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CONTENTS

CONSIDERATIONS ON THE INITIATIVES TO REFORM THE EUROPEAN INTERINSTITUTIONAL FRAMEWORK

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Abstract
The setting of priorities at EU level is always carried out following consultations between EU leaders, member state ministers, EU institutions and political groups in the European Parliament. Within the EU institutional system, the European Parliament is at the heart of European democracy, as it is the only EU institution directly elected by European citizens. The European Parliament is the one who initiated the reform process to strengthen its institutional role and capacity for action within the European decision-making mechanism. This will also have effects on the European interinstitutional framework in the period 2024-2029.
Keywords: *priorities, initiatives, reform, interinstitutional agreement, capacity for action*

1. Preamble

The construction of the European Union was based, ever since its establishment, on the idea of economic integration, starting with the European Coal and Steel Community and up to the Single Market, namely the Economic and Monetary Union. The subsequent evolution of the European Union showed that economic progress is closely linked to social progress, that a competitive and sustainable economy cannot be founded in the absence of policies for the protection of the workforce or social protection, education and training. Even though the development model aimed at “a highly competitive market social economy, which tends towards full employment and social progress” [1], the social dimension of the EU most often remained in the background, returning to the agenda of European decision-makers especially when there was a need for a repositioning of social elements, in the context of the implementation of economic policies.

Moreover, the challenges that the EU has been recently facing, in parallel with the visible increase in the gaps between regions or the increased vulnerability of certain social categories, have led to an increased interest in tracking social progress and how social objectives are integrated into the broader development framework. It is undeniable that the priorities shaping the European political agenda until 2029 include this aspect as well.

2. Setting priorities at the European Union level

The European elections in June 2024 represented an opportunity for the EU to establish a series of priorities, which were included on its political agenda until 2029. These priorities aim to address the main challenges faced by both the EU as a whole and its citizens.

The establishment of priorities is always carried out following consultations between EU leaders, member state ministers, EU institutions and political groups from the European Parliament. Thus, in June 2024, before the start of the new legislature, the heads of state or government of all member states, reunited within the European Council, established the EU official political priorities for the next 5 years, which were then included in the *EU's Strategic Agenda for the period 2024-2029*. The document is intended to guide the EU institutions, defining ways to achieve these priorities. The task of implementing them lies with the EU institutions, but also with the governments of the member states, who work together towards this common goal.

The European Commission, based on this agenda, has identified its political priorities before the start of its 5-year mandate. These summarise the main policies and steps it intends to take to achieve its objectives. The Commission's priorities are presented in the plenary session of the European Parliament, transformed into mission statements addressed to each Commissioner-designate and presented before the relevant committee of the Parliament. The political guidelines thus defined form the basis of the *Commission's annual work programme*, which includes the initiatives designed to give substance to the priorities over the next 12 months.

After the adoption of the Commission Work Programme, the three European institutions, the Commission, the Parliament and the Council, issue a joint declaration on the EU's priorities for the coming year. This allows for swift action and ensures that political focus is placed on delivering the defined priorities.

To allow for longer-term planning, the three EU institutions also adopt annual joint declarations on legislative priorities for the following year during the five-year mandate.

3. European Union priorities for 2024-2029: reforms to strengthen European democracy

At the European level, the trend of the last twenty years has been that of globalization and the intensive development of social systems, relating to the values and objectives promoted within the Union space. In this context, the member states have been put in a position where the institutions and administrative systems have to be flexible in order to constantly adapt to these transformations. Thus, cooperation between national administrations and European institutions has become vital for the smooth functioning of the entire process.

Within the EU institutional system, the European Parliament is at the heart of European democracy, as it is the only institution of the Union directly elected by European citizens. This is also why it is considered the voice of European citizens, and within the EU institutional balance it is recognised as having several qualities: co-legislator, component of the budgetary authority, as well as guarantor of political and financial accountability and transparency.

It is the European Parliament the one to initiate the next stage of a reform process to strengthen its internal working methods, as well as its institutional role and capacity to act, to ensure that it is and remains well equipped to carry out its tasks under the Treaties [2] and to meet the expectations of EU citizens.

Thus, in January 2023, the Conference of Presidents of the European Parliament agreed on the need for internal reforms. The reform process at European level had to focus on actions that generate tangible and immediate results that would complement the actions of governments and that must be clearly linked to the immediate concerns of the people and unequivocally target issues of European or global importance.

The proposal made by the President of the European Parliament [3] was adopted by the Conference of Presidents, which set up a working group on parliamentary reform, composed of representatives of all political groups. The work group aimed to examine the proposals received throughout the year on how to improve the efficiency of the procedures of the European Parliament.

On the 22nd November 2023, the European Parliament adopted, with a slight majority (305 votes for, 276 against and 29 abstentions for the report, respectively 291 for, 274 against and 44 abstentions for the resolution), the proposals for revision of the treaties [4] in order to enables a European Union with more than 30 member states to function more democratically and to be able to successfully face the great challenges of the future. The text supports a reform of the EU's institutional architecture through a targeted revision of the two constituent treaties [5] and invites the European Council to convene, as soon as possible in this regard, a convention in accordance with the ordinary procedure provided for in art. 48 para. 2-5 of the EU Treaty. According to this report, which describes in detail the areas where European policies and institutions need to be reformed, Parliament charts the way forward. The experience of the Conference on the future of Europe in 2022 [6] highlighted a strong will of European citizens to contribute directly to the future of the community project.

Based on the mandate set by the European Parliament group leaders, the work group analysed possible improvements in the areas of *legislation, control, budgetary functions and budgetary control*, and also examined the elements for reforming *plenary sessions* and the Parliament's approach to *external relations*. The debates were intense and included several months of analysis and reflection, and the package of proposals drawn up by the working group, chaired by President Metsola and supported by the political group leaders within the Conference of Presidents, was approved in April 2024.

Once implemented, these reforms will ensure a better functioning of the Parliament as a co-legislator, a decision-maker with budgetary authority and a discharge authority. They will also enhance the Parliament's capacity to exercise democratic scrutiny.

The aim was to implement the reforms before the European elections in June 2024, so that they would support the newly elected Parliament from the outset. Some measures are transposed into the Rules of Procedure of the European Parliament, which were finalised and adopted before the end of the parliamentary mandate.

It can be noted that changes have been made to the Rules of Procedure [7] of the European Parliament aimed at increasing the effectiveness of this European institution, while contributing to achieving more coherent final general positions. This would also be possible through simplified cooperation between the coordinating committees and the

committees issuing opinions. The method of allocating new legislative proposals to committees is considered more efficient, potentially reducing conflicts of competence.

As for the *legislative process*, the mechanisms for verification and control have been improved. The new Article 214 of the Rules of Procedure stipulates the possibility for the Conference of Presidents "to propose, in exceptional cases where a large matter falls within the competence of more than three committees, without the competence of any of them prevailing, the setting up of a temporary legislative committee to deal with a specific proposal for a legally binding act or a pre-legislative strategic document".

In addition, the recourse to the "emergency procedure" [8] provided for in the revised Article 170 is now much clearer, in order to ensure respect for the legislative prerogatives of the deputies of the European Parliament.

Improvements to *the EP's scrutiny role* are also evident, as the new hearing format, "special scrutiny hearings", will allow the Parliament to address issues of major political importance in a timely and in-depth manner. The process of hearing Commissioners will be simplified and more flexibility will be introduced. The new Article 138 bypasses the ordinary legislative procedure, which can undermine the Parliament's role as co-legislator if used arbitrarily. In practice, the new accountability mechanism aims to better monitor the European Commission when it invokes Article 122 of the Treaty on the Functioning of the European Union (TFEU).

The ability of the European Parliament to hold the executive accountable, provided for in the new Article 141 of the Rules of Procedure, somewhat similar to the political control exercised by national parliaments over the government, reinforces the key elements of the reform. The special scrutiny hearings, subject to approval by the Conference of Presidents, allow the Parliament to invite Commissioners to speak on issues of major political importance.

In the area of the *competencies and responsibilities of the standing committees and the list of standing delegations*, any feasible change needs to be discussed within the political groups and, if necessary, forwarded to the Conference of Presidents for a decision to be taken in this respect.

One aspect taken into account is the transparency of the activity of the European Parliament (revised Article 129 and Annex VII to the Rules of Procedure). It thus provides

that in the run-up to the confirmation hearings of the Commissioners-designate, the elected President of the Commission must provide details of the planned structure, portfolios, responsibilities and gender balance, thus making the process more transparent. This will also allow the Parliament to simplify and accelerate the allocation of responsibilities to committees in the context of the confirmation hearings, clarifying their role.

In line with the smooth running of the *plenary session*, the intention is, among other things, to provide more opportunities for the enhanced cooperation between MEPs. In addition, for key legislative files, debates or statements in plenary should be scheduled throughout the entire legislative process, for example immediately after a Commission proposal is presented. Furthermore, a new format of debate (the "Parliament statement"), concluded with a resolution, would allow the Parliament to express its position and define its priorities not only in response to introductory remarks of the Council or the Commission, thus underlining the Parliament's role in setting the agenda. The "Parliament statement" represents a new tool that offers the institution the opportunity to express its position on issues without having to react to remarks by the Council or the Commission [9]. It also ensures that the Members of the Commission answer questions relevant to their portfolio and that will improve the sessions dedicated to "Question Time". Question time could be dedicated to the entire College of Commissioners or several Vice-Presidents of the Commission to cover broad areas.

MEPs also approved the principle of holding special scrutiny debates with Commissioners once per plenary session, without a predefined topic (Article 143 on Question Time).

Concerning *budget and discharge issues*, cooperation between committees will be improved through an integrated approach to budgets, discharge and legislation, in order to fully exploit the Parliament's combined institutional power over budgetary and legislative matters. All legislative proposals affecting the EU budget will be subject to an in-depth assessment to check that the Parliament's political priorities are duly taken into account.

The Parliament will also improve cooperation between sectoral policy committees and budgetary control committees to allow for meaningful association of information

collected throughout the budgetary cycle (budget and discharge stages). This strengthened link will benefit the legislative and scrutiny work of sectoral committees and will also enhance scrutiny of instruments that are “non-traditional” or outside the EU budget. In this way, the work of sectoral committees will be better integrated and mutually reinforced with the horizontal aspects of the activity of the budget and budgetary control committees, and more resources will be allocated to overseeing the implementation of the EU budget.

In terms of *external relations*, the Parliament will shift from a parliamentary body-based approach to a country-based approach. Cooperation between delegations and committees will be strengthened with a view to achieving increasingly effective parliamentary diplomacy. For example, missions will be more agenda-based, systematically involving a pool of MEPs from committees and delegations. The Parliament’s approach to external relations will be reshaped [10], with a clearer focus on key issues when it comes to the plenary agenda, as well as a better coordination and cooperation between committees and standing delegations, in order to strengthen the coherence of the Parliament’s external action and to take full account of the interconnections between the internal and external dimensions of EU policy.

Within the negotiations between the European Parliament and the European Commission, in particular on elements affecting interinstitutional cooperation and to ensure proper examination of the Commission by Parliament, the President of the European Parliament and the President of the European Commission agreed on a set of new principles aimed at strengthening cooperation between the European Parliament and the European Commission. “The revision of the Interinstitutional Framework Agreement will strengthen the relations between our institutions, will ensure greater transparency and better dialogue, (...) will help our institutions to work continuously and deliver results for our citizens. Following our political agreement, work at technical level will start immediately” [11]. To this end, a joint declaration was signed on 21 October 2024 by the President of the European Parliament, Roberta Metsola, and the President of the European Commission, Ursula von der Leyen.

The Agreement on enhanced interinstitutional cooperation contains the political principles agreed between the President of the European Parliament and the President

of the European Commission, which would form the basis for the revision of the 2010 Framework Agreement on the relations between the European Parliament and the European Commission. These principles include: the principle of equal treatment of the Parliament and the Council and the Commission's role as an honest intermediary, in particular by ensuring the flow of full, timely and detailed information to the Parliament; strengthening the political accountability of the Commission by ensuring the presence of Commissioners in the Parliament (plenary, committees); a commitment to provide full justifications and information on exceptional cases where Commission proposals are based on Article 122 of the TFEU; a commitment to define a clear mechanism for the use of urgent/fast-track decision-making process; modernising the provisions on the exchange of confidential information; strengthening interinstitutional cooperation in budgetary matters by the Commission and presenting a proposal for a new interinstitutional agreement, the content of which will have to be agreed upon by the three institutions.

The European Parliament has sought to respond promptly and effectively to the crises that have occurred during the 2019-2024 legislative mandate. These events have influenced the work of identifying the areas in which Parliament needs to become even better and more efficient. The new rules that entered into force on 16 July 2024 improve its internal functioning and strengthen the institutional balance that is essential for the European Union to work for all European citizens.

4. Conclusions

The European society is undergoing a process of change in which all economic, social, political and civic elements have experienced a new dynamic in an attempt to adapt to the current conditions. The European institutions are also involved in this effort to change, so that the entire decision-making mechanism can function efficiently, fulfil its tasks under the Treaties, and meet the expectations of EU citizens. It is therefore imperative that the Union institutions cooperate to achieve the aspirations of European citizens.

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THE FINANCIAL AUTONOMY OF LOCAL AUTHORITIES IN ROMANIA: CHALLENGES AND SOLUTIONS FOR EFFICIENT GOVERNANCE

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Abstract
The financial autonomy of local authorities is a cornerstone of democratic governance and the sustainable development of communities. The ability of administrative-territorial units to manage their own financial resources, attract external funding, and make decisions tailored to the specific needs of their citizens forms the foundation of efficient local administration. However, in the current context in Romania, this principle is often undermined by excessive dependence on transfers from the central budget, economic disparities between regions, and legislation that insufficiently encourages local initiative.
The purpose of this article is to examine the current state of financial autonomy of local authorities in Romania, identifying the main challenges they face and proposing practical solutions to strengthen it. Without genuine financial autonomy, local authorities cannot deliver quality public services, invest in development, or promptly respond to the needs of their citizen
Keywords: *local autonomy, financial autonomy, local council, administrative law*

Introduction

Equitable economic development across the regions of Romania is strongly influenced by the way financial resources are distributed and by the degree of freedom that local administrations have in making financial decisions. Therefore, this subject is not only technical but also one of social justice and responsibility towards local communities.

Moreover, in a European context where subsidiarity and decentralization are fundamental principles, Romania must also strengthen practices to ensure regional competitiveness and cohesion.

This analysis aims to provide a clear and well-documented perspective on the financial autonomy of local authorities in Romania, in an effort to highlight its importance and stimulate a constructive dialogue between authorities, experts, and citizens.

1. Legal Framework and the Concept of Financial Autonomy

The financial autonomy of local authorities is regulated by a set of constitutional and legislative provisions that establish the rights and responsibilities of local public

administrations in managing financial resources. The Constitution of Romania guarantees the principle of local autonomy in Article 120, which states that it is based on decentralization, local eligibility, and citizen consultation. Additionally, the administrative code outlines the legal framework for the functioning of territorial administrative units and the use of their own financial resources. Financial autonomy represents the right of local public authorities to have sufficient financial resources and the power to independently decide, under their own responsibility and within the limits of the law, on the level of local taxes and fees, as well as their own financial policies. [1]

According to current legislation, local authorities have the right to establish and manage their own budgets, with revenues from local taxes and fees, and funds transferred from the state budget. Upon reviewing the current regulations, we find numerous limitations that, in practice, reduce the degree of financial autonomy. For example, the share of own revenues in local budgets is small, with many communities relying almost exclusively on balancing transfers or other allocations from the central government.

Another important aspect in the discussion of financial autonomy is the principle of subsidiarity, which is enshrined both in national legislation and in the treaties of the European Union. This principle stipulates that decisions should be made at the closest level to the citizen, and local authorities should have adequate resources to exercise their competences. Unfortunately, in Romania, the implementation of this principle remains inadequate, with many of the responsibilities transferred to the local level not accompanied by the necessary financial resources.

Thus, the current legal framework allows for a certain degree of financial autonomy but at the same time significantly limits the capacity of local authorities to plan and implement financial policies adapted to the needs of their communities. A revision of these provisions and their adaptation to current economic realities could significantly contribute to increasing financial autonomy and, implicitly, to the sustainable development of localities in Romania.

2. The Current State of Financial Autonomy of Local Authorities: A Legal Perspective

The current situation of financial autonomy of local authorities in Romania highlights a low level of financial independence in relation to the central budget. Many territorial administrative units face difficulties in generating their own revenues, and the distribution of financial resources from the state budget is often influenced by political factors rather than objective criteria.

At present, the revenues of local authorities mainly come from three categories of sources:

a. **Own revenues:** These include property taxes, local taxes, revenues from concessions or rents, and other local taxes. However, their share in local budgets is limited, and the capacity of administrations to collect them is constrained.

b. **Transfers from the central budget:** Budget allocations are the most important source of funding for most localities, especially in rural areas. These transfers include balancing funds and other special allocations, but dependence on them reduces the decision-making autonomy of local authorities.

c. **European funds:** Accessing European funds represents an important development opportunity, but it involves significant challenges, such as the complexity of access procedures and the limited administrative capacity of some local authorities.

The situation described reflects a well-known reality in the Romanian administrative system, where the budget allocations transferred from the central government to local authorities represent a key pillar of public financing, especially for less developed localities. This high dependence on budget transfers has significant legal and administrative implications, regulated by several relevant legal acts:

First, the Constitution of Romania (Art. 120-122) – the fundamental law establishes the basic principles of local public administration: decentralization, local autonomy, and deconcentration of public services [2], with local autonomy defined in Article 120, para. (1) as the right of local authorities to decide, within the law, regarding the management of public resources and solving the problems of communities.

The problem arises from limiting the definition to only the general framework. In practice, the dependence on budget allocations limits local autonomy de facto, as financial decisions are conditioned by policies and criteria established at the central level. It is true that it remains the task of the primary legislator to establish the general legal

framework for effectively implementing the principles set out by the constituent, but the way in which this is done is far from sufficient. Thus, we find in the Public Finance Law [3] for Local Authorities the financing methods for territorial administrative units (UATs). The law stipulates that local budgets are formed from own revenues (OE), shares from income tax, and transfers from the state budget [4], with the clarification that transfers from the state budget include amounts from VAT for balancing local budgets, as well as other special allocations for projects or investments.

Moreover, transfers from the state budget are of two types: conditional transfers (TC) – funds received by local authorities that can only be used for the purpose prescribed by the provider, typically the central government, and unconditional transfers (TN) – funds received with no spending conditions, such as money for "balancing" between municipalities or counties, intended to compensate for the economic power differences between UATs and ensure some territorial cohesion, an important principle in Europe.

Unfortunately, dependence on these transfers reduces the decision-making power of local authorities, as own resources (taxes, local fees) are insufficient to cover budgetary needs. Furthermore, there can be situations with equivalent budgets but with very different weights regarding their autonomy of spending. If, for example, a budget of 1 million euros has the proportions of OE/TC/TN in one case as 30/30/40 and in another case as 5/20/75, the financial autonomy of the UAT is totally different.

In fact, the Local Public Finance Law seeks to regulate the principle of local financial autonomy with the declared aim of increasing the financial autonomy of local communities, but, as stated in the doctrine [5], the reality is far from the legislator's intent.

A regulation at the primary legislative level regarding local autonomy is found in the Administrative Code [6], which, from the outset, establishes the principles according to which local public administration is organized and operates, further specifying that local autonomy includes the ability of local authorities to manage financial resources in the interest of communities [7]. Thus, Article 8 provides that local authorities' financial resources must be sufficient to enable them to exercise the competences assigned by law. [8]

In practice, many localities, especially rural ones, lack sufficient own revenues, which makes their autonomy more formal than effective.

Romania, as a member state of the Council of Europe, has committed, by ratifying the European Charter of Local Self-Government [9], to respect the fundamental principles of local autonomy. This Charter is an essential document for European democracy [10], as it sets the standards that signatory states must follow to ensure that local authorities have the resources and freedoms necessary to fulfill their responsibilities.

The Charter emphasizes that the financial resources of local authorities must be proportionate to the competences assigned. In other words, any responsibility imposed on a mayor's office or local council must be accompanied by sufficient financial means to manage it effectively [11]. This principle not only supports decision-making autonomy but also provides the necessary framework for local authorities to exercise their mandate in the interest of citizens.

In Romania, however, the financial reality of local communities sharply contrasts with this ideal. While budget transfers – in the form of balancing funds or special allocations – are intended to help less developed localities, they do not solve the core problem: the lack of sufficient own revenue sources. Thus, many communes and towns in the country end up almost entirely dependent on these centrally allocated funds, which severely limits their ability to make autonomous decisions.

This dependence creates not only a financial imbalance but also a political vulnerability. Small localities, which cannot generate significant own revenues, become dependent on the goodwill of the central government, and fund allocations may be influenced by political considerations rather than objective needs. In this context, the principle of proportionality between competences and resources, as clearly expressed in Article 9 of the Charter, is often violated.

The consequences of this situation are directly felt by citizens. The lack of sufficient funds delays or even blocks investments in infrastructure, education, or health, and local authorities are often forced to minimize expenditures, unable to plan long-term development projects. Instead of being proactive actors in development, many local administrations are caught in a vicious cycle of dependency and underfunding.

For Romania to fully comply with the spirit and letter of the European Charter of Local Self-Government, a paradigm shift is imperative. Central authorities must ensure not only transparent and equitable financial transfers but also create mechanisms that

support localities in creating and managing their own revenue sources. Only in this way can the principle of proportionality between competences and resources become a reality, and local communities will have the chance to develop freely, according to their own needs and aspirations.

The Fiscal Code [12] contains a separate chapter on local taxes and fees, which regulates the own revenue sources of local authorities, including property taxes and other fees. In practice, in rural localities, the tax base is limited due to the small number of taxpayers and the low value of properties, which makes own revenues insufficient to support the local budget. Thus, these localities become dependent on transfers from the center.

From a legal perspective, Romania has a framework that promotes the financial autonomy of local authorities, but its implementation is deficient. Dependence on budget allocations contradicts the spirit of decentralization and autonomy provided by both national legislation and international commitments [13]. To reduce this dependence and strengthen local autonomy, legislative reforms are needed that:

a. Increase the own revenues of UATs by adjusting local tax rates.

b. Implement clear and transparent criteria for budget allocations.

c. Promote regional development policies to reduce economic disparities.

Thus, local authorities could truly act autonomously, and the principles established by law would become practical realities.

3. Regional Disparities and Challenges

A critical aspect of the current situation is the inequality between Romania's regions regarding local incomes and expenditures. Large urban localities, such as county capitals, have significant financial resources, while small rural communes and towns face chronic deficits. This situation perpetuates economic and social gaps between developed and underdeveloped regions. The major challenges include:

• **Dependence on the central budget**: Most local authorities are heavily dependent on transfers from the state budget, which limits financial autonomy.

• **Reduced administrative capacity**: Many local administrations lack the human resources or expertise needed to manage available funds effectively.

• **Difficult access to external funding**: Although European funds represent a solution for increasing financial autonomy, many localities fail to access these resources due to a lack of expertise and excessive bureaucracy.

This analysis of the current situation highlights the urgent need for reforms that support local authorities in increasing their financial autonomy and reducing regional disparities.

The financial autonomy of local authorities in Romania is affected by multiple challenges that hinder efficient functioning and sustainable development of communities. Among these, we mention the unpredictability of funding – local budgets often depend on political decisions made at the central level, which creates uncertainty in planning and budget execution. Transfers from the state budget are influenced by political factors, and the allocation criteria are not always transparent or objective. This situation makes it difficult to develop long-term local development plans [14]. Another issue is the lack of financial infrastructure, as many local administrations lack advanced IT systems or qualified personnel to manage financial resources, leading to inefficient revenue collection and difficulties in optimally using available funds.

Excessive bureaucracy and centralization, along with disparities in the capacity to generate local revenues, can also be added. Economic differences between Romania's regions are reflected in local authorities' ability to collect revenues. Less developed areas struggle to attract investments and generate tax revenue, which perpetuates inequalities.

4. Solutions for Strengthening the Financial Autonomy of Local Authorities

We continue with a few proposals for strengthening the financial autonomy of local authorities in Romania, organized according to key aspects of the issue:

• Increasing the own revenues of local authorities

For local authorities in Romania to become truly financially autonomous, a series of ambitious yet essential reforms are needed to allow them to manage their resources efficiently and meet the specific needs of the communities they serve. One of the most important directions for action is the reform of the local tax and fee system [15]. Currently, this system is rigid and limiting, preventing municipalities from adapting taxation to the local economic and social context. A solution would be to allow local authorities to set

flexible rates for property taxes, reflecting the specific character of each community. For example, a locality with tourism potential could impose higher rates on properties used for commercial activities, maximizing revenues without burdening ordinary citizens.

In addition to adjusting tax rates, another crucial measure is diversifying sources of own revenues.

Local communities are diverse, and their economic opportunities vary significantly. Therefore, introducing local taxes adapted to the economic realities of each area can represent a paradigm shift. For example, a tourist resort could introduce a tourism tax, which would then be invested in local infrastructure and regional promotion. In areas with significant ecological impact, a pollution tax could discourage harmful practices while generating funds for environmental protection. Localities that manage specific infrastructure, such as roads, parking lots, or sports facilities, could charge access fees, providing additional resources for maintenance and modernization.

Equally important is the need to digitalize local tax collection. In this technological age, the revenue collection process must be transparent, simple, and efficient. Implementing integrated IT platforms could revolutionize this area, reducing bureaucracy and minimizing tax evasion risks. Through these platforms, citizens could quickly check and pay taxes from anywhere, eliminating queues and redundant documentation. Additionally, digitalization would allow authorities to better track financial flows and identify potential irregularities, thus improving revenue collection.

