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ADMINISTRATIVE CONTROL OVER THE ACTS OF LOCAL PUBLIC AUTHORITIES. LEGISLATIVE EVOLUTION AND THE CURRENT LEGAL FRAMEWORK

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Abstract:
This study examines the evolution of administrative control over the acts of local public authorities in Romanian law, tracing the legislative developments from the nineteenth-century administrative reforms to the current legal framework established by the Administrative Code. The research focuses on the two fundamental mechanisms of administrative control: administrative tutelage exercised by the Prefect and internal legality review carried out by the Secretary General of the administrative-territorial unit. The analysis highlights the continuity of the legal conception underlying these institutions despite successive legislative reforms and the codification process completed in 2019. At the same time, it identifies the practical limitations affecting the effectiveness of administrative control, resulting from the insufficient institutional guarantees of impartiality of the supervisory authority and the functional independence of the authority entrusted with internal legality review. The study concludes that the effectiveness of administrative control depends not only on the legislative solutions adopted but also on the institutional architecture and the legal safeguards ensuring the effective implementation of the principle of legality.
Keywords: *administrative control; administrative tutelage; legality review; Prefect; Secretary General of the administrative-territorial unit*

1. General Aspects

Local public authorities are those public administrative authorities whose territorial competence is limited to specific parts of the national territory, generally determined according to the country's administrative-territorial organization [1]. For the purposes of this study, we refer exclusively to those public authorities that belong to local territorial communities and are entrusted with the pursuit of their interests. Depending on the administrative level of the territorial unit, local public authorities operate either at the basic administrative-territorial level or at the intermediate level. Under Romania's current administrative-territorial organization, counties constitute the intermediate level, while communes, towns and municipalities represent the basic administrative-territorial units. The local public authorities are the local council, the mayor, the county council and the president of the county council, all of which reflect a constant feature of Romania's

political and administrative organization, namely the existence of the commune, the town and the county [2].

Although these authorities have undergone significant changes over time, they remain traditional institutions of Romanian public administration, having been established through the administrative reforms introduced during the reign of Alexandru Ioan Cuza [3], reforms that themselves reflected a longer process of institutional development dating back to earlier periods [4]. Their legal status is currently governed by the Administrative Code, adopted through Government Emergency Ordinance No. 57/2019, which systematized and consolidated within a single legislative instrument the provisions previously dispersed throughout the legislation on local public administration.

Administrative control over the acts of local public authorities constitutes a defining element of the political and administrative system of any state, although the forms through which such control is exercised may vary considerably.

According to a distinguished Romanian scholar [5], administrative control may be generally defined as *"the control exercised by public administration over itself"*, or, in other words, the control exercised within or by public administrative authorities.

The forms of administrative control over administrative acts are diverse and may be classified according to several criteria. Among the classifications proposed in the legal literature, the following are of particular relevance.

According to the objective pursued, a distinction is drawn between legality review and expediency (opportunity) review [6].

Legality review concerns the conformity of an administrative act with all legal norms having superior legal force. It represents the principal guarantee of the rule of legality, reflecting the fundamental constraint imposed upon public administration by virtue of its executive character.

Expediency review, by contrast, seeks to determine whether the measures adopted through an administrative act are appropriate for achieving the purpose for which the act was issued, taking into account the specific factual circumstances. Expediency constitutes the practical expression of the administration's power of appraisal in selecting the most suitable means for implementing the law or, as Romanian legal doctrine has consistently emphasized, the expression of its discretionary power, exercised within the

limits established by law and justified by the requirements of effectiveness and administrative efficiency.

According to the relationship between the controlling authority and the controlled authority, administrative control may be either internal or external.

Internal control is exercised by persons belonging to the internal administrative structure of the authority concerned or, as another author has observed [7], where both the controlling and the controlled subjects belong to the same public authority. Internal control is exercised either by the managerial bodies of the institution by virtue of hierarchical authority or by specialized personnel expressly entrusted with control functions.

