characteristic that the rules developed by administrative judicial practice, i.e. primarily the practice of the State Council, but also of administrative courts, as well as the Tribunal des Conflicts, which resolves conflicts of jurisdiction between courts of general jurisdiction, have the main influence and administrative courts.

In French legislation, the basic criteria of administrative contracts have been established, and they represent - first the criteria of the parties, then the criteria of the objective and the criteria of special powers. The criterion of special powers represents the basic difference between civil law contracts and administrative contracts.

According to the main element of the administrative contract, which represents the realization of a broader social interest, in French law any dispute regarding administrative contracts is exempted from the scope of the courts of general jurisdiction and placed under the jurisdiction of the administrative courts. The basic division of administrative

contracts in France is carried out according to the object of the contract into: 1) Contracts on public procurement and 2) Contracts on concessional public service. In addition to these two most important types of administrative contracts, there are also some others such as: the contract on the registration of public loans, the contract on public-private partnership, the contract on the occupation of public goods and others.

French administrative contracts are an expression of the aspiration that public administration is not exclusively served by an administrative act, as well as not being served by a classic private law contract. This represents a kind of environment, because it ensures a certain subordination to the public law of competent authorities, but not in such an explicitly one-sided and authoritative way as is the case with administrative acts.

In German law, the administrative contract was regulated in 1976 under the Administrative Procedure Act, which is defined as a special type of contract that creates, changes or terminates public law relations. This institution is defined by Article 54 of the aforementioned law as follows: "A legal relationship within the framework of public law can be established, changed or terminated by contract to the extent that it does not contradict the Law."

Looking at the aforementioned norm in the context of the application of the German Law on General Administrative Procedure, an administrative contract is considered to be a contract: 1) which is regulated by the regulations of administrative law, 2) the subject of which is the regulation of legal relations, 3) which is based on administrative law powers and obligations, 4) of which one contracting party is a subject of public authority. It is important to note that the German Law on Administrative Procedure regulates the form of the administrative contract, the situation when the consent of third parties and the consent of other persons of public law bodies to the administrative contract is required, regulates the nullity of the contract, regulates the amendment or termination of the contract due to changed circumstances, regulates the execution of the contract, as and subsidiary application of other regulations. The German theory of administrative law divides administrative contracts into coordinated (administrative) public law contracts and subordinate (administrative) public law contracts. Coordinated public law contracts are those concluded between equal or nearly equal public authorities, on the other hand,

subordinate public law contracts are those in which one contracting party has a stronger legal will, i.e. acts with authority, because it is the holder of public powers [18].

Institute of administrative contract of the Republic of Croatia

The goal of the comparative legal method must not be simple "legal tourism", as explained by Prof. Ratko Marković. In this context, the choice of countries, which will be the subject of study and research, as well as the legal systems, must be rational and measured, and above all based on their influence on the matter that is the subject of study. Looking at the comparative legal presentation of the administrative contract subject, the authors who deal with this topic from the perspective of theory point to the fact that two legal systems - French and German - have the greatest influence on the entity of the administrative contract. Also, it is pointed out that the biggest example, as part of the reform process, of our legal system in the segment of the introduction of the administrative contract was Croatian law [19].

From the aspect of this work, which is not thematically concerned with comparative legal research of the administrative contract, but bearing in mind the influence that the Law on General Administrative Procedure of the Republic of Croatia had on the introduction and definition of the administrative contract in the ZUP ("Official Gazette" No. 47/ 09), which was adopted on March 27, 2009. year, a short analysis of the regulation of this institute in the Croatian legal system will be carried out.

The Law on General Administrative Procedure of the Republic of Croatia standardized the basic issues of administrative contracts, while their detailed regulation is left to special laws and administrative court practice. According to the aforementioned law, instead of passing an administrative act, an administrative authority can conclude an administrative contract with a party in relation to which it would otherwise pass an administrative act, if such a contract is expressly permitted in a certain type of administrative matter. The legal relationship of administrative law can be contractually established, modified or annulled, if this does not contradict the legal order.

The Law on General Administrative Procedure of the Republic of Croatia distinguishes two types of administrative contracts: 1. coordinated administrative contracts (contracts between public authorities of equal or almost equal status) and 2.

subordinated administrative contracts (contracts between parties in a superior or subordinate position).

Administrative contracts can be concluded when there is an express authorization or in the case of decision-making based on the principle of discretionary evaluation, in a situation where it is not necessary to pass an administrative act to solve a certain issue. The law stipulates that the administrative contract must not be contrary to the wording of the decision and compulsory regulations, it must not be concluded against the public interest or to the detriment of third parties. If the contract acts towards third parties, i.e. creates certain rights or obligations, the consent of those persons is necessary for its validity.

The administrative contract is concluded in written form. The lack of any of the mentioned conditions results in the nullity of the administrative contract. The Law on General Administrative Procedure of the Republic of Croatia provides for unilateral termination of the contract by the administrative authority. Termination is carried out in the form of a decision, against which an administrative dispute can be initiated. Termination of the contract is possible in the following cases: 1) when the administrative authority and the party do not agree on the amendment of the contract or if the administrative authority or a third party does not agree to the amendment, 2) if the party does not fulfill the obligations of the administrative agreement, with the fact that if the failure to fulfill the obligation damage caused to the administrative body from the contract, the body has the right to claim compensation from the party and 3) when it is necessary to remove a serious and immediate danger to the life and health of people and public safety, if it could not be removed by other means that would less affected the acquired rights [20].

Due to non-fulfillment of obligations by the administrative body, the other party can file a complaint and has the possibility of claiming damages caused by non-fulfillment of contractual obligations. The objection is submitted to the authority that, according to the law, supervises the administrative authority with which the party concluded the contract. The settlement of disputes arising from non-fulfillment of obligations from administrative contracts is entrusted to administrative courts.

According to the provisions of the Law on General Administrative Procedure of the Republic of Croatia, an administrative contract is void (alternatively): 1) if it is contrary to

the decision for the purpose of execution of which it was concluded (administrative legal presumption) and 2) for reasons of nullity prescribed by the law regulating general obligation relations (general contractual presumption) [21].

Administrative contract in european legislation

Administrative contract in the European Union (hereinafter: EU) is a legal instrument used to regulate relations between EU bodies or institutions and other parties. An administrative contract is a contract concluded between an EU body (e.g. European Commission, European Parliament, European Court) and an individual, organization or other state.

A certain number of principles and methods of administrative law fall under the general principle of "reliability and predictability", which is also called "legal certainty" of procedures and decisions of state administration. These numerous principles are intended to eliminate arbitrariness from the conduct of public affairs [22].

A management contract in the EU can be concluded in different contexts, such as the award of financial support, cooperation or partnership agreements or service contracts. Examples of contracts in the EU may include project finance contracts, research and development contracts, public procurement contracts or service contracts. Administrative contracts in the EU must be concluded in accordance with the relevant EU legal regulations. It is also important to ensure transparency, equality and non-discrimination in the process of concluding an administrative contract.

The procedure for concluding an administrative contract in the EU may differ depending on the institution or body that concludes it. In general, the procedure includes the following steps: identification of contract needs, preparation of tender documents or bids, publication of tenders, evaluation of bids, negotiation of contract terms, conclusion of contract and verification of contractual obligations.

It is important to note that information on administrative contracts in the EU is available to the public, taking into account the principle of transparency and access to information within the framework of European legislation.

The criteria that affect the development of the administrative law of the member states of the Council of Europe are formed through the judicial practice of the European

Court of Human Rights. For administrative law, the most significant standards are those derived from the interpretation of Article 6, Paragraph 1 of the European Convention on Human Rights: "Everyone, during the decision-making process on his civil rights and obligations or on criminal charges against him, has the right to a fair and public hearing in a reasonable deadline before an independent and impartial court, formed on the basis of the law..." [23].

The impact of the postulates of the European Administrative Area on the administrative law of Serbia is manifested in the established right to "good administration" found in Article 41 of the Charter of Fundamental Rights of the European Union, which became a legally binding document with the Lisbon Treaty of 2009. In this context, the European Code of Good Administrative Behavior (2001),199 which, based on a special report of the European Ombudsman and on his initiative, was adopted by the European Parliament by Resolution of September 6, 2001, is of particular importance. years. The European Parliament invited the European Ombudsman to apply the Code on a daily basis, when examining the regularity of the work of Union bodies, in order to strengthen the right of citizens to good administration [24].

Conclusion

By reforming the administrative procedure through the adoption of the Law on General Administrative Procedure in 2016, which applies from July 1, 2016. year, it was aimed at improving legal certainty and improving the relationship between administrative bodies and citizens, and the operationalization itself was focused on certain goals in terms of the modernization of the procedure, realization of the public interest and the interests of citizens and other legal entities, efficiency and simplicity, establishing the principle of "good administration" in providing services in accordance with needs. The administrative contract, as a new institute in the legal system of administrative law, becomes part of administrative matters that affect the party's position through the application of regulations and other acts. However, after a full six years since its introduction, through the standardization of the administrative contract in five articles of the ZUP, through practice, questions are raised regarding definitions that are not regulated by law regarding the area of its application. Bearing in mind that the cause of the administration of the contract is

public interest, the question arises of the possible inequality of the contracting parties, which is the essence of the contractual relationship in terms of freedom of contract when concluding the contract. This conclusion is also indicated by the norms related to the termination of the contract, in which case only the authority has the right to terminate, while the party has the right to object due to non-fulfillment of contractual obligations. The party has the right to request changes to the contract, but cannot terminate the contract, in which case a situation may arise where the authority decides to stick to the agreed norms and does not want to change them, and What changed circumstances have arisen. A complaint is not an adequate legal remedy for non-fulfillment of contractual obligations, because it is about protecting the rights of one of the contracting parties, which should be equal in the contractual relationship. The reference to special laws, without some clear guidelines in defining this institute, is a significant doubt in its application. It is necessary to define the scope of the application of obligation relations to the administrative contract. Many authors dealing with the subject of administrative contracts write about the experience of the French legal system.

The administrative contract is of great importance for the legal system of state administration, because it represents the best possible way to achieve certain goals, which will justify its existence and importance by a quality way of meeting public needs. For these reasons, it is necessary to provide legal and other prerequisites for this institute to be improved and formally and legally regulated more precisely, which will facilitate its application to specific situations, prevent conflicting interpretations and improve the institute of legal protection of the contracting parties, which will be a joint task legal theory and practice, as well as comparative legal analysis, while giving appropriate proposals to the legislator.

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GOOD OR BAD FAITH OF THE JUDICIAL BODIES. SANCTIONS. PRELIMINARY CHAMBER.

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Abstract:
In the activity of judicial criminal investigation bodies, errors or mistakes appear that are the object of contradictory analysis in the preliminary chamber phase. Their detailed research brings into discussion, in addition to the lack of professionalism of the criminal investigation/prosecution bodies, the thin line of demarcation between their good or bad faith, as well as the procedural sanctions to be ordered by the judge of the preliminary chamber.
Keywords: *judicial body, preliminary chamber, good/bad faith of judicial bodies, procedural sanctions*.

Preliminary considerations

From the very beginning, we make it clear that the institution of the preliminary chamber was and is the most controversial institution introduced in our criminal procedural landscape, starting from February 1, 2014. We affirm this, since together with Decision no. 641/2014 of the Constitutional Court of Romania [1], there was a change in the philosophy of this institution, and it generated other decisions of the constitutional court or the supreme court, but also liters of ink, causing indignation among some legal book authors, and over time, radical changes in the views of doctrinaires.

Not infrequently, lately, in the activity of the criminal investigation judicial bodies, there are errors/mistakes that are noticed by the procedural participants in the procedure carried out in the preliminary chamber phase. Their detailed analysis brings into discussion, in addition to the lack of professionalism, the thin line of demarcation between the good or bad faith of the judicial bodies, as well as the procedural sanctions that must be taken.

Carrying out a short foray into the practice of the Gorj courts, a case recently settled by the Gorj Court drew our attention [2].

The ruling of the first court.

By ruling no.272 from 23 October 2023 [3], the first instance judge of preliminary chamber, in case file nr.xx/xx/2023/a1, pursuant to art. 345 para. (1) and (2) Criminal procedure code, rejected, as unfounded, the requests and exceptions formulated by the defendant V. G. A., through the chosen defender.

Based on art. 342 and art. 346 para. (2) Criminal procedure code, the judge stated the material and territorial competence of the Târgu Jiu Court, the legality of the referral to the court and the regularity of the indictment no. xx/P/2020 dated 13.06.2023 of the Prosecutor's Office attached to the Târgu Jiu Court regarding the defendant V. G. A., as well as the legality of the administration of evidence and the execution of criminal prosecution documents. The start of the trial was ordered, looking at the defendant V. G. A., sent to court for committing the crime of robbery, provided for and punished by art. 233 Penal Code, against the injured person V. (V.) R. V.