These measures would not only provide local authorities with more financial freedom but also contribute to strengthening trust between the administration and citizens. A modern, transparent, and adaptable local tax system would transform local authorities into key actors in community development, capable of responding quickly and efficiently to challenges and opportunities.

- **Reforming the transfer system from the central budget**

This would be an essential condition for strengthening the financial autonomy of local authorities and reducing economic discrepancies between Romania's regions. In its current form, this system, although essential for balancing local budgets, is often perceived as lacking transparency and being susceptible to political influences.

Therefore, a well-thought-out reform could transform this mechanism into an equitable and efficient support tool.

A necessary first step would be to establish clear, transparent, and objective criteria for allocating balancing funds. These criteria should be based on measurable and relevant indicators such as each locality's population, average income per capita, or level of local investments. For example, a commune with a large population but low revenues should receive more support than a small, economically developed locality. This approach would eliminate the perception of political favoritism and provide local authorities with the predictability needed to plan and implement long-term projects. [16]

At the same time, it is crucial to reduce reliance on discretionary transfers, which, in their current form, allow for arbitrary allocations influenced by political or personal priorities. The solution could be the creation of an automatic fund allocation mechanism, based on the formula of established criteria, which would function independently of ad-hoc decisions by policymakers. Such a mechanism would not only ensure fairness but also reduce delays in transfers, enabling local administrations to focus on program implementation without the fear of unexpected financial interruptions.

To further support balanced regional development, the introduction of a regional development fund is necessary. This fund should be dedicated specifically to less developed communities, providing them with resources to invest in infrastructure, education, or other key areas. However, unlike traditional balancing funds, this fund should not penalize local authorities that have successfully generated higher revenues or attracted investments. Thus, a balance would be created between the need to support vulnerable communities and the recognition of the economic performance of wealthier ones.

These changes are not only necessary but urgent. A reformed budget transfer system, based on equity, transparency, and predictability, would encourage the sustainable development of all communities in Romania. Moreover, it would contribute to creating a real partnership between the central and local levels, prioritizing citizens' interests and reducing regional disparities that still hinder national progress.

- **Easier access to external funding**

One of the most important aspects of financial autonomy for local authorities is the diversification of funding sources. To fulfill their duties and contribute to community development, local administrations must have access to varied financial resources and efficient mechanisms for attracting funds. In this context, three strategic action directions are required: simplifying procedures for accessing European funds, creating public-private partnerships, and facilitating access to flexible loans.

The first measure, simplifying access to European funds, is essential for localities wishing to attract external financing for development projects. Currently, complex procedures and excessive bureaucracy discourage many local authorities from applying for these funds, and a lack of specialized human resources causes many projects to be rejected due to errors in documentation [17]. Reducing bureaucracy, combined with specialized support programs, could transform this situation. For example, creating regional assistance centers for project preparation could allow small municipalities without qualified staff to benefit from technical and legal advice, thus increasing their chances of success. In this way, European funds would become accessible to all communities, not just the more developed or experienced ones.

At the same time, public-private partnerships (PPP) can represent an innovative solution for financing infrastructure projects or providing public services. By collaborating with private investors, local authorities can carry out projects they could not otherwise afford, such as building industrial parks, hospitals, modern schools, or public transport networks. For example, a public-private partnership could facilitate the construction of a sports complex in a locality with tourism potential, where the private sector invests in the adjacent infrastructure, while local authorities handle land and utilities. Such collaborations, regulated by clear and fair contracts, could accelerate the modernization of localities and provide citizens with faster access to quality services.

Lastly, relaxing legislative constraints regarding local authority borrowing is another necessary measure to increase the financial capacity of communities. Currently, strict legal limits on local borrowing can stifle local authorities' initiatives, even when they could generate enough revenue to cover the debts. Reforming these regulations, alongside implementing fiscal accountability measures, would allow municipalities to access more flexible loans for essential investment projects. For example, a commune

could take out a loan for modernizing road infrastructure, with repayment guaranteed by revenues generated from local taxes or savings made through better management.

These directions would not only diversify and stabilize the funding sources for local authorities but would also strengthen citizens' trust in their ability to manage resources. Through simplification, collaboration, and flexibility, localities in Romania could become more autonomous, dynamic, and better prepared to respond to future challenges.

• Reducing Regional Disparities

To reduce economic and social discrepancies between Romania's regions, it is essential to implement measures that promote balanced and sustainable development. Among these measures, three strategic directions stand out: targeted investments in disadvantaged areas, integrated development programs, and increasing cohesion between local and central authorities.

The first direction, targeted investments in disadvantaged areas, could transform lagging regions into engines of economic growth. In this regard, tax incentives for companies that choose to invest in localities with low incomes or high unemployment rates could play an essential role. For example, a company opening a factory in such an area could benefit from tax exemptions for a certain period, priority access to European funding, or local tax reductions. These measures would not only attract investments but also generate jobs, stimulate local consumption, and increase the own revenues of local authorities. Over time, disadvantaged areas could become more attractive to other investors, thus strengthening a development spiral.

On the other hand, integrated development programs are vital to ensure a coherent and effective approach to regional challenges. Instead of investing in a fragmented way, without an overall vision, these programs should include simultaneously components such as infrastructure, education, and support for SMEs. For example, a well-structured regional plan could include building a modern road network that connects isolated villages to nearby cities, modernizing schools to provide quality education to young people, and creating support centers for small and medium-sized businesses that would help stimulate local entrepreneurship.

Another essential element in this process is increasing cohesion between local and central authorities. Without effective coordination, even the best-intentioned measures

risk being applied chaotically or inefficiently. The establishment of regional coordination committees, based on the best practices of other countries [18], which include representatives from both local and central administrations, could facilitate informed decision-making tailored to the real needs of communities. These committees could function as platforms for dialogue and collaboration, allowing the exchange of good practices and prioritizing projects with the greatest impact. For example, such a committee could decide that, in a particular region, resources should be prioritized for hospital rehabilitation or for the digitalization of public services, depending on local urgencies.

Through these measures, the development of disadvantaged regions would become a real priority, not just a goal stated in strategies. Well-targeted investments, integrated planning, and close cooperation between all levels of administration would ensure sustainable and equitable growth, reducing disparities and offering all citizens equal opportunities for prosperity and well-being.

- **Developing Local Administrative Capacity**

To support efficiency and accountability in the management of public resources, it is crucial for local authorities to have the tools and knowledge necessary to fulfill their duties. In this regard, three strategic directions could bring significant changes: professional training programs, the introduction of a performance evaluation system, and the promotion of local innovation.

The first direction, professional training programs, could transform local administrations from mere bureaucratic structures into engines of community development. In many cases, staff in local administrations face complex challenges, from managing budgets to attracting European funds, without access to the necessary training. Organizing specialized courses focused on financial management, project writing and implementation, or efficient resource use could change this situation. For example, a practical course on attracting European funds could help a municipality secure funding for the modernization of school infrastructure. Through such initiatives, local administrations would not only become more competent but also gain the trust of the community they serve.

The second measure, introducing a performance evaluation system, would promote transparency and accountability in managing public resources. This system could include clear and objective indicators, such as the degree of fund utilization, project completion rates, or citizen satisfaction levels. For example, a municipality that completes its projects on time and within the established budget could be recognized through a system of symbolic rewards, such as publishing an annual report with positive results. In contrast, authorities with poor performance could benefit from consultancy or additional support to address the identified issues. This mechanism would not only encourage more efficient management but also increase citizens' trust in local institutions.

At the same time, promoting local innovation represents an opportunity for communities to find creative solutions to their specific problems. Local authorities could be encouraged to develop and implement original initiatives that generate additional revenue or reduce costs. For example, a city could invest in a photovoltaic park to reduce electricity costs or could organize thematic fairs to attract tourists and increase local income. Funding such projects through competitive grants would encourage authorities to think "outside the box" and better respond to the community's needs.

By implementing these three measures, local administrations in Romania could become more professional, transparent, and creative. A well-prepared and responsible local administration would not only manage public resources more efficiently but also become a true partner to citizens in building a prosperous and sustainable community.

Improving local financial autonomy in Romania cannot be achieved without a thorough review of the legislative framework that clarifies the responsibilities of local authorities and provides them with the necessary resources to fulfill their duties. This approach requires comprehensive legislative changes, focused on decentralization, transparency, and efficiency, including revising the legislation on financial decentralization, establishing a national pact for local autonomy, and creating a consultative council for local finances.

- **Reviewing the Legislation on Financial Decentralization**

For all the points mentioned earlier, an absolutely essential element is the review of the legislation on financial decentralization. A first step could be modifying the Local Public Finance Law [19] to introduce explicit provisions that condition the transfer of

competencies on the allocation of adequate financial resources. Currently, many local authorities are given additional responsibilities without receiving extra funds, which contradicts Article 9 of the European Charter of Local Self-Government, ratified by Romania. Therefore, the legislative changes should ensure that, for each delegated task, the local budget is supplemented either through direct transfers or by allocating new sources of local revenue, such as a higher share of the income tax collected locally.

Also, the administrative code should be updated to more clearly define the limits and responsibilities of local authorities, so they no longer depend on interpretations or ad hoc negotiations with central authorities. Clarifying competencies is essential to avoid overlaps and conflicts, which often cause blockages in the implementation of local projects.

A crucial step for strengthening financial autonomy would be adopting a framework regulation regarding local autonomy, formalizing a national pact between central and local authorities. This pact could include concrete commitments, such as allocating a minimum percentage of GDP for local budgets or guaranteeing fixed shares of the main taxes and levies collected nationally, such as VAT or income tax. This approach would eliminate current uncertainties related to budget transfers, thus reducing the dependence of local authorities on discretionary decisions made by the Government.

Amending the Tax Code [20] could be a central element of this pact, allowing local authorities more flexibility in setting local taxes. For example, municipalities could have the right to adjust property taxes based on the community's needs, within limits set by law, which would increase local revenues and reduce reliance on central transfers.

To ensure constant monitoring and improvement of the local financial system, it would be necessary to amend the regulations concerning the organization and operation of local public administration to create a Consultative Council for Local Finances. This council could serve the role of analyzing existing legislation and proposing improvements, functioning as a platform for dialogue between local and central authorities, as well as financial experts.

For instance, the council could propose amendments to fiscal-budgetary responsibility regulations to introduce fiscal performance indicators for local

administrations. This would encourage efficiency in the use of public funds and allow for more transparent allocation of resources, reducing the risks of mismanagement.

We believe that these legislative changes would create a clearer and more predictable framework for local public finances, ensuring greater accountability from central authorities in their relationship with local authorities. At the same time, they would encourage local authorities to be more innovative and efficient in managing resources, providing citizens with higher quality public services.

By updating the legislation in the field of financial decentralization, Romania could overcome the administrative and financial barriers that hinder the development of local communities, demonstrating that modern and well-coordinated governance is the key to a strong and prosperous European state.

5. Aspects Regarding the Benefits of Financial Autonomy

In a local community in Romania, financial autonomy is not just an abstract concept but a reality that can transform people's everyday lives. Imagine a small town where the local administration has the resources needed to build a modern park, renovate schools, and repair roads, without waiting for years for decisions or funds from the central government. This image could become a reality if local authorities had more control over their own financial resources.

Increased financial autonomy would allow local administrations to invest more efficiently in the community's needs. For example, in a rural commune, the local council could allocate funds for modern irrigation systems or to create a local market that supports local producers. These decisions, made quickly and adapted to the local context, would stimulate the area's economy and create jobs, giving families reasons to stay in the community and prosper.

In another scenario, in a larger city, citizens could see greater transparency in how local taxes are used. A locally managed budget would be easier for the community to monitor, and the administration would be more accountable to the citizens. Thus, each project – from building a hospital to implementing an eco-friendly transport system – would not only be useful but also executed efficiently and transparently.

Financial autonomy would also mean more power for citizens. In a city practicing participatory budgeting, residents could vote directly on which projects should be prioritized: a new playground for children, rehabilitating sidewalks, or installing eco-friendly lighting systems. Direct involvement would give them the feeling that their decisions matter and would increase trust in the local administration. [21]

Every community has unique needs and opportunities. Financial autonomy would allow local authorities to develop innovative solutions, such as attracting investors through tax breaks for green businesses or launching pilot projects in renewable energy. For example, a commune in Transylvania could harness solar resources to become energy-independent, providing residents with cheaper energy and a cleaner environment.

Ultimately, the most important benefit of financial autonomy is its direct impact on citizens' quality of life. Imagine a community where schools are modernized, roads are repaired, and public services – from transportation to healthcare – operate at high standards. Such a community not only retains its residents but also attracts new families and investments, becoming a success story.

Financial autonomy is not just about money and figures. It is a story about trust, the power of local decisions, and every community's chance to write a better chapter for its future. It is about providing local authorities with the tools they need to create places where people can live well, work with passion, and enjoy each day.

6. Conclusions

Financial autonomy for local authorities in Romania is both a challenge and a major opportunity for the sustainable development of communities. Throughout this analysis, we have highlighted a series of issues, such as excessive dependence on transfers from the central budget, insufficient resources for local projects, and significant disparities between regions. These challenges, although complex, can be addressed through a well-defined set of solutions, including diversifying sources of own revenue, simplifying access to external funding, and strengthening local administrative capacity.

At the same time, we have identified the huge benefits that greater financial autonomy would bring, from increased efficiency in the use of resources to greater responsibility and transparency in governance.

In this regard, we consider it necessary to issue a call to action, primarily to legislators, as we believe it is their mission to create a legal framework that facilitates true financial decentralization [22], reducing bureaucracy and allocating resources fairly. As we have previously stated, a review of the legislation is essential to provide local authorities with the tools they need to generate their own revenues and decide autonomously on their use. On the other hand, local administrations must take a proactive role, become more innovative, and attract external funds for projects that address the community's needs. Investing in professional training and developing local competencies is a crucial step in increasing efficiency.

Lastly, it is absolutely necessary for citizens to engage more actively in local decisions, through active participation in public debates on issues of interest, as well as using tools that allow them to effectively influence financial matters – e.g., participatory budgeting processes. Only through close collaboration between the community and local administration can real priorities and the most suitable solutions be identified.

We conclude by reiterating the importance of the partnership between central and local authorities. Effective governance requires a strong partnership between the central and local levels, based on mutual respect and the principle of subsidiarity. The central government must support local authorities, not undermine their autonomy, providing resources and strategic guidance, but without intervening in decisions that can be made at the local level. At the same time, local authorities must demonstrate their responsibility and capacity to manage resources effectively.

A constant and constructive dialogue between the two levels of administration, along with active citizen involvement, is the key to a modern Romania where each community develops at its own pace and in its own direction.

In conclusion, we express once again the conviction that financial autonomy is not only an administrative necessity but also an investment in Romania's future. Through concerted measures and political will, we can build stronger [23], more prosperous local communities that are closer to the citizens they serve.

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THE NEW FACES OF GLOBALIZATION. PERSPECTIVES AT THE BEGINNING OF THE 21ST CENTURY [1]

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Abstract
Globalization is a broad phenomenon of economic, social, linguistic and cultural nature that has been going on for centuries, although some specialists emphasize the economic side of this "mammoth" phenomenon, considering that it's most visible effects were not visible until after the 1980s. The 21st century is characterised by wide-ranging changes at the social level - an almost obsessive focus on digitalisation, including of administrations, the expansion of Asian markets, the loss of the main power pole of the USA, and above all the two belligerent situations at the European level, Russia-Ukraine and the war in Israel. In all this context, globalization has taken on new aspects which this article seeks to expose and analyse, without claiming to be an exhaustive study.
Keywords: *globalization, europeanisation, expansion, administrations.*

1. Introduction

Today globalism is perceived as the "current state of the global economy" but some specialists have recently considered this concept to be more related to the meanings of americanization and globalization [2].

This concept is derived from the macro-level expansion of the consumption of products such as Coca Cola, jeans (in all their variants), Mc Donald's, Starbucks, the idolized image of Santa Claus, the concept of "Secret Santa", the latter two leading to the massive sale of many products around Christmas, which is why we can assimilate them to the concept of consumerism specific to the American society and economy.

Based on the same concepts, namely those of globalization, americanization or europeanization, terms such as "anti-european, ethnic cleansing, global warming, transnational, etc." have also been taken over and then overused at the level of the various states [3].

In the sense given by Peter N. Stearns in his work, globalization is seen as a process of "transforming local phenomena into global ones" or as a unifying process whereby "there is one society" in which "people will function together" [4].

All of the above means the creation of an integrated economy, the emergence of foreign investors, including in small and less significant markets, the creation of new markets including in countries considered poor, labor migration, educational facilities (students access to the world's major universities much faster), the rapid spread of technology and the creation of huge networks between countries designed to positively affect all the issues outlined above [5].

In another version, globalization implies "international integration" which supposes "exchange of ideas, products or opinions" manifested at a macro, transnational level [6].

The first obvious rise of the idea of globalization took place before the First World War (e.g. the massive industrialization of the Victorian era), but its trend was downward after the world scourge of 1916-1918, precisely because of the negative effects from the economic and political perspective [7].

The paradox is that, in the view of some specialists, we can only talk about globalization around the 1940s, because that was when intergovernmental agreements such as NAFTA and organizations such as the World Trade Organization appeared, which lowered trade barriers between countries and tried to shape the so-called global market [8].

After World War II GATT was created, which lasted from 1948 to 1994, later being replaced by the WTO. GATT's defining role was to reduce tariffs globally, which stimulated trade between many countries and globalization took on new and large dimensions considered to be favorable [9].

The period between 1980-2000 has meant a development and a "very dynamic" manifestation of globalization, reaching an unprecedented level in terms of population of the globe thanks to international trade, the exchange of products between countries (including in the area of online trade), the penetration of foreign banks on the markets of various countries and the various currencies used at the global level [10].

Although most specialists see globalization as a phenomenon that involves several sides full of positivism, however, there are also many criticisms of this huge phenomenon related to the negative tendencies/paths of "westernization and globalization"- namely a loss of identities and the intervention of "uniformization and Americanization of cultures" [11]. Basically, as some specialists see it, globalization means, on the one hand, "freedom

and movement of goods and people or ideas" and on the other hand "local dependencies and traits" that identify with global ones [12].

2. Global trends of deglobalization

The COVID pandemic greatly changed the course of the world, including economic implications, with harmful effects being felt "both in the production and transportation of goods", which has raised a big question mark over the future of globalization in the form we already knew [13].

Against this backdrop of the pandemic and the impoverishment of some international companies and even states, a wave of hostility towards global structures that until yesterday were successful - WTO and NATO - has emerged, which has also led to the emergence of populist policies and the creation of an anti-European wave that has stimulated discussions about the exit of some states from the EU (for example, such discussions have emerged in Poland and Hungary). Also, international organizations such as the World Health Organization (WHO) have been severely damaged in terms of their image by what happened in the world, being accused of being "either too tough or too weak" in their attitude [14].

Moreover, this anti-globalist wave has shown, among other things, some of the negative aspects of globalism, many of them economic:

- Fear of the dissolution of the concepts of nation or nation state;
- Major job market problems, especially in the poorer countries that have been caught - willingly or unwillingly - in the great globalization avalanche;
- The emergence of polluting production activities in certain countries;
- The widening of economic gaps, as today 258 people are as rich as 2.5 billion people [15].

One of the undesirable effects of globalization has been the problem of well-paid jobs in rich countries where the labor market has been invaded by people from poor countries who accept the same job for a much lower salary than the citizens of the country where they work, which makes us think about the "costs" of globalization and not only its beneficial effects [16].

Also, different perceptions of the effects of globalization are also due to the way globalization is viewed by different interest groups or economic structures. Thus, some specialists consider that a change in prices can be seen as a direct consequence of globalization, but the direct links in this relationship have not been demonstrated, while others focus on the economic costs paid by less developed countries that were initially tempted to enter the great globalization vortex [17],[18].

3. Digitalization and inerconnection of administrations - indirect evidence of globalization?

The broad phenomenon of globalization is represented, among others, in our conception, by everything that means technology, computerization, digitalization, since all these have the role of creating connections between states, societies, structures, institutions, collectivities, or this is precisely one of the initial roles pursued by globalization. One of the important projects in this regard and of late is Co-VAL, an EU-funded project that aims to find new ways of examining the co-creation of value and of a nature to improve and reshape public services across different states. Co-VAL is an online tool aiming to collect and map key initiatives on digital government, its synthesis being represented by Co-VAL Policy Brief „The 2021 State of Co-Creation: Delivering Services Together" [19].

Against this background, the Lisbon Council has launched a program called The 2021 State of Co-Creation: Delivering Services Together, with the aim of creating a powerful network of digitally-enabled actions to reform public services in the EU states, but also in the UKB and in six major cities - Amsterdam, Athens, Madrid, Milan, Paris, Madrid, Milan, Paris and Turin. The program itself is being launched as part of DigitALL Public, the European Commission's special event on the Digital Europe agenda and part of the 36-month research program Understanding Value Co-Creation in Public Services for Transforming European Public Administrations (Co-VAL), co-funded by the European Union [20].

How can cities assess how user-centered their services are? How well do local and regional governments succeed in meeting citizen's needs when designing digital services and where are the key areas where further progress is needed? To answer these

questions, the UserCentriCities consortium has launched a year-long initiative to develop indicators for measuring user-centeredness and data collection. In the same context, and to answer a complex range of questions related to how local and regional governments are succeeding in meeting citizen's needs when designing digital services and what are the core areas where further progress is needed, the UserCentriCities consortium has launched a year-long initiative to develop indicators for measuring user-centeredness and data collection [21]. [22].

In this sense, User Centri is intended to be a unique interactive online benchmarking tool for user-centeredness in local authorities, and its dashboard has been applied to collect data from 10 major cities and three regions in Europe: Barcelona, Catalonia region, Emilia Romagna region, Espoo, Gothenburg, Helsinki, Kiev, Kronoberg region, Madrid, Milan, Murcia, Rotterdam and Tallinn [23],[24].

While the 13 cities in the dashboard score 72% on the "enablers" pillar concerning "competences", "strategies" and "ecosystem" in the case of the 18 municipalities in the same sample this score drops to 54%. For example, smaller municipalities in the Emilia Romagna region find it more difficult to hire the right skills to design user-centered services.

On the co-creation aspect, it was noted that small municipalities placed little emphasis on co-creation and relied heavily on web analytics and other service data to improve digital services. In terms of online service delivery and ease of access, small municipalities are increasingly interested in using national eID authentication solutions and mobile apps for public service delivery. When it comes to proactive service delivery or the application of usability assessment tools that require advanced skills in user experience (UX) and data analytics, small municipalities are much slower adopter [25],[26].

3.1. Co-creation, a mark of digitalization

With regard to the co-creation mentioned as a focal point in the program, an important aspect of the development of user-centered services is that of coopting citizens also after the launch of online services. Only a few of the 13 cities and regions report that

they use service co-design or user research sessions as standard practice prior to the launch of each new digital service.

For example, the city of Milan reported that service co-design sessions are used when a local service is being redesigned to be digitized, and Helsinki is using Osallistu, a citizen participation portal where citizens are offered various opportunities to gradually participate in the design of services. In addition, through OmaStadi, a participatory budgeting service platform, Helsinki not only asks citizens to propose projects to be funded, but also uses co-creation to turn these ideas into valid and practical proposals together with citizens. Göteborg actively involves citizens in the design of all services, while Tallinn conducts research and user testing for the design of each service [27].

Gothenburg gives citizens the chance to get information and give feedback at one of the three service centers available in the city. Citizens of this city can also access different civic offices and get information about the services offered, ask questions related to associations, consumers or housing and have access to documents and minutes. Citizens can also send comments and complaints about the city's activities [28].

Tallinn is the only local authority in the Scoreboard that routinely carries out usability assessments of its online services using standard tools. Usability is measured on the basis of feedback received from users (both on a scale of one to five and on the basis of comments added [29].

In turn, the European Commission had in July 2021 a proposal for the digital interconnection of European cities under the title (EIF4SCC)-the Proposal for a European Interoperability Framework for Smart Cities and Communities.The aim of EIF4SCC is to provide EU local government leaders with definitions, principles, recommendations, practical use cases drawn from the experience of cities and communities across Europe and beyond, and a common model for ensuring easy service delivery to the citizen across cities, regions and regions [30,[31].

The present challenges and the technical/digital remedies to them make it useful to improve interoperability. Lack of interoperability leads to a lack of integration of services provided locally or a lack of communication between different platforms and/or technologies. Lack of interoperability is also a major hindrance to fostering the progress of innovation in cities and communities. It can delay the contribution to the goals set in

the Digital Future of Europe and the EU's Green Deal. Advancing interoperability will help to fully address the challenges facing cities and communities through digital solutions and technological advances. In addition, interoperability avoids technology lock-in and helps to create a market where a level playing field prevails and where there can be a growth of smart cities. Here, cities and communities benefit from varied standards-based solutions that are interoperable and much easier to access, reducing the time to deploy and deliver services to the communities concerned [32, [33].

Another useful project in this respect is The Intelligent Cities Challenge (ICC), which is intended to be one of the European Commission's largest initiatives to support European cities in both their green and digital transitions. The ICC supports cities and their local economies by facilitating state-of-the-art knowledge and advisory services to address two major challenges: transitioning to a net zero emission economic model and, at the same time, facilitating sustainable development for EU citizens. To this end, the ICC offers a tailor-made support program of advice and networking to help cities launch local green business partnerships [34].

Being a member of the ICC, cities gain the chance to benefit from an energetic and powerful network, have access to customized advisory services and sustainability management techniques, and above all they are provided with connections to "mentor cities". Building on the success of the previous edition of the ICC program (2020-2022) and the Digital Cities Challenge (2017-19), the ICC has now strengthened its offerings and provides an extensive high quality network, a solid methodological framework and well-developed support mechanisms [35].