External administrative control is exercised by one public authority over another within a legal relationship in which the controlling authority and the controlled authority are institutionally distinct. Depending on the nature of the relationship between them, external administrative control may be hierarchical or extra-hierarchical.

Hierarchical administrative control is exercised by superior administrative authorities over subordinate authorities on the basis of hierarchical subordination. Although its scope may vary according to the powers conferred upon the supervisory authority, hierarchical control is generally characterized by full supervisory powers.

With regard to administrative acts, hierarchical control may encompass both legality review and expediency review. It may also involve confirmation of administrative acts and the exercise of directive powers. Depending on the category of act under review, the supervisory authority may revoke, suspend, annul or replace the act concerned [8].

By contrast, extra-hierarchical administrative control concerns relationships between administrative authorities that are not linked by hierarchical subordination. Such control may be exercised only where expressly authorized by law and strictly within the limits established by the relevant legal provisions. The principal forms of extra-hierarchical administrative control are administrative tutelage and specialized administrative control.

Traditionally, the concept of administrative tutelage refers to the control exercised by central state authorities over local public authorities. Depending on the degree of local autonomy recognized by the legal system, administrative tutelage may be either

extensive, where the supervisory authority enjoys powers comparable to hierarchical control, or limited, where it consists exclusively of an ex post legality review.

As regards specialized external administrative control, this is exercised by specialized inspection bodies (for example, the State Health Inspectorate), state inspectorates (such as the State Construction Inspectorate), specialized enforcement authorities (for example, the Veterinary Police), as well as by constitutionally or statutorily established supervisory institutions, including the Romanian Court of Accounts.

The present study focuses exclusively on administrative tutelage and internal legality review exercised over the acts of local public authorities. This choice is justified by the fact that these represent the most significant forms of administrative control, being exercised on a regular basis and, as a matter of principle, covering the entirety of the acts adopted or issued by local public authorities. The analysis traces their historical development from the beginnings of the modern Romanian State while devoting particular attention to the post-1989 evolution of the legal framework.

Subsequent legislative developments have not altered the fundamental principles governing administrative control over the acts of local public authorities; rather, they have resulted in a comprehensive legislative systematization. Through the adoption of the Administrative Code (Government Emergency Ordinance No. 57/2019), both the Local Public Administration Act No. 215/2001 and Act No. 340/2004 on the Prefect and the Institution of the Prefect were repealed, their provisions being consolidated into a single legislative instrument. Consequently, the historical analysis that follows retains its relevance, as it illustrates the institutional continuity preserved through the codification process while also identifying issues that continue to generate practical and doctrinal debate.

2. Administrative Tutelage

The Communal Act No. 394/1864 and Act No. 396/1864 on the Establishment of County Councils introduced an extensive system of administrative tutelage over the acts adopted by local public authorities. Under these statutes, both the acts of communal councils and those of county councils were subject to both legality review and expediency review, exercised prior to their entry into force.

In the case of communal councils, legality review was exercised by the mayor and could ultimately lead to the annulment of the contested act by an ordinance issued by the Ruler (Domnitor) [9]. Expediency review was expressly required for the exercise of most local powers and took the form of prior approval granted by the competent supervisory authority, which varied according to the subject matter concerned [10].

As regards county councils, legality review was exercised by the Prefect, who was under a legal obligation to refer any act considered unlawful to the Government [11]. Unlawful acts were annulled by ordinance of the Ruler [12]. Expediency review likewise applied to the most significant categories of acts and took the form of confirmation by the Ruler [13].

Without entering into unnecessary historical detail—which falls outside the principal purpose of this study—it should be noted that Romanian legal scholarship has shown that this system of administrative tutelage, although subject to successive modifications regarding both the supervisory authorities and the extent of their powers, remained in force until April 1949 [14]. It was then effectively abolished following the establishment of the communist administrative system, under which local administration based on a degree of local autonomy was replaced by provisional committees and subsequently by the People's Councils, created under the Constitution of 1948 as local organs of state power together with their executive committees acting as local organs of state administration.