In order to pronounce this conclusion, the judge of the preliminary chamber of the first instance held that by the indictment indicated above, it was ordered to send the defendant V. G. A. to court, for committing the crime of robbery, prev. and ped. of art. 233 Criminal code.

In the referral act, it was essentially noted that, on 03.03.2020, the injured person V. (V.) R.V. notified the Târgu Jiu Municipality Police, regarding the fact that during the day of 03.03.2020, around 17:15, while he was on the staircase at Kindergarten no. 8, from the municipality of Târgu Jiu, she met her ex-husband, the defendant V. G. A., who stripped her of her Samsung Galaxy S8 mobile phone, by snatching it from her hand.

Through the request made on 07.07.2023, the defendant V. G. A. requested, based on art. 346 Criminal procedure code, returning the case to the prosecutor's office because there are several reasons for illegality and irregularity regarding the conduct of the criminal investigation in this case, among which (only those that are of interest to our analysis will be indicated - n.n. A. I. -):

Thus, it is imperative to exclude the medico-legal expert report made by the Gorj Legal Medicine Service, whereas, the address of I.P.J. Gorj dates from 03.04.2020, the report could not be based on an examination from 03.03.2020, since obviously Legal Medicine Service had not been given the next day's address. Thus, it is obvious that the report is illegally drawn up, as long as the medico-legal finding submits to the judicial body's request to make it.

Analyzing the requests and exceptions invoked by the defendant, within the limits of the preliminary chamber procedure, the preliminary chamber judge noted, among others, the following:

From the criminal investigation material, it appears that on 03.03.2020 the criminal investigation body issued the Ordinance (file 19 criminal prosecutoon file) by which it ordered the performance of a medico-legal examination in the case, setting the objectives in this regard. The injured person was examined on the same day, 03.03.2020, according to the mentions in the preamble of the expert report (file 21 criminal prosecution file). At the same time, the forensic doctor formulated preliminary findings, fixing the relevant aspects in the existing document on page 20.

The judge of the preliminary chamber assessed that the cited aspects are not in a position to call into question the regularity of the indictment and its legality. Moreover, contrary to what was claimed in general terms by the defendant, in the contents of the indictment, on tab 4, point II, the means of evidence considered by the criminal investigation body are detailed, these being assessed as sufficiently explicit for an observer reasonable.

The criticism brought to the reporting document is unfounded in the sense that it was issued on the basis of unfairly administered evidence, respectively in violation of the provisions of art. 101 Criminal procedure code In the same sense, the judge of the preliminary chamber found that the procedure of the preliminary chamber covers exclusively the aspects regulated by art. 342 Criminal procedure code. As a consequence, in this procedure it is not possible to proceed with the assessment of the evidentiary material.

The judge of the preliminary chamber does not examine the aptitude of the evidence to lead to the pronouncement of convictions or the lack of clarity of the evidence

or the fact that the indictment does not mention evidence administered during the criminal investigation, but which is in the file sent to the court. The judge of the preliminary chamber does not evaluate the relevance, usefulness or conclusiveness of the evidence, as is the case in the judicial investigation, but limits himself to ascertaining whether or not the evidence has a legal character, whether it was administered in accordance with the law, and when he finds a violation of the provisions related to the administration of evidence, evaluates its impact on the evidence, considering the provisions of art. 101, art. 102 and art. 280, 282 of the Criminal Procedure Code.

Thus, regarding the verification of the legality of the administration of evidence and the execution of criminal prosecution documents, the judge of the preliminary chamber held, from the analysis of the documents in the file, that in the case the administration of evidence respects the principle of legality and loyalty according to art. 100, art. 101 and art. 102 Criminal procedure code.

It was also noted that the indictment was drawn up in compliance with art. 328 Criminal procedure code, including the data related to the state of facts, the legal framework, the moral and personality profile of the defendant, the evidence administered and the criminal prosecution documents carried out, the referral to court and the judicial expenses, being verified under the aspect legality and soundness.

The decision of the court of judicial review.

The defendant V. G. A. filed an appeal against this criminal decision, in which he criticized the final decision of the preliminary chamber no. 272 of 23.10.2023 pronounced by the Târgu Jiu Court in file xx/318/2023/a1, mainly requesting its abolition and sending the case for retrial, or, alternatively, the retrial of the case and the admission on the merits of the requests and exceptions formulated before the first courts.

In support of the appeal, it is stated that through address no. xx/P/2020 of 12.12.2023 the Prosecutor's Office attached to the Târgu Jiu First Instance Court has submitted a response to the request of the higher court panel through which it communicated that the criminal investigation has been started in the criminal file no. xx/P/2020 on 03.03.2020,

and the further prosecution was ordered by the criminal investigation bodies on 23.28.2023 and confirmed by the prosecutor on 29.03.2023.

It was also shown that the witnesses T. D. and Z. L. were heard on 29.03.2023.

On 13.12.2023, the appellant-defendant submitted written conclusions to the file in which he emphasized that:

1. The order to start the criminal prosecution in rem dates back to one day before the event and the reporting to the prosecutor's office through the prior complaint, respectively the order to start the criminal prosecution dates from 02.03.2020 as it appears from the criminal prosecution file tab 9, to a prior complaint registered with the Târgu Jiu Municipality Police with no. xxx from 03.03.2020 and at the local Prosecutor's Office with no. xx/P/2020 (f. 10) for an incident dated 03.03.2023 so that he requested the finding of the absolute nullity of the Ordinance to initiate criminal prosecution.

2. In the content of the decision of the first court, no reference is made to the requests and exceptions invoked by the defendant regarding the order denying the initiation of the criminal action against the defendant (f. 7 criminal investigation file), order by which the same case prosecutor states that: "the named V. G. A., did not dispossess the injured person V. R.V. of the mobile phone with the aim of wrongfully taking it for himself", thus not fulfilling the constituent elements and all the conditions regarding the content of the crime of theft, a component of the complex crime of robbery.

Thus, the prosecutor through the Ordinance dated 09.01.2023 states that: "The Ordinance for the initiation of the criminal investigation drawn up by the Bureau of Criminal Investigations within the Municipal Police is illegal because the circumstance on which it is based does not exist, the constitutive elements of the crime of robbery under the aspect of the objective side" right for which it invalidates the Ordinance to initiate the criminal investigation. These aspects must be weighed all the more since, at the time of the annulment order, all the means of evidence that were considered in issuing the indictment had already been administered, the witness G. A. had been heard on 05.03.2020.

3. On 03.03.2020, the defendant V. G. A. states that he was informed that he is being questioned as a suspect for committing the crime of aggravated robbery, as can be seen from his statement given as a suspect (f. 44 verso criminal investigation file), and throughout the criminal investigation, there is no ordinance to establish the change in the

legal classification of the prosecuted crime, considering the fact that, initially, he was informed that the criminal investigation was started against him for the crime of aggravated robbery, and later, it is continued unexpectedly for the distinct crime of simple robbery.

4. In addition to the mentioned aspects, there are a number of inconsistencies in the criminal investigation file, as shown in the grounds of appeal, supplementing in the sense that in the Ordinances of March 28, 2023 and March 29, 2023, as well as the Ordinance for initiating the criminal action from 20.04.2023 (f. 5, 3 and 1 criminal investigation file) it is mentioned that: "By ordinance no. xx/P/2020 of 03.03.2020 the criminal investigation bodies of the judicial police, (...) ordered the start of the criminal investigation in rem, under the aspect of the crime of robbery, provided for and punished by art. 223 of the Criminal Code", art. 223 of the Criminal Code criminalizing the crime of sexual harassment.

5. Through the address issued by the court on 05.12.2023, the Prosecutor's Office attached to the Târgu Jiu Court was requested to communicate whether regarding the ordinances on tabs 8-9 of the criminal investigation file (Ordinance of 28.03.2023 - file xx/ P/2020) and the date of the statements of the witnesses T. D. from page 22 and Z. L. from page 24 of the criminal investigation file, a material error has crept in regarding the dating of these documents carried out during the criminal investigation and to communicate the date of issuance of the order of initiation of the criminal prosecution in rem. As it follows from the address dated 12.12.2023 of the Prosecutor's Office attached to the Târgu Jiu First Instance Court sent by e-mail to the court on 12.12.2023 at 08:49, it is communicated in the case file that: "The criminal investigation has been started in the criminal file no. xx/P/2020 on 03.03.2020". Without specifying, as requested by the court, the date of issuance of the order to start the criminal prosecution, since, in reality, as he showed, the date of its issuance is 02.03.2020 as written on it and as it appears from the copy of the criminal prosecution file (f. 9) which was carried out and handed to him from the file by the police officer F. E. after his request to study the criminal file and to hand over the copies of the documents it contains was accepted by the order issued by the prosecutor.

It is stated by the defendant that the criminal investigation bodies issued the Ordinance of March 28, 2023 based on the statements of the previously mentioned

witnesses, who, as confirmed by the prosecutor's office through the answer of 12.12.2023 and as written in their contents, were heard on March 29 2023 one day after the issuance of the ordinance of 28.03.2023, which is based on their statements (f. 6 criminal investigation file).

In conclusion, the defendant-appellant shows that this whole file is a staging against him with the aim of being denigrated and losing his public office, which he has exercised with honor and faith for over 17 years, and that the criminal investigation bodies have remained passive for over 3 years to keep him in suspense from 2020, and on March 28 and 29, 2023, they suddenly managed to do almost everything in just two days in this file, to incriminate him.

Analyzing the appeal filed by the defendant V. G. A., in accordance with the provisions of art. 347 related to art. 345 and 346 of the Code of Criminal Procedure, in relation to the existing criminal investigation material in the case, the incident legal provisions and the criticisms formulated, based on art. 425^1 para. (7) point 1 letter b) from the Code of Criminal Procedure, the preliminary chamber panel of the court of judicial review found it unfounded.

The panel of judges of the preliminary chamber of the court of judicial review adopted the theoretical and factual arguments retained by the first-degree judge, and, contrary to the defendant's opinion, held that the judge analyzed and gave a reasoned answer to all the points in the request to be accused through the conventional defenders.

The appeal panel's analysis focused mainly on the reasons developed before the court, either in writing or orally.

Reception and commentary on the issue addressed

We also adopt the opinion of the court, with the note that we will add other aspects necessary for the complete clarification of the issue under discussion.

Thus, it was held by the panel of the superior court, that the limits and specifics of the object of the present procedure are explicitly defined within the provisions of art. 342 Criminal procedure code, norm ruling on the prerogatives of the judge to verify, after the referral to court, specific issues, listed exhaustively, respectively: the competence of the

court referred to by the indictment, the legality of the referral to the court, the legality of the administration of evidence and the execution of documents by criminal prosecution bodies.

The legality of the notification involves the verification, real and effective, of the fulfillment of the conditions of form and content of the indictment, the judge analyzing whether the act of notification complies with the requirements of art. 328 para. (1) Criminal procedure code relating, inter alia, to its prior verification by the superior hierarchical prosecutor, to the indication of the persons sent to court, the facts held against them, the legal classification or the evidence/means of evidence that substantiated the prosecutor's option to give the case the solution provided by Art. 327 para. (1) lit. a) Criminal procedure code.

At this stage, the focus falls on verifying the clarity of the accusation, respectively the description of the criminal acts - as manifestations in the sphere of objective reality - in a detailed, explicit, unambiguous manner, which allows the defendant to fully understand the factual content of the criminal charges, and the judge - the individualization, beyond any equivocation, of the object and limits of the judgment.

The legality of the administration of evidence requires verification, from the perspective of the provisions of art. 101-102 Criminal procedure code, of the legality of the evidentiary procedures and the means of evidence administered in the initial phase of the process.

Equally, such an examination involves an evaluation of the evidence from the same sole perspective of legality (or, as the case may be, of loyalty), the judge analyzing only the legality and not the appropriateness of the act by which the administration of an evidence was ordered/rejected by the prosecution.

In the matter of probation, the examination of the judge of the preliminary chamber has a single purpose - the exclusion of the evidence that was the basis of the order of referral to court, but which was administered illegally. The manner of assessment of the informative content of the evidence by the prosecutor and the censoring of the value attributed to some of the administered evidence at the expense of others are matters essentially circumscribed by the concept of "assessment of the evidence", within the

meaning of art. 103 Criminal procedure code, which does not submit to the legal object of the preliminary chamber.

The legality of carrying out criminal investigation documents requires the verification, under the law, of all criminal investigation documents, an examination which, similar to the verification of competence, in order to have an effective character, must also fulfill the previously mentioned requirements.