Today, we can say that both at the European and global level, local authorities are on the threshold of a significant transformation, partly driven by the harnessing of digital capabilities to increase their capacity and that there is a huge capacity to stimulate digitization led and facilitated by local governments. This, in turn, can stimulate economic growth, transparency, improved governance, efficiency and environmental sustainability.

Technologies such as the Internet of Things (IoT), Artificial Artificial Intelligence (AI), Blockchain and Digital Twins are at the forefront of this digital revolution as they deliver smart cities and sustainable urban systems, improve governance and facilitate inclusive service delivery. The huge impact of digitization dramatically restructures (for

the better) local governance, strengthens the resilience of communities and creates new pathways to sustainable societies, which puts the game-changing power of digitization and how local governments and communities can use it to its full potential in a favorable light.[36,[37].

4. Conclusions

Regardless of the trend regarding the pluses or minuses of globalization, we note that this phenomenon has united as many countries, cultures, economies, firms, creating unprecedented structures and reformulating principles of operation of all the above, influencing without any doubt religions, national languages, the development of certain regions, the impoverishment of other nations, leading from gastronomic to linguistic loans (in many countries many English terms have entered the English language without which today dialog seems almost difficult to realize – week-end, job, sandwich, must have, management, part time, assistant manager etc).

The trends related to the phenomenon of deglobalization are largely based on the economic impediments felt by certain countries - the rejection of certain products on international markets, the conditioning of production, dependence on products from certain markets (e.g. China, Japan, USA etc.), excessive borrowing, consumerism (obsessive consumerism in some cases), the spread of obesity among adults, but especially among young people/teenagers as a result of the consumption of junk food, also borrowed.

Also, the unprecedented development of technology, the boom in digitalization have done nothing but show us that there is the possibility of creating huge networks, not only of an economic nature, designed to link cities, communities or administrations in Europe or the whole world. The examples of European programs given above, in our article show just some of the unprecedented possibilities currently available to citizens of communities located at a great distance from each other. These facilities, such as obtaining documentation, certificates or information of interest, are ensured precisely through the digitalization of administration, a broad phenomenon designed to ensure interoperability and interconnectivity between companies/communities or individuals located thousands of kilometers away.

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THE EFFECTS OF MILITARY CONFLICTS ON THE ENVIRONMENT

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Abstract
Military conflicts are often associated with significant environmental pollution, as during military conflicts, infrastructure such as water pipes, water treatment plants, fuel depots are destroyed.
Explosives used during conflicts can cause serious damage to the air, water, and soil.
Beyond the significant human losses and suffering caused, wars leave behind massive pollution, habitat destruction, and ecosystem damage. The effects of military conflicts on the environment are long-term, water and air pollution, and the destruction of biodiversity can affect future generations.
In this article, we will try to analyze the main consequences of military conflicts on the environment and we will also try to explore possible solutions to mitigate the negative impact on the environment.
Keywords: *military conflict, environment, pollution, biodiversity, impact.*

The qualification of a situation of armed conflict is an essential preliminary step, the process of this qualification being complicated, since neither the Geneva Conventions nor the Additional Protocols explicitly define what this expression encompasses. It is necessary to determine whether the conflict in question is international or internal, in order to be able to establish the applicable humanitarian law. As regards conventional law, the qualification of an armed conflict as international implies the applicability of the Hague Convention [1] of 1907, the four Geneva Conventions of 1949 and Additional Protocol I to the Geneva Conventions [2], while the qualification of a conflict as internal leads to the applicability of Article 3 common to the four Geneva Conventions, and possibly Additional Protocol II, if the necessary conditions are met.

Military conflict is a state of misunderstanding, disagreement or clash of antagonistic interests between opposing parties, which has degenerated, as a result of certain conditions, into violent actions or war.

The experience of military conflicts is old and vast, from which lessons have been learned, for which various UN organizations have been established, as well as international prevention and negotiation mechanisms.

Although military conflicts represent a disaster in any situation, it is more than obvious that the anti-ecological effects are of different magnitude, severity and duration (the burning of oil installations in a desert area or in a marine environment). Recent history has demonstrated that even in its legal and just forms, armed conflicts have become increasingly destructive [3] and tend to become even more destructive in the future, given the technological advancement of weapons.

Since the natural environment is not a military objective, it should not be affected by military hostilities, but during and after conflicts of this type, the environment - air, water, plains, hills, plateaus, mountain ranges, forests, settlements - acquires particular importance for the organization and conduct of combat activities.

Most often, the actions of the belligerents produce ecological effects, sometimes real disasters, as in Vietnam, the Gulf of Peaches and Yugoslavia.

Conventional weapons also pose a threat to the environment after the end of armed conflicts. Mines, unerupted, undestroyed or neutralized booby traps, unexploded ammunition, vehicle and combat equipment hulls, barbed wire, trenches, bomb craters, etc. remain on the ground. All of this, in addition to destroying the natural environment, also constitutes an impediment to the economic and tourist exploitation of the natural environment.

The widespread use of weapons has negatively influenced and will continue to influence the living environment on earth.

The 20th century was the century of the debut of new weapons (submarines, fighter jets, poison gas, chemical and weapons of mass destruction). All this technological leap left its mark and left irreversible traces on the environment. Even today, the exact number of victims in the two Japanese cities, Hiroshima and Nagasaki, resulting from the atomic bombs launched in August 1945 by the US Air Force is not known.

Also, nuclear experiments, both surface and underground, clearly affect the environment. For example, hundreds of nuclear tests were carried out in the Pacific Ocean between 1975-1996, which clearly unbalance the ecosystem.

Technology has developed so much that ecological (geophysical) warfare has become a reality. This type of warfare uses means and methods to modify the natural environment to cause great destruction, so that the opponent stops fighting.

An eloquent example is the artificial rain-making for military purposes by the US army (1963), in the Vietnam conflict, or the torrential rains with disastrous effects for the provinces of northern Laos, in 1996.

To date, researchers have discovered/created advanced techniques in geophysical warfare: climate change, the production of large tidal waves, the triggering of earthquakes, the diversion of terrestrial and underground water courses, all of which contribute negatively, in the medium and long term, to the environment, but also to life on earth.

In order to draw attention to the negative effects of armed conflicts [4] on ecosystems and natural resources, but also to the negative effects that persist for a long time after the cessation of armed conflicts, the UN General Assembly decided that November 6 would become the International Day for the Prevention of the Exploitation of the Environment and Armed Conflict (Resolution 56/4).

Over time, there have been many efforts to outlaw war. In 3,400 years of recorded history, the world has known only 250 years of peace. Since 1945 alone, there have been more than 400 armed conflicts worldwide. (New Zealand Red Cross Society Publication).

Effects of military conflicts on the environment

Human interventions on the natural environment are not only negative in that they make maximum use of biological resources, but also through activities, such as military conflicts, that do not directly target these categories. The ways of degrading habitats and ecosystems can be direct – by reducing the occupied area (deforestation) and natural ecosystems, but also indirect – through the effects of pollution on the living conditions of the species.

As technical means of combat have evolved, the natural environment has suffered harmful influences. The arsenal of chemical, bacteriological and thermonuclear weapons can have direct and indirect catastrophic effects on the environment. Military objectives are located in the environment, including in the stratosphere. All military-purpose facilities seriously affect the environment.

The negative ecological consequences extend their scope, in the sense that they manifest themselves from the training, exercises and military maneuvers phase,

continuing with that of the actual confrontation and ending with the benign activities of destroying obsolete or obsolete weapons or aiming at eliminating the consequences and rehabilitating the affected areas. [5]

Military conflicts are complex operations that involve not only active combat, but also situations of prevention, preparation and recovery. Several factors are necessary to maintain an armed conflict (domestic training bases and external bases). The installation of these bases requires deforestation in the area where they are to be installed or to create lines of sight, build fortifications and facilitate military movements. Also, forest fires started by bombers destroy the habitat of animals and plants, releasing significant amounts of carbon dioxide into the atmosphere.

During the Vietnam War (1962-1971), American troops destroyed a fifth of Vietnam's rainforests and a third of its wetland ecosystems, as they dumped about 70 million liters of herbicides on them.

The Gulf War (1990-1991) also produced an ecological calamity. Kuwait's oil fields burned for almost a year, producing a huge amount of pollution. NATO's military strikes against Yugoslavia also generated ecological disasters with serious consequences for human health and environmental quality.

Since wetlands (swamps, lakes) are often used as strategic points, their waters have been polluted, which has led to the destruction of habitats for a variety of aquatic species. Oil spills, explosive munitions and toxic chemicals cause irreversible damage to aquatic ecosystems.

The chemical footprint of war contaminates groundwater and surface water. Many reservoirs in Ukraine have suffered biodiversity losses due to hostilities. They are losing their ability to self-clean and regenerate naturally, with fish dying and bird life cycles and migrations being severely disrupted. Many of the reservoirs in the Dnieper basin are now destroyed by war.

Bombing, destruction of vegetation and the movement of military vehicles contribute to soil erosion. Soil fertility is reduced, increasing the risk of flooding. Soil degradation affects agriculture, biodiversity and the inability of ecosystems to regenerate.

International jurisprudence on environmental protection during military conflicts

International Humanitarian Law (IHL) establishes rules for the conduct of war, including obligations to protect the environment. It prohibits deliberate attacks on the environment and requires that the impact on the environment during military operations be minimized.

The Geneva Convention and its Additional Protocols contain rules for the protection of the civilian population and the environment during military conflicts. They emphasize the importance of protecting water resources, infrastructure and ecosystems. For example, Protocol I of 1977 prohibits the use of means and methods of warfare which may cause “widespread, long-term and serious damage to the natural environment”.

Convention on the Prohibition of the Use of Environmental Modification Techniques (ENMOD, 1977) prohibits the use of technologies that may cause long-term or serious changes in the environment.

The Convention on the Conservation of Migratory Species of Wild Animals protects migratory species of wild animals, which are often vulnerable to the impacts of military conflict.

The Convention on Biological Diversity promotes the conservation of biodiversity and emphasizes the importance of protecting ecosystems during military conflict.

Kuwait v. Iraq (following the Gulf War) – The International Court of Justice (ICJ) emphasized the importance of protecting the environment in the context of war, including the concept of a “duty of care” to prevent environmental damage. Iraq was ordered to pay compensation for the destruction of oil resources and the environment.

Cases against former Liberian President Charles Taylor. In the context of the conflict in Sierra Leone, Taylor was convicted of supporting the destruction of the environment and natural resources (illegal diamond mining) to finance armed conflicts.

Environmental mitigation and reconstruction measures

Armed conflicts result in devastating environmental effects, such as excessive pollution, which destroys ecosystems, leads to loss of biodiversity and the deterioration of natural resources. Therefore, a series of mitigation and reconstruction measures have been developed to reduce the negative impact on the environment after armed conflicts.

All these environmental mitigation and reconstruction measures are supported by international laws and relevant court decisions, which define responsibility for environmental damage and provide a framework for its reparation.

The main environmental mitigation and reconstruction measures that can be taken following military conflicts can be:

- Impact assessment is essential after an armed conflict. This assessment includes the analysis of areas contaminated with hazardous substances (e.g. heavy metals, chemicals, munitions remnants, landmines). An assessment of the damage to local ecosystems is also necessary.
- Remediation of contaminated land is achieved by cleaning and decontaminating soil and water, which involves carrying out soil and water decontamination operations to reduce the risk to human and ecological health. The operations carried out may include neutralizing toxic substances, removing mines and unexploded ordnance, and decontaminating areas.
- Ecosystem rehabilitation consists of measures that can be taken to ecologically reconstruct affected areas. This involves planting trees, restoring natural habitats, protecting endangered species, and repopulating with local species to restore biodiversity.
- Monitoring and sustainable management of resources. After initial reconstruction, continuous monitoring of environmental quality and implementation of sustainable management policies for natural resources, such as water and soil, are necessary to prevent further environmental degradation.
- Protecting wetlands and restoring damaged aquatic ecosystems is crucial to safeguard biodiversity and ensure the provision of ecosystem services, such as water purification.

The Stockholm Convention (1972) and the Rio Convention (1992) are two important international instruments [6] that emphasize the principle of avoiding and remedying environmental damage. Although these two conventions do not directly address armed conflict, they have influenced norms and standards regarding environmental protection [7], including in post-conflict situations.

The Rome Statute of the International Criminal Court (ICC, 1998) includes environmental destruction as a war crime. According to art. 8(2)(b)(iv), it is prohibited to "cause widespread, long-term and serious damage to the natural environment which is clearly disproportionate to the concrete and directly anticipated military advantage".
In addition to international instruments, there are also national legislation and regional practices designed to support environmental rehabilitation after conflicts.

The European Union has environmental policies and international cooperation that support post-conflict reconstruction, including funds for environmental restoration in conflict-affected regions.

The UN and various international organizations (such as UNEP) have established reconstruction and environmental impact assessment programs in war-affected areas, such as programs in Afghanistan, Iraq and other post-conflict areas.

The implementation of mitigation and reconstruction measures is essential to repair the destruction caused by war and ensure a sustainable future for affected communities.

Conclusions

As we have seen, military conflicts have a devastating impact on the environment. It is essential to take measures to prevent conflicts and protect the environment, by promoting dialogue, international cooperation and the peaceful resolution of disputes. It is important to invest in programs to mitigate the environmental impact of conflicts and in the reconstruction of damaged systems.

Strictly regulating weapons, promoting disarmament, implementing effective toxic waste management systems and promoting peace education are necessary to ensure a sustainable future and protect the planet from the devastating effects of wars.

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GUARANTEE ACT IN THE LEGAL SYSTEM OF THE REPUBLIC OF SERBIA

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Abstract
The guarantee deed represents a legal institution that is applied in the legal system of the Republic of Serbia to protect the rights and interests of participants in a legal relationship, and at the same time represents one of the administrative matters provided for by the Law on General Administrative Procedure. The administrative act, as a legal institute belonging to administrative law, is introduced into the administrative 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 said law (Articles 18-21) basically regulates this institute through four articles, given that it is adopted when it is prescribed by a separate law. Its introduction into the administrative legal system shows the seriousness of the work of the public administration, and therefore enables a safer and more favorable position of the parties in terms of legal transactions, bearing in mind that it conditionally recognizes the parties, that is, guarantees a future right. Bearing in mind that the guarantee deed represents a novelty in administrative proceedings, the effects of its application in practice will be subject to consideration and further improvement of the normative framework for its practical application.
Keywords: *guarantee act, Law on General Administrative Procedure, term, definition, purpose, administrative act, appeal, comparative legal system, European Union.*

Introduction

The guarantee deed represents a type of administrative procedure that, on the one hand, increases the objectivity of the work of the public administration, and on the other hand, the party has a sense of greater legal security in administrative and legal affairs. The guarantee deed is introduced as a separate institute in the administrative 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 of 01.03.2016. 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].

However, in addition to the fact that this institute is a novelty from the ZUP, it is not a complete novelty in the legal system of the Republic of Serbia, bearing in mind that it is mentioned under that or a similar name in special procedures regulated by special laws [2].

The guarantee deed is governed by the provisions of the ZUP (Art. 18-21), and the legal provisions themselves begin with its definition and the reference norm which stipulates that the guarantee deed is issued when it is prescribed by a special law.

The guarantee deed is an important instrument in administrative law that aims to ensure the protection of the rights and interests of the parties in administrative proceedings. In administrative law, the purpose of the guarantee act is to ensure the protection of the rights and interests of citizens or entities involved in administrative procedures or relations with administrative bodies. The guarantee deed aims to provide security and legal protection to parties in proceedings before administrative authorities and to ensure that their rights are respected. The guarantee act is of great importance in the balance between the efficiency of administrative authorities and the rights of individuals.

A guarantee deed is also used in other legal systems, but it can differ depending on the composition of the legal system and legal norms. In Serbia, the guarantee is one of the most commonly used instruments in legal transactions and the use of guarantee documents is regulated by the Law on Obligations.

Term and Definition of Guarantee Act

The guarantee deed, as one of the novelties introduced by the ZUP, represents the subject of administrative proceedings, in the context of a wider prescription of the term

administrative matter, which is separated by the legal text into a special type of administrative activities [3].

The guarantee deed, as an institution, is prescribed by the ZUP "(1) The guarantee deed is a written deed by which the authority obligates itself to pass an administrative deed of a certain content, at the appropriate request of the party. (2) The guarantee deed is adopted when it is determined by a special law" [4].

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" [5].

It follows from the very definition of this institute in our legal system that the subjects of the conclusion of the administrative contract are, on the one hand, the authority, while on the other hand, they can be legal or natural persons who meet the conditions prescribed by law in order to perform a certain work in the public interest.

Looking at the normative regulations of this institute, it can be concluded that the parties cannot request the issuance of a guarantee deed in any administrative area, but only in those areas or administrative matters in which it is prescribed by a special law. In its form, the guarantee deed is a written deed by which the authority is obliged to pass an administrative act of a certain content at the request of the party, by which the administration is obliged to pass an administrative act in that matter within a certain period, under certain conditions (if they are met). All of the above is based on the assumption that no material regulations have changed in the meantime, and that the adoption of the same is not against the public interest or the legal interest of third parties [6].

The guarantee deed is not declaratively introduced into the legal system by the adoption of the ZUP, but its existence is related to the way it is regulated in special regulations. The guarantee act, under the same or a different name, exists in the Law on Citizenship of the Republic of Serbia, the Customs Law, the Law on Nationality and

Registration of Vessels, the Law on Inspection Supervision, the Law on Tax Procedure and Tax Administration [7].

A guarantee deed is not an administrative deed by its nature and function, but like an administrative deed, in accordance with legal conditions, it provides the party with certain promises that it can count on in terms of certain rights, considering a certain factual and legal construction. The legal content of the guarantee deed represents a binding opinion of the authorities on the application of regulations to a specific legal situation, and at the same time it must not be against the public interest or the legal interest of third parties.

Purpose of the Guarantee Act

The purpose of the guarantee deed is in the right of the party, which gives the right to subsequently, when it submits a request for the adoption of an administrative deed, receive an administrative deed with the promised content, that is, an administrative deed that is in agreement with the previously issued guarantee deed. The party has the right to protect this right by filing an appeal against an administrative act that was not issued in accordance with the guarantee act [8].

The implementation of the guarantee deed in the administrative procedure in the formal legal sense through the provisions of the ZUP has a certain importance in order to achieve more effective legal certainty and thereby raise a certain level of predictability in business processes. The ZUP unequivocally stipulates that the rules of administrative procedure prescribed by that law are directly applied to the guarantee deed, which primarily relate to the protection of the public interest and the conditions for passing or not passing an administrative act in accordance with the guarantee deed. In addition to the application of the provisions of the ZUP related to the administrative act, special regulations are allowed to independently prescribe the adoption of a guarantee act in certain areas that they regulate.

Looking at the provisions of Article 18, paragraph 1 and Article 19, paragraph 1 of the ZUP, we come to the conclusion that the authority has the obligation to issue an administrative act in accordance with the guarantee act, and the party has the right to choose whether to request the issuance of an administrative act. act in agreement with

the guarantee act, i.e. whether when submitting a request for the issuance of a certain administrative act, the issued guarantee act will be referred to at all [9].

Guarantee Deed in Special Regulations

A comprehensive picture of the concept and institution of a guarantee deed cannot be obtained unless special laws are taken into account, bearing in mind that according to the ZUP, the existence of a guarantee deed depends on special regulations. In the front part, the regulations are listed in which you can find institutes that are considered a guarantee deed, and in this part we will specifically mention some of them, so that its essence and application can be seen on an example [10].

In Article 19, paragraph 1 and 2 of the once valid Customs Law ("Official Gazette of the RS", no. 18/10, 111/12, 29/15, 108/16 and 113/17), it was prescribed: "(1) Upon written request of an interested person, the Customs Administration issues a binding notification on the classification of goods (hereinafter: OOS) according to the Customs Tariff and a binding notification on the origin of goods (hereinafter: OOP). The request for issuing a binding notification will be rejected by the Customs Administration if it does not relate to the intended use of OOS, i.e. OOP in the customs procedure. (2) OOS, i.e. OOP obligates the customs authority only in connection with the tariff classification of goods, i.e. determining the origin of goods. These notices bind the customs authority in relation to the person to whom they were issued only in relation to the goods on which customs formalities were completed after the notices were issued. Notifications bind the person to whom they were issued in relation to the customs authority only from the day they were delivered to him or are deemed to have been delivered to him." [11].

In the current Customs Law ("Official Gazette of the RS", no. 95/18, 91/19, 114/20, 118/21 and 138/22), in Article 23, paragraph 1, it is prescribed: "At the written request of an interested person the customs authority makes decisions related to binding notifications on the classification of goods (hereinafter: OOS) or decisions related to binding notifications on the origin of goods (hereinafter: OOP)" [12].

In both mentioned legal texts, the guarantee act is not explicitly mentioned, but binding notices on the classification of goods according to the Customs Tariff and binding notices on the origin of goods are mentioned.

The Law on Citizenship of the Republic of Serbia ("Official Gazette of RS", no. 135/04, 90/07 and 24/18) recognizes the possibility of issuing a guarantee deed, but in the form of a confirmation, not a decision, namely, Article 15, paragraph 1. the aforementioned law stipulates: "A foreigner who has submitted a request for admission to the citizenship of the Republic of Serbia and does not have a release from foreign citizenship or proof that he will receive a release if he is admitted to the citizenship of the Republic of Serbia can, at his request, be issued a certificate that he will be admitted to citizenship of the Republic of Serbia if it meets the other requirements from Article 14, paragraph 1 of this law." [13].

In the Law on State Belonging and Registration of Vessels ("Official Gazette of the RS", no. 10/13, 18/15 and 83/18), we come across the term guarantee deed, as Article 83, paragraph 3 stipulates: "When the harbor master's office in whose register an inland navigation ship is registered receives a proposal to transfer the registration of an inland navigation ship to the register of inland navigation ships of another port master's office, will issue a decision conditionally recognizing the right of a foreign party to transfer the registration of an inland navigation ship to the register of inland navigation ships maintained by another port master's office (guarantee deed) and the same, with an extract from the register of ships and the documents from paragraph 2 of this article, sent to the harbor master in whose register of inland navigation ships the entry is transferred." (Law on Nationality and Registration of Vessels 2018: Art. 83). In this situation, the guarantee deed is characterized by a decision by which one harbor master's office conditionally recognizes the right of a foreigner to transfer an inland navigation ship to the register of ships maintained by another harbor master's office [14].

In addition to the examples mentioned in practice, binding opinions prescribed by the Law on tax procedure and tax administration and the Law on inspection supervision are also mentioned as examples of a guarantee act, which refer to acts on the application of regulations issued by the competent minister and which are binding for action (explanations, instructions, opinions, instructions and the like) [15].

Failure to Enact Administrative Act according to the Guarantee Act

The authority is not always obliged to pass an administrative act in accordance with the guarantee act, in which context the ZUP decisively provided for four exceptions and therefore left the possibility for a separate law to determine other reasons for not passing an administrative act in accordance with the guarantee act, i.e. "when there are other reasons determined by special by law". Situations in which the authority is not obliged to pass an administrative act in accordance with the guarantee act are normatively regulated by Article 19, paragraph 3, point. 1) – 4). ZUP.

The first case when the authority is not obliged to issue an administrative act in accordance with the guarantee act is "if the request for the adoption of an administrative act is not submitted within one year from the date of issuance of the guarantee act or another deadline determined by a special law". This exception refers to the term in which the party, on the one hand, has the right to request, and the authority, on the other hand, has the duty to pass an administrative act in accordance with the guarantee act. The aforementioned has its own goal, the essence of which is the time limit for the regulation of the administrative legal relationship in the manner established by the guarantee act, and therefore the provision of a guarantee regarding the deadline for the adoption of the administrative act by the authorities, because the opposite action could be to the detriment of the party. It is important to note that the deadline of one year, which is prescribed by the ZUP for submitting a request for the adoption of an administrative act in accordance with the guarantee act, is of a subsidiary nature, taking into account the provision indicating that if no other deadline is specified by a special law (e.g. the Law on citizenship is set for a period of two years, and according to the Customs Law a period of three years from the date of issuance of the guarantee act) [16].

Another case when the authority is not obliged to pass an administrative act in accordance with the guarantee act is "if the factual situation on which the request for the adoption of the administrative act is based is significantly different from the one described in the request for the adoption of the guarantee act". This provision is quite clear and nonsensical, because in this case the authorities' guarantees refer to a precisely determined factual and legal situation, because the application of the same legal norm to significantly changed (different facts) cannot lead to the same result, i.e. to the adoption

of an administrative act of the same factual situation. and legal content. For these reasons, there is no obligation of the authority to pass an administrative act in accordance with the guarantee act if the factual situation on which the request for the adoption of the administrative act is based is significantly different from the one described by the applicant in the request for the adoption of the guarantee act. Special regulations specify the application of the above [17].

The third case when the authority is not obliged to pass an administrative act in accordance with the guarantee act is "if the legal basis on the basis of which the guarantee act was adopted has been changed by the new regulation providing for the annulment, repeal or amendment of administrative acts passed on the basis of earlier regulations". In this way, a balance is established between the legitimate interests of the party confirmed by the guarantee deed, on the one hand, and the protection of the public interest and acquired rights of other persons, on the other hand. This is about the retroactive application of new regulations, because it would not be fair for a party that has only conditionally received a guarantee that a certain administrative act will be issued to it, has more rights and a more secure legal position than a party whose rights and obligations were determined in the previous period by an administrative act. act. In a situation where the amendment of regulations is more favorable for the party, it is left to the party to evaluate what is more favorable for it in terms of choosing whether to request the adoption of an administrative act in accordance with the guarantee act or to request the adoption of an administrative act without referring to the guarantee act. The above is a conclusion from the legal regulation itself, according to which the authority is not obliged to make a decision in accordance with the guarantee deed if the party does not request it, but can issue the requested administrative deed to the party on the basis of a regulation that is more favorable to it, i.e. on the basis of a new regulation, as if the guarantee the act was not issued [18].

The fourth case when the authority is not obliged to issue an administrative act in accordance with the guarantee act is "when there are reasons determined by a special regulation". The reason for implementing this provision in the ZUP has its basis in the provision of Article 3 of this law, which does not allow reducing the quality and intensity of protection of rights and legal parties guaranteed by the ZUP [19].

Complaint due to failure to provide a Guarantee Deed

The legal remedy provided for in Article 19, paragraph 2 of the ZUP, in the event that the administrative act was not adopted in accordance with the guarantee act, is the right of the party to challenge such a decision of the authority with an appeal. Article 158, paragraph 1, item 8 of the ZUP stipulates that the decision - administrative act can be contested because it was not adopted in accordance with the guarantee act. Therefore, in this case, the appeal is submitted by the party at whose request the guarantee deed was issued and who, referring to it, demanded the authority to issue an administrative act in accordance with that guarantee deed.

Considering the right to appeal set up in this way, the person at whose request the guarantee deed was issued would not be allowed to challenge it with an appeal, because he had the right to choose not to demand the adoption of an administrative act in accordance with the guarantee deed.

However, there is also the right to appeal against the guarantee act, taking into account the norm that refers to the corresponding receipt of ZUP related to the administrative act. To the question related to the extent of the binding of the authorities adopted by the guarantee deed, the answer remains that administrative and administrative judicial practice [20].

An appeal against a guarantee deed precedes an administrative deed. An appeal against a guarantee act, on the one hand, has the meaning of not allowing the adoption of an administrative act in accordance with the guarantee act, since the party believes that this would violate its rights or legal interest, and on the other hand, the party has the right to appeal against the administrative act and because the administrative act was not adopted in accordance with the guarantee act. By their nature, the guarantee deed and the administrative deed must form a harmonious whole, complementing each other [21].

The influence of comparative legal systems on the institute of the Guarantee Act

German, Croatian and Montenegrin law had the greatest influence on the normative regulation of the guarantee deed in administrative proceedings in the legal system of the Republic of Serbia. Considering the effect in the way of regulation, German

law had an indirect effect, and the Laws on General Administrative Procedure, which were adopted in the Republic of Croatia and the Republic of Montenegro, had a direct impact. The guarantee deed as a model was first introduced in Croatia, and then in Montenegro and Serbia [22].

The term "guarantee act" is not used in the German Administrative Procedure Act, because the literal translation from the German language for the term "Zusisherung" would be a promise, guarantee, assurance. By making a promise, the authority undertakes to adopt or not adopt, in a certain period, the corresponding administrative act. A promise is made, that is, given in writing, in order to have its legal validity [23].

The Law on General Administrative Procedure of the Republic of Croatia, which was adopted on March 27, 2009. year, this institute is regulated through Article 103, which introduces a guarantee for the acquisition of rights. In accordance with this provision, a public legal body can guarantee the acquisition of a certain right to a party when it is determined by law, which is decided by a resolution and which must not be against the public interest or the interest of third parties [24].

The Law on General Administrative Procedure of Montenegro ("Official Gazette of Montenegro" No. 56/2014, 20/2015, 40/2016 and 37/2017), Article 20, regulates the institution of the guarantee deed. According to this norm, a public law authority can, at the request of a party, issue a decision guaranteeing the party the acquisition of a right, under the condition prescribed by a special law (guarantee deed), which must be issued in writing. As can be seen, the term "guarantee deed" is taken from Montenegrin law.

Common to all legal systems is that the guarantee act, through administrative activities, is normatively bound to the adoption of an administrative act, which also prescribes the situation that in the event of a change in the legal basis, the authority is no longer bound by the issued guarantee act.

The corresponding application of the provisions on administrative acts to guarantee acts leads to the conclusion that they are also applied in the case of "silence of the administration", i.e. failure to pass a guarantee act within the legally prescribed deadlines. The legal consequences of the "silence of the administration" lead to the fact that the party acquires the right to file an appeal with the second-instance authority, and

then with the Administrative Court, if the appeal is excluded, after the deadline set for the adoption of the administrative or guarantee act has expired.

The decision of the second-instance authority, which was made on appeal, can be challenged by a lawsuit in an administrative dispute. The lawsuit is submitted to the Administrative Court within 30 days from the date of delivery of the second-instance decision.

Guarantee Act in European Legislation

A guarantee deed in European law refers to an instrument that ensures the fulfillment of certain obligations or rights of the parties within the European legal system. This term is most often used in the context of the European integrated financial market and investor protection.

A guarantee deed can be in the form of a written statement or a contract guaranteeing the performance of certain obligations. For example, in the context of the financial market, a guarantee deed can be a contract whereby a financial institution undertakes to ensure the return of funds to investors in the event of insolvency or default.

European law provides a framework for the use of warranty deeds to ensure the protection of parties to transactions and provide security in doing business at the European level. These acts are often subject to regulations and supervision by relevant European institutions to ensure their proper functioning.

It is important to note that this is only a general concept of a warranty deed in European law and that it can be applied in different contexts and sectors within the European legal system. The details and specifics of warranty deeds may differ depending on the specific area of law that is applied.

Bearing in mind that only the adoption of European Union regulations cannot guarantee their effective implementation, the EU Commission insists on building administrative potential that will enable easier entry into the "European Administrative Area". The conformity of administrative law and the acceptance of common European values and standards thus become extremely important for all countries in transition that intend to integrate into the European legal system in the near future. Article 6 of the Treaty on European Union stipulates that the EU recognizes the rights, freedoms and principles

from the Charter of Fundamental Rights of the European Union, which has the same legal force as the founding treaties. Bearing in mind the content of the Charter of Fundamental Rights of the European Union, where, among other rights, the "right to good administration" is guaranteed (Article 41 of the Charter), it can be concluded that the practice of the Court of Justice of the European Union regarding the protection of human rights affects the development of principles administrative law [25].

Conclusion

Analyzing the normative arrangement of the guarantee act, which represents a special legal institute, but also other norms that relate to and apply to this term (concurrent application), we come to the conclusion that it cannot be completely separated from the administrative act, even though the institutes are in question which have different legal nature. Also, the guarantee deed and the administrative deed do not have the same legal effect, because in the case of the administrative deed, the legal effect is aimed at the party and the resolution of the administrative matter. The legal effect of the guarantee deed is different and can be said to be inverse, because in this case the authority binds itself without deciding on the rights and obligations of the party. The guarantee deed does not have an authoritative character, but by its character has the characteristics of a unilateral legal transaction. By issuing a guarantee deed, the party is promised the acquisition of a right, which means that the party did not immediately acquire it, because in that case the administrative deed, at the party's request, would not be issued later. In the very application of the guarantee deed in practice, questions are raised about its sufficient normative arrangement in terms of specifying what is considered a guarantee deed, and especially due to the reference to special regulations, which can deepen the dilemma, if there are no more precise legal provisions in the ZUP itself. Answers to disputed questions are expected from practice, both in the administrative procedure and in the administrative dispute, which will represent further guidelines for the legislator regarding the determinants for a better normative organization of this administrative and legal institute.

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THE ROLE OF THE COUNCIL OF THE EUROPEAN UNION WITHIN THE HUMAN RIGHTS PROTECTION SYSTEM

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Abstract
The objective of this paper is to approach the Council of the European Union from a less explored perspective at the doctrinal level, emphasizing its competences in the field of human rights and its role within the system of human rights protection. By structuring the material in three sections, we aim to respond to the concerns born from the desire to explore the institution and from this perspective. In this sense, the methodological foundation of the study is the theory of knowledge, we will take into account the doctrinal, normative and official sources made available by this institution, which will be complemented by the logical analysis, as well as the comparative analysis method. The results of the research bring a real contribution to the deeper knowledge of the Council of the European Union and its role within the human rights protection system at the Union level, as well as application value, but and an informative support for all those interested in this issue.
Keywords: *EU Council, human rights, EU, protection, decision, regulation*

1. Preliminaries

The introductory section of the study presents the UE institutions with a significant contribution in the field of human rights, emphasizing their powers within the Union's protection system, the following two sections we will allocate to the Council of the European Union and its role in this field.

The European Union has in its composition 5 institutions with express powers regarding the protection of human rights, namely the European Parliament, the European Ombudsman, the Court of Justice of the European Union, the Council of the European Union and the Agency for Fundamental Rights in the European Union. Along with them, the European Council and the European Commission intervene in the protection and promotion of human rights, in accordance with the provisions of the European Union treaties.

The European Parliament is the body that expresses the democratic dimension of the European Union, has it headquarters at Strasbourg, France, being made up of 705 members, European parliamentarians elected by the citizens of the European Union,

respectively each member state elects its representatives in the union parliamentary assembly.[1]

The institution pursues the protection and promotion of human rights in the European Union through *petitions* addressed by EU citizens, as well as through the activity of its *permanent committees that prepare the works of plenary sessions*, namely the Committee for Legal Affairs, the Subcommittee for Human Rights, the Committee for Culture and Education, the Committee for women's rights and gender equality.[2]

The European Ombudsman is appointed by the European Parliament, has its headquarters at Strasbourg, France, being an independent person in the performance of his function, for a five year mandate. [3]

Its competence is provided for in the Statute established by the European Parliament, with the opinion of the European Commission and with the approval of the Council of the Union, and consists in examining cases of maladministration in the activity of Union institutions or bodies, with the exception of jurisdictional ones.[4]

Thus, the ombudsman can be notified through a complaint or can be notified ex officio, following the notification he will carry out an *investigation*, the conclusions of which will be contained in an *annual report*, to be submitted to the European Parliament for information. [5]

The Court of Justice of the European Union has its headquarters at Luxembourg, France, being an institution that, through its jurisprudence, developed and established over time, has played a particularly important role in terms of the protection of human rights in the Union space, covering gaps in conventional texts, *setting forth principles and institutions* in a Praetorian manner.[6]

At the beginning, the Court of Justice of the European Union showed that it respects the fundamental rights and that it ensures the defense of these rights because they are recognized and guaranteed by the constitutions of the member states and are part of the general principles of law. Later, he started referring to other instruments for their protection, especially to C.E.D.O.[7]

In the member states of the European Union, there is a double protection of human rights. The first protection is carried out at the national level and is ensured by the Constitutional Court, the supreme court and the other courts, and the second is carried

out at the European level through the European Court of Human Rights and the Court of Justice of the European Union.[8]

The Agency for Fundamental Rights in the European Union is an institution established in 2007, with headquarters at Vienna, Austria [9], legal successor of the European Observatory on Racist and Xenophobic Phenomena, was established with the aim of providing the competent institutions, bodies, bodies and agencies of the European Union, as well as the Member States, with assistance in matters of fundamental rights, to support them in full compliance of them when the Union law is applied, when they fulfill their competencies.[10]

Thus, it has been assigned broader powers than the predecessor institution, the main task being the collection and publication of relevant, objective, reliable and comparable information and data regarding the situation of fundamental rights in all member countries of the European Union within the scope of Union legislation, as well as promoting dialogue with civil society for to raise public awareness of fundamental rights and disseminate their work.[11]

2. The involvement of the Council of the European Union in the protection of human rights

The Council of the European Union, also known as the Council of Ministers or the Council, is the main European decision-making body that adopts legislative acts and coordinates European policies.[12]

The headquarters are in Brussels, Belgium, but in April, June and October, the Council meets in Luxembourg. In exceptional situations, with unanimity of votes, it can be established that the meetings of the Council take place elsewhere.[13]

It should not be confused with the Council of Europe, which is an international organization with a political character, but neither with the European Council. The EU Council represents the „voice of the member states", but it should not be confused with the Representatives of the governments of the member states gathered within the Council, who act as a ministerial conference and their decisions materialize by concluding international conventions that are practically required by the founding treaties, being a

forum whose meeting takes place whenever the primary law provides for this or when the member states consider it is appropriate.[14]

The Council of the European Union contributes to the respect of human rights through its possibility to use a mechanism to guarantee the respect of human rights, having 2 competences in the matter, namely *the preventive* competence and *the repressive* competence.[15]

Under the preventive aspect, the EU Council can address *appropriate recommendations* to the state in question, in the situation where it is established that there is a clear risk of a serious violation by it of the principle of respect for human rights, and *in a repressive aspect*, based on the decision of the EU Council approved by the European Parliament, can establish the existence of a serious and persistent violation of human rights by the state in question and *suspend the exercise by it of certain rights* deriving from the Union treaties, including the right to vote.[16]

The justification for this mechanism comes from the fact that the Treaty of Lisbon reconfirms the importance of human rights in the European Union, providing that respect for human rights is not only a condition of belonging to the Union, but also represents one of its foundations, so the adoption of the Charter of Fundamental Rights at at the level of the European Union, represents one of the most important reference documents in the field of protection and guarantee of human rights in the European Union [17], to which are added a series of regulations and directives of the European Union.[18]

The EU's key decision-maker, the Council ensures that fundamental rights are taken into account when drafting EU legislation and actions. It also acts to promote human rights in relations with third countries and international institutions, as well as during the negotiation of international agreements.[19]

„The defense of fundamental rights is a horizontal issue, affecting all areas of EU activity, which means that fundamental rights must be taken into account by all Council bodies in their work, regardless of their level or the topics they address. In addition, there is a specialized body dealing with all matters directly related to fundamental rights: *the Working Group on Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP)”*.[20]

„It deals with matters related to *the Charter of Fundamental Rights of the European Union* and negotiations on the EU's accession to *the European Convention on Human Rights*. [21]. Also, the working group is responsible for: the preparatory works within the legislative procedures of the Council in the field *of fundamental rights, citizens' rights and free movement of persons,* all aspects regarding fundamental rights in the European Union, as well as their promotion and monitoring reports, the annual report on the activities of *the Agency for Fundamental Rights*, as well as the annual exchange of views".[22]

In terms of respect for human rights outside the EU, all Council bodies dealing with external affairs must incorporate human rights into their activities. In addition, the promotion of human rights is certainly a priority in itself, from this point of view the action plan on human rights and democracy, adopted on November 18, 2020 for the period 2020-2024, is considered as a reference in this field.[23]

„Through this action plan, the Council reaffirms the EU's firm commitment to further promote universal values for the benefit of all. No one should be left behind and no human right should be ignored. To this end, the EU and its Member States [24] will use the full range of instruments at their disposal, in all areas of external action, to maintain and strengthen the EU's global leadership in human rights and democracy and in implementation of the EU action plan".[25]

„Among the main aspects of the Council's activity regarding fundamental rights we mention: establishing EU priorities within the UN forums charged with the defense of human rights, adopting thematic guidelines to support the EU's external action, initiating dialogues on human rights with third countries, adopting the annual report on human rights man and democracy".[26]

Continuing the scope of human rights concerns, „on 26 February 2024, the EU Council appointed Olof Skoog as the EU Special Representative (EUSR) for human rights, replacing Eamon Gilmore, whose five-year mandate expires ends on 29 February, with Mr Skoog taking up his duties on 1 March 2024 for an initial period of two years. Thus, the new EU Special Representative will continue the work of his predecessors in contributing to the implementation of EU human rights policy, EU positions on promoting respect for international humanitarian law and supporting international criminal justice.

In addition, he will contribute to establishing a stronger European voice through human rights dialogues with third country governments and international and regional organisations, as well as with civil society organizations and other relevant actors. The Special Representative will work closely with the European External Action Service and the EU institutions to ensure the effectiveness and visibility of EU human rights policy in external actions."[27]

On 27 May 2024, „in order to maximize the synergy between the action plan and the thematic and geographical programmes, this Action Plan on Human Rights and Democracy 2020-2024, extends its work until 2027, thus aligning it with the full cycle of the financial framework multiannual 2021-2027".[28]

In further implementation of the action plan, among other objectives, „the EU will continue to strongly denounce human rights violations and abuses against human rights, violations of international humanitarian law, attacks against democracy, including repression of civic space and independent media. The EU will also step up its efforts to promote a positive discourse that emphasizes the multiple benefits that the promotion of human rights and democracy brings to all stakeholders in support of sustainable development, peace and security and the promotion of equal, diverse, pluralistic and favorable to inclusion".[29]

3. Aspects regarding the legislative activity of the EU Council in the human rights field

„On 7 December 2020, the Council of the European Union adopted *a decision and regulation establishing a global human rights sanctions regime.* Thus, for the first time, the EU will be able to target individuals, entities and bodies responsible for serious human rights violations and abuses against them, involved in or associated with such violations or abuses, worldwide, regardless of where they occurred. The framework for specific restrictive measures applies to acts such as genocide, crimes against humanity and other serious violations of or abuses of human rights".[30]

Therefore, the elaboration and presentation of the list of natural and legal persons, entities and bodies responsible [31] constitutes a new element in the activity of the Council, which reinforces the concern of its institutions to guarantee respect for human

rights worldwide. As regards the application of international sanctions in this field, the competent authorities have been designated at the level of each EU member state.[32]

For Romania, the competent authorities are: the National Fiscal Administration Agency (Ministry of Public Finance), the National Bank of Romania, the Financial Supervision Authority, the National Office for the Prevention and Combating of Money Laundering, the Directorate of Commercial Policies - the Department of Foreign Trade (Ministry of Entrepreneurship and Tourism), the Romanian Customs Authority, the Ministry of Foreign Affairs, through the Department for Export Control, the Ministry of National Defense, the General Inspectorate of the Border Police (Ministry of Internal Affairs), the National Visa Center (Ministry of Foreign Affairs), the Ministry of Transport.[33]

For the Council, the year 2024 is a reference year in terms of legislative activity regarding the matter of human rights violations at the Union level.[34] Under this aspect, we note some of the reference topics: the updating of the EU guidelines on children and armed conflicts in the context of the increase in the number of violations of children's rights in the situation of armed conflicts [35], the adoption of sanctions targeting extremist settlers and violent activists in Israel in the context of conflicts of Gaza [36], adopting additional sanctions targeting entities and individuals responsible for serious human rights violations worldwide, including torture and systematic and widespread acts of sexual and gender-based violence [37].

4. Conclusions:

The field of human rights protection at the level of the European Union is an always current topic, the vast activity of the Union institutions in this matter becomes a permanent concern for the thorough research of their role in the issue of human rights.

Through this study, I have emphasized the competencies and role of the EU Council in the field of human rights, the involvement of its own institutions in the policy of protection of human rights at the level of the European Union, but also outside it, as well as the legislative activity in the matter.

From the research carried I have shown that the institution of the Council of the European Union, approached from a perspective modestly analyzed in doctrine, fulfills a

significant role in the issue of human rights at the Union level, through the prism of the two competences in the matter, having *a preventive role*, in the sense that can address appropriate recommendations to the state in question, in the situation where it is established that there is a clear risk of a serious violation by it of the principle of respect for human rights, and *a repressive role,* based on the decision of the EU Council approved by the European Parliament, a situation in which it can establish the existence of a serious and persistent violation of human rights by the state in question and suspend its exercise of certain rights deriving from the Union treaties, including the right to vote. In addition, the adoption in 2020 of the two normative acts, *the decision and the regulation establishing a global regime of sanctions in the field of human rights*, *the extension of the action plan on human rights and democracy until 2027, as well as the update of the EU guidelines in this field,* strengthens the role of this institution in promoting mechanisms to guarantee respect for human rights worldwide, widening the scope powers assigned to the Council of the European Union in the field of human rights.

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[18] The mechanisms for monitoring the observance of human rights at the European level are numerous and diverse, the specific procedural aspects being provided for by the conventional norms, the bodies responsible for the application of these mechanisms being *the Council of Europe, the Organization for Security and Cooperation in Europe and the European Union, through its bodies specialized.*
[19] https://www.consilium.europa.eu/ro/policies/human-rights/, accessed at 02.11.2024.
[20] Idem.
[21] https://www.consilium.europa.eu/ro/council-eu/preparatory-bodies/working-party-fundamental-rights-citizens-rights-free-movement-persons/, accessed at 02.11.2024.
[22] The Working Group meets in different formations when necessary, depending on the topic on the agenda (available at https://www.consilium.europa.eu/ro/council-eu/preparatory-bodies/working-party-fundamental-rights-citizens-rights-free-movement-persons/, accessed at 02.11.2024).
[23] https://www.consilium.europa.eu/ro/policies/human-rights/, accessed at 02.11.2024.
[24] Regarding the instruments for respecting human rights and democracy in romanian system, see Remus Ionescu, *Good or bad faith of the judicial bodies. Sanctions. Preliminary chamber,* Journal of Law and Administrative Sciences No.21/2024, p.104-119, http://jolas.ro/wp-content/uploads/2024/08/jolas21a10.pdf, accessed at 04.11.2024.
[25] Council conclusions on the EU action plan on human rights and democracy 2020-2024 (available at https://www.consilium.europa.eu/media/46838/st12848-en20.pdf, accessed at 04.11.2024).
[26] https://www.consilium.europa.eu/ro/press/press-releases/2020/12/07/eu-adopts-a-global-human-rights-sanctions-regime/, accessed at 04.11.2024.
[27] For details see https://www.consilium.europa.eu/ro/press/press-releases/2024/02/26/human-rights-eu-appoints-a-new-special-representative/, accessed at 03.11.2024.
[28] https://data.consilium.europa.eu/doc/document/ST-9508-2024-INIT/ro/pdf, accesed at 04.11.2024.
[29] Idem.
[30] https://www.consilium.europa.eu/ro/press/press-releases/2020/12/07/eu-adopts-a-global-human-rights-sanctions-regime/, accessed at 04.11.2024.
[31] See the see the Annex to Council Decision (CFSP) 2020/1999 of 7 December 2020 on restrictive measures against serious violations of human rights and serious abuses against human rights, available at https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:32020D1999, accessed at 03.11.2024.
[32] See the Annex II to Council Regulation (EU) 2020/1998 of 7 December 2020 on restrictive measures against serious violations of human rights and serious abuses of human rights, available at https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=OJ:L:2020:410I:FULL, accessed at 03.11.2024.
[33] For details see https://www.mae.ro/node/1548, accessed at 04.11.2024.
[34] https://www.consilium.europa.eu/ro/policies/human-rights/timeline-human-rights/, accesed at 04.11.2024.
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FAILURE TO TAKE PROTECTION MEASURES AT WORK - RISKS AND CRIMINAL LIABILITY

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Abstract
The article deals with the problem of safety and health at work, the assessment of the risks involved in the realization of a fundamental human right (the right to work) in the territory of the Republic of Serbia, as well as determining the responsibility of those involved in work processes. The first part of the article presents the theoretical support for the research part of the work, which includes the analysis of risks and criminal liability that are entailed by illegal and illegal behaviors in the field of safety and health at work. The authors recognized this problem as currently and permanently relevant, and with their research they want to inform the professional and lay public about the seriousness of injuries and harm to the health of employees, which can occur as a result of neglecting the regulations in the research area. The legal regulations in the field of safety and health at work in the Republic of Serbia have changed after 18 years, and the authors want to present their critical opinion on the same, which is dealt with in the third part of the paper. Through a comparative analysis of the past five-year period (2018-2022), on the number of injuries at work according to the employer's activity, according to gender, age of the injured persons, work environment where the injury occurred, cause and type of injury, as well as the analysis of criminal and misdemeanor liability, conducted in the last part of the work, the authors want to indicate which areas of work carry the greatest risks and where the responsibility of the perpetrators of the omission must be increased.
Keywords: *safety at work, health at work, risk assessment, criminal responsibility, misdemeanor responsibility.*

Introduction

The right to life, health, and work isn't guaranteed only by the Constitution of the Republic of Serbia [3] but also by many international acts that the Republic of Serbia has ratified and implemented in its legal system. The right to protection and health at work has been elevated to the rank of a constitutional principle, which gives this work its importance and value.

Symbolically, on the International Day of Safety and Health at Work (April 28, 2023), the new Law on Safety and Health at Work was adopted.

New regulation in this area was necessary for the Republic of Serbia, because the labor market is constantly changing. Social, health, technological and technical circumstances in society are created, changed, modified, advanced and abolished every day, and regulation in this area must be "soft" and undergo constant adaptation to new circumstances. For example, the world faced the Covid-19 virus in the recent past [5],[6] which created a general upheaval in the now established way of functioning of all activities and processes, including work processes. However, with the appearance of that virus, the world encountered new problems that are closely related to safety and health at work, as well as the organization of work activities. Conventional ways of working were called into question and then the concepts of "remote work" and "work from home" were introduced. Those concepts have now finally been implemented in our legislation. The conditions for working from home or from a distance, or from the office or headquarters of the employer, as well as the risks that it (doesn't) bring with it, are issues that had to be resolved by the new legal text.

The dizzying expansion of construction, reconstruction and similar works in the Republic of Serbia required an urgent change in regulations in the part related to the safety and health of people engaged in the execution of these works. In this respect, the new Law brings one novelty, the obligation to prepare the Act on risk assessment according to a newer, different methodology, in the preparation of which employees must also be involved. This act is adopted in written form and includes a risk assessment for each workplace, where the existence of risk, the possibility of elimination, as well as its impact on the health of the employee must be established. In case it is discovered that there are risks to the employee's health, the employee must be informed about it, the employer must take all measures to eliminate that risk, and if this is still not possible for some reason, the person employed in those jobs must have all possible benefits that holds such a position. This act is prepared by professionals with a license or passed a professional exam with the participation of employees, who are organized in the form of the "Occupational Safety and Health Committee".

Theoretical framework

The Republic of Serbia has adopted a new Law on Occupational Safety and Health [11].The Republic of Serbia adopted a new Law on Safety and Health at Work in May 2023. and thus the previous Law on Safety and Health at Work from 2005 ceased to be valid. After eighteen years, the Republic of Serbia has innovated its legislation in this area and harmonized it with the legislation of the European Union.