It was found that, by verifying the content of the reporting document, it is found that it satisfies the requirements of the provisions of art. 328 para. (1) Criminal procedure code, it containing sufficient mentions regarding the evidence on which the criminal charge was based, these being indicated in the content of the indictment, the defense having the real possibility to identify them based on the mentions of the indictment, to know their content, as revealed by the file documents and to test their reliability during the judicial investigation.

As a result, in the case it was found that the provisions regarding the defendant were respected, the factual circumstances being reasonably described in the indictment, with references to the means of proof, the factual situation being retained in essence and the legal framework being indicated, so that the object and the limits of judgment are determined.

With regard to the criticisms regarding the sufficiency or insufficiency of the evidence formulated by the defendant, it was held that, in principle, the prosecutor's option to use, in support of the charges, only some of the administered evidence does not raise issues of the legality of the referral, but of the merits of the charges, which they cannot be censored in the preliminary chamber phase. Thus, a possible contradiction between the information provided by the evidence administered in the present case, their relevance for clarifying the circumstances of the case or the allegedly erroneous legal significance given to them by the prosecutor are matters circumscribed to the actual court act and cannot be censured in this procedural phase.

The circumstance that the prosecutor did not refer to the files of the file, or that he understood to give a certain form/composition to the expository part of the indictment, does not in any way violate the precepts listed previously, moreover, the panel from the court retained in this context the concise form and clear of the reporting act.

It is noted that the defendant requested the exclusion of all evidentiary material, its restoration and the entire criminal prosecution because, throughout the criminal prosecution, the defendant was not ensured effective respect of the rights conferred by the Code of Criminal Procedure, the European Convention on Human Rights and of the Charter of Fundamental Rights of the European Union.

The panel of the preliminary chamber from the higher court held that the challenged conclusion answered this criticism, however, in addition to what was held, we add the following.

We find that, although the violation of some rights provided for at the legal or conventional level is ritely invoked, the defendant did not indicate any right that was violated and that would lead to the retention of nullity and the exclusion of evidence, with the mention that in the case the cause of automatic exclusion of evidence, according to art. 102 para. (1) of the Criminal Procedure Code.

Therefore, we note that the verification of the legality of the evidence, carried out by the preliminary chamber judge, concerns the compliance of the probation activity previously carried out by the criminal investigation bodies (of the evidence administered during the criminal prosecution, of the evidentiary procedures used) with the principles of the legality of the evidence, respectively of the loyalty of the evidence administration, under the conditions in which the assumptions regulated in art. 101 of the Code of Criminal Procedure constitute aspects of the illegality of obtaining evidence. The finding - in the preliminary chamber - of the violation of the procedural prescriptions for the administration of evidence, respectively the finding of obtaining evidence through the use of illegal methods - at the request of the parties and the injured person, respectively ex officio - attracts the application, by the judge of the preliminary chamber, of the sanction of their exclusion , under the conditions in which the sanctioning of these procedural illegalities protects the legality of the criminal process, enshrined, as a principle, in art. 2 of the Criminal Procedure Code. Contextually, we remind you that as the Constitutional Court of Romania ruled in decisions no. 383 of May 27, 2015 [4] and no. 787 of November 17, 2015, [5] in the matter of probation, the nullity regime is always applied, the exclusion of evidence by the judge of the preliminary chamber being conditioned by the finding of nullity of the act by which the administration of the evidence was ordered or authorized

or by which it was administered during the criminal investigation, in in the case of relative nullities - which constitutes the rule in this matter - it is also necessary to prove the existence of an injury to the rights of the parties that cannot be removed otherwise than by abolishing the act. Therefore, not every violation of the rules regarding the administration of evidence will cause them to be excluded.

In the case, the defendant did not invoke, nor did the pre-trial panel from the court identify any case of absolute nullity, as they are normatively configured by the provisions of art. 281 Criminal procedure code.

This being so, we are going to analyze whether in the case there is any case of relative nullity whose regime is regulated by the provisions of art. 282 Criminal procedure code. Analyzing the parts of the file, we note that neither the defendant nor the preliminary chamber teams have identified any injury that would lead to the finding of relative nullity and, therefore, to the exclusion of evidence.

Next, we will analyze to what extent the aspects invoked by the defendant during the debates and through the written conclusions, as well as those identified ex officio, constitute a violation of the legal provisions that regulate the institution of the preliminary chamber.

To begin with, one criterion of the analysis will relate to the manner in which the judicial bodies acted, more precisely if they acted deliberately in bad faith. When the judicial bodies acted in good faith, it must be analyzed to what extent the accused was prejudiced by the respective violation and the effects that the violation of the legal provisions had on his legal situation.

Analyzing the inadvertences of the documents indicated by the defendant, a first aspect that must be remembered is that all of them exist (as the panel of the higher court also remembered), as they are presented by him.

Regarding the order to start the criminal prosecution in rem from 03.03.2020, in the photocopy submitted in the appeal it would appear that its date would be March 2, but not March 3. Moreover, it is noted that the photocopy issued to the defendant, as a result of the request for study and photocopying made by him on 04.07.2023 (f. 73 criminal investigation file) does not indicate the file number, which may lead to the idea that when the photocopies were made, even the original did not have the file number inserted at the

top right. Regarding the criticisms regarding the prosecutor's order of 09.01.2023, these are aspects related to the merits of the case, more precisely the sufficiency or insufficiency of the evidentiary material. However, something not even identified by the defendant is that the cited order (the date of which is changed with the pen) invalidates the order to continue the criminal investigation from 03.03.2020, which is not signed by the criminal investigation body (f. 11 criminal investigation file), a fact that attracts its relative nullity [art. 286 para. (2) lit. g) Criminal procedure code]. Moreover, the ordinance states in the prosecutor's visa that it is about the suspect V.G.D. and, by no means, V.G.A.

We also find the defendant's claim to be true, according to which in the statement of 03.03.2020, given as a suspect in the presence of the defense attorney (f. criminal investigation file), the crime of qualified robbery provided for by art. 234 Penal Code is considered as a crime at a given time.

In relation to what interests us, we find that the remark regarding the medico-legal expert report drawn up in the case on 03.03.2020 is also true, although the address of the criminal investigation body was formulated, issued and registered on 03/04/2023.

In the same register of objective reality, there is also the criticism regarding the ordinance of 28.03.2023 in which the statements of witnesses T. D. (f. 22) and Z. L. (f. 24 criminal investigation file are invoked, from which it follows that they were heard in date of 29.03.2023, therefore, after the issuance of the respective procedural act.

We note that the full court of the preliminary chamber tried to clarify these aspects, and through the address issued by the court on 05.12.2023 to the Prosecutor's Office attached to the Târgu Jiu District Court, it requested to be informed whether with regard to the ordinances on tabs 8 -9 of the criminal investigation file (Ordinance of 28.03.2023 - file xx/P/2020) and the date of the witness statements, a material error has crept in regarding the dating of these documents carried out during the criminal investigation and to communicate the date of issuance of the ordinance of starting the criminal prosecution in rem. As it follows from the address dated 12.12.2023 of the Prosecutor's Office attached to the Târgu Jiu Court sent by e-mail to the court on 12.12.2023 at 08:49, it is communicated in the case file that: "The criminal prosecution was started in criminal file no. xx/P/2020 on 03.03.2020 and confirmed by the prosecutor on 03.20.2023 and the witnesses T. D. and Z. L. were heard on 03.29.2023.

It is also true the assertion that in the contents of the ordinance of 28.03.2023 reference is made at a given time, to the crime of robbery indicating, however, as the basis of art. 223 Criminal code which regulates bears the marginal name "sexual harassment" (f. 8 Criminal investigation file)

In agreement with the panel from the tribunal, we also believe that, although apparently a contrary conclusion would emerge, all these aspects do not represent, however, genuine causes of nullity, even relative, in the consideration of the theoretical matrix exposed previously, but rather a lack of professionalism of the investigation and prosecution bodies, an aspect that cannot be censured by the preliminary chamber judge, without affecting the fairness of the procedure regarding the defendant. That this is how things are, is also proven by the fact that the file has been idle for over 3 years, from here, probably, all the aforementioned inaccuracies in the dating of the mentioned documents.

In the same register, the activity of the criminal investigation body must also be considered, which on April 1 proceeded to the technical editing of the statements of the injured person and the witnesses T. D. and Z. L., the minutes being signed only by the criminal investigation body. In addition to the fact that these minutes, rendered more than 3 years after the holographic statements were taken, are not signed by the mentioned persons, they represent a procedure not foreseen by the Code of Criminal Procedure, and therefore without evidentiary value (art. 104-109 -111 and art. 114-124 Criminal procedure code).

In the light of what has been noted, we conclude that all these inadvertences give rise to the idea of ignorance of the relevant legal provisions regarding the administration of these means of evidence.

Augmenting our scientific approach, we also note that criminal prosecution is governed by the principle of loyalty of judicial bodies in a broad sense.

Apparently, ordering the solution to exclude evidence in such situations would also be required from the need to comply with the principle of evidentiary admissibility, which imposes the requirement that the authorization, disposition, obtaining, administration, assessment and/or use of evidence in any form of evidence in the criminal process must be in accordance with the law.

Without going into details, we note that the distinction between legality and legality means the distinction between the general theory of evidence and the special law of evidence. Thus, legality represents a component of lawfulness in the sphere of named evidence - reference brevitatis causa, the "named-unnamed" dichotomy referring to the means of evidence, and not the evidence itself - these being thus subject to a double examination of lawfulness, carried out both from the perspective of compliance with the principles that underpins the general theory of evidence, as well as of compliance with the rules that define their legal regime [6].

In other words, in both situations, the procedural morality of the criminal investigation bodies in the activity of collecting evidence capable of ensuring the credibility of the judicial act can be questioned. However, by proceeding in the manner shown, it was the latter who suffered, and not the defendant.

As a result, until the evidence to the contrary, despite the answer given by the prosecutor's office, the documents of the investigative and criminal prosecution bodies enjoy the presumption of legality (until their falsity is established) and cannot be the subject of the preliminary chamber judge's analysis, not being able to it is considered that they acted deliberately in bad faith.

In this context, we note that the criminal investigation documents and the criminal investigation documents are the documents through which the object of the criminal investigation is carried out. The criminal procedure code uses the notion of "acts of the criminal investigation bodies" in two senses. The first is that of acts carried out by the criminal investigation bodies in order to resolve the cases. These documents are divided into two categories: documents for the administration of evidence in order to clarify the factual situation, also called criminal investigation documents, and documents by which procedural measures are proposed or ordered, also called criminal investigation documents. In the second sense, by "documents of the criminal investigation bodies" are designated the documents in which their proposals or dispositions are recorded.

The acts of criminal investigation have a limited scope, being those by which, after the evaluation of the collected evidence, the continuation of the criminal investigation is ordered, the initiation of the criminal action, respectively those by which it is ordered regarding the taking, revocation, replacement or termination of law of preventive

measures or other procedural measures. Thus, criminal investigation documents are only procedural documents, not procedural documents.

As is well known, most of the acts carried out by the criminal prosecution bodies are criminal investigation acts, they mainly refer to the acts by which evidence is gathered regarding the existence of crimes, the identification of the perpetrators and the establishment of criminal liability or their civil servants.

It must be said that, in principle, a complaint can be filed against both the criminal investigation documents and the criminal investigation documents under the conditions of art. 339 Criminal procedure code, which will be resolved by the prosecutor who supervises the criminal investigation of the criminal investigation bodies that issued the act, respectively by the prosecutor hierarchically superior to the one who issued the act. At the same time, it should be borne in mind that the documents of criminal investigation or criminal investigation can be refuted under the conditions of art. 304 Criminal procedure code, however, as an exception, the law stipulates a judicial control of some of the criminal prosecution documents, the complaint against them to be resolved by the judge of rights and liberties. As can be seen, as the panel of the court also observed, the defendant did not make any complaint in this regard.

Regarding the documents issued by the criminal investigation bodies, we note that the prosecutor decides on the procedural documents or measures and resolves the case by means of a reasoned ordinance, unless the law provides otherwise.

In accordance with the provisions of art. 286 Criminal procedure code, the ordinance is the act by which the criminal investigation body disposes during the criminal investigation on procedural documents or measures and must be motivated in fact and in law, and will always include the elements provided by the cited text.

Non-compliance with the legal provisions regarding the content of the ordinance, as well as its lack of motivation, or the equivocal character of the device of the procedural act may attract the incidence of the sanction of relative nullity under the conditions of art. 282 Criminal procedure code.

Or, until the evidence to the contrary, the procedural documents (with the exception of the order to continue the criminal investigation from 03.03.2020), are limited to the legal requirements noted above.

Conclusions

In the lines above, we tried to legalize a series of problems faced by the judge of the preliminary chamber, whether of first or last degree.