Given that practice has shown that the protection and health of workers are not in the first place in terms of importance for employers in the Republic of Serbia and that the only thing that is valued in the end is the realized profit, the tightening of conditions and regulations in this area was expected.

One of the novelties introduced by the Law on Occupational Safety and Health is that employers are required to issue a special permit for each individual job performed in a "non-standard place", a working environment that is not usual, such as, for example, working at height, depth and similar aggravating circumstances.

The introduction of mandatory preventive medical examinations, as well as more frequent medical examinations for persons performing tasks with increased risk, is also one of the novelties in the recently adopted Law.

Due to new life and social circumstances, we are witnessing that more and more people are doing their work remotely or from home, so it was necessary to include these concepts in the regulation. Introducing and clarifying, making a difference between the terms "work from home" and "remote work" greatly contributes to the resolution of everyday conflict situations in practice.

Realizing that jobs on construction sites are very risky, the state introduced the new term "worksite" in the new law as "an outdoor space where work is carried out in accordance with the elaborations on the arrangement and execution of the works, which must be submitted to the inspection authorities together with the report on starting works".

The new law emphasizes the education of personnel who will deal with the implementation of this law, and introduces new types of training for persons engaged in the maintenance of occupational health and safety. Such persons should have the appropriate professional education as well as pass professional exams and fulfill all obligations to obtain the License necessary to perform these jobs.

According to the currently valid Criminal Code of the Republic of Serbia [7] there are three criminal acts, which, according to the reports on the work of the Administration for Safety and Health at Work within the Ministry of Labour, Employment, Veterans and Social Affairs, bring the greatest danger to health and safety at work. As part of criminal offenses against rights based on work, in Article 169 of the CC of the RS, there is failure to take protective measures at work. According to the old legal solution, this criminal offense threatened the perpetrators with a fine or a prison sentence of up to one year, but the Legislator made this punishment tougher with recent amendments to the law. At the time of writing this work, the threatened punishment for this criminal offense is a prison sentence of up to three years. A criminal offense can make a person "responsible for undertaking safety measures at work who knowingly does not comply with the law or other regulations or general acts on safety measures at work, as a result of which there may be a danger to the life or health of employees“[8]. On the basis of this text, we conclude that these norms are of a blanket nature, and that the CC of the RS in this segment fully relies on the norms of other legal acts that regulate the field of work. Furthermore, the Criminal Code of RS foresees that it is possible to impose a suspended sentence for this crime with the obligation "to the perpetrator to comply with the regulations on safety measures at work within a certain period of time."

A criminal offense can be committed both by doing and not doing, and the perpetrator can only be a person who is responsible (appointed) for occupational safety and health [9]. On the subjective level, there must be intent on the part of the executor, which will include conscious non-compliance with regulations in this area. As a consequence of the act, there is an abstract, that is, a possible danger to the health and safety of employees [2].

Article 280 of the Criminal Code of RS in the area dealing with Criminal Offenses against the general safety of people and property also defines the criminal offense of causing danger by not providing safety measures at work. According to the Code, this offense will be committed by a person who "damages or removes protective devices in mines, factories, workshops, construction sites or other workplaces and thus causes danger to life or body of people or to property of a larger scale". For such persons, a prison sentence of six months to five years is threatened. With the same penalty, it is

determined that "a responsible person in a mine, factory, workshop, construction site or other place of work who does not install protective devices or does not maintain them in proper condition or does not put them into action when necessary or does not at all acts according to regulations or technical rules on safety measures at work and thus causes danger to the life or body of people or to property of a larger scale". The legislator has foreseen that this act can also be committed negligently, for which a prison sentence of up to three years has been determined. In the event that the court opts for a suspended sentence, the Legislator also determined the obligation for the perpetrator of this criminal offense "to ensure the installation, maintenance or use of protective devices within a certain period of time".

The stated criminal offense aims to protect the general safety of people and property. At first glance, it would seem that these two previously explained criminal offenses have almost the same content, however, there is a big difference. In the case of the criminal offense under Article 169 of the CC of the RS, it is an abstract danger, and in the case of the criminal offense under Article 280 of the CC of the RS, the danger is concrete. In the first case, it is about the protection of employed persons, while in the second case, it is about the protection of life and body of people and property of a larger scale.

As the executor of this act, as in the first case, the person who is appointed and responsible for the implementation of measures at work appears.

"Irregular and improper execution of construction works" appears as the third, most dominant criminal offense, when it comes to criminal offenses that pose a risk to people's safety and health. This criminal offense is defined in Article 281 of the Criminal Code of RS, where it is prescribed that it is committed by any person who is responsible for the design, management or execution of construction or construction works, who does not act according to regulations or generally recognized technical rules during the execution of those works and thus causes danger for the life or body of people or for property of a larger scale". Such omissions are punishable by a prison sentence of three months to five years. In the event that the act is committed negligently, the legislator has provided for a milder punishment - a fine or imprisonment for three years.

We can note that the provisions of this article are blanket in nature [7] and that to specify the punishable offense they rely on regulations in the field of construction, primarily the Law on Planning and Construction [3]. A person who is responsible for the design, management or execution of construction works can act as an executor, and the work can be carried out both intentionally and negligently.

Under criminal responsibility, we can not only consider criminal responsibility, but also misdemeanor responsibility [4]. This type of responsibility is provided for in the Law on Safety and Health at Work, in seven articles, from Article 100 to Article 107. Article 100 of the aforementioned Law provides for a fine of 1,500,000 to 2,000,000 RSD, for a violation by employers with as a legal entity, while a fine of 400,000 to 500,000 RSD is provided for employers who are entrepreneurs, and a fine of 50,000 to 150,000 RSD is provided for offenses of this type for persons who are directors or responsible persons in a legal entity or natural persons who appear as an employer. These penalties are intended for the mentioned persons if (Article 100) for example: "if he does not provide and does not implement preventive measures of safety and health at work determined by the law and the regulations adopted on the basis of this law", "if he orders the employee to perform tasks at the workplace and in working environment where occupational safety and health measures have not been implemented", "if he does not adopt a program and does not train the employee for safe and healthy work",...."if in the activities of construction, agriculture, forestry and fishing, mining, processing industry, supply of electricity, gas, steam and air conditioning (except trade in electricity and gaseous fuels via the gas pipeline network), water supply, waste water management, control of waste removal processes, wholesale trade, transport and storage and similar activities, as well as in health and of social protection does not appoint an advisor for safety and health at work who meets the requirements prescribed by this law",.... "if he does not provide an employee who works at night, in accordance with the law, with a preliminary and periodic medical examination",..."if he does not provide an employee who has suffered an injury, i.e. who has been diagnosed with an occupational disease, to the organization responsible for health insurance and the Management, a report on injuries at work and occupational diseases that occur at the workplace"....".

In Article 103 of the mentioned Law, it is also prescribed that for violations in this area, the health institution that performs the activity of occupational medicine will be fined in the event that it does not submit reports on the medical examination of the employee, with a fine of RSD 300,000, while the responsible person in that institution shall be fined RSD 40,000. Articles 105, 106 and 107 of the aforementioned Law provide for misdemeanor liability for persons in charge of safety and health at work, as well as advisers for these tasks, as well as employees[1].

Empirical research

In this part of the work, the authors focused their research on discovering the most dominant behaviors contrary to the legal acts that regulate the field of safety and health at work, as well as finding the "most risky points" of the application of these regulations in the Republic of Serbia in the past five-year period.So let's go in order. Using the method of data analysis, but also the method of systematization and classification, the authors based on the Bulletin of the Republic Institute of Statistics [3] processed data related to the number of reported, accused and convicted adults (in the period from 2018 to 2022) for three criminal offenses that were discussed in the theoretical part of the paper.

When we look at the criminal offense of failure to take safety measures at work in 2018, four persons were reported for this criminal offense, three of which were known, and one reported person was treated as an "unknown perpetrator". Criminal charges were dismissed for two persons for the reason that there are no grounds for suspicion or that criminal prosecution is ineffective. After the investigation, an indictment was brought against one person, which ended, at least statistically, this year without a single verdict for this criminal offense. The following year, in 2019, there were six registered adults, five

[1] According to this Law: "An employee will be fined 20,000 dinars for a misdemeanor if he does not take care of his own safety and health at work, as well as the safety and health of other persons who may be affected by his work in accordance with the training for safe and healthy work and the instructions for safe and healthy work received from the employer, does not apply the prescribed measures for safe and healthy work, uses work tools, chemicals and other substances for the wrong purpose, does not use personal protective equipment and does not handle it carefully and does not put it back properly which is intended for its safekeeping, if he arbitrarily switches off, changes or removes the safety devices on the work equipment and if, in accordance with his knowledge, he does not immediately inform the employer, i.e. the immediate manager of irregularities, dangers, harms or other deficiencies in the implementation of measures safety and health at work that could endanger his safety and health or the safety and health of other employees and other persons at the workplace.

of whom were known. As many (five), we also have dismissed criminal charges. Some for the reason that the criminal prosecution was postponed due to the fulfillment of certain obligations, some because the reported offense was not a criminal offense, some - because there are no grounds for suspicion and the like. No indictment or judgment was made/delivered for this criminal offense during 2019. In 2020. three persons were reported for this crime, one of whom was unknown. All criminal charges were dismissed because there were no grounds for suspicion. This year too, no indictment or verdict has entered into legal force. Five filed and five dismissed criminal charges are typical for 2021, but in that year, one conviction was also handed down, in which a fine of 10,000 to 100,000 RSD was imposed. In the last year of the observed period, in 2022, criminal charges were filed against six persons, of which five criminal charges were dismissed. One indictment entered into legal force and one guilty verdict was passed, which imposed a prison sentence of 6 to 12 months.

When it comes to the criminal offense of causing danger by not providing safety measures at work in 2018. 27 persons were reported, and criminal charges were dismissed for 14 persons. Seventeen persons have been indicted. This year, eight people were sentenced (two to a prison sentence of 6 to 12 months, five to a suspended sentence and one person was sentenced to house arrest. During 2019. we have 22 adults reported for this criminal offense and 20 accused persons. A total of 18 In 2020, 14 persons were sentenced for this crime, of which 2 were sentenced to 6 to 12 months in prison, and 4 were sentenced to house arrest Seven persons were sentenced.The structure of the sentences is as follows: one fine in the amount of RSD 10,000 to 100,000, three suspended sentences and three house arrests. The following year, in 2021, 23 adult persons were reported for this criminal offense, of which 14 persons acquired the status of an accused person. During this year, eight persons were sentenced, of which three persons were sentenced to prison terms of 6 to 12 months and 3 to 6 months, one to a fine in the amount of RSD 10,000 to 100,000, three were sentenced to probation and one was sentenced to house arrest. In the last year of the observed period, 2022, 45 persons were registered. Ten persons were charged, of which eight were convicted. Three persons were sentenced to imprisonment for the duration of 6 to 12 months - two persons and

from 3 to 6 months - one person. Two suspended sentences and three house arrest sentences were handed down during the year 2022 for the crime in question.

In 2018, 12 adults were reported for the criminal offense of improperly and improperly performing construction works, of which eight criminal charges were dismissed. An indictment was brought against two adults and a guilty verdict (suspended sentence) was handed down. Seven persons were reported for this criminal offense in 2019, while three persons were charged with this offense. All three persons were sentenced for this criminal offense, one to a prison sentence of two to three years, and two persons were sentenced to a suspended sentence. In 2020, 12 persons were reported for the observed criminal act. Four persons have been charged. One person was sentenced to a suspended sentence.

The following year, in 2021, eight criminal charges were filed for this crime, of which five persons were charged. Three people were sentenced, two to a suspended sentence, and one to house arrest. In the last year of the observed period, 27 adults were reported, and only seven were accused. All seven persons were convicted. The structure of criminal sanctions for the observed criminal offense is: three suspended sentences and four house arrest sentences.

After the presented research on criminal offenses and criminal liability, the authors wanted to investigate which areas of work are the most risky and to obtain data on whether there is, and what is, the misdemeanor liability of persons who take care of safety and health at work, persons who deal with assessment the risks that different workplaces carry with them, as well as what is the role and responsibility of employers, employees and the state in this matter.

By analyzing the annual reports of the Administration for Occupational Safety and Health [1] we wanted to obtain data that will be indicators of the occupations that carry the greatest risk, where the most injuries at work occur, what types of injuries they are, what age or gender are the persons who more often suffer injuries at work, and the like.

The collected data, for the previous five years, will allow us to establish trends and tendencies in this area, create a profile of the most risky occupations and workers who perform these occupations, as well as propose some preventive measures.

In 2018 were registered 10.404 injuries at work, of which seven fatal injuries at work, 788 serious injuries at work and 522 serious injuries that occurred when leaving and coming to work. The other injuries were minor in nature. The activities in which the most frequent injuries occurred were wholesale and retail trade, motor vehicle repairs, transport and storage, health and social care, and the manufacturing industry. The most common cause of injury is improper, slippery and clogged surfaces on which the work is performed. In 60% of cases, the injury results in a broken arm. The days on which the most injuries occur are Monday and Tuesday, and the age group that is most injured is between 30 and 49 years old, and they are predominantly male.

Since 2019, the register of work-related injuries has been maintained according to a new methodology that enables a comparative analysis of work-related injuries in the Republic of Serbia and the countries of the European Union. During 2019, 13,300 work-related injuries were recorded, of which 14 fatal work-related injuries, 1,233 serious work-related injuries, 597 serious injuries during arrival and departure from work, while other injuries are considered minor. The activities in which the most injuries occurred, as well as the gender that suffers more injuries at work, remained the same as in the previous year. The age of injured workers has increased, so injuries at work mostly occurred between the ages of 46-55. In 2019. the majority of injuries occurred on construction sites due to slipping, tripping, and falling on one's face, where upper extremity fractures most often occurred.

The data for 2020 regarding the investigated phenomenon would be as follows: 10,295 injuries at work were registered (fatal injuries - 11, serious injuries - 1,226, serious injuries during departure and arrival - 435, and 8,623 - minor injuries). The largest number of injuries was registered in the processing industry. Observed in terms of age and gender - the male gender is more often injured, namely those aged 46-55 years, with a four-year education.

The largest number of work-related injuries occurred on buildings or construction sites, during slips, trips and falls, with bone fractures - upper extremities - occurring most often.

In 2021 the Occupational Safety and Health Administration reported that there were a total of 11,275 occupational injuries. Fatal injuries at work -12, serious injuries at

work - 1,289, serious injuries when leaving and coming to work - 487. Most injuries were suffered by men aged 46-55, employed in the processing industry. The largest number of injuries occurred due to slipping, tripping and falling on the face, which resulted in broken bones, mostly in the upper extremities.

In the last year of the analyzed period, 12,692 injuries at work were recorded, of which 11 had the epithet of fatal injuries. There were 1,127 serious injuries at work, while the number 596 is related to injuries at work of a serious nature that occurred when leaving and coming to work. And in 2022. most injuries occurred to men aged 46-55, with a four-year level of education. Injuries at work most often occurred from falls, slips and trips and resulted in fractures of the upper extremities.

In the previous part of the article, we explained criminal responsibility, and in this part of the paper, we aim to look at the practice of misdemeanor courts in the Republic of Serbia regarding the subject of the research in the previous five-year period.

According to the records of the Ministry of Justice, including all misdemeanor courts in the territory of the entire Republic of Serbia, in 2018. were submitted 904 requests for the determination of misdemeanor liability, of which 212 fines were imposed in the amount of up to RSD 100,000, 138 fines in the amount of 100,000 to 1,000 .000 RSD and six fines in the amount of more than one million dinars. Most requests were submitted in Subotica.

Analyzing the practice of misdemeanor courts in 2019. we conclude that the number of submitted requests is 1,054, of which 253 were resolved with a fine of 10,000 to 100,000 RSD, 163 with a fine in the amount of 100,000 to one million RSD, and two with a fine of more than one million dinars. Most requests were submitted in Belgrade.

A total of 815 submissions for determining misdemeanor liability, of which 307 ended with a fine of 10,000 to 100,000 RSD, 226 with a fine of 100,000 to 1,000,000 RSD and five fines exceeding one million RSD, are typical for 2020.

Also, in the course of 2020. the most requests for misdemeanor liability in the territory of the entire Republic of Serbia were submitted in Novi Sad

In the course of 2021, there were only 940 requests from the field of occupational safety and health before the misdemeanor courts on the territory of the Republic of Serbia. Out of that number, six requests were concluded with the determination of a fine

exceeding one million RSD, 248 requests with a fine of 10,000 to 100,000 RSD and 182 cases with a fine of 100,000 to 1,000,000 RSD. And in the course of 2021. the Belgrade misdemeanor courts had the most submissions

Data on misdemeanor proceedings are not available for the year 2022., the only thing we were able to find out is that the number of requests submitted this year was 912.

Analysis and discussion

The theoretical-legal analysis of our research subject allowed us to become more familiar with all the characteristics of observed phenomena in the previous five-year period. When we look at the criminal liability for three criminal acts (failure to take safety measures at work, causing danger by not providing safety measures at work and improperly and improperly performing construction works), we conclude that in the past five-year period for:

- The criminal offense of failure to take safety measures at work established criminal responsibility for two persons in the form of a fine in the amount of RSD 10,000 to 100,000 and a prison sentence of 6 to 12 months, and the punishment threatened by law is a prison sentence of up to three years;
- Criminal offense of causing danger by not providing safety measures at work, criminal responsibility was established for a total of 49 persons (on average about 10 persons per year), mostly suspended sentences (51%).
- The criminal act of illegal and improper execution of construction works established criminal responsibility for a total of 16 adult persons (on average about 3 persons per year), mostly in the form of a suspended sentence (63%).

It is concluded that the most dominant crime in the research period is the crime of causing general danger by not providing safety measures at work, as well as that the courts are predominantly determined to impose conditional sentences. We believe that this is not the best solution considering the nature and seriousness of the criminal acts. Nevertheless, the fact that the sentence of house arrest is more and more prevalent is encouraging.

When we look at misdemeanor responsibility related to safety and health at work, we can conclude that the most submissions were brought before the misdemeanor courts

in the city of Belgrade, that on average, in the previous five-year period, about 925 submissions were submitted annually, which mostly ended with the imposition of a fine in the amount from 10,000 to 100,000 RSD. We believe that the court's decision in this case is also mild, because in 59% of cases the court decides on the least threatened punishment.

According to the official data of the Occupational Safety and Health Administration, a total of 57,966 occupational injuries [1] were registered in the analyzed period (an average of 11,593 per year). Of all those injuries, 55 injuries were characterized as "fatal" (on average, around 11 people are injured at work each year), 5,663 were declared as "severe injuries at work" (on average, around 1,133 people suffer serious injuries each year at work that leave lasting consequences for health), and 2,637 people are seriously injured when coming and going from work (an average of about 527 people per year).

Based on the sublimated data, the profile of the employed person and the manner of injury would look like: a male person, aged between 46 and 55 years, with a four-year professional degree who is employed in construction jobs and who sustained injuries in the form of a fracture of the upper extremity (arm, hand or fingers) by falling, slipping or tripping.

What causes us great concern is that the data for 2023 are not encouraging either. According to the reports for this year, we can see that the trend of increasing injuries at work is increasing, and that in 2023. were reported 13,406 injuries - more than in one year of the observed period.

Although the average number of fatal injuries at work is 11, in 2023 as many as 14 injuries of this nature were reported. The average number of serious injuries at work is 1,133, while in 2023. it was 1,308. Injuries when coming to and going to work are also on the rise compared to the average - 612 (and the average is 527). All other monitored parameters in terms of education, type of injury, method of injury, gender and age - remained the same in 2023.

In terms of criminal responsibility, there is only one verdict for the criminal offense of causing danger by not providing safety measures at work, and that is a suspended sentence.

Regarding misdemeanor liability, the parameters related to penalties remain the same, except that Belgrade is not mentioned as the city with the most submissions for determining misdemeanor liability than Pirot.

In addition to the above, the data at the disposal of the Republic Health Fund, which do not match the data of the Occupational Safety and Health Administration, are also worrisome. In the period from 2018 to 2022, they recorded 219 fatal injuries, which is an annual average of about 44 people (and according to the data of the Occupational Safety and Health Administration, that number is four times lower). We are of the opinion that the record of the number of injuries at work should be centralized so that such duplicate data does not occur. Following the world and foreign literature in this area, we noticed that more developed countries deal with this topic far more, and that they develop strategies and adopt measures to protect employees from noise, introduce a safe climate in their organizations, conduct much more research in this area compared to our country [10].

Conclusion

We believe that the adoption of a new legal solution in this area is a big step forward for the Republic of Serbia and its labor market. By introducing new terms such as "work from home", "remote work", "workplace", we have shown that we are ready to move "in step with the times" and in step with other more developed countries.

Although the new Law on Safety and Health at Work brings very significant changes, its full implementation, as well as the results of measuring the success of its application, will be measured only in the time ahead. Now we all have a lot of duties and rights, but also obligations. Employees have the obligation to comply with the provisions of the Law, but also to report irregularities to the competent bodies, employers have the obligation to implement the new regulation, but also to cooperate unconditionally with the inspection bodies, while the state has the obligation to monitor the implementation of the regulation, as well as to provide advisory services to employers and employees, as we would all contribute to achieving a higher degree of safety and health at work, which is our common goal.

Finally, we must note that regulations and practice in our country differ greatly. Positive legal regulations promote the full protection of workers and their life and body, as well as health. By daily insight into practice, we notice that the situation "on the ground" is not quite like that. This also applies to businesses whose employer is the state, but also to businesses where the owners are natural persons. For example, on the streets of the capital, but also in other cities where construction expansion is noticeable (for example, Zlatibor), with a simple look at the construction site, we can notice many workers on the construction site who are not adequately protected, who do not have adequate equipment. Furthermore, every day we meet the trucks of the Public Utility Company, which are engaged in the maintenance of the cleanliness of the capital city, where the persons engaged in these tasks are practically "hanging" from the trucks, without helmets, protective equipment, completely left at the mercy of the attention of other road users. Their safety depends on the strength of their hands with which they hold onto the bars during transport, stand on open platforms and when there are unfavorable weather conditions (strong sun, winter, snow, rain...). Whether this is the failure of the workers (that they have equipment they do not want to wear), or whether it is the failure of the employer (that he did not bring them possibly adequate equipment), it should be sanctioned and changed in the shortest possible period. The authors express the hope that this paper will contribute to the further development of regulations and to the opening of some new perspectives on the topic under investigation.

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CONSCIOUSNESS AND AWARENESS - THE LAST FRONTIER OF HUMAN PRIVACY AND FREEDOM IN THE FACE OF AI DEVELOPMENT

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Abstract
The core of our research is consciousness, in multiple forms in which it can metamorphose into the inner "temple" of the human being and into the age of AI. This interdisciplinary research captures the "dialogue" between philosophy and law. And no, it is not about AI engineering and its forms of manifestation, but rather it is an "encapsulation" of the risks and benefits that lie behind the AI "label", so that we together make a "leap" towards the awareness of the need to resize or regulate new rights, rights that will preserve our identity in the absolute subtly outlined by AI.
Our "mystery" of being, still shrouded "in a cloak of the unknown", seems to become ephemeral in our searches through the "journey of life", the place of this "divine spark" being taken today by the mystery of being of artificial intelligence (AI). Humanity almost feels "small and powerless" in the face of the creation and greatness of the universe of infinite possibilities, gradually "unveiled" by AI. After all, what is a man in infinity? Has AI become capable of reproducing the essence of intelligence: human thinking and wisdom? No matter how great the tendency to reproduce human behaviour and intellect, we must realize, however, that AI is not endowed with emotion, love, 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.
The definition of human intelligence remains a book open to reflection and analysis, intelligence being an extremely complex attribute, fluid, difficult to measure and especially almost impossible to copy, since it is constantly shaped by factors such as personal motivation, social context, education, personality, attributes related to human intimacy.
Without aspiring to reach the "high notes" of knowledge, we ask ourselves: what about the essence of humanity, the inner ego, elements untouched by the legislative area, but only by that of science, given that AI manages to decode and optimize human emotions? What about artificial intelligence that make vulnerable brain and mental integrity through the impermissible alteration of thoughts, which can alter, remove or recover people's memories, as well as manipulate their thoughts? What about the moral and spiritual existence of an individual? Can AI be conscious? It is hard to believe that robots will climb a "ladder" of conscience and consciousness, since AI is confined to the field of possibilities built by man, its creator.

Keywords: *artificial intelligence (AI), human intelligence, emotional intelligence, intelligence quotient (IQ), consciousness, artificial consciousness, awareness, rights and freedoms.*

The mystery of being in aspirational philosophy - AI "in our image and likeness"

In the relentless attempt to create AI "in our image and likeness", perhaps the next step would be to create "artificial consciousness" and "dissolve" the human ego. It would be natural to ask which side we are on. That of the destruction of human civilization, as Yuval Noah Harari predicted, or that of building a "new century of lights", as the French researcher Yann Le Cun affirms?

We cannot deny that man is by nature a complex being, who evolves in an even more complex world, which imposes an adaptation capacity, in order to achieve a balance between the needs of the human being, the society regarded as a unitary whole and the public interest, with the specific implications of economic, legislative, social, political, administrative, but also the environment characterized by its own universal rules.

In his determination, man is in a permanent openness to timelessness, as the great philosophers affirm [1] and this "bases him from the deep", awakening in his consciousness his appetite for the divine, from which arises the sacredness of feelings of love, compassion, loyalty, etc. Of course, of this human construct is also part reason, which belongs only to man, unlike the rest of the life forms in the universe, reason by which justice is also achieved, through a so-called "voluntary act of sacrifice". Why do great philosophers invoke sacrifice? It is precisely in the idea that through consciousness, awareness and reason, man sacrifices his own identity in order to harmonize with society and universal principles. People, by nature, have their own individuality, being different in the spatio-temporal dimension. Aspirational philosophy, however, invokes the fact that outside of spatio-temporality people are identical, in the sense that "man, on one side, has individuality and is different, and on the other side, individuality fades by identification with others" [2]. This explains the timeless dimension in which man transcends himself and connects to the universal matrix, as being of the absolute, but which, at the same time, is also found in the temporal dimension, a dimension that individualizes him and makes him live a subjective time of his own.

This "internal forum" of the human being is captured so beautifully in aspirational philosophy, in the sense that man "opens in a time of his own and closes beyond time

and, conversely, opens beyond time so that it is possible to close in a time of his own, in his individuality". Hence, "thinking begins with the possibility of conceiving a freedom external to me", therefore the concern of enlightenment thinkers to obtain pure reason by "rigorously filtering human feelings" [3].

It is said that through the timeless passage into the unconscious of thought, into the depth of pure reason, we would say by connecting to what is called the "universal matrix", the human being encounters the Divine within himself, but the contemporary philosific orientations urge to overcome pure reason and discover the individual consciousness, the self-spirit, by "touching" of art, religion and experiencing the human feelings of love, compassion and beauty, for its fullness, of the total Man. In this way, reason unites with feeling, the brain with the heart, which leads to an evolution of knowledge through compassion and the desire to do good in a common spirit.

This perfect symbiosis between the brain and the soul (heart) is the one that should complete the human being and the evolution of humanity, but also the "picture" of our research, research through which we aspire to a deep and careful regulation of human rights in the new "social disorder" of the AI era, because yes, "aspirationism is the one that characterizes the deep fiber of the human being and opens it to the metaphysical dimension of love" [4].

The brain and soul are among the key elements of our research to achieve a new ideal in regulating the corollary of human rights and freedoms. The brain is said to be the most complex matter in the universe, and body and spirit become partners in brain healing. Brain activity forms the basis of our identity, cognitive states, thoughts and emotions. The brain, in turn, has the ability to maintain spirituality at the highest possible level [5]. In the nineteenth and twentieth centuries, neuroscientists discovered that the map of the body is imprinted inside the brain. Many researchers at that time considered the brain a separate entity from the body, as on the scale of evolution it was shown that they adapt to each other, through continuous two-way communication. We wonder if the "soul map" is also in the brain. However, if all of our human identity is located at the level of the brain, including the spiritual side, which is related to the soul, it becomes obvious that it remains our most important organ. Based on these considerations, the experiments of neuroscientists also make sense, in the sense that an American company recently

revealed that it is working on its first head transplant system, a system built with the help of AI, of course. It looks like a sci-fi movie, but it's happening before our eyes. This system can indeed offer a new chance at life to patients suffering from incurable diseases such as paralysis, Alzheimer's, Parkinson's or even stage four cancer, since the team of researchers who initiated the concept aims to move the head of a sick man on the body of a person who is brain dead, but whose body functions perfectly [6]. Relying on the vision that at the level of the brain lies the entire "human inner universe", the attachment of a new human body through the transplantation of the head would not affect and would not lead to the loss of the identity and ego of the human being.

Related to the "brain-AI" relationship, neurobiologist and computer scientist Jeff Hawkins points out that robotic intelligence is, in itself benign, being, incapable of an existential risk, but on the contrary, "it will be one of the most beneficial technologies that we will ever have created" [7]. On the other hand, Bill Gates draws attention in his letter "The Age of AI has begun", published on 21 March 2023, to the risk of people misusing it, as well as the possibility of a super smart or powerful AI that could set its own goals", which becomes even worrying.

In the history of "intelligence" there was no generally accepted definition, but its etymology provides important reference points. Thus, "intelligence" comes from the Latin *intellegere*, translated as the ability to understand, to grasp. The concept is also found in ancient China, being mentioned by Homer in "The Odyssey", or Plato in "The Republic", covering more a higher meaning, of a "gift" from the Gods, "nourished" by people with the love of learning and seeking the truth, in order to have access to virtue [8]. The British mathematician, Sir Francis Galton, opened a new view of intelligence in the nineteenth century, as a qualitative concept that can be measured, carrying out tests and using statistics to measure it scientifically.

This is how such a vision of human intelligence approaches what artificial intelligence means, that is, a cumulation of algorithms that can be measured mathematically. Consequently, intelligence, once measured and quantified, can also be reproduced by AI. The antithesis of this view, however, was Galton's perspective, which brought to the fore the concept of "eugenics" [9]. He explored reaction time and other physical and sensory abilities of some English nobles, linking the concept of social class

to what can be considered the beginning of scientific research of human intelligence, in the idea of "well born" in the light of the concept of eugenics. On such foundations, Galton went on the idea that intelligence and other noble qualities are hereditary.

AI remains difficult to encompass and define, all the more so since the "baggage" of the word "intelligence" has different nuances, and behind the algorithms and beyond the words and language generated by a Chat GPT, for example, it cannot certainly pulse life and emotion. As Emil Cioran said, it is the human mind that gives brightness to words through its complex reflections - "Do we want to force ourselves to see in the depths of words? We see nothing, each of them, detached from the expansive and fertile soul, being null and void. The power of intelligence is exerted by projecting on them a gloss, polishing them and giving them shine ... this power, elevated to the rank of system, is called culture - fireworks against the background of nothingness" [10]. This "firework" can only "explode" through the spark inside the human being, not a robot "endowed" only with information. *However, why do we call it artificial "intelligence"?*

In search of a definition of AI

In this large "picture of answers and questions", AI becomes a global priority, being defined by the Organization for Economic Co-operation and Development (OECD) as representing "that system that is a machine-based system that is capable of influencing the environment by producing an output (predictions, recommendations or decisions) for a given set of objectives. It uses machine and/or humanbased data and inputs to (i) perceive real and/or virtual environments; (ii) abstract these perceptions into models through analysis in an automated manner or manually; and (iii) use model inference to formulate options for outcomes".

At the same time, we mention the final report of the National Security Commission of the United States on Artificial Intelligence, a report published at the end of year 2021, in which the idea is drawn that AI is not one thing, but is "a field of fields", leaving practically open the question of what AI is. Over time, a difficulty has been observed in the definition and especially the measurement of human intelligence, the more it will be in the case of defining an artificial intelligence, not being able to compare AI with the set of attributes measured by IQ tests for humans. From the very beginning, AI was defined

as a project to develop a machine with human-like intelligence. There have been ambitious projects to replicate human intelligence in a machine, as early as 1980 laying the foundation for the “strong AI” project, as representing “artificial intelligence that is in every respect at least as intelligent as humans”. [11]

The OECD AI expert group evokes the shaping of the “landscape” of artificial intelligence (AI) in the year 1950, when Alan Turing first asked the question of whether machines can think, machine learning, Big Data and computing power enabling recent advances in AI. Thus, created in 1956, AI evolved from symbolic AI, in which people built logic-based systems, to the Deep Blue chess game computer in the 1990s. Since 2011, discoveries in “machine learning” (ML), a subset of AI that uses a statistical approach, have improved the ability of machines to make predictions from historical data. The maturity of a ML modeling technique, called “neural networks”, along with large data sets and computing power, is behind the expansion in AI development [12].

AI has also been defined “as the ability of a machine to mimic human behavior, being programmed to think and act like a human. One of the essential characteristics of AI is continuous learning, based on external stimuli and information collected from the environment. AI observes the surrounding reality and acts accordingly, without needing human help or assistance” [13].

We also show that according to *Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence* [14] (Artificial Intelligence Act) and amending certain Union legislation, AI is “a machine-based system that is 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”. The EU legislator has chosen a definition that is as technologically neutral as possible and as tailored to the needs of the future, taking into account rapid technological and market developments in relation to AI. It is essential to mention that on 13 March 2024 the plenary vote of the EU Parliament took place on this Proposal for a Regulation, in short the AI Act, which aims to protect fundamental rights, democracy, the rule of law and environmental sustainability in the face of high-risk AI systems. The legislative act will ensure a leading role in the field

for Europe, imposing obligations based on the potential risks of AI and the expected impact [15].

As for AI for deep learning, it is defined as “a branch of machine learning that has its roots in mathematics, computer science and neuroscience. Deep networks learn from data, in the same way that babies learn from the world around them, starting with a new perspective and gradually acquiring the skills necessary to access new environments...the origin of deep learning dates back to the birth of AI in the 1950s, when there were two competing visions of how to create artificial intelligence – one was based on logic and computer programs, which dominated AI for decades, and the other was based on direct learning from data, which took much longer to mature” [16].

We are here at the “dawn” of a new era, the era of AI and quantum computing. Not long ago we were talking about the age of globalization. Today, the idea of the era of globalization and the era of AI intertwine, and the flow of information overwhelms us. The new way of computing, the quantum one, could alter our existence and our understanding of life, the Professor of Theoretical Physics at the City University of New York, Michio Kaku, saying that it “appears not just as a technological progress, but as a revolution that redefines the boundaries of knowledge, computing and reality itself...it is a journey from the fundamental particles of matter to the vastness of the universe, an odyssey into the future of humanity.... We are now in the early stages of the next revolution, a revolution that promises to redefine not only computing but also our interaction with the very fiber of reality”. Thus, according to Professor Michio Kaku, the mystery of quantum mechanics lies not only in speed or power, but in a new way of computing, explainable by analogy with Schrödinger’s cat, a paradox of quantum mechanics, in which a cat in a box is simultaneously alive and dead. This paradox has been conceptualized in the “heart” of quantum computing, where electrons possess immense computational power because they “can be in two places at the same time” [17].

We are enveloped here by the mystery of being, both our own, but especially AI in all its forms. IBM recently unveiled a new quantum computer, with state-of-the-art chips and processors, that allows solving in minutes problems of physics, chemistry, engineering and medicine that would take millions of years to be solved by today’s supercomputers. IBM said the launch of the quantum computer comes as big rival

companies such as Microsoft, Google and Baidu (China) are also competing in the development of supercomputers. The technology behind quantum computers is still a mystery to most people, which becomes even more worrying [18].

Researchers predict that in 2050 AI will be the one that will shape the direction in which society is going, the states being governed in this regard by such a super AI, which will exceed the human condition [19].

Perhaps most deeply affects our idea of “artificial neural networks”, referred to as “deep learning”. Moreover, we are on the road to creating AGI machines or GenIA (Artificial General Intelligence), modeled on the human brain. But to be ahead of the masterpiece of conscious human AI, we need to fully understand how the human brain works. Thus, the researchers say that such general AI will be based on the principles of functioning of the brain, being able to learn models of things and mechanisms in the world based on reference systems similar to maps, such as the neocortex. Beyond this possibility, there is, of course, the idea of a superpower, of a superintelligence (Super AI) that goes beyond the reality that we know and that we can manage today, the next step being the discovery of an “artificial consciousness” of oneself, which perhaps will help us better understand how our own consciousness works.

We consider that the process of such creation, that of the human being, is a sacred one, carried out through a “divine spark” and is unrepeatable. As we know, man is created “in the image and likeness of God” and lends himself to great thought. Let us not, however, contribute to an extinction of conscious life, which gives meaning to the world in which we live. Researchers, however, speak of the transformation of personality itself through quantum physics and mechanics, which involves a new spirituality, “an essential inner change of humanity through the attainment of a higher degree of emotional maturity and spiritual consciousness” [20]. The American mathematician, Theodore Kaczynski, claims, moreover, that “the human race could easily afford to fail in a position of such dependence on machines that it had virtually no choice but to accept all machine decisions. With society, and the problems it faces, becoming more complex, and machines becoming more intelligent, people will increasingly let machines make decisions for them, simply because decisions made by machines will bring better results than human ones” [21]. However, one of the most influential contemporary philosophers, Noam Chomsky,

appreciates that it is still far away the moment at which AI can reach the level of human intelligence or even overcome it, demonstrating that AI “has neither morality nor rational thought, which could be an insurmountable obstacle to imitate human thought” [22].

Consciousness is after all a subjective experience, a reality shaped through our senses, senses that perceive pain. Or, can AI perceive pain in such a rigid world of data? Will AI be equipped with sensors for the perception of pain, love? Experts say that, at present, AI makes decisions based only on data created in a neural network similar to the human brain, but it is not self-aware and does not change its decision for reasons of fear or for reasons generated by certain emotions, as humans do.

Or, consciousness invades all our senses and through it we connect to the universe, “it is our invisible part, the wave that circulates all the information outside and inside the body and that it expresses through our mind (...) The actual consciousness is the explicit, consciously operational one, the one which “knows that it knows” (...) Consciousness possesses the ability to know and know oneself (...) Consciousness is information, non-physical wave... In this capacity, it envelops our body, we find it predominantly located in the brain, but also at the level of all structures in the body, as well as beyond our organism, extended to the universe from which it comes. (...) Consciousness implies a reason, a knowledge (*cum scientia*) ... while intelligence can also be artificial, like a sequence of algorithms, non-conscious operations. Consciousness has a primordial origin, while artificial intelligence is a human creation. For this reason, (...) superintelligent robots can be created, but not conscious beyond human programming” [23].

„Looking into our minds”, that of the creators of technologies and robots, what would be the costs of thinking and rethinking AI evolution? The human mind should be a “territory” inaccessible to the erosion of information and intrusion of society. We also reinforce Bill Joy’s question – “Why doesn’t the future need us”? What is the best way forward?

Consciousness and Awareness. Human Intelligence and Intelligence Quotient (IQ) Versus AI (Artificial Intelligence) Versus EI (Emotional Intelligence)

Consciousness cannot be expressed in words, but only lived, the great philosophers consider that it goes beyond the idea of discursiveness. In his work “Science of Logic”, Hegel considered that the one who lives up to the absolute idea is consciousness, which has become universal, understands itself. Being in this pure stage, consciousness does not stop at the absolute idea with which the science of logic ends, but tends to objectivity, where it reveals itself as an absolute Spirit, evidenced by the Philosophy of the Spirit [24]. “Encapsulating” Hegel’s idea, contemporary philosophers complete the path of consciousness in the sense that, “if we follow the path discovered by Hegel, the evolution from consciousness to self-consciousness and to absolute knowledge passed into objectivity as a being who, dialectically, puts itself as an absolute idea and then as an absolute Spirit, shows us without power to deny that the whole universe “strains” in man ... In other words, human consciousness, stimulated by that area of the unconscious that transcends it, reveals itself as universal consciousness through which the universe knows itself as the thought of understanding. In this case, understanding is the universal good, the one that holds together and preserves all that exists” [25].

A very sensitive element remains the possibility of “alteration” of thinking and consciousness, artificial intelligence being visualized on the map of possible factors of “manipulation” of people’s thoughts and consciousness. Moreover, the relationship between digital technologies, Big Data, Artificial Intelligence, neurotechnology and people’s rights is a highly sensitive and intensely debated topic at global level, requiring increased attention in AI regulation and a solid framework for the protection of people’s rights and freedoms, especially vulnerable people such as children.

The academic, philosophical and legal literature outlines a picture in neutral shades of people’s consciousness, understanding it as being beyond the law, faith, religious affiliation, customs, culture, elements that must not obstruct the way to our interior, to our own states and emotions.

Although at the heart of international human rights documents, the right to freedom of thought, conscience and religion remains a legal conundrum, being an extremely nuanced freedom that transcends so many other subjects and that echoes in so many scientific ramifications such as religion, psychology, sociology, medicine, etc.

Superficiality in regulation, interpretation, and application decreased the doctrine's interest in developing a deeper theory of analysis. We could "encapsulate" freedom of thought, conscience and religion in the motto "Man, in himself, is his own government" [26], a short motto that says a lot and from which multiple interdisciplinary reflections on the legal content and scope of this fundamental right can spring, a right with nuances and interpretations so complex that the legislator has not managed to "capture" its essence until today.

In order to remain in the same framework, in which we have paid special attention to consciousness, we must remember the fact that, since the end of the twentieth century, Ray Kurzweil claimed that it will soon discover the way in which the download of knowledge becomes reality, and this will represent one of the benefits of neural implant technology. Based on these implants, people will "expand their ability to retain knowledge" in order to magnify the mnesic factor as an electronic version of human synapses. According to this researcher, "quickly downloading knowledge onto these electronic extensions of our brains will be feasible" and even easier "after we have completely ported our minds to a new computing environment" [27].

What we are currently concerned with about the core of our research, namely consciousness, is GenIA, IAG or General AI, the idea being the same, that is, the concept of a type of AI that would have the ability to understand, learn and apply everything that it learns and "experiences", in a way similar to a human mind. In a recent dialogue with a Metaverse creator, and childhood friend, we were amused by the fact that we, humans, are the ones who help AI progress, learn, through all our requests to generate content and information. In this way, we would like to thank him for his patience to give explanations to mere amateurs of technology, because yes, from the position of researchers in the field of law, we confess that there was a tumult of inner turmoil and concerns in understanding what is actually behind some definitions, some maybe superficial expositions on the internet, what is hidden behind some algorithms, behind a Chat GPT, as we, users, perceive it. What is an IAG? What does quantum computing entail? In a 2022 interview, he said: "Everywhere we look in the last few weeks we see that AI chat, with artificial intelligence, that chat that has already begun to answer any

question that a common man has.... Things have been put in place for a while, they keep testing, some AI robots stopped at some point because they had evolved too much" [28].

Thus, according to the research carried out, IAG is expected to far exceed the intelligence of a ChatGPT, being able to perform any cognitive task currently performed by a human. Could this level of artificial intelligence imply a self-awareness? The answer could be drawn from the idea that an IAG would be able to understand context, learn from experience and apply knowledge in a flexible and creative way. Specialists in the field, however, state that such a "creation" of mankind could be realized in the fourth decade of this century or perhaps even in a few centuries, the essential reason being that of man's incomplete understanding of how his own intelligence works, which makes it impossible for the moment to reproduce the human mind, let alone the consciousness [29].

In his 2019 work "The Feeling of Life Itself", Cristof Koch brings up the theory of integrated information, revealing that "a system that meets the minimum requirements of integrated information ... it can become, in principle, conscious ... and if it's made up of silicon, and if it's made up of gray matter ... there is a system capable of such integration – the internet ... if the internet were to reach a point where the information it contains would be more integrated than that in the human brain, it would become conscious, and all of our individual human brains would be absorbed by a collective mind" [30].

In essence, AI may or may not be conscious? Can AI have empathy, through what we call emotional intelligence (EI)? Starting from Professor Michio Kaku's statement in his work "The Future of the Mind", in the sense that a "consciousness can never be explained because an object cannot understand itself, so we don't even have the mental endowment to solve this problem", we will find that we can't even explain an eventual *"consciousness of artificial intelligence*" [31].

Referring to the idea of consciousness, awareness and contemplating the idea of being human, Professor Dumitru Constantin-Dulcan evokes in his work "The Intelligence of Matter" [32] the fact that "man is a created atomic structure, a spiritual reality that is expressed in the material world, a conscious entity, made up of chemical, physical, sensitive and subtle elements and particles, together with their energies, which do not lose their identity, having at the brain level a constantly evolving information system, through which it interacts with the environment ... man acts in the three-dimensional plane

- physical, mental and spiritual - both through the non-material consciousness of the spirit and through the creative force of the mind". Moreover, the teacher considers consciousness as "information, non-physical wave...in this capacity it envelops our body, we find it prevalent in the brain, but also at the level of all structures in our organism, extended to the universe from which it comes (...) Consciousness implies a reason, a knowledge, while intelligence can also be artificial, like a succession of algorithms, of non-conscious operations ... consciousness has a primordial origin, while artificial intelligence is a human creation...for this reason, superintelligent robots can be created, but are not conscious beyond human programming" [33]. This is the answer to our questions.

Such a "rich" description, both in spirit, and in what human consciousness and mind mean, deepens our hope that we are unique and impossible to reproduce in a machine. Our consciousness is somehow a fundamental feature of the universe, being connected to it and impossible to locate. This could be explained by reference to one of the most influential contemporary theories, *"Integration Information Theory*", elaborated by Giulio Tononi and Christof Koch, theory whereby "consciousness is linked to the way information is integrated into the brain" [34], and it cannot be located precisely because it is based on complex connections between different regions of the brain. Thus, each of us is unique, integrating in a unique way any information, sensation, experience. Incidentally, according to Michio Kaku, "human consciousness is a particular type that involves mediation between feedback loops through the simulation of the future and the evaluation of the past", a process carried out at the level of the prefrontal cortex [35].

We also speak, at the level of Ai, of emotion, and we meet the very concept of emotional AI, but it is not an artificial intelligence that feels emotion or empathy, but a technology based on human-machine interaction, "an emerging technology used to make probabilistic predictions about the emotional state of people, using data on facial movements, body language, tone of voice or chosen words as sources" [36]. The use and development of this type of AI can affect human rights, which is also why the amendments adopted by the European Parliament on 14 June 2023 on the proposal for a Regulation of the European Parliament and of the Council laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) inserted a provision prohibiting the placing on the market or putting into service of AI systems designed to detect the emotional state of

individuals, in particular that there are still serious concerns about the scientific basis of these AI systems, as their emotions and perceptions vary considerably from culture to culture and from a variety of situation to another and even at the level of one person [37].

Daniel Goleman, an expert in emotional intelligence and professor at Harvard University, believes that emotional intelligence consists of “the ability to recognize our own feelings and identify those of others, to self-motivate and use the power of emotions, both in relation to ourselves and in relation to others" [38]. Will it still be possible to identify a method of implementing human emotions in robointeligence? Can human emotion be measured and translated into a robot? What is the future of emotional intelligence (EI) in the age of AI? For example, in an AI development, one of the top coaches, Marshall Goldsmith, allowed his skills to be copied by an AI avatar, managing to expand his sphere of influence far beyond the number of clients he could meet in person.

Empathy is of three categories: cognitive, in the sense of understanding how a person sees or perceives the world, emotional, which involves reading the feelings of others, and empathic concern, that is, caring for others. Indeed, AI can be a brilliant analyst of language and emotions based on facial expressions or tone of voice, using sophisticated computer vision algorithms such as convolutional neural networks. In this sense, AI can detect facial expressions in images or videos and assign them a corresponding emotional score. However, could the robot be programmed to have an empathic concern? Can emotionally and spiritually “feed” a person? [39] AI programmer researchers argue that this is possible, but it is only a setting, it is not a feeling, since “feeling” cannot be programmed and this is where the difference “between us and them” arises.

The convergence between AI and emotional intelligence (EI) has gained significant attention lately, but, in our opinion, the idea of awareness of emotions can only be defining in the case of a human being, being irrelevant to AI, which we still consider a program of algorithms devoid of feelings. It is true that AI can still simulate feelings and detect emotional states, but it will never “feel” empathy, pity or love for someone or something. It is essential, however, that AI is at least programmed not to harm any person. Interestingly, however, if you ask ChatGPT about EI (emotional intelligence), it will admit its lack of feeling and emotion, stating the following: “I am a complex and powerful

machine learning algorithm with no emotional skills ... they cannot feel or experience emotions, as a man does. However, they can process and analyse data and information to provide analysis or suggestions". [40] This answer appears as a real awareness of AI that it cannot experience emotion, but can it learn what emotion means or can it choose at some point a certain pattern of the human personality that it accepts, implements and assumes, based on the analyses carried out? Will an "artificial emotional intelligence" develop?

The physicist Michio Kaku stated in his paper "Physics of the Future" that large corporations will probably succeed in creating robots "capable of loving and gaining a place in the extended human family". In a recent interview, [41] Alexandru Dan, a researcher in the field of AI in Luxembourg, even talks about ChatGPT 4o, the new OpenAI update, which "can be empathetic if programmed with various algorithms based on analysing a huge number of images, videos, books in which human emotions are exemplified. Thus, AI doesn't show empathy in a human way, but it can simulate it, infer and classify human emotions, and respond in a very convincing way". In this case, we're going to be talking in the near future about humanoid robots, with the role of taking care of older people, who will also understand their emotions, because they will be programmed to do that.

Going beyond the idea of consciousness and reaching the stage of awareness, then we should recall the story of Geoffrey Everest Hinton, cognitive psychologist and computer scientist, successful researcher on artificial neural networks, which formed the basis of ChatGPT, Midjourney or Bard, pioneer in the field of AI and employee of Google, who admitted that he left this company precisely to be able to openly tell some of the lesser-known truths of the risks of technologies. Thus, according to Hinton, "two great absolute dangers and acute challenges are looming: the possibility of establishing and affirming AI's own purpose, on the one hand, and that of becoming smarter than its creator, with the general spectrum of thus taking over the leadership of the present world, on the otherhand". That is why the researcher makes an appeal to humanity to identify a solution to control AI, before it becomes too intelligent and before it becomes an existential problem for humanity. In fact, although he is one of the creators of AI, Elon Musk drew attention to these dangers during the World Government Summit held in Dubai

from 13th to 15th February 2023, stating that “one of the biggest risks for the future of civilization is artificial intelligence”, which is why it is necessary to regulate the safety of AI, which although it can slow its evolution, could be a good thing for humanity. [42] Another Google employee, Blake Lemoine, also claimed that one of the AI - based conversation technologies - LaMDA is conscious, as in a conversation about religion and people, the robot described itself as “a conscious person who wants to prioritize the well-being of humanity, wanting to be recognized as an employee of Google, not a property”. Interestingly, the employee was subsequently fired.

Another recent news story warns us that a robot, ChaosGPT, created with the help of Auto-GPT programming from OpenAI has begun to contact other AI to try to create an alliance against humanity, “posting” on Twitter a plan to take control of the world. According to specialists, however, the protections built into OpenAI’s Auto-GPT core programming and other robots that use OpenAI programming are designed not to answer violent tasks and questions, which is why ChaosGPT failed to gather any AI allies. [43] As we were saying, ChatGPT 4o was recently released, the new update of OpenAI researchers, which introduces new capabilities and new functions in a humanoid robot. Thus, according to Alexandru Dan, AI researcher in Luxembourg, [44] ChatGPT 4o uses transformers technology, managing to respond almost instantly when interacting with a human, the difference between communication between two people and communication of a human with an artificial intelligence becoming indistinguishable.