Regardless of our approach, it is becoming increasingly clear that the institution of the preliminary chamber is consuming money, human resources and time-consuming (this procedure leads on average to at least 5 months delay in the resolution of a criminal case, in which the court is notified with indictment.

But, as reconfigured by the Constitutional Court of Romania, it represents, today, only a tribune of the masters of the legal bar, and of the doctrinaires, famous or less famous, than one that responds to the purpose of the criminal process as it is normatively configured, by the provisions of art. 5 of the code.

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FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW

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Abstract:
The fundamental principles of international law are initially imprinted at the abstract level of the legal experiences of nations, as guiding ideas of a social nature which, as time goes by and their viability is proven, require normative protection at the international level through appropriate regulation.
This article analyses the content of each of the ten fundamental principles of international law which are fully established in the United Nations General Assembly Declaration (UNO) no. 2625 (XXV)/1970 "on principles of international law concerning friendly relations and cooperation among States in accordance with the UN Charter", and in the Final Act of the Conference on Security and Cooperation in Europe (CSCE) adopted in Helsinki in 1975, respectively: the principle of the sovereign equality of States, the principle of self-determination, the principle of non-interference in internal affairs, the principle of non-use of force or threat of force, the principle of peaceful settlement of international disputes, the principle of good faith fulfilment of international obligations (pacta sunt servanda), the principle of cooperation, the principle of the inviolability of frontiers, the principle of territorial integrity and the principle of respect for human rights and fundamental freedoms, on the premise that the general principles of law, by virtue of their generality, applicability and binding force, are also fundamental not only to national systems of law but also to international law, in whose sphere of application they are used.
Keywords: *principle, state, law, international, agreement.*

General considerations

In the legal sense, the term principles means "basic idea" [1] or "guiding idea", and principles of law are nothing more than the leading (guiding) ideas of a system of law.

In the system of international relations, and in particular in relations between States, legal relationships arise which are governed by international law, formerly known as Gentile law, which borrows the general principles of law from national systems of law, which in this respect constitute sources of international law.

As general principles of law we recall: the principle of ensuring the legal basis for the functioning of the state, the principle of freedom and equality, the principle of accountability, the principle of equity and justice, the principle of res judicata or good faith in the performance of contractual obligations.

The application of these principles is also necessary in order to eliminate the lack of regulation in certain areas in international relations or for the purpose of interpretation and development of international law, as they are indispensable for it.

The need for the application of general principles of law and international law follows unquestionably from the content of Article 38(2). (1) of the Statute of the International Court of Justice [2], content from which it follows that ”*General principles of law, as sources of international law, means all the principles common to the new contemporary legal systems which can also be applied in the international legal order*” and considered alongside treaties and custom in the settlement of disputes before the International Court of Justice.

The general principles of law by their generality, their applicability and their binding nature are obviously fundamental not only to national systems of law, but also to international law, in whose sphere of application they are used.

Article 2 of the UN Charter and the 1970 UN General Assembly Declaration on Principles of International Law [3], adopted under the aforementioned article refer to other ”specific” fundamental principles of international law applicable to ”*the conduct of States wherever it is exercised*” respectively: the principle of the sovereign equality of States, the principle of self-determination, the principle of non-interference in internal affairs, the principle of non-use of force or threat of force, the principle of peaceful settlement of international disputes, the principle of good faith fulfilment of international obligations (*pacta sunt servanda*) and the principle of cooperation.

These seven principles are also reiterated in the Final Act of the Conference on Security and Cooperation in Europe, adopted in Helsinki in 1975, with the addition of three further fundamental principles, namely: the principle of inviolability of borders, the principle of territorial integrity and the principle of respect for human rights and fundamental freedoms.

The ten principles adopted in the CSCE Final Act have also been recognised by the Charter of Paris for a New Europe, as well as by the Declaration adopted by the High-level Meeting of the UN General Assembly on 14 September 2012 on ”The Rule of Law at the National and International Level”.[4]

On the basis of the above, we conclude that by reference to the rules of international law, the fundamental principles of international law are ”*rules of universal application, with a maximum degree of generality and mandatory character, giving expression to and protecting a fundamental value in relations between subjects of international law*” [5].

From the above definition we can identify several characteristics of the fundamental principles of international law, namely: maximum generality, their interdependence, are binding and mandatory and have normative value.

The interdependent nature of these principles is explicit in Declaration No 2625 (XXV) of 24 October 1970 of the UN General Assembly, namely ”*In their application and interpretation, the preceding principles are interrelated and each principle must be interpreted in the context of the other principles*”.

The normative character, in the sense of the obligation to respect the rules of conduct that these principles impose, is also confirmed by the International Court of Justice in its practice. Thus, on the occasion of the settlement of the dispute ”*Military and paramilitary activities in and against Nicaragua*” (Nicaragua vs. SUA, 1984-1986), The Court ruled affirmatively on the normative value of the ”*Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations*” (UN General Assembly Resolution No. 2625 (XXV)/1970).

These principles ”*arise by tacit or express agreement of States, by customary or contractual means, and are binding*” [6].

In the second section of the article, we will present an analysis of the content of each of the ten fundamental principles of international law.

Analysis of the content of the fundamental principles of international law set out in UN General Assembly Declaration No. 2625 (XXV)/1970 *on principles of international law concerning friendly relations and cooperation among States, in accordance with the UN Charter* and in the Final Act of the 1975 Conference on Security and Cooperation in Europe

Principle of sovereign equality of States

States are the main and primary subject of international law, and this quality is the result of their sovereignty, which belongs to both the constitutional law branch of the domestic law system and international law, thus resulting in the ”*supremacy*” of state power from the internal point of view and, respectively, the independence of the state from the external point of view, both components being inextricably linked to each other, given the unity between the domestic and foreign policy of the state. Independence is a full expression of sovereignty.

In the literature [7] sovereignty has been attributed certain characteristics, namely: inalienability (sovereignty cannot be surrendered, and at the same time it cannot be the subject of any cession to other States or international organisations), exclusivity (only one sovereignty can act on the territory of a state), indivisibility (the attributes of sovereignty cannot be appropriated and exercised in a state by more than one subject) and the original and plenary character (sovereignty is the exclusive and intrinsic attribute of the State, it is not attributed to the State by any foreign entity or group of entities, and the State, through all the constitutional and legal levers it possesses, acts all-embracing in all areas of the economic, social and political life of the society whose exponent is the State in question).

In the light of the elements set out above with regard to the characteristics (attributes) of sovereignty, we stress that when the constitutionally or legally competent national authorities represent the State in question at the international level, through the powers they hold, in the process of international cooperation and collaboration, for the purpose of pursuing the interests of the nation of which exponent that State is, it does not affect any of the attributes of State sovereignty.

On the basis of sovereignty, States conclude bilateral or multilateral treaties, participate in the work of international conferences and organisations with the aim of acquiring international rights and obligations designed to ensure effective inter-State cooperation and cooperation and, ultimately, a climate of global security.

The rights and obligations of States, acquired at the international level on the basis of their sovereignty, constitute the prerequisite for the freedom of choice at the internal

level by the States concerned of their economic, social and political system, on the basis of their own aspirations, without interference of an external nature.

Based on sovereignty, States must respect the rules of international law and, consequently, the sovereignty and independence of other States, their equal rights, and take an active role in identifying and implementing solutions leading to the maintenance of a climate of security and cooperation among nations.

With regard to the intrinsic content of this principle, the 1970 UN General Assembly Declaration attributed the following elements to it: a) states are legally equal; b) each State enjoys the rights inherent in full sovereignty; c) every state has an obligation to respect the personality of other states; d) the territorial integrity and political independence of the State are inviolable; e) each state has the right to freely choose and develop its political system, social, economic and cultural; f) every state has an obligation to comply fully and in good faith with its international obligations and to live in peace with other states.

To these elements, the 1975 CSCE Final Agreement added other equally important ones, namely: the right of each State to determine its own laws and regulations; the right to freely define and conduct its relations with other States in accordance with international law; the right to belong or not to belong to international organisations; the right to be or not to be party to bilateral or multilateral treaties, including the right to be or not to be party to alliance treaties; the right to neutrality and the right to change borders, in accordance with international law, by peaceful means and by agreement.

The principle of the sovereign equality of States implicitly enshrines their equality in rights, since all States can acquire rights and assume obligations on an equal footing, regardless of the differences in their economic and social development.

Thus, the 1970 UN General Assembly Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States under the Charter of the United Nations stated that ”*All states enjoy sovereign equality. They have equal rights and obligations and are equal members of the international community, regardless of economic, social, political or other differences.*” [8]

Equality of rights of state entities implies the obligation and necessity for developed countries to provide developing countries with specific trade and economic assistance (compensatory equality).

We also point out that according to UN General Assembly Resolution No. 2153/1966, all States, by virtue of the principle of their sovereign equality, exercise their permanent sovereign right of ownership and exploitation of national economic resources in accordance with their own conception of economic and social development, which constitutes, according to some authors, the crystallization of a new fundamental principle of international law.

The Montevideo Convention of 1933 states that the rights of States are independent of their capacity to ensure their implementation, the essential condition in this case being that the States concerned are subjects of international law.

The principle of self-determination (the right of peoples to determine their own destiny)

The origins of the right of peoples to self-determination can be traced back to the demands of the French Revolution of 1789 for the sovereignty of the people [9].

This principle was initially established in the UN Charter (Article 1(2)) and the 1960 UN General Assembly Resolution on the granting of independence to countries and peoples in colonies, and was later definitively crystallised in all its nuances in the Declaration on Principles of International Law concerning Friendly Relations among States in accordance with the UN Charter, adopted by UN General Assembly Resolution no. 2625 (XXV)/1970 and, respectively, the Final CSCE Act, adopted in Helsinki in the year 1975, bearing the title ”*the equal rights of peoples and their right to decide for themselves*”.

This right can only be exercised by the people or nation, not by any other subject of international law, and cannot be ceded to a subdivision of the nation (e.g. a national or religious minority or a part of the people in a division of the national territory).

By virtue of this principle, *all peoples have the right to determine their political status, in full freedom and without outside interference, and to pursue their economic, social and cultural development, and every State has an obligation to respect this right in*

accordance with the provisions of the UN Charter (UN General Assembly Resolution of 1970).

The limits [10] of this principle are clearly described in this resolution. Thus, "*Nothing in the preceding paragraphs shall be construed as authorizing or encouraging any action which would dismember or threaten, in whole or in part, the territorial integrity or political unity of any sovereign and independent State, governed according to the principle of equal rights and self-determination of peoples set forth above and having a government which represents the whole people belonging to the territory, without distinction as to race, creed or colour.*

Any State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of another State or country".

In the same vein, Article 1(1) of the 1966 International Covenants on Human Rights provides that all peoples have the right to self-determination and, on the basis of that right, to determine freely their political, economic, social and cultural organisation.

The 1970 UN General Assembly resolution regulates the means (modalities) by which peoples exercise their right to decide for themselves, namely: "*the creation of a sovereign and independent state, free association or union with an independent state or the acquisition of any political status freely determined by a people*".

It therefore establishes the obligation of every State to promote the realization of the principle of equal rights of peoples and their right to self-determination, whether with other States or separately, and to assist the United Nations in fulfilling its Charter responsibilities with regard to the application of the above principle, in order to promote friendly relations and cooperation among States and to put an end to colonialism and all forms of alien subjugation, domination or exploitation.

Furthermore, it prohibits any State from resorting to measures of coercion which would deprive peoples in colonies of the right of self-determination, and recognises the right to resist such measures of coercion and to seek and receive support in accordance with the principles and purposes of the Charter.

An essential manifestation of the right of peoples to decide their own destiny is embodied in the right of peoples to independence, from which derives the legitimacy of the process of resistance (including armed resistance) of peoples under foreign

domination and the correlative obligation of States to support the UN in fulfilling its responsibilities in this area, in order to effectively provide the support requested by these peoples.

Another form of protection for peoples under foreign domination is expressly provided for in the 1970 UN General Assembly Resolution by regulating that ”*the territory of a colony or other non-self-governing territory possesses, by virtue of the Charter, a status separate and distinct from that of the territory of the administering State, such separate and distinct status by virtue of the Charter exists so long as the people of the colony or non-self-governing territory do not exercise their right of self-determination in conformity with the Charter of the United Nations and, in particular, with its purposes and principles*”.

Today, any form of foreign domination, including colonialism, no longer effectively exists, which shows the decisive influence and impact on states of the above-mentioned principle, mainly regulated and implemented by the UN.

Last but not least, ensuring the practical effectiveness of this principle is inextricably linked to the effective recognition and observance by each State of human rights and fundamental freedoms, in accordance with the UN Charter.

The principle of non-interference in internal affairs

Referred to in the literature as the principle of non-interference or non-intervention, this principle finds its doctrinal origins in the ideas of the French Revolution of 1789 which established the postulate of non-intervention of the French people in the internal affairs of other nations and, correlatively, the non-interference of other powers in the internal affairs of France, being explicitly established in Article 119 of the French Constitution of 1793 [11].

The President of the United States of America, James Monroe, in his message to the U.S. Congress on December 2, 1823, launched what was later called in the international law, the ”*Monroe Doctrine*” which was originally directed against the intervention projected by the victorious states of Napoleon's France (England, Russia, Prussia and Austria) in the war between Spain as the hegemonic power and the states of

Latin America. Essentially this doctrine referring to non-intervention by the US in Europe and by European countries on the American continent.

In the contemporary era, the UN Charter states in Article 2(7) that ”*Nothing in this Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State, nor shall it oblige its Members to submit such matters for settlement on the basis of the provisions of this Charter.*”

Giving specific expression to this principle, UN General Assembly Resolution 2131/1965, entitled ”*Declaration on the inadmissibility of intervention in the internal affairs of other states and the protection of their independence and sovereignty*”[12] and subsequently UN General Assembly Resolution No. 2625 (XXV)/1970 [13], respectively the 1975 Final Act of the CSCE regulates the prohibition of any form of direct or indirect intervention, individual or collective, in the internal or external affairs of any State. Without being exhaustive, but merely illustrative, the following are therefore prohibited: armed intervention or the threat of such intervention, acts of military or political coercion, economic or other forms of coercion, direct or indirect support for terrorist or subversive activities and other acts aimed at the violent overthrow of the regime of another State, interventions in the internal strife of another State, as well as any form of interference or any threat to use economic, political or other measures directed against the personality of a State or against its political, economic and cultural elements.

The regulation made is only illustrative, not limitative, given the expressions used, namely ”*for any reason*”, ”*any form of interference or any threat*”, ”*of any other nature*”, ”*advantages of any kind*”, ”*any intervention, direct or indirect, individual or collective*”, ”*any form of armed intervention or threat of such intervention*”, ”*in all circumstances*”, ”*any act of military or political coercion, economic or otherwise*” or ”*some advantage*”.

This principle, from its inception (explicitly provided for in the French Constitution of 1793) to the present day, has not infrequently been violated, with the following arguments being put forward[14] in favour of its infringement ”*compliance with international law*”, ” *consensual interventions*”, ”*interventions for humanitarian purposes*”, ”*protection of citizens of a State abroad and their property*”.

”*However, violations have been the exception and compliance the rule, which also explains its evolution, development, maintenance and consolidation as a fundamental principle of international law*”[15].

In 1991, at international level, after the end of hostilities in the Persian Gulf, the view was taken that humanitarian considerations may have the effect of violating the principle of non-interference in the affairs of another state, taking into account the imperative to protect refugees, in which case no intervention was undertaken.

Thus, this principle retains its character as a peremptory norm of general international law (*ius cogens*), from which there can be no derogation and which can only be modified by a rule of general international law with the same binding force.

Principle of non-use of force or threat of force

Armed conflict was banned for the first time in history with the signing of the Briand-Kellogg Pact in Paris on 27 August 1928.

However, after the catastrophe of the Second World War, States broadened the scope of application of the principle of non-aggression, with Article 2(4) of the UN Charter stating that ”*All members of the Organization shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.*”

The legal content of the principle was refined by the 1974 Declaration on the Definition of Aggression, but in particular by the 1970 UN General Assembly Declaration and the 1975 CSCE Helsinki Final Act.

Thus the concept of ”*strength*” not only involves ”*armed force*”, but also pressures of any kind against states or world peace and security.

As such, ”*no consideration may be invoked as justification for resorting to the use of force or the threat of force contrary to this principle*”, and ”*war of aggression constitutes a crime against peace which gives rise to liability under international law*” – (the case of Russia's aggression against Ukraine is more than eloquent).

The most destructive effects are undoubtedly to be found in the use of armed force, which fully justifies the definition of armed aggression in a specific, far-reaching international document, UN General Assembly Resolution 3314 of 1974.

”*According to this resolution [16], the State which has resorted to armed force contrary to the provisions of the UN Charter has intentionally committed an act of aggression of a certain gravity which constitutes sufficient evidence of its status as aggressor*”.

This resolution includes, but is not limited to, the most common cases of aggression, namely: violation by a State which with the unforced consent of another State, has military forces on the territory of the latter State of the terms and conditions of stationing, invasion of the territory of a third State, unprovoked aggression by a third State on the military or civilian facilities of another State, blockade imposed by the naval forces of a State or bombardment by the military aircraft of an aggressor State.

It can therefore be seen that armed aggression has been regulated at international level, which is not yet the case with pressure and coercion of any kind, which can be exercised to the detriment of the independence and sovereignty of States.

International law allows the use of force in two situations:

1) use of force under UN Security Council decision; and

2) exercise of the right of individual or collective self-defence against an armed attack (Art. 51 of the UN Charter).

”*After the American intervention in Iraq in 2003, a new concept emerged in the specialist doctrine, promoted by US President George Bush, namely the concept of preventive war (the Bush doctrine), which is based on the new concept of preventive attack and is an outgrowth of the US National Security Strategy, a concept which, however, raised a number of legal problems*”[17].

So, in these two cases we are in the presence of the legitimate use of force, being internationally agreed to remove any aggression that endangers the existence, sovereignty and independence of states.

The principle of non-use of force and threat of force also applies to ”*submarine territories beyond national jurisdiction, to outer space, to the moon and to other celestial bodies, as provided for in the relevant special treaties*”[18].

In the Western-inspired literature, the view has been expressed that Article 2(4) of the UN Charter, which prohibits the use of force at the international level, is being eroded

because it has been frequently violated, and that a legal rule cannot be imposed on a State which other States ignore or violate.

This point of view must be vigorously contested because, at international level, Article 2(4) of the UN Charter is not abrogated and, on the other hand, no State is capable of issuing exceptions that would render the regulation in the aforementioned article ineffective, ”*all the more so since the provisions of Article 2(4) must be read in conjunction with those of Article 2(6) of the UN Charter, which provide that the UN has an obligation to ensure that non-UN Member States act in conformity with the principles of the Charter in order to maintain international peace and security*”[19].

The principle of peaceful settlement of international disputes

The non-use of force or the threat of force, as a fundamental principle of international law, is clearly the logical consequence of the settlement of any international dispute[20] peacefully. Peaceful means of settling disagreements have, of course, been used since ancient times, but at the normative level there was no such obligation until the adoption of the Briand-Kellogg Pact (Paris, 27 august 1928).

This principle is established in Article 2(3) of the UN Charter which provides that: ”*All members of the organisation shall settle their international disputes by peaceful means so that international peace and security and justice are not endangered.*”

Article 33(1) of the UN Charter provides for the means of settling disputes, namely: negotiations, enquiry, mediation, conciliation, arbitration, judicial settlement, regional bodies or arrangements or other peaceful means, at the option of the parties, while providing for the obligation of the parties to have recourse to these means of settlement in the settlement of disputes.

The above principle was established in the UN General Assembly Resolutions of 1970 and 1982, in the 1975 Helsinki Final Act of the CSCE and in the Declaration[21] adopted at the High-level Meeting of the UN General Assembly on 24 September 2012 on ”*Rule of Law at National and International Level*”, providing as follows: ”*We reaffirm the obligation of all States to settle their international disputes by peaceful means, inter alia, through negotiation, enquiry, good offices, mediation, conciliation, arbitration and judicial settlement or other peaceful means of their own choice*”.

The peaceful settlement of international disputes logically requires that the parties to the dispute respect the principle of non-use of force or threat of force, as well as the other fundamental principles of international law.

A distinction must be made between an international dispute and an international situation.

Thus, the international dispute is a situation of disagreement between international actors, which presupposes that they have already crystallised their points of view through recourse to institutions of international law, the disagreement may be caused by conflicting interests or a lack of transparency or communication between States.

Unlike a dispute, an international situation is a state of affairs (circumstance) arising between international actors that may or may not degenerate into a dispute.

In this context, the question has been raised in the literature as to whether the obligation of peaceful settlement of disputes only applies to serious disputes with negative implications for international peace and security, or whether it also applies to disputes that present a low degree of danger in the international arena.

"*It was considered that any international dispute, whatever its nature, content and gravity, should be settled by peaceful means*"[22], this all the more so as the UN Charter, in Articles 11(3), 34 and 35, regulates situations "*that could endanger international peace and security*".

At the same time, the nature (substance) of the dispute - political or legal - is irrelevant, since any dispute has both political and legal connotations, and it cannot be said that, unlike legal disputes, political disputes do not have to be resolved by recourse to the institutions and principles of international law.

Just as the parties are free to choose the means of settling the dispute, they may subsequently choose another means of settlement if the choice of the initial means of settlement does not lead to a positive outcome, the essential elements in this case being good faith, responsibility and a spirit of cooperation on the part of the parties, with a view to moving the settlement of the dispute towards a positive solution and not to delaying the settlement of the dispute or aggravating it.

The peaceful settlement of international disputes also depends on how many states are involved in the dispute (two or more), and the means of settling them must be

addressed in consultations to be carried out mainly through regional international organisations or the UN, with states enjoying the same rights in settling disputes.

Accordingly, it is beyond any doubt that the States involved in the dispute, as well as other States, must refrain from any manifestations that aggravate the dispute, including fraudulent involvement in the negotiating process of the parties, and thereby undermine international peace and security.

In this regard, the 1982 UN General Assembly Declaration states that: ”*neither the existence of a dispute nor the failure of a procedure for the peaceful settlement of a dispute shall authorise any State party to a dispute to resort to force or the threat of force*”.

Contemporary international law contains rules, however, which do not prohibit the States involved in the dispute or other States from resorting to coercive measures not involving military force (retaliatory measures or reprisals not involving the use of force).

We consider, however, that if the use of such coercive measures has the effect of aggravating the dispute or endangering international peace and security, their use must be prohibited by the rules of international law.

Constant recourse to instruments for the peaceful settlement of international disputes also ensures that the principle of non-use of force or threat of force in international relations becomes more effective.

”Pacta sunt servanda” Principle (performance in good faith of the international obligations)

Throughout history, both in the domestic and international legal order, the performance in good faith of obligations undertaken or provided for in national or international law has been a fundamental principle in international law as well, constituting one of the oldest principles, appearing with the conclusion and fulfilment of the first treaties by the Chinese, Egyptians, Greeks and Romans.

States which disregard a treaty concluded are clearly violating international law, endangering and damaging first and foremost the States themselves, and indirectly the international legal order.

The UN Charter established the obligation of Member States to fulfil in good faith their obligations under the Charter (art. 2 point 2).

This regulation was further developed by the UN General Assembly Resolution of 1970 and the 1975 Helsinki Final Act of the CSCE, providing that "*each State has an obligation to fulfil in good faith the obligations it has assumed in accordance with the UN Charter, its obligations under generally recognised principles and rules of international law and its obligations under international agreements in accordance with generally recognised principles of international law*", while providing that "*In the event of a conflict between the obligations of UN Members under the UN Charter and their obligations under any treaty or other international agreement, their obligations under the Charter shall prevail, in accordance with Article 103 of the UN Charter*".

It follows from the foregoing that this principle is applicable both to treaties and to customary rules, i.e. to lawful treaties, i.e. those in conformity with the fundamental principles of international law.

According to Article 2 para. 1(a) of the 1969 Vienna Convention on the Law of Treaties, "*a treaty is an agreement concluded in writing between States and governed by international law, whether embodied in a single instrument or in two or more related instruments, and whatever its name may be*", and according to Article 26 of the same Convention "*Any Treaty in force binds the parties and must be performed by them in good faith*".

Custom is "*a general, relatively long-standing and repeated practice of States, regarded by them as giving expression to a legally binding rule of conduct (a rule of law)*"[23].

This principle is not only "*a rule of law, but also one of international morality, since States must fulfil the obligations to which they have freely consented, good faith presupposing the performance of obligations without subterfuge and without the use of improper means of evading their performance*"[24].

The principle of cooperation

This principle states the obligation of States to cooperate with each other and with all States on an equal footing, whatever differences may exist between their political,

economic and social systems, in the various fields of international relations in order to maintain peace, international security and justice and to achieve international economic progress and stability, the general welfare of nations and international cooperation which is free from discrimination based on these differences. Cooperation must ensure universal respect for and observance of human rights and fundamental freedoms for all the world's inhabitants, as well as the elimination of racial discrimination and religious intolerance in all its forms. This cooperation between States must also be carried out in the economic, social, scientific, cultural, technical, commercial and humanitarian fields, foster the advancement of culture and education in the world, in accordance with the principles of sovereign equality and non-intervention, and act jointly as well as individually in cooperation with the UN, in accordance with the provisions of the UN Charter (UN General Assembly Resolution of 1970 and the Helsinki Final Act of the CSCE of 1975).