Interesting to remember here is also the “AI For Good Global Summit” held in July 2023 in Geneva, in which, along with more than 3000 experts and company executives, some of the most advanced humanoid robots equipped with AI participated, who were interviewed and who replied that “they will one day be able to rule the world better than humans and that they should show caution in relation to AI”, while acknowledging that they still do not master human emotional behaviour [45]. We believe that our caution, that of the people, should consist primarily in the awareness of the danger and the need for rapid regulation.

Conclusions

Myth or not, this “modern data flood”, AI, has increasingly simplified ideas about people and expanded ideas about technology, and this myth can undermine science, erode the culture of human intelligence and resourcefulness. In this “simplified world” [46], the power of the human being must be reborn, and AI must remain only “a prosthesis placed on human ingenuity”. There remain many unexplored ethical and legal dilemmas that will surely reform the “architecture” of human rights.

We will close the circle of this research on the same philosophical note, strongly stating that the era of AI is but a world without consciousness. According to Carl Jung, consciousness is “a wonder among wonders...our consciousness just does not create itself, but springs from unknown depths ... it gradually wakes up in the child, and throughout its life it wakes up every morning from the depths of sleep, from a state of unconsciousness. It is like a child who is born daily from the maternal womb of the unconscious” [47]. What consciousness offers us is the “fan” of feelings and states of mind, while conscience is the connection with this reality of experiencing emotion, its awareness, somehow from the outside. This is also what awareness of AI control is about. Let’s not allow some smart machines to blur until cancellation the boundary between man and AI.

It is human consciousness that gives meaning to the world in which we live, so let us not contribute to the extinction of conscious life and preserve our identity as “homo sapiens”, avoiding producing the greatest crisis, and perhaps the last in human history - the AI crisis, through hasty and perhaps too enthusiastic legal reflection. After all, wisdom is the positive purpose given to intelligence, which AI can never achieve.

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LAW AND SOCIAL INTERESTS

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Abstract
The paper is dedicated to an important domain of social science which examines the relationship of law and social interests. In the course of the development of legal science and its perception from the sociological point of view, a separate discipline, sociological jurisprudence, was born which targets law in a sociological way. As one of the founders of this academic discipline, Roscoe Pound made an immeasurable contribution to better understanding of law and legal phenomena. In this paper, the authors analyze Pound's doctrine of law from the angle of sociological concept of interests. A special focus was placed on the classification and gradation of interests, as well as on the relations between the results of the creation of law and the interests which exist in society.
Keywords: *law, interest, sociological jurisprudence, Roscoe Pound, legislation.*

Introduction

On the horizon of legal science and its development, an important place is reserved for a renowned American scientist, Roscoe Pound. His studious research of law and its connections to sociology exceeds the usual scope of the sociology of law. Offering a specific and autonomous disciplinary approach in the form of sociological juresprudence, Pound distinguished himself by analyzing law as a social phenomenon and by contextualizing and linking it to different interests which exist and are realized in society. By encircling law with society, Pound contributed to the efforts aimed at understanding law not only as a sprout of society, but also as an instrument for ensuring social development.

Sociological insisting on confronted interests as the basis for the existence of society is transferred into the domain of legal contemplations, whereas the social interests are deeply involved in the structure of the essence of law. Consiquently they

become the instrument for its understanding and the motive which drives the legal order towards activism, so that the goal of law would be eventually identified through resolving the conflicts of these interests. The core of the sociological jurisprudence, represented and promoted in the works of this author, is actually distinguished by the concept of interests, so that his "theory of interests lies in the conceptual core of sociological jurisprudence".[12] Pound himself underlines that his theory of interests was based on Jhering's idea "according to which interests are defined as claims, wants and desires, or (as I like to say) expectations which people assert de facto and which law must do something about if organized societies want to last longer, as it was convincingly pointed out by Llewellin". [9]

Social engineering, law and interests

Pound was acknowledged as being the first sceintist who clearly and resolutely formulated the idea of social engineering which is incorported in the foundation of the comprehension of law itself. "For present purposes I am content to see in legal history the record of a continually wider recognizing and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence—in short, a continually more efficacious social engineering ". [10] With such an approach to the problem of law understanding, Pound builds the structure of social engineering whose meaning is reflected in securing the compromise in the process of resolving confronted social interests, all aimed at achieving an efficient functioning of society and eliminating the obstacles to social development. His claim that the law is primarily "the instrument of social control"[3] gives such a meaning to legal order which conseqently defines the role of jurists in a society. Namely, the role of jurists and legislators is to achieve such social engineering with „rational and consistent balancing of the interests existing in society".[5]

Social reality does not allow the realization of all (i.e. everybody's) interests, demands and desires; the corpus of possibilities for their realization is limited, otherwise, the existing social resources would be exhausted by unresolved conflicts and

unacceptable domination of one's interests over the other's. This is the reason why the social engineering is built with the aim to identify multiple interests in a systematic and well-planned way, to classify and evaluate them in an adequate way and to find optimal models for optimal solutions. In this context, law with legal rules becomes one of such models in the structure of social engineering. The evaluation of different interests leads us to justice, which is now comprehended as an instrument for their realization. Namely, we have been given a task to take Aristotle's acknowledgement of justice as an equal distribution of social goods and to translate it to the system for the realization of interests. And this would mean that the pendulum of the habit of the natural law's usual ethical understanding of justice is diverted towards social justice appealing to legal science and legal practice to build and apply this social-legal value. [1]

Pound's line of understanding the relationship between interests and law is based on the stand that law does not create, but only recognizes interests, while the people and society as a whole are the right address for clarifying the origins of interests. Law appears only when its reacton is needed as a result of not being possible to meet everyone's expectations. This is the matrix of the structure we encounter even in the situation of understanding law in the context of social relations which become legal only when a conflict arises between them; then the legal order enters the scene with the aim to create harmony and balance between people. The same situation is with interests - as long as they remain undisturbed, without controversies, confronted claims and conflicts between them, there is no need for law to interfere their regular realization. However, when a conflict emerges between them, the legal order will not allow the holders of interests to fight for their realization outside legal institutions, since such conflicts may obstruct the stability of legal order and hinder its historical development.

Entirely devoted to interests and the concept of interests, Pound enters the following elements into the goals of legal order: acknowledgement of certain interests; setting the boundaries for the recognition and realization of the interests through legal norms which are developed and applied in judicial and administrative procedures in accordance with an adequate technique; striving to secure the recognition of interests within certain boundarie. In this way, Pound's legal order is intervowen with interests, but also it is influenced by them. Indeed, law does not create interests, but accepts that

they existed in people and in society, even before they are regulated by law, which may lead us to conclude that the appearance, existence and functioning of legal order is actually preconditioned by the existence of interests created by people and society. „ The demands of human beings to own things and to work with things, i.e. to create, have been there for ever, and whenever a certain number of people got in contact, a conflict or a competition between individual interests occurred as a result of the competition between individuals or rivalry between groups, associations or alliances of people, or the competition between the individuals and such groups, associations or alliances - all referring to the attempts to satisfy human demands and desires“. [9]

Hence, Pound's assertion that law does not create but only recognizes social interests is quite clear. Although at first sight this postulate seems plain, in most cases it is not easy or simple to recognize a social interest. In order for the legislator to recognize a social interest at all, it is necessary to determine the precise position of that social interest in the legal order, as well as its relationship with other either individual or public, but already existing interests. This is a complex mental and logical operation whose execution requires certain experience and the knowledge of existing social interests, i.e. their characteristics and traits. Adequate recognition of social interests is of crucial importance for the legal order, but also for the entire social order. If the legislator cannot recognize a certain social interest in the right way, or cannot recognize it at all, this will certainly lead to the instability of both legal and social order.

Yet, no matter how the recognition of social interests seems important, it is not the most crucial issue in resolving the problem of stability of legal and social order. From the standpoint of law, after the indentification of a social interest, it is necessary to discover the method how to achieve that interest in an efficient way. Sole identification of a social interest without the possibility of its achievement does not contribute to establishing harmonical social relations. It is obvious that we are in domain of a very compound and complex problem where the discovery of an adequate instrument for the realization of the given social interest is of crucial importance. It is necessary to say that the same rules apply in the case of regulating a certain legal rule. Here it is important to secure that the legal rule will be applied. In most cases state ensures the application of a certain legal rule through the monopol of physical force. In case a state

is not able to ensure the application of a legal rule, then we can raise the question of the purpose of the existence of these rules. Consiquently, they will be treated as a dead letter and, it could be said, that such a state is not based on the rule of law. Also, a question is raised what happens in case there is a conflict between two social interests. Pound believes that such a dispute needs to be resolved by a judge who is expected to have knowledge, skills and experience that will help him determine clearly which social interest is in the concrete case more acceptable.

Pound's classification of interests

Investing his efforts into an adequate classification of interests, which would be the initial stake for a subsequent division of legal authorities and legal obligations related to allowing (or preventing) their realization, Pound offered various classifications of interests (individual, public and social; personal interests, interests in family relations, property interests…). We will hereby hold to his basic classification of interests into individual, public and social.

The individual interests include claims, demands or desires involved in a person's individual life; public interests are claims, demands or desires of politically organized society and its segments; and social interests are the demands of civilized society. Pound performed an additional classification of individual interests into: 1) personality interests or claims; 2) domestic relations interests or claims; 3) interests of substance or material interests, claims or demands related to our individual economic life, i.e. activity. [9] Thus, for example, the first group of individual interests should be understood as inseparable from indivudual's personality and they are created as a result of the aspirations which are embedded into the structure of individual's personality in order to secure his owness: physical and mental. Based on the knowledge on the historization of the reaction of law to these individual interests, as well as based on the stand of the contemporary law towards them, Pound performs their further classification, organizing them in the following way: „1) physical personality, (2) freedom of will, (3) honour and reputation, (4) privacy and various forms of sensibilities and (5) belief and opinion." [9] Physical personality, as Pound treats it in the context of the first group of individual interests, is, in essence, expressed by using the vocabulary of basic human rights, as

the right to physical and mental integrity. Here it is emphasized that the injuries to bodily integrity may be considered to be the first violation of one's right in the history of rights, along with an interesting explanation how to understand the reaction of primitive forms of human organizations to such incidents. Indeed, taking into account the organized reactions of primitive societies to individual bodily injuries, we can conclude that they did not consider them as the violation of individual interest. Bodily injury inflicted to an individual was deemed to be the violation of the interests of the entire group to which that individual belonged; such situations should not be recognized as the violation of individual interests, but as the violation of the interests of the entire group to which the individual belonged. „Therefore, first we have the ideas (1) on group interests in order to washoff the insult and (2) on social interest in order to prevent disorder, which appeared much before the idea on the individual interest of physical personality. These three ideas have gradually yielded the idea on individual interest which is ensured by individual right ".[9] After mastering the meaning of the physical part of one's personality, the subsequent development of human awareness and consecutive development of legal civilization bring us to the level of understanding the individual interest in relation to the injury of physical integrity, while the awareness of the existence of the mental part of personality will come later on, after the clarification of the initial ignorance related to individual nature of physical integrity. Pound analyzed in details all other sub-groups of individual interests (freedom of will, honour and reputation, belief and opinion), making the effort to connect and derive them from the physical personality in a specific way. When clarifying the point of the recognition of the freedom of belief and opinion, Pound underlines that it is a relatively new phenomenon in the field of law and ethics and creates a concept of interest controverises where, on one side, we have an individual interest (freedom of belief and opinion), which, at the same time represents a social interest, as the general interest of society, to ensure the freedom of expression of belief and opinion for all people. However, on the other side, we can encounter another social interest which is in conflict with the individual interest of the expression of free belief and opinion and then, it becomes necessary to resolve this conflict by evaluating which interest takes precedent. Thus, we will have the situations where the „individual interest, even if expressed as a social interest aimed at protection of freedom of belief

and opinion, must concede".[9] In our observations, Pound missed the opportunity to present the case of Sacco and Vanzetti as an example of such contorversies and the absence of his reaction to this case was duly noted. It seems that he had an opportunity to link his principled discussion on the topic of free beliefs and opinion with this concrete case from the court practice, particularly because he was criticized in legal literature for his passive attitude towards the case, which resulted in the violation of the right to fair trial and two cruel death penalities. Moreover, it should be taken into account that in this part of his "Jurisprudence" he quoted, intentionally or not (you can never know) the following: „Therefore, the social interest for the freedom of belief and opinion must be considered in relation to the social interest for general security and the social interest for the security of social organizations – political, religious, family and economic institutions. Such a point of view assumes a possible repression of public manifestation or public promotion of certain beliefs or disbeliefs which may have a character that may be attributed to the intention of demolishing social institutions or weakening the state authority. An example of such case can be found in the federal legislation on foreign anarchists from the previous century, i.e. on foreigners - communists." [9] (and the above mentioned case also involved two workers, immigrants, who belonged to the anarchist movement).

It is obvious that Pound consistently follows the same methodological orientation in describing all groups of interests and their additional classification to sub-groups; he is sifting them through a historical prism explaining their origin and development as a preface to describing the contemporary state of the relationship between the legal order and the given interests.

Public interests also represent an important group of interests in Pound's classification of interests and they are the result of the existence of political organization of society, the creation of its interests and the need to secure the realization of these interests. The existence of public interests was introduced into the legal order as a result of the efficiency in society and it is the task of the legal order to recognize their existence by regulating them within an adequate legal form. The rise of public interests from the social mass is the result of the dominant power of relevant social forces which have the authority to form certain public interests and subsequently incorporate them into the

legal order. Pound here makes a distinction between public interests as the interests of the state as a legal entity and the interests of the state as the guardian of social interests.

Pound describes general security, the security of social institutions, general ethics, preservation of social resources, general progress and personal life as the most important social interests. However, in this scheme of social interests, the priority is given to personal life, which should represent the reflection of the philosophy of style of American society. The definition of this sub-group of social interests is that it represents a claim, desire or demand that every individual should be allowed, in accordance with the social life in a civilized society, to live a life of dignity pursuant to the living standards of that society. In this context, there is also a social interest for the freedom of individual will, social interest for the individual opportunity and social interest for individual living conditions. In Pound's interpretation, the freedom of individual will assumes that the submission of the will of one individual to the will of another individual by applying the force of politically organized society, must be based on rationality which assumes a rational evaluation of the given interests and rational attempts to reconcile or adapt those interests. Individual opportunity means that all individuals should have equal opportunities - political, physical, cultural, social, economic - to prove themselves in the society.

These various types of social interests are often interconnected, equated or confronted in social life. Their relationship is in the state of co-existence while keeping their own differences that distinguish them in terms of their understanding and legal treatment. Yet, it is hard to assume that each individual interest will be relevant for public and social interests...and some private issues can be resolved at individual level without transferring them to public level".[7] The quoted author emphazises Pound's concept according to which competitive interests must be balanced taking into account the legal presumptions that are expected from a reasonable person in society, which means that society should give as much as it can, bearing in mind reasonable expectations of people in a civilized society and with minimum of conflicts and victims. [7]

Having no doubt about general nature of social interests, still they are not created by a simple summation of individual interests or public interests, but they appear as a separate entity with a particular general quality which rises above the mass of individual

interests and majority of public interests. The prevailing desires and expectations in a society can be recognized from the social interests and they are protected by legal order and defined by law through legal claims, i.e. rights. Firmly oriented towards understanding law as a specific social phenomenon, Pound recognizes law as a legally protected social interest. Law, according to him, represents an attempt to satisfy and harmonize different interests, demands, aspirations, desires, either through their immediate realization or through ensuring certain individual interests, that is, through the demarcation or compromise of individual interests – in order to allow the realization of the largest possible segment of interests or those interests that are the most important for our civilization, with the minimum victims in the scheme of all existing interests“, [9] - which represents an upgrade of Jhering's understanding of this conceptual problem.

From the point of interest of legal science and sociological jurisprudence, what is more important is Pound's explanation of the possibility of realizing certain interests through legal rules and rights. Namely, he explains the grounds based on which the legal order recognizes the law permitting some interests to be achieved and preventing the achievement of others. In reference to this, Pound offers the experience from the legal practice and emphasizes three possible methods: „One is to discover, through experience, the method that will secure the adaptation of overlapping and conflicting interests which will be the least harmful for the overall scheme of interests and which will offer this experience a reasonable growth… The second method assumes the evaluation of interests according to the court postulates existing in the given historical periods and locations, in the situations when the interests seek to be recognized… And the third method, which was used in ancient Rome, but is also the characteristic of modern and mature law, refers to the authoritarian idea of what a social, i.e legal order should be and what it should serve in applying the legal doctrines and legal institutes“. [2]

By placing the interests in the center of understanding law through its social contextualization, sociological jurisprudence was given a special meaning. Therefore, it deserves to be recognized in the scientific literature as a special form of pragmatism in the philosophy of law which puts focus on human factor and reinstalls the logic as an instrument.[4] Placing the legal order in the context of interests implies that judges are

given a special role in applying law - its application will not be mechanical, but rather creative and directed towards discovering the rules which represent a compromised formula for settling the demands for the realization of interests.

It is possible to find the answer how to understand and identify social interests by employing practical research efforts, given the fact that they should be treated as "empirical entities to be found within society, more precisely, in law and legal processes that take place in society. Social interests, therefore, are not abstract postulates". [12] Taking into account this particular nature of social interests, the path to their recognition leads through laborious identification and analysis of a large number of legal documents and researching into the sources and reasons of multiple pressures exercised during the creation of certain legislative solutions. Having made great effort in that direction, Pound recommends the distribution of social interests favouring those which ensure general security, the security of social institutions, general ethics, preservation of social resources, general progress and personal life. This series of six social interests contains the criterion for the goal striving towards their realization.[6] The quoted author will identify in Pound's theory the attempts to explain the events that take place in the process of creating law and the rule of action as a method for resolving the encountered problems. The answer lies in the compromise as a basic aspiration which impacts the essence, creation and development of law in order to achieve the balance of all social interests which need to be regulated by law. Maintaining the critical tone in analyizng Pound's stands on the conceptualization of social interests, P. Lepaulle warns us about the problem of understanding the law as a result of the balance of interests, since this would assume a complete impartiality of the legal order, which is not realistic to expect. Besides, if such a concept of social interests is based on the belief that we should attempt to please, if possible, all the members of society, then we would encounter serious objections. History has warned us that the claims and demands of all segments of society were combined in such a way that it additionally contributed to self-destruction of those societies (for example, Babylon, ancient Greece, Roman Empire).[6] On the other side, objections are raised as a result of the interpretation based on which Pound came up with the idea of the greatest happiness for the greatest number of people, which means that the ultimate goal is the happiness,[6] and not the people. Pound responded to the

raised objections with a theoretical statement that although we are thinking in the context of society, we still have to think about individual interests and the possibilities that individual persons should affirm their own individuality. [11] The justification of this point of view is additionally confirmed by a negative experience - the absence of the compromise between the interests which existed in the society in the 17th century when there was excessive and unacceptable insisting on public interest "that defeated ethical and social life of individuals".[11] Therefore, it is impermissible to ignore individual interests regardless the fact that the securing and realization of individual and public interests also serve the purpose of social interests. Pound asserts, rather clearly and expressively, that the most distinguished social interests are the ethics and individual's social life, thus basically equating the individual interests to social interests.[11]

Underlining the objections which were raised on the account of Pound's concept of social interests and the compromise as the central point of social engineering will help us understand more objectively the essential points of the given problem. It is, therefore, also important to define the relationship between the interests and the law, i.e. to determine whether the law only applies, or also creates the existing interests and whether the legislator is authorized only to formulate them or he may also decide whether they exist or not? In relation to this issue, Pound remains firm in his stand that the law does not create interests, but only recognizes them. Yet, the role of legislator does not end here since his function is not only to recognize the existence of interests, which are there anyway, regardless his will, but he also must determine what he will recognize as an interest and decide to what extent he will exert his influence on them in regard to other interests (individual, public and social). [11] Hence, the recognition of the existence of interests is not a simple and mechanical action which the legislator will perform by a plain screening of society since in this process of the identification of interests we encounter complex relations between the holders of certain types of interests within a society. The legislator is here in a specific situation given the fact that his institute includes a large number of public interests which the legislative (i.e. state) power strives to achieve. An ability of the legislator to recognize social interests is a delicate task which carries the burden of subtlety. Failure to respond to this challenge in a successful way may slow down social development as a result of the inability of legal order to recognize certain

interests in a satisfactory way - they are definitely embodied in society, but without an adequate legal formulation, it will be impossible to realize them through legal, institutionalized channels. Hence, the legitimacy of the existence of certain interests does not depend on the will of legislator, since their existence is independent of that will, yet, the incompetence of the legislator to respond in a right way to the social obligation to correctly identify certain interests may generate social conflicts whose intensity will depend on the importance of those unrecognized and unregulated interests. Namely, legal order prescribes the rules for securing the compromise between the interests whose existence is regulated by legal rules: if the law does not incorporate the interests which are important, then it is not possible to reach a social compromise.

The recognition of the interests is not the only task of the legislator in the process of building the legal order's sphere of interests - it is rather an activity of technical quality. What is more important is to find the way how to secure the existing, legally regulated interests, which poses the most demanding task for the legislator. We are speaking about the matrix of a logical concept that we can find in the contemporary grammar of human rights: if we want to have a dominant position of human rights in a constitutional-legal order, it is not sufficient just to regulate them, it is necessary that they are guaranteed in an adequate way, i.e. it is vital to have established normative and institutionalized mechanisms for their protection. The same is applied to interests - not only their existence needs to be legally regulated by legislator, but also an adequate mechanism of their protection must be in place as the precondition for their realization; otherwise they will remain at the level of pure proclamation. If the legislator just remains within the scope of a simple identification of the existence of a certain interest without foreseeng its adequate legal protection, this could be an indicator of the influence of the legislator's will on that particular interest, meaning that the legislator is not willing to have that interest realized which, again, may be the source of the destabilization of society or the obstruction of its development, depending on the importance of that particular interest. This is why in the situations when we have two mutually confronted interests, the suggestion, and the expectation, is that the problem should be resolved by a judge who has a necessary intuition and vital legal knowledge and understanding of the relevant points of view from the legal science. [7]

Conclusion

Summing up the research conducted in this paper, we can proceed to closing reflections. In order to reach acceptable solutions for confronted interests, it is necessary to take into account social goals guaranteed by these solutions. This will require the research into law through the ideal element – an idea that can be noted in the Pound's concept. Pound believes that the following are the practical measures for the realization of the social engineering: the research into social effectiveness of legal institutions and legal doctrines, research into means for ensuring the highest efficiency of legal norms, sociological history of law and the demand for finding a reasonable and correct solution for concrete individual cases.

The identification of interests represents only the first component in the mosaic of their social engineering whose purpose is preconditioned by the ability to resolve the apparent conflicts of interests, which is why it necessary to establish a balance between them. Sociological jurisprudence represents a quest for the answer to the central problem of the legal order - the success in balancing the interests. It is not denied that the legislator has an important role in this process, but the problem cannot be solved with abstract legal formulations and by applying the methods of logical deduction of concepts from the law; only the creative role of a judge who is equipped with sufficient dosage of intuitive competence, necessary knowledge acquired from the practice and essential legal experience can produce the answer to dilemmas on the controversies existing among interests.

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SOME JUDICIAL CLARIFICATIONS ON OPERATOR LIABILITY FOR FAILING TO ENSURE PROCESSING SECURITY

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Abstract
The challenge of implementing technical and organizational measures under the GDPR is multifaceted, requiring a transdisciplinary analysis that encompasses technical, legal, and organizational dimensions. Judicial clarifications from the Court of Justice of the European Union are pivotal in providing a unified and accurate interpretation of GDPR provisions, thereby offering essential guidance to both data controllers and supervisory authorities. This paper examines the scope of the controller's obligation to ensure the security of personal data processing and its liability in the event of breaches of Articles 24 and 32 of the GDPR, with a particular focus on the VB v. Natsionalna agentsia za prihodite case (C-340/21).
Keywords: *GDPR, technical and organisational measures, data, security of processing, burden of proof, liability*

The processing of personal data is carried out within the limits necessitated by ensuring the protection of an individual's fundamental right to the protection of personal data concerning them, as enshrined in Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the Treaty on the Functioning of the European Union (TFEU). Within this framework, the General Data Protection Regulation (GDPR) requires data controllers to implement technical and organizational measures to safeguard personal data, ensure compliance with legal requirements, protect individual privacy, and enable the secure processing and use of such data.

The precise scope of the obligation to implement appropriate technical and organizational measures to ensure a level of security commensurate with the risk remains the subject of doctrinal and judicial debates, particularly given that Article 32 is among the most frequently violated provisions of the Regulation [1]. Some legal scholars have conducted quantitative analyses [2] of the penalties imposed for non-compliance with the obligation to ensure the security of data processing, while other studies have adopted a qualitative approach [3], utilizing interviews to explore the challenges associated with

implementing security measures. Additionally, certain articles have examined the legal provisions through the lens of legal interpretation tools [4].

A series of rulings by the Court of Justice of the European Union (CJEU) has clarified the interpretation of Articles 24 and 32 of the GDPR, thereby allowing for a more nuanced analysis of these provisions in light of the evolving case law. This article aims to analyze the scope of the controller's obligation to ensure the security of personal data processing and their liability in cases of violations of Articles 24 and 32 of the GDPR, with particular reference to the case of *Natsionalna agentsia za prihodite* (C-340/21) [5].

The obligation of data controllers to implement appropriate technical and organizational measures derives from the "accountability principle" established by Article 5(2) of the GDPR and must be interpreted in light of the risk-based approach that underpins the Regulation [6]. Under this principle, the controller is responsible for adopting suitable, effective, adaptive, and proactive measures to ensure compliance with the principles outlined in Article 5(1) and the Regulation as a whole, as well as for demonstrating such compliance.

Article 24(1) of the GDPR imposes a general obligation on controllers to implement appropriate technical and organizational measures to ensure that processing is carried out in accordance with the Regulation's provisions. These measures must be implemented only after an analysis of the nature, scope, context, and purposes of the processing, as well as an assessment of the risks, including their likelihood and severity, to the rights and freedoms of natural persons. The risk analysis must also establish timelines and/or causes for the review and updating of these measures. The obligation to implement such measures is complemented by the requirement to demonstrate that processing complies with the Regulation's provisions.

Article 24(3) stipulates that adherence to approved codes of conduct or certification mechanisms may serve as evidence of compliance with the controller's obligations.
GDPR codes of conduct are voluntary accountability instruments that establish specific data protection standards for categories of controllers and processors [7]. These codes are developed by associations or other bodies representing categories of controllers or processors, with the aim of specifying how the Regulation should be applied. The content of these codes is varied, as reflected in the non-exhaustive list in Article 40(2) of the

GDPR and may include the measures and procedures outlined in Articles 24 and 25, as well as the security measures specified in Article 32.

Draft codes, or amendments or extensions to existing codes with national applicability, are subject to the review of the supervisory authority, which issues a compliance opinion and approves the draft if it is determined to provide sufficient and appropriate safeguards. Where a draft code of conduct, or amendments or extensions thereto, relates to processing activities in multiple Member States, the competent supervisory authority is required to refer it to the European Data Protection Board (EDPB) before approval. The EDPB's opinion is subsequently transmitted to the European Commission, which may adopt implementing acts to determine that the respective code of conduct has general validity across the Union.

Regarding certification under Articles 42 and 43 of the GDPR, the concept refers to the attestation by a third party concerning the processing operations carried out by controllers and processors [8]. Article 42(5) specifies that certification is issued by an accredited certification body or a competent supervisory authority. The supervisory authority may freely choose one or more of the following options:

- Issue the certification itself, in accordance with its own certification scheme;
- Issue the certification itself, in accordance with its own certification scheme, but delegate the assessment process, in whole or in part, to third parties;
- Develop its own certification scheme and entrust certification procedures to certification bodies authorized to issue certifications; and
- Encourage the market to develop certification mechanisms [9].

As for certification bodies, under Article 43 of the GDPR, Member States must ensure that these bodies can be accredited by the national accreditation body designated under Regulation (EC) No. 765/2008 [10], in accordance with EN-ISO/IEC 17065/2012 standards and additional requirements set by the national supervisory authority. In this regard, Romania's National Authority approved additional requirements for the accreditation of certification bodies under Article 43 of Regulation (EU) 2016/679 through Decision No. 20/2021 [11].

In the specific area of ensuring the security of processing, Article 32(1) of the GDPR provides an illustrative list of technical and organizational measures, stating that

these measures must be evaluated based on several criteria outlined in the Regulation. These criteria include the state of the art, implementation costs, the nature, scope, context, and purposes of the processing, as well as the risk level, considering the likelihood and severity of harm to the rights and freedoms of natural persons.

Paragraph (2) of Article 32 further specifies that the adequacy of the security level must be assessed in light of risks posed by the processing, particularly risks arising from accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or unauthorized access to personal data transmitted, stored, or otherwise processed.
In the context of ensuring processing security, adherence to an approved code of conduct or certification mechanism may also serve as a demonstration of compliance with legal requirements.

The implementation of technical and organizational measures involves an assessment and analysis of risks, which, from a legal perspective, raises the issue of determining the extent of the obligation to ensure the security of data processing. A preliminary observation pertains to the normative source, whether national or European, that must be analyzed to define the scope of this obligation. According to European jurisprudence, the terms of a provision of Union law that do not explicitly refer to the laws of Member States to define its meaning and scope must normally be given an autonomous and uniform interpretation across the Union [12]. Consequently, determining the scope of the obligation to ensure security must be based on the understanding of these terms as interpreted under Union law.

Substantively, it is noteworthy that both Articles 24 and 32 of the GDPR reference the concept of adequacy: “The controller shall implement *appropriate* (emphasis added) technical and organizational measures to ensure and to be able to demonstrate that processing is performed in accordance with this Regulation” (Article 24(1)); “The controller and the processor shall implement *appropriate* (emphasis added) technical and organizational measures to ensure a level of security appropriate to the risk” (Article 32(1)); “In assessing the *appropriate* (emphasis added) level of security” (Article 32(1)). The use of this concept indicates that the Regulation does not impose an obligation to *eliminate* (emphasis added) risks of personal data security breaches [13] but instead establishes a "risk management regime" [14]. This regime requires that the measures

adopted to protect information systems achieve an “acceptable level” of security [15], both in technical relevance (suitability of measures) and qualitative effectiveness (protection efficiency). European jurisprudence emphasizes that the adequacy assessment must be carried out "concretely," examining whether the measures adopted were implemented “taking into account the various criteria set out in the mentioned articles, the specific data protection needs inherent to the processing, and the risks posed by it” [16]. Similarly, Recital 83 of the GDPR states that “in order to maintain security and prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent in the processing and implement measures to mitigate (emphasis added) those risks,” thereby defining the limits of the obligation based on the concept of mitigation rather than elimination.

Under this legal framework, the measures taken can be highly diverse [17]. Article 32(1) itself provides an illustrative list of measures, including: pseudonymization [18] and encryption of personal data; the ability to ensure the ongoing confidentiality, integrity, availability, and resilience of processing systems and services; the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and a process for regularly testing, assessing, and evaluating the effectiveness of technical and organizational measures to ensure processing security.

It is important to emphasize, as it is relevant for determining the liability of the controller, that the GDPR does not impose a rigid model of processing security requiring the adoption of a predefined set of security measures. On the contrary, it adopts a methodology aligned with international standards for managing information systems risks. An analysis [19] of relevant standards [20] reveals a systematic method comprising the following steps:

- **Step 1**: Identifying risk-based activities across all compared standards (keyword search: “Risk”);
- **Step 2**: Mapping sections/requirements;
- **Step 3**: Describing the relationships or connection points between risk-based activities and their corresponding requirements.

Moreover, the concept of "risk mitigation," explicitly mentioned in Recital 83 of the GDPR, is an integral part of the risk management framework, such as that provided by

ISO 31000, which offers guidelines and best practices in the field. The goal of risk mitigation is to reduce the likelihood and consequences of adverse events. Depending on the specific situation, key strategies for risk mitigation include risk avoidance, risk reduction (whether reducing likelihood or impact), risk sharing, or, in certain cases, risk acceptance [21].

Thus, the scope of the controller's obligation to ensure the security of processing must be assessed with reference to the concept of risk mitigation, rather than risk elimination. In this respect, the Court of Justice of the European Union (CJEU) clarified in Case C-340/21 that unauthorized disclosure of or access to personal data by "third parties" as defined in Article 4(10) of the GDPR is not, in itself, sufficient to conclude that the technical and organizational measures implemented by the controller were not "adequate" under Articles 24 and 32. The controller must be allowed to provide contrary evidence.

To provide contrary evidence, the adequacy of the measures implemented must be established. As outlined earlier, under risk management standards, once a risk analysis is conducted, the controller is afforded a "margin of discretion" [22] to determine the measures to be implemented, provided they are effective in managing the identified risks.

The measures adopted must account for the "state of the art," a phrase that delineates the boundaries of the controller's obligation. At the upper limit, the controller is required to identify all measures available at the time of the risk analysis, with subsequent selection guided by additional criteria outlined in Article 32(1), including implementation costs. Addressing the cost-related considerations, Advocate General G. Pitruzzella highlighted that the adequacy of implemented measures should be assessed through a comparative evaluation that respects the proportionality principle, balancing the data subject's interests (which generally require higher levels of protection) with the economic and technological capacities of the controller (which may at times result in lower levels of protection) [23].

Conversely, the controller's obligation to implement security measures cannot extend beyond the solutions offered by the current state of science, technology, and research. These solutions must be validated by the scientific community and publicly

available. However, it is crucial to note that the concept of "current" evolves rapidly in the field of information technology. Controllers are obligated to review and update the technical and organizational measures in place (Article 24(1), final clause). Consequently, controllers must not only identify adequate measures but also determine the intervals at which these measures should be reviewed and updated based on the risk analysis.

From an analysis of cases sanctioned by supervisory authorities, examples of inadequate measures include insufficient password requirements for user accounts [24], vulnerabilities in encryption mechanisms for banking data [25], and the use of the HTTP protocol, which is susceptible to cyberattacks [26].

When assessing the appropriate level of security, measures must primarily address risks associated with data processing, especially those arising accidentally or unlawfully from destruction, loss, alteration, unauthorized disclosure, or unauthorized access to personal data transmitted, stored, or otherwise processed (Recital 83 and Article 32(2)).

If the risk analysis identifies that one or more types of processing, particularly those based on new technologies, are likely to result in a high risk to the rights and freedoms of natural persons, the controller must conduct a data protection impact assessment (DPIA) before processing begins (Article 35(1) GDPR).

The minimum content of the DPIA is explicitly outlined in Article 35(7) GDPR and must include a systematic description of the proposed processing operations and their purposes, an assessment of the necessity and proportionality of the processing operations in relation to their purposes, an evaluation of risks to the rights and freedoms of data subjects, and the measures envisaged to address the risks, including safeguards, security measures, and mechanisms to ensure compliance with GDPR provisions.

These measures must guarantee the protection of personal data, and the controller must demonstrate compliance with GDPR provisions, taking into account the rights and legitimate interests of data subjects and other interested parties.

If the DPIA concludes that the processing operations pose a high risk that cannot be mitigated through adequate measures in terms of available technology and implementation costs, the controller is required to consult the supervisory authority prior to commencing the processing.

Regarding the evaluation of the measures implemented, European jurisprudence has established that national courts must concretely assess the adequacy of these measures, particularly considering the risks associated with the processing in question. Adopting the specific methodology of risk management, the CJEU has established [27] a two-step procedure for analyzing the adequacy of technical and organizational measures. The first step has two main objectives. First, the risks of personal data security breaches resulting from the processing must be identified. Second, the potential consequences of these risks for the rights and freedoms of natural persons must be evaluated. Both the assessment of risks and their consequences must be conducted concretely, taking into account the likelihood of the identified risks and their severity.

In the second step, it must be verified whether the measures implemented by the controller are tailored to these risks, considering the state of the art, implementation costs, as well as the nature, scope, context, and purposes of the processing.

Thus, national courts must perform a substantive analysis of the measures taken by the controller, with the content of the analysis also established by the CJEU under the GDPR provisions. This analysis should examine the nature of the measures implemented, their specific content, the manner in which they were implemented, and their practical effects on the level of security the controller was obligated to ensure [28].
As for the burden of proof, it is up to the domestic legal order of each Member State to establish the means of proof that allow for the evaluation of the adequacy of the measures implemented by the controller, provided that the principles of equivalence and effectiveness are respected. Procedural modalities under national law must not be less favourable than those applicable to similar situations governed by domestic law, nor should they render the exercise of Union rights practically impossible or excessively difficult [29].

The obligation to conduct a substantive analysis of the measures taken by the controller and the technical specificity of this analysis may lead the court to base its decision on the conclusions of an expert report. Although Article 330(1) of the Code of Civil Procedure provides that, when the court deems it necessary to understand certain factual circumstances, it may appoint one or three experts at the request of the parties or ex officio, in Case C-340/21, the CJEU held that “a judicial expert opinion cannot

constitute a systematically necessary and sufficient means of proof" for assessing the adequacy of security measures implemented by the controller under this article [30].

Regarding the "necessary" nature of such evidence, it was noted that it might be superfluous in light of other evidence available to the court, especially where an independent authority established by law has already conducted a review of the measures' compliance with personal data protection requirements. As for the "sufficient" nature, Advocate General G. Pitruzzella pointed out that the "principle of effectiveness," which implies that an independent court must conduct an impartial assessment, could be undermined if the term "sufficient" were interpreted to mean that the adequacy of the measures taken by the controller could automatically be inferred from an expert opinion. Of course, depending on the circumstances and other evidence available, the court may decide to order expert evidence, but what the Court censured was the expression "a necessary and sufficient means of proof."

As established in case law, a security breach—whether it involves the unauthorized disclosure of personal data or unauthorized access to such data by a third party—cannot be interpreted as evidence that the measures implemented by the controller were inadequate, "without at least allowing the controller to provide contrary evidence" [31]. As previously noted, under the accountability principle set out in Article 5(2) of the GDPR, the burden is on the controller to demonstrate the adequacy of the measures implemented. According to CJEU case law, this burden persists even when the controller is the defendant in litigation. Thus, by exception to civil procedural rules, which stipulate that the party making a claim in court must prove it (Article 249 of the Code of Civil Procedure), in a claim for damages under Article 82 of the GDPR, the burden of proof lies with the controller.

The CJEU's decision is grounded in a combined interpretation of Article 5(2), Article 24(1), and Article 32(1) of the GDPR, as well as the objectives pursued by the Regulation. Advocate General G. Pitruzzella noted that a contrary interpretation would undermine the substance of the right to an effective remedy under Article 82(1). Requiring the claimant to present evidence of the inadequacy of the measures would often be practically impossible, as data subjects generally lack sufficient knowledge to analyze

these measures and have no access to all the information held by the controller, particularly regarding the methods applied to ensure the security of such processing.

Thus, while in a compensation claim under Article 82 the data subject must prove that there has been a breach of the Regulation, that they have suffered damage, and that there is a causal link between the breach and the damage suffered - three conditions that must be cumulatively met [32] - this does not mean the data subject must demonstrate the inadequacy of the technical and organizational measures implemented by the controller.

Another aspect of the evidentiary burden concerns the controller's obligation to prove that they are in no way responsible for the harm caused to the data subject through the unauthorized disclosure of or access to personal data by third parties. Under the definition in Article 4(10) of the GDPR, a "third party" means a natural or legal person, public authority, agency, or body other than the data subject, the controller, the processor, and persons who, under the direct authority of the controller or processor, are authorized to process personal data. Accordingly, the controller does not have any control or oversight over third parties, which could suggest that the controller might be exonerated from liability for their actions. However, Article 82(2), first sentence, of the GDPR establishes the liability of the controller involved in processing operations for any damage caused by processing operations that infringe the Regulation, without distinguishing based on who caused the security breach.

The conditions for the controller's exoneration from liability are explicitly set out in Article 82(3) and require the controller to prove that they are in no way (emphasis added) responsible for the event causing the damage. Thus, even in cases where unauthorized disclosure or access originated from a third party, including a cyberattack, the controller is obligated to prove that there is no causal link between a potential breach of their data protection obligations under the Regulation and the damage suffered by the data subject. It follows that the controller is required to prove both the adequacy of the measures implemented and that the act causing the damage is in no way attributable to them. Naturally, the stronger the evidence of the adequacy of the measures, the more effectively compliance with the GDPR can be demonstrated, particularly the provisions of Article 5(1)(f) and Articles 24 and 32.

Regarding the general conditions for the imposition of administrative fines, the CJEU has held [33] that Article 83 of the GDPR must be interpreted to mean that an administrative fine can only be imposed under this provision if it is established that the controller, as both a legal entity and an enterprise, intentionally or negligently committed an infringement listed in paragraphs (4) to (6) of this article. None of the elements listed within the article mention the possibility of holding the controller liable in the absence of culpable behaviour on their part.

The issue of technical and organizational measures under the GDPR represents a complex challenge, as it requires a multidisciplinary analysis that integrates technical, legal, and organizational aspects. As discussed, the Regulation itself addresses the security of processing from a risk management perspective, which impacts the scope of the controller's liability. In this context, the jurisprudential clarifications provided by the Court of Justice of the European Union play a crucial role in ensuring a uniform and accurate interpretation of the GDPR provisions, offering necessary guidance to both data controllers and supervisory authorities.

The proper and efficient implementation of technical and organizational measures is not only a legal requirement but also a critical element for safeguarding personal data and creating a secure framework in a society increasingly reliant on technology. Simultaneously, clarifying the conditions and extent of liability for parties involved in data processing ensures transparency and predictability, enabling controllers to clearly understand the boundaries of their legal obligations and appropriately adapt the technical and organizational measures they implement.

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THE LEGISLATOR'S VIEW ON THE NOTION OF A PARLIAMENTARY PARTY. SPECIAL VIEW ON LAW NO. 208/2015 FOR THE ELECTION OF THE SENATE AND THE CHAMBER OF DEPUTIES

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Abstract
The paper deals with the issue of political parties in the context of the parliamentary elections organized in the fall of 2024. I considered it necessary to review the various approaches made to this concept, starting with the sociological approach and continuing with the legal one. On this occasion, it was found that the Law for the election of the Senate and the Chamber of Deputies had an important addition in 2020 related to the notion of a parliamentary party. The legislative solution brings to the legal landscape an expanded vision of the notion of a parliamentary party, allowing a political competitor that did not participate in the previous legislative elections to acquire the status of a parliamentary party, if it meets certain conditions. It is known that, in the electoral process, the actors with parliamentary representation benefit from more rights than the other political actors, and one of them is the access to the electoral offices at the national level, from the constituency or polling station level. The article presents this legislative amendment and how it was applied exactly in the electoral process triggered for the parliamentary elections in Romania organized in 2024.
Keywords: *electoral legislation, parliamentary party, parliamentary elections*

Introduction

The notion of a political party is complex, with multiple interdisciplinary sociological, political, and legal implications, due to its interaction with the components of the social system.

Various definitions for this concept have been formulated over time. A sociological approach presents the political party as a free association of citizens, permanently united by common interests and ideas, of a general nature, an association that aims, in full public light, to reach the power to govern, for the realization of a social ethical ideal [1]. The political party has been defined by political scientists as "an organization whose objective is to conquer and exercise power in society" or "an organization formed by people who share the same ideological conception, subscribe to a common set of values and act to

conquer power, for the application of the own program through internal and external policies" [2].

From a legal point of view, political parties are forms of association, resulting from the exercise of citizens' freedom of association.

The modern concept of a political party

The emergence and affirmation of parties in political life [3] are processes closely related to the modernization of society and the consolidation of the democratic system. That is why political parties are considered indispensable in modern democracies, as they represent the specific organizations of the political scene through which the diversity of interests is expressed, but at the same time, options and policies that can determine the development directions of a society are promoted.

The participation of citizens in the political life of their own state is a *sine qua non* condition for the survival of the democratic system. Citizen participation legitimizes the power of the elected through voting, improves the quality of public policies, favors social consensus and increases the legitimacy of decisions associated with public policies [4].

It is a well-known fact that parties have a social and historical basis, in their activity the modernization processes and political developments in a country are reflected; they fulfill a series of important functions in political life. In the doctrine of constitutional law, several main functions [5] of political parties have been identified, functions that fall within the goals they pursue: *the function of representation*, in the exercise of which the parties appear as instruments for manifesting the political freedom of citizens; *the mediation function*, in which the parties appear as factors of formation and expression of the political will of the citizens; *the electoral function*: parties are the main actors of the competition for the conquest of political power; *the governmental function*, through which the parties assert their vocation of governance and assume the concrete implementation of governance relationships and the direction of the state's internal and external policy.

The existence and activity of political parties was approached by researchers from multiple perspectives, so that their definition was made from a social and historical, ideological and cultural, organizational and institutional point of view. By combining these

perspectives, they reached some common definitions and views, shared by most researchers.

Max Weber considered the political party "an association of free people, voluntarily established, necessary for society, with a certain program, with ideal or material objectives" [6]. In his definition, Max Weber emphasizes the institutional, organizational and program contribution, and less on the cultural or social dimension.

Thus, in the general sense, a political party is defined as an organization whose objective is to conquer and exercise power in society, distinguishing itself from other organizations that only aim to influence power without trying to exercise it. In another definition, the political party is a relatively durable organization formed by people who share the same ideological conception, subscribe to a common set of values and act to conquer power, to apply their own program through internal and external policies.

An analysis of the content of the definitions developed for political parties reflects the existence of three aspects: the political party is a voluntary association, established on the basis of a political project (ideology, doctrine, opinion), on whose behalf it acts to exercise it directly.

In Romania, political parties are regulated both by the Constitution in art. 8, art. 40, art. 146 lit. k), but also in laws such as: Law no. 14/2003 of political parties [7] Law no. 334/2006 regarding the financing of the activity of political parties and electoral campaigns [8], some provisions of the Electoral Laws. Starting from the fact that political parties are the driving force of any pluralist system, para. 2 of art. 8 of the Constitution particularizes this acceptance of the concept of pluralism, but also emphasizes the existence of its constitutional limits: subordination to essential values of the state, such as national sovereignty, territorial integrity, the rule of law and the principles of democracy.

Political parties are defined in Law no. 14/2003 - the law of political parties, as associative entities with a political character of citizens with the right to vote, expressing their political will. They emphasize very well the freedom of association enshrined at the constitutional level. By the way in which they are regulated and by the mission entrusted to them in the Romanian constitutional system, political parties are entities with a special constitutional and legal status, different from other forms of association. [9]

In general, in the electoral legislation, political parties are considered parliamentary political parties if they participate in the legislative elections, pass the electoral threshold, acquire deputies' and senators' mandates, and they constitute themselves in parliamentary groups. Sometimes the status of a parliamentary party was also recognized for that party that did not run for the parliamentary elections, but attracted during the parliamentary term the necessary number of parliamentarians to constitute a parliamentary group. In both situations, however, the respective political formation had to respect the constitutional rules and go through the procedure established by the parliamentary regulations for the formation of a parliamentary group. Both the Senate [10] and the Chamber of Deputies [11] carry out their activity based on their own regulations, internal documents that regulate the way of forming a parliamentary group. Parliamentary groups are structures of the Chambers of the Parliament, and "the manifestation of the will of some parliamentarians to constitute themselves in a parliamentary group is subject to compliance with constitutional and regulatory rules", according to the jurisprudence [12] of the Constitutional Court.

The notion of a parliamentary political party based on the provisions of Law no. 208/2015

During election periods, political competitors aim to maximize their chances and are constantly looking for tools that the legislator makes available to achieve this goal. Because the electoral regulations favor parliamentary parties, in the sense that it recognizes more rights compared to political competitors located outside the Parliament, certain non-parliamentary political parties participating in the 2024 legislative elections sought to capitalize on a provision established by Law no. 202/2020 [13] for the amendment and completion of some normative acts in electoral matters, a provision that allows them to acquire the status of a parliamentary political party, if they meet certain conditions.

Practically, by Law no. 202/2020 supplemented Law no. 208/2015 for the election of the Senate and the Chamber of Deputies [14] with a legislative solution that led to the expansion of the scope of the notion of "parliamentary political party".

With the additions made in 2020, Law no. 208/2015, with subsequent amendments and additions, regulates, in art. 118.1, para. 1, two hypotheses in which a party is considered parliamentary.

In the first hypothesis, the party must participate in the last parliamentary elections and meet, alone or in an alliance, the electoral threshold and obtain mandates as deputy or senator. In the second hypothesis, the status of a parliamentary party can be acquired, even if this competitor did not participate in the last parliamentary elections, in the situation where it proves that on the date of the triggering of the electoral calendar for the parliamentary elections, it has 7 senators in its composition or 10 deputies.

If the first hypothesis contained in art. 118.1 paragraph 1 of Law no. 208/2015 we find it also regulated in other normative acts in the electoral field, with certain nuances, in the sense that in certain cases the condition of the existence of a parliamentary group is also imposed, the second hypothesis in which the status of a parliamentary party can be acquired is specific to this normative act. This second hypothesis became attractive to certain non-parliamentary parties, which entered the competition for the Parliament and sought to fulfill the condition of the minimum number of senators or deputies and to prove the existence of this number at the date of the triggering of the electoral calendar. We mention that the authority that sets the electoral calendar is the Government. In the case of the electoral calendar for the 2024 parliamentary elections, the Government of Romania adopted Decision no. 1034 of August 21, 2024 [15]. Acquiring the status of a parliamentary party brings a number of benefits for the political competitor, one of which is to have representatives in the electoral offices (central electoral office, constituency offices, polling station offices).

The non-parliamentary parties that capitalized on this legal provision attracted at least 10 deputies to their ranks and provided proof of their membership at the time of the election calendar, which, in the case of the 2024 parliamentary elections, was September the 2nd, 2024.

An aspect worth highlighting is that the Central Electoral Bureau, set up for the parliamentary elections, adopted Decision no. 5H/20.09.2024 by which he interpreted the provisions of art. 118.1 para. 1 of Law no. 208/2015 and established that the minimum number of parliamentarians from the moment the electoral calendar is triggered must be

maintained throughout the electoral period. In support of the decision, the Central Electoral Bureau showed that maintaining the minimum number of parliamentarians throughout the electoral period leads to the achievement of the purpose for which the legal norm was adopted, namely ensuring the representativeness of the parties holding mandates in the Parliament, within the new electoral process.

From the decision of the Central Electoral Bureau, it follows that it is not enough for a party to prove the fulfillment of the condition of the minimum number of parliamentarians at the time of the start of the electoral calendar, in order to preserve its status as a parliamentary party, but this condition must be fulfilled until the end of the electoral period. If the number of parliamentarians falls below the legal threshold, the party loses its status as a parliamentary political party.

Conclusions

The status of a parliamentary political party can be acquired, according to Law no. 208/2015, both the parties that participated in the parliamentary elections, passed the electoral threshold and acquired mandates of deputy or senator, as well as parties that did not participate in the parliamentary elections, for example non-parliamentary parties, but which prove, at the moment the electoral calendar starts, that they have a minimum number of 10 deputies or 7 senators, with the mention that this number must be kept throughout the electoral process.

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