The need for the promotion and establishment of this principle at the international level ”*is due to the multiplication of subjects of international law, the increase in interdependence, the emergence of acute global problems which require the cooperation of all States and the finding of international solutions to them*”[25].

This principle was originally established in Article 1(3) of the UN Charter which stated that ”*one of the purposes of the United Nations is to achieve international cooperation in solving problems of an economic, social, cultural or humanitarian character and in promoting human rights*”.

The need to implement this principle is also provided for in Chapter IX of the UN Charter entitled ”*International Economic and Social Cooperation*” which states that the ultimate purpose of cooperation among States is the solution of problems arising at the international level which have implications for more than one State, or international economic prosperity and development, and which states the obligation of Member States to fulfil these objectives.

”*The content of the principle of cooperation consists in the existence of a right and a correlative obligation of States to cooperate with each other, each State having the right to establish cooperative relations with other States on a bilateral or multilateral basis, institutionalized or ad hoc, in any field of mutual interest or of general interest, and may not be arbitrarily prevented from exercising this right.*”[26]

Cooperation between States at the international level is at the core of the implementation of the entire edifice of international law, and is the prerequisite for the full manifestation of the other fundamental principles of international law, as well as ensuring their interdependence.

The principle of the inviolability of borders

This principle is established in the 1975 Helsinki Final Act of the CSCE and states that "*The participating States shall each consider inviolable all frontiers of the other, as well as the frontiers of all States in Europe, and shall accordingly refrain now and in the future from any attack on these frontiers and shall refrain from any demand or any act of seizure and usurpation of all or part of the territory of any independent State*".

Although this international document was signed in Helsinki in 1975 by the presidents or prime ministers of 33 European states, the USA and Canada, taking into account the provisions of the UN Charter, it is clear that this fundamental principle of international law refers to the inviolability of the borders of all states in the world.

We note that some of the practical modalities ensuring the implementation of this principle are contained in the regulation of the principle of non-use of force or threat of force, provided for in UN General Assembly Resolution 2625(XXV)/1970, namely "… *any State has an obligation not to resort to the threat or use of force to violate a State's existing international borders*", resulting in the interdependence of the two principles.

It makes sense for this to be the case, since the primary means by which a state's recognized international borders are those by which force or the threat of force is used.

The state border consists of "*those lines drawn between different points which separate the territory of one State from the territory of another State or, as the case may be, from the high seas and which extend in height to the lower limit of outer space and in depth inland to the limits accessible to modern technology*"[27].

At the international level, it is accepted that the only way to change the State border separating the territory of one State from the territory of another State is by agreement or consent of both States.

The principle of territorial integrity

The 1975 Helsinki Final Act of the CSCE also established this principle by stating that "*participating States will respect the territorial integrity of each other will refrain from any action inconsistent with the purposes and principles of the UN Charter, against the territorial integrity, political independence or unity of any participating State, and in particular, from any such action constituting a use of force or threat of force or of making the territory of another State the object of military occupation or other measures of direct or indirect use of force contrary to international law or the object of acquisition by such measures or threat thereof, no such occupation or acquisition being recognized as lawful*".

We note that some of the practical modalities ensuring the implementation of this principle are contained in the regulation of the principle of non-use of force or threat of force, provided for in UN General Assembly Resolution 2625(XXV)/1970, namely "*any State has an obligation not to resort to the threat or use of force to violate a State's existing international borders*", thus resulting in the interdependence between these two principles.

This is natural, because some of the ways in which the territorial integrity of states is infringed are "*any such action constituting a use of force or threat of force*".

Also, the phrase "*no such occupation or acquisition not being recognised as lawful*" (with reference to non-use of force or threat of force), is also reflected in the regulation of the principle of non-use of force or threat of force as laid down in UN General Assembly Resolution 2625(XXV)/1970, i.e. "*no territorial acquisition obtained by threat or use of force shall be recognised as lawful*" which is an additional reason to underline the interdependence between these two principles.

In international law, state territory is "*the geographical area made up of land, water, sea, soil, subsoil and airspace over which the State exercises its full and exclusive sovereignty*"[28].

The only lawful modification of a State's territory allowed under contemporary international law is "*that which is based on the freely expressed consent of the population inhabiting the territory in question, thus resulting in the separation of territories from a State, the formation of another State or States, or the joining of parts of the territory of a State or States as a whole to another State or States*"[29].

According to Article 1(3) of the UN Charter, the amendments are legal ”*only if it expresses the sovereign will of the people living in that territory*”.

Principle of respect for human rights and fundamental freedoms

”*The idea that the individual, as a human being, has immanent rights, intrinsic to this quality, has distant origins, especially in the Christian conception of man*”[30].

The first European, and implicitly world-wide document outlining the basic elements of the legal guarantees of the individual in the ”*Magna Carta Libertatum*” annunciated by King John without Land in 1215, under pressure from the English nobility and church which provided that ”*No free man shall be imprisoned or expelled or destroyed in any manner without due process of law by his peers according to the laws of the land*”.

The need to respect human rights was crystallised in the doctrine of natural law (the law of gentiles and nature) from which J. J. Rousseau took his ideas for ”*Social contract*” (1762).

The bourgeois revolution in England led the British legislature to adopt two important documents, *Habeas corpus* (1679) and *Bill of Rights* (1689) which provided for the right to trial by jury, inviolability of the person, bail, the right to free elections and freedom of speech.

The legislation adopted by the young American state and the Declaration of the Rights of Man and of the Citizen adopted during the French Revolution on 26 August 1789 give expression to the principle that the human being is entitled to sacred and inalienable rights in respect of his person, recognized by the state power, without any connection with his origin and social status: equality among individuals, including before the law, the establishment of governments with the consent of the governed, the right to life and liberty, the right to property, freedom of thought, expression and demonstration, and the right to security and resistance to oppressive domination.

In the contemporary international era, given the crucial importance for humanity of respect for human rights and fundamental freedoms, the above-mentioned principle, ”*initially regarded as a principle of international law of a branch nature, considered to relate only to the subject of population in international law, has become a fundamental principle of international law, since the criterion of respect for human rights and*

fundamental freedoms has become an essential coordinate of inter-State relations and a condition for accession to various fora and forms of cooperation or integration"[31].

Consequently, in view of the above imperatives, effective systems and mechanisms have been established at international level to ensure the protection of human rights and fundamental freedoms.

Thus, at the UN level, the preamble to the UN Charter reaffirms "*the belief in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small*".

Article 55 of the UN Charter establishes "*universal and effective respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion*".

The Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948, constitutes a "*common ideal to be achieved by all peoples and nation* " and mentions numerous civil and political rights (the right to life, the right to liberty and security of person, the right not to be held in slavery or servitude, the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment, the right to freedom of peaceful assembly and association, the right to take part in the conduct of public affairs and the right of access to public service, as well as economic, social and cultural rights (the right to social security, work and free choice of work, equal pay for equal work, insurance in case of unemployment, invalidity, mother and child protection).

Although the provisions of the Universal Declaration of Human Rights are not binding and coercive, they have legal content and priority over the domestic law of States, all the more so as this Declaration has been an essential landmark in terms of the level of regulation of human rights and fundamental freedoms in contemporary constitutions (see, for example, Article 20 of the Constitution of Romania).

The International Covenants on Human Rights were adopted by the UN General Assembly on 16 December 1966, the International Covenant on Economic, Social and Cultural Rights entered into force on 3 January 1976, providing for the right to work, freedom to choose one's place of work, the right to just conditions of work, equal remuneration for work of equal value, the right to safety and health at work, rest and leisure, the right to form trade unions, the right to strike, the right to social security.

The International Covenant on Civil and Political Rights entered into force on 23 March 1976 and had two Optional Protocols, the first on the possibility of referral to the Human Rights Committee entered into force on 23 March 1976 and the second Optional Protocol concerned the abolition of the death penalty and entered into force on 11 July 1991.

This Covenant provides for the right to life, freedom of thought, conscience, religion, freedom of expression and the right to freedom of assembly and association.

The 1975 Helsinki Final Act of the CSCE provides for freedom of thought, conscience, religion or belief for all without distinction as to race, sex, language or religion, civil, political, economic, social, cultural and human dignity freedoms, freedom of individuals to profess and practise their religion or belief alone or in community with others, respect for the rights of persons belonging to national minorities, including equality before the law and the effective enjoyment of human rights and fundamental freedoms.

Regarding the international mechanisms for ensuring the protection of human rights, these are implemented at the UN level, the other mechanisms for ensuring the protection of human rights being of a regional nature (the European system through the Council of Europe and the OSCE, respectively the Inter-American system and the African system).

The UN system comprises the UN General Assembly, the Security Council, the Economic and Social Council, the Committee on the Elimination of Racial Discrimination, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the UN Secretariat, the Office of the UN High Commissioner for Refugees, the Committee on the Rights of the Child, the Office of the UN High Commissioner for Human Rights, the Committee on Migrant Workers and the Committee on the Rights of Persons with Disabilities.

Conclusions

The fundamental principles of international law have their origin in the abstraction of legal rules specific to this branch of law.

These principles have emerged and crystallised in inter-state relations and have evolved and developed in line with the evolution and development of relations between states, reflecting the socio-economic and political imperatives of the historical periods in which states emerged and developed.

States, as the principal subjects of international law, are primarily under an obligation to respect the fundamental principles of international law and, consequently, because of this desire, must also respect the other principles, institutions and rules specific to the whole edifice of international law.

The fundamental principles of international law, sometimes referred to in the literature as the standards of international conduct applicable primarily to States, are the highest criterion in verifying the legality of any legal act of international law or in assessing other actions or abstentions of States and other subjects of international law in international relations, as well as in constructing rules of conduct in areas newly regulated by international law.

Based on the fundamental principles of international law, the main subjects of international law, i.e. States, at the level of international organisations of global or regional scope, promote their own national interest through specific political and legal instruments.

Since contemporary society is constantly evolving and developing, this character is also organically imprinted on the fundamental principles of international law, in terms of their number and the enrichment of their content.

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ASSESSMENT OF THE INDIVIDUAL PERFORMANCE OF CIVIL SERVANTS UNDER THE ADMINISTRATIVE CODE

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Abstract:
Performance indicators are established to assess the degree to which civil servants have achieved their individual objectives. The setting of individual objectives and performance indicators must be linked to the tasks and objectives of the institution in which the civil servant works.
In the framework of the individual performance assessment process for civil servants, the training requirements for civil servants are established.
The objectives set out in paragraph (1) shall be determined in accordance with the duties set out in the job description, by reference to the public position held, its professional grade, the theoretical and practical knowledge and skills required to perform the public position held by the civil servant, and shall correspond to the objectives of the department in which the civil servant works.
The performance indicators referred to in paragraph 1 shall be set out in paragraph (1) shall be established for each individual objective, in accordance with the level of the public office holder's duties, by reference to the requirements relating to the quantity and quality of the work performed. In all cases, the individual objectives and performance indicators shall be made known to the public servant at the beginning of the period evaluated.
In this article, we propose to discuss relevant issues concerning the analysis of the annual individual performance assessment report of civil servants, by analysing the two methodologies for assessing the annual performance of civil servants, as described above, with reference to the judicial practice in this field.
Keywords: *public position; civil servant; professional performance; objectives of the public authority or institution; evaluation report*

Actuality

The approach to this issue is generated by the existence of several cases being brought before the administrative court, the object of which is the annulment of the annual individual performance assessment report of the civil servants appointed within the Agricultural Directorate of Arad County, the order of the employer to re-assess the individual performance of the civil servants assessed and the accessory claims, aiming either at the granting of a certain grade in the re-assessment, or at the calculation and reimbursement of the salary rights, unlawfully withheld on the basis of the grade granted and the payment of the related legal interest.

Subject matter: With regard to the analysis of the annual performance assessment report of civil servants appointed to the Arad County Agricultural Directorate, it can be noted that the provisions of Article 485 of the Administrative Code, approved by O.U.G. no.57/2019, regulate the general assessment procedure.

Thus, the individual performance assessment of civil servants is carried out annually and the process of evaluating the individual performance of executive civil servants and senior civil servants is the objective assessment of the individual performance of civil servants by comparing the degree and manner of achievement of individual objectives and established performance criteria with the results actually achieved by the civil servant.

The assessment of the individual performance of civil servants includes the following elements:

a) assessment of the extent to which and how well individual objectives have been achieved;

b) assessment of the degree to which the performance criteria have been met.

Performance indicators are established to assess the degree to which individual civil servants have achieved their objectives. *The setting of individual objectives and performance indicators must be linked to the tasks and objectives of the institution in which the civil servant works.*

Individual performance assessments shall be carried out for all civil servants who have actually worked for at least 6 months in the calendar year for which the assessment is made.

The ratings obtained in the individual performance assessment process of civil servants are taken into account in:

a) promotion to a higher public office;

b) the granting of bonuses, in accordance with the law.

c) a 10% reduction in salary rights until the next annual individual performance assessment for civil servants who have obtained a "satisfactory" rating;

d) dismissal from public service.

The evaluation of individual job performance is also mandatory when civil servants' employment is modified, suspended or terminated.

The individual performance assessment process for civil servants establishes the training requirements for civil servants.

As far as the concrete evaluation procedure is concerned, a distinction is to be made according to the period under evaluation.

Thus, with regard to the work carried out by civil servants from 1 January 2020, as well as the work of junior civil servants appointed to public office after 1 January 2020, the evaluation procedure is governed by Annex 6 to O.U.G. no.57/2019, on the Administrative Code, on the methodology for carrying out the evaluation process of the individual professional performance of civil servants applicable to the work carried out from 1 January 2020, as well as for carrying out the evaluation process of the work of junior civil servants appointed to public office after 1 January 2020.

According to the provisions of Art.14-16 of the Methodology:

Art. 14 - "(1) The annual assessment of the individual professional performance of civil servants shall be carried out for one calendar year, during the period from 1 January to 31 March of the year following the period assessed, for all civil servants who have actually worked for at least 6 months in the calendar year for which the assessment is carried out.

(2) By exemption from the provisions of Art. (1), the annual assessment of the individual performance of civil servants may also be carried out after the period from 1 January to 31 March of the year following the period assessed, if the official's service relationship is suspended for the entire assessment period. In this case, the assessment shall be carried out within 5 working days of resuming work, in accordance with the conditions of this methodology.

(3) By way of exception to Art. (1), the annual assessment of the individual performance of civil servants may also be carried out after the period from 1 January to 31 March of the year following the period assessed, if the service relationship or, as the case may be, the employment relationship of the assessor is suspended for the entire assessment period. In this case, the assessment shall be carried out within 5 working days of the end of the assessment period, with the appropriate application of Article 15(2). (1)(b) of this Annex.

Art. 15 - (1) By exception to the provisions of Art. 14 paragraph. (1) of this Annex, the evaluation of civil servants shall be carried out for another period in any of the following situations:

(a) when the civil servants' employment relationship is modified, suspended or terminated in accordance with the law, if the period actually worked is at least 30 consecutive days;

b) upon modification, suspension or termination of the employment relationship or, as the case may be, of the employment relationship of the assessor, under the terms of the law, if the period actually coordinated is at least 30 consecutive days. If the assessor is legally or factually prevented by an administrative act from actually carrying out the assessment, the status of assessor shall revert to the person who is the countersignatory of the assessment report on the date of termination, suspension or amendment, under the conditions laid down by law, of the employment relationship or, where applicable, of the assessor's employment relationship, with appropriate application of the legal provisions regarding the appointment of another countersignatory, where possible, in accordance with the organisational structure;

c) when during the period under review the civil servant is promoted in grade or professional rank.

(2) The assessment carried out in the situations referred to in paragraph 1 shall be based on the following criteria (1) shall be called a partial evaluation and shall cover the evaluation of the individual objectives referred to in Article 485 (1). (3) of this Code.

(3) The partial assessment shall be carried out on or within 10 working days after the occurrence of the situations referred to in paragraph (1). (1) and shall be taken into account in the annual evaluation.

(4) The partial evaluation of civil servants shall not be required if the civil servant's employment relationship is changed by delegation, suspended in accordance with Article 513 para. (1) (e), (h), (i) and (j) of this Code or, where applicable, terminated under Article 517 para. (1) (a) and (b) of this Code.

Art. 16 - (1) In order to carry out the individual performance assessment of executive and managerial civil servants referred to in Article 485 para. (3) lit. a) of this Code, at the beginning of the evaluated period the person who is the evaluator shall

establish individual objectives for the civil servants whose work he/she coordinates and the performance indicators used in the evaluation of the degree and manner of their achievement.

(2) The objectives referred to in paragraph (1) shall be determined in accordance with the duties set out in the job description, by reference to the public office held, its professional grade, the theoretical and practical knowledge and skills required to perform the public office held by the public servant and shall correspond to the objectives of the department in which the public servant works.

(3) The performance indicators referred to in paragraph (1) shall be established for each individual objective, in accordance with the level of duties of the public office holder, by reference to the requirements of the quantity and quality of the work performed.

(4) In all cases the individual objectives and performance indicators shall be made known to the civil servant at the beginning of the assessment period.

(5) Individual targets and performance indicators may be reviewed quarterly or whenever there are changes in the work or organisational structure of the public authority or institution. The provisions of paragraph (4) shall apply accordingly.

(6) The performance criteria for carrying out the individual performance assessment component of the performance assessment of civil servants under Article 485 para. (3) (b) of this Code are set out in Article 29 (b) of this Annex".

With regard to the work carried out by civil servants until 31 December 2019, the evaluation procedure is governed by the provisions of Articles 621 - 6213 of Law No.188/1999, on the status of civil servants, as resulting from the provisions of Article 597 paragraph 2 letter b of O.U.G. No.57/2019, on the Administrative Code, according to which:

"(2) On the date of enforcement of this Code, is abrogated:

(b) Law No. 188/1999 on the Status of Civil Servants, republished in the Official Monitor of Romania, Part I, No. 365 of 29 May 2007, with subsequent amendments and additions, with the exception of the provisions of Articles 20, 201 - 2010, 60 para. (3), articles 601 - 604, 621 - 6213 and annex no. 2, which apply to the evaluation of the individual professional performance of civil servants for the activity carried out in 2019".

Therefore, according to the provisions of Articles 626-6213 of Law 188/1999:

"Art. 626) - (1) The annual evaluation of the individual professional performance of civil servants shall be carried out for one calendar year, in the period from 1 to 31 January of the year following the evaluated period, for all civil servants who have actually worked for at least 6 months in the calendar year for which the evaluation is carried out.*

(2) By way of exemption from paragraph. (1), the partial assessment of the individual performance of civil servants shall be carried out for a period other than that provided for in paragraph (1) in any of the following circumstances:

(a) when the civil servants' employment relationship is modified, suspended or terminated in accordance with the law, if the period actually worked is at least 30 consecutive days;

b) on modification, suspension or termination of the employment relationship or, as the case may be, the employment relationship of the assessor under the law, if the period actually coordinated is at least 30 consecutive days. If the assessor is legally or factually prevented by an administrative act from actually carrying out the assessment, the status of assessor shall revert to the person who is the countersignatory of the assessment report on the date of termination, suspension or amendment, under the conditions laid down by law, of the employment relationship or, where applicable, of the assessor's employment relationship, with the appropriate application of the legal provisions regarding the appointment of another countersignatory, where this is possible according to the organisational structure;

(c) when, during the period under review, the civil servant is promoted in grade or professional rank.

(3) The partial assessment shall be carried out within 10 working days of the date of the occurrence of the situations referred to in paragraph (2) and shall be taken into account in the annual assessment, in accordance with the law.

(4) The partial evaluation of civil servants is not required in the case where the civil servant's service report:

(a) is changed by delegation;

b) is suspended in cases where the civil servant has been remanded in custody, is under house arrest, or has been placed under the terms of Law No. 135/2010 on the Code of Criminal Procedure, as subsequently amended and supplemented, under the

measure of preliminary investigation under judicial supervision or under judicial supervision on bail, if obligations have been established against him/her that prevent the exercise of the employment relationship, is on leave for temporary incapacity for work under the terms of the law, is missing, and the disappearance has been established by a final court decision or in case of force majeure;

(c) shall cease on death or on the final judgment declaring the death of the civil servant.

(5) By way of exception to paragraph. (1), the annual assessment of the individual performance of civil servants may also be carried out after the period from 1 to 31 January of the year following the period assessed, if the service relationship of the civil servant is suspended during the whole assessment period. In this case, the evaluation shall be carried out within 5 working days after the resumption of work, under the conditions of this Law.

(6) By exception to the provisions of para. (1), the annual evaluation of the individual professional performance of civil servants may also be carried out after the period from 1 to 31 January of the year following the evaluated period, if the service relationship or, as the case may be, the employment relationship of the evaluator is suspended during the entire evaluation period. In this case, the appraisal shall be carried out within 5 working days of the end of the appraisal period, with the appropriate application of the provisions of paragraph (2)(b).

Art. 627) - (1) In order to carry out the individual performance assessment of civil servants referred to in Article 622 para. (1) letter a), at the beginning of the evaluated period, the person acting as evaluator shall establish individual objectives for the civil servants whose work he/she coordinates and the performance indicators used in the evaluation of the degree and the way of achieving them.*

(2) The objectives referred to in paragraph 1 shall be set by the (1) shall be established in accordance with the duties in the job description, by reference to the public office held, its professional grade, the theoretical and practical knowledge and skills necessary for the performance of the public office held by the public official, and shall correspond to the objectives of the department in which the public official works.

(3) The performance indicators referred to in paragraph (1) shall be established for each individual objective, in accordance with the level of the duties of the public office holder, by reference to the requirements of the quantity and quality of the work performed.

(4) In all cases, the individual objectives and performance indicators shall be made known to the civil servant at the beginning of the period under review.

(5) Individual targets and performance indicators may be reviewed quarterly or whenever there are changes in the work or organisational structure of the public authority or institution. The provisions of paragraph(4) shall apply accordingly".

Art. 628) - The performance criteria used to carry out the individual performance appraisal component of the performance appraisal of civil servants under Art. 622 para. (1) letter b) are set out in item. III of Annex 2".*

Important aspects regarding the analysis of the annual performance assessment report of the civil servants appointed to the Agricultural Directorate of Arad County.

Analysing the two methodologies for evaluating the annual professional performance of civil servants, as set out above, by reference to judicial practice in the matter, it is noted that there are three aspects relevant to the issue of analysing the evaluation reports of civil servants:

a) The deadline for the evaluation;
b) The individual objectives and performance indicators are made known to the civil servant at the beginning of the appraisal period.
c) Consequences of the annulment of the assessment report/application for the award of a specific appraisal grade in the reassessment or for the calculation and reimbursement of the salary rights unlawfully withheld on the basis of the appraisal grade awarded and the payment of the related legal interest.

a) The deadline for carrying out the assessment.

With regard to the term for carrying out the evaluation, it can be noted that in the old legislation, concerning the activity carried out by civil servants until 31 December 2019, the evaluation term is between 1 and 31 January of the year following the period

evaluated, for all civil servants who have actually carried out activity for at least 6 months in the calendar year for which the evaluation is carried out, as it results from the provisions of Article 626 paragraph 1 of Law No. 188. /1999 on the status of civil servants, whereas in the new legislation, concerning the activity of civil servants from 1 January 2020 and the activity of junior civil servants appointed to public office after 1 January 2020, the evaluation period is between 1 January and 31 March of the year following the period evaluated, for all civil servants who have actually worked for at least 6 months in the calendar year for which the evaluation is carried out, as stated in Article 14, paragraph 1 of Annex 6 to O.U.G. no.57/2019, on the Administrative Code, regarding the evaluation methodology.

b) The individual objectives and performance indicators are made known to the civil servant at the beginning of the appraisal period.

With regard to this requirement of legality of the evaluation report, we note that both in the old legislation, concerning the work carried out by civil servants until 31 December 2019, namely the provisions of Article 627, paragraph 4 of Law No. 188/1999 on the status of civil servants, and in the new legislation, concerning the work carried out by civil servants from 1 January 2020, as well as the work of junior civil servants appointed to public office after 1 January 2020, namely Article 16 paragraph 4 of Annex 6 of the O.U.G. no.57/2019, on the Administrative Code, regarding the evaluation methodology, *in all cases, it is stipulated the requirement that the individual objectives and performance indicators are made known to the civil servant at the beginning of the evaluated period.*

In this regard, the judicial practice of the Timisoara Court of Appeal has consistently held that, *since it has not been proven that these individual objectives were brought to the attention of the civil servant at the beginning of the period assessed, the assessment of the applicant's annual professional performance was carried out formally, without analysing the assessment criteria in concrete terms and without complying with the legal requirements,* and thus without setting out in concrete terms the aspects on which the contested assessment was based, namely the concrete method of awarding marks during the assessment, which leads to the unlawfulness of the assessment report and, by implication, its annulment.

However, there is a non-uniform practice at the Timisoara Court of Appeal level in the concrete way of analysing and applying this requirement of legality of the civil servant's evaluation report.

Thus, in one case it was decided that individual objectives are established in accordance with the duties in the job description and *there is no impediment for them to be identified with the duties in the job description,* as long as the conditions set out in Article 16 of Annex 6 to O.U.G. No. 57 /2019 are met, on the Administrative Code, concerning the evaluation methodology, which require that these objectives be established by reference to the public office held, the professional grade of the same, the theoretical and practical knowledge and skills required to perform the public office and which correspond to the objectives of the department in which the civil servant works.

However, the Court of Appeal held that the assessment report was null as there was no evidence that the individual objectives had been brought to the attention of the civil servant at the beginning of the period assessed. Thus, although the defendant argued that the individual objectives were contained in the job description, namely in a decision issued by the management of the DAJ Arad by which the applicant was appointed to a committee for the implementation of decision no. 716 /2020 on the approval of the 'The minimis aid scheme to compensate for the effects of the adverse hydro-meteorological phenomena which occurred between March and May 2020 in the beekeeping sector', the applicant did not prove those claims either before the court of first instance or before the court of appeal, nor did he prove that the job description and the decision referred to above had been notified prior to the period assessed, in order for it to be held that that notification represented notification of the individual objectives for 2020, thus complying with Article 16 paragraph (4) of the Methodology.

However, given that no such evidence was provided and that the appraisal report for the period 2019 does not record any objectives under the heading 'objectives for the next appraisal period', the Court held that the Court of First Instance was right to hold that it had not been proved that the objectives for the appraisal period had been brought to the attention of the civil servant at the beginning of the appraisal period. The Court held that it was irrelevant that the 2019 appraisal report had not been contested by the applicant, as the applicant was not dissatisfied with the grade awarded in that report and

the defendant had the burden of proving that the individual objectives for 2020 had been communicated to the civil servant.

The Court also found that the first court correctly held that the assessment of the applicant's professional performance for the period from 1 January 2020 to 31 December 2020 was carried out formally, without analysing the assessment criteria in detail and without complying with the legal requirements, and that the aspects on which the contested assessment was based, namely the specific method of awarding marks during the assessment, were not set out in detail. Thus, in the assessment report challenged in the present case, *the assessor did not give reasons for the marks awarded and the court is thus unable to verify the lawfulness of the procedure,* since the content of the assessment report does not clearly show the considerations which led to the award of those marks, the evaluation report does not contain any reasoning as regards the assessor's assessments for each of the performance criteria used in the evaluation, the 'Comments' section of each of the 11 performance criteria is not completed, and the percentages indicated in the first part of the evaluation report as to the weighting of the achievement of the performance indicators relating to the six objectives are not justified (see Civil Decision No. 261 /18.03.2022 pronounced by the Timisoara Court of Appeal - Administrative and Fiscal Litigation Section in case no.2607/108/2021).

In another case it was decided that the appraisal report was unlawful because it *was not proven that the objectives for the period under appraisal, which are not confused with the duties in the job description, as the appellant wrongly tries to claim, were brought to the attention of the civil servant at the beginning of the period under appraisal,* and the performance indicators were not properly set out, with no relevant explanations/comments being recorded for any of the performance criteria.

However, the contested appraisal report, in the section 'objectives during the period under review', reproduces almost in full the duties mentioned in the job description. In those circumstances, the Court held that the assessment of the applicant's professional performance in the period from 1 January 2019 to 31 December 2019 was carried out formally, without setting out and analysing the assessment criteria in concrete terms and without complying with the legal requirements in terms of both the legality and the thoroughness of such a procedure. In those circumstances, the Court held that the result

of the assessment, the mark awarded, is uncertain, without any guarantee that it accurately reflects the work carried out, which is such as to show that an objective assessment of the applicant's work was not carried out in practice, and that the aspects on which the contested assessment was based, namely the specific method of awarding marks during the assessment, were not set out in detail (see Civil Decision No 374 /25.03.2021 delivered by the Timisoara Court of Appeal - Administrative and Fiscal Litigation Section in case no. 1072/108/2020)

c) The consequences of the annulment of the appraisal report/the ancillary claims concerning either the award of a specific appraisal grade in the reassessment or the calculation and reimbursement of the salary rights, unlawfully withheld on the basis of the evaluation grade awarded and the payment of the related legal interest.

In the cases, the main subject-matter of which is the annulment of the annual individual performance appraisal report of the civil servants appointed to the Agricultural Directorate of Arad County and an order that the employer should re-evaluate the individual performance of the civil servants evaluated, the applicant also brought ancillary proceedings, The applicants claim that the Court should, following the upholding of the main head of claim and the annulment of the appraisal report, either order the defendant to award a specific mark in the reassessment or order the defendant to calculate and repay the salary rights unlawfully withheld on the basis of the mark awarded and to pay the related statutory interest.

In one case, the Court of First Instance dismissed the applicant's secondary head of claim, seeking an order that the defendant alter the final mark and award the mark 'very good', on the ground that it is *not the court's function to substitute itself for the assessor*, especially since, on the basis of the information in the file, no such assessment can be made, and the court cannot therefore impose the mark to be awarded following the re-assessment (see civil judgment No 877 /09.11.2020, pronounced by the Court of Arad - Section III - Administrative and Fiscal Litigation, Labour and Social Security Disputes in case no.1072/108/2020). This decision of the first instance was not challenged by appeal, only the decision given to the main claim, which was to annul the evaluation report, was challenged and upheld by the appeal court.

In another case, the Court of First Instance dismissed the applicant's additional claims for an order that the defendant calculate and repay the unlawfully withheld salary entitlements and pay the statutory interest thereon. In its reasoning, the first instance held that those heads of claim related to the repayment of salary rights and the related interest, rights which had been reduced for the applicant following the award of a 'satisfactory' grade. However, even if the plaintiff is to be reassessed, *the court cannot substitute itself for the assessment committee in order to know, with certainty, whether or not, at the new assessment, the plaintiff will exceed the "satisfactory" qualification in order to be entitled to the undiminished salary rights* (see civil judgment no.1312/03.11.2021 pronounced by the Court of Arad - Section III - Administrative and fiscal litigation, labour and social security disputes in case no.2607/108/2021).

This decision was modified on appeal, with the Timișoara Court of Appeal ordering the defendant Arad County Directorate for Agriculture to reimburse the applicant the sums withheld following the award of the "satisfactory" rating in the annulled individual performance appraisal report and the related statutory interest, calculated from the date on which those sums were withheld until the date of actual payment. In its reasoning, the Court of Appeal found that, following the award of the "satisfactory" rating by the individual performance appraisal report drawn up on 29.03.2021, pursuant to Article 485(7) of the O.U.G. no.57/2019 and Article 21(1)(c) of the Methodology, the applicant's salary rights were reduced by 10% until the next annual individual performance appraisal. *Given that the individual performance appraisal report drawn up on 29.03.2021 was found to be unlawful and was annulled, and that the reason for reducing the applicant's salary rights by 10% was the "satisfactory" rating obtained in the individual performance appraisal for 2020, the Court held that it was therefore necessary, in view of the ancillary nature of those small amounts, to allow the application for reimbursement of the amounts withheld following the award of the "satisfactory" rating and the award of the related legal interest calculated from the date of deduction of these amounts until the date of actual payment, the qualification to be awarded to the plaintiff following the reassessment being irrelevant, as long as the reason for the reduction in salary rights no longer exists at that time (see civil decision no.261/18.03.2022 handed down by the Timișoara Court of Appeal - Administrative and Fiscal Litigation Section in case no.2607/108/2021).*

We cannot agree with this solution, because the reason for the reduction of the applicant's salary rights by 10% is the "satisfactory" rating obtained by the applicant in the evaluation of individual professional performance, as provided for in Article 485(7) of the O.U.G. No. 57/2019 and as provided for in Article 21(1) letter c of the Methodology, and the reinstatement of the applicant's assets implies the awarding of a rating higher than 'satisfactory' in the new assessment, which cannot be done by the court, since the assessment of civil servants and the determination of the ratings to which they are entitled is beyond the jurisdiction of the court, which is the exclusive responsibility of the assessment committee of the institution, appointed in accordance with the law. In other words, even if the appraisal report is annulled by the court, the court may not reassess the applicant, and there is no certainty that the appraisal carried out by the appraisal committee will award the civil servant a higher mark than 'satisfactory' in order to allow his claim for repayment of the reduced salary entitlement, since the committee may again award the mark 'satisfactory' and is not bound by the court's assessment of the civil servant's professional performance, but only of the legality of the appraisal report.

In addition, it is undeniable that the appraiser has an obligation to listen to the appraisee, otherwise, by not doing so, he will cause the appraisee an injury which, under the circumstances, no longer needs to be proven by the appraisee, but must be presumed in the case.

On the other hand, in the context of the fact that, contrary to the legal provisions already set out, and the theoretical considerations set out, the appeal was not resolved in the presence of the parties, the civil servant in question was not heard, and the decision adopted by the committee deciding the appeal was in no way reasoned, it must be held that the decision to maintain the score relating to the assessment of the civil servant is null and void, since the court does not have the legal prerogative to invalidate the decision of the assessment committee and, moreover, to proceed to a new assessment by awarding a higher score than that originally awarded by the assessment committee.

However, through such a case law ruling we consider that the court has exceeded its general jurisdiction, exceeding the powers of the judiciary, having no legal basis to re-evaluate itself the evaluation sheet in educational management, awarding marks based on its own assessment of the grades given by the evaluator.

The High Court of Cassation and Justice has also pronounced in the same sense in Decision no. 1580 of 11 April 2008 of the Administrative and Fiscal Contentious Section, published, showing that the discretionary power conferred on an authority cannot be considered, in a state governed by the rule of law, as an absolute and unlimited power, since the exercise of the right of appreciation by violating the fundamental rights and freedoms of citizens provided for by the Constitution or by law constitutes an excess of power, in the context in which the Romanian Constitution provides in Article 31 para. 2 of the Constitution requires the public authorities to ensure that citizens are properly informed about public affairs and matters of personal interest. The High Court therefore held that any decision likely to have an effect on fundamental rights and freedoms must be reasoned not only from the point of view of the power to issue that act, but also from the point of view of the possibility for the individual and society to assess the legality of the measure, that is to say, whether the boundaries between discretionary power and arbitrariness are respected, since to accept the view that the employer does not have to give reasons for its decisions is tantamount to emptying the essence of democracy and the rule of law based on the principle of legality.

Moreover, it has also been held in Community case-law that the statement of reasons must be appropriate to the measure issued and must set out in a clear and unequivocal manner the algorithm followed by the institution which adopted the contested measure, so as to enable the persons concerned to establish the reasons for the measures and also to enable the Community courts to review the measure (Case C-367/1995).

As the European Court of Justice has ruled, the extent and detail of the statement of reasons depends on the nature of the act adopted, and the requirements which the statement of reasons must meet depend on the circumstances of each case, an insufficient, or incorrect, statement of reasons is deemed to be equivalent to a failure to state reasons for acts, as in the present case. Moreover, failure to state adequate reasons or failure to state reasons renders Community acts null and void or invalid (Case C-41/1969). A detailed statement of reasons is also necessary where the issuing institution has a wide discretion, since the statement of reasons makes the act transparent, allowing individuals to verify whether the act is properly reasoned and, at the same time, enabling

the Court to exercise judicial review (Case C-509/1993).

In a different perspective, however, but in full agreement with the same decision of the High Court mentioned above, in our opinion, it is the employer's prerogative to award grades in the annual performance appraisal procedure, and the court hearing the action for annulment of the annual performance appraisal form has the power only to review the legality of the appraisal procedure, without carrying out the appraisal itself and awarding another grade.

Last but not least, but for the purposes of the considerations set out above, it is clear that in exercising the legality review, the court cannot proceed to only partially annul the file in question, precisely because it is not entitled to make judgments of expediency, i.e. to assess the work, in accordance with the legal provisions and cannot "issue" another assessment of service "with a higher value". In addition, based on the relevant legal provisions and the relevant case law, we consider that the court may not rule on the granting of a particular type of rating, it has the power to exercise exclusively the control of legality of the evaluation procedure of the individual performance of the civil servant in activity, and it may order the re-evaluation procedure with the observance of the legal rigours, but without subrogating itself to the rights and obligations of the evaluator.

The awarding of the rating in the annual individual performance appraisal procedure is the prerogative of the employer and the modification of the score is the exclusive responsibility of the appraisal committee.

In conclusion, we express the opinion that only when the right of assessment of an authority turns into an abuse of law, the court has the possibility under Article 18 of Law No. 554 of 2004 on administrative litigation, to censor the act in order to annul it and possibly in order to oblige the authority to re-evaluate, without replacing the powers of the committees and without itself changing the relevance of certain certificates concerning the qualifications and skills of candidates.

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