Following the election of deputies to the People's Councils on 3 December 1950, Romania entered the period of the "democratic centralism" model of local administration [15]. Under this constitutional principle, local administrative bodies were subject to a dual hierarchical subordination: horizontally to the People's Councils and vertically both to the superior executive committees and to the central organs of state administration [16]. This system remained in force until the Revolution of December 1989.

During this period, administrative tutelage disappeared as a legal institution, being replaced by strict hierarchical administrative control. This hierarchical model continued under Decree-Law No. 8/1990 on the organization and functioning of local state administration bodies [17] and Act No. 5/1990 concerning the administration of counties, municipalities, towns and communes pending the first democratic local elections [18].

Following the local elections of 1992, Romania re-established local public authorities founded upon the constitutional principle of local self-government, in accordance with the provisions of the 1991 Constitution [19] and the Local Public Administration Act No. 69/1991 [20].

Under Title III ("Public Authorities"), Chapter V ("Public Administration"), Section 2 ("Local Public Administration") of the 1991 Constitution, the elected local public authorities are the local council, the mayor and the county council. Pursuant to Article 122 of the Constitution, the supervisory authority exercising administrative tutelage is the Prefect, acting as the representative of the Government at local level. The Prefect may challenge before the administrative courts any act adopted by a county council, a local council or a mayor whenever such act is considered unlawful. The contested act is suspended by operation of law.

This constitutional model of administrative tutelage has essentially remained unchanged to the present day. The constitutional revision of 2003 did not alter the constitutional configuration of the legality review exercised by the Prefect, while the reorganization of local government legislation through the adoption of the Administrative Code (Government Emergency Ordinance No. 57/2019) preserved the same underlying conception of administrative tutelage. Today, the Prefect's powers concerning the legality review of acts adopted by local public authorities are regulated by the Administrative Code, without any change in the exclusively legal nature of this form of administrative supervision [22].

The foregoing demonstrates that, even under the current legal framework established by the Administrative Code, Romania continues to operate a system of limited administrative tutelage, at least from a legal perspective. The Prefect exercises ex post legality review exclusively, following the adoption or issuance of the administrative act. Moreover, the Prefect has no authority to annul the act directly but may only refer it to the competent administrative court for judicial review.

From a practical perspective, however, the constitutional rule providing that the contested act is automatically suspended by operation of law may affect the institutional balance of this mechanism of control, given that the office of the Prefect has traditionally retained a significant political dimension.

The attempt to depoliticize the offices of Prefect and Deputy Prefect, initiated through Act No. 161/2003 concerning measures to ensure transparency in the exercise of public offices, the prevention and sanctioning of corruption, ultimately failed to achieve the objectives pursued by the legislature and proved incapable, in practice, of securing genuine political neutrality within the institution of the Prefect [23].

The legislative attempt to depoliticize the offices of Prefect and Deputy Prefect, initiated through Act No. 161/2003 concerning measures to ensure transparency in the exercise of public office, the prevention and sanctioning of corruption, ultimately failed to achieve its declared objective and proved incapable, in practice, of ensuring the genuine political neutrality of the institution of the Prefect [23].

Under this legislation, Prefects and Deputy Prefects were to become senior civil servants, a category of public officials prohibited from holding membership in political parties. Incumbent Prefects and Deputy Prefects, who had initially been appointed on political grounds, acquired senior civil servant status upon relinquishing their party membership and successfully passing a professional certification examination. To the best of our knowledge, none failed this examination. Moreover, the statutory eligibility requirements concerning education and professional experience clearly indicate that these positions were not designed exclusively for career public administrators. Pursuant to Article 9 of Act No. 340/2004 on the Institution of the Prefect [24], eligibility for appointment as Prefect or Deputy Prefect required, inter alia, higher education completed with a bachelor's degree (or its equivalent), together with five years of professional experience in the relevant field for Prefects and three years for Deputy Prefects, as well as either completion of a specialized training programme in public administration or the prior exercise of at least one full parliamentary mandate.

Under these requirements, it was entirely possible, for example, for a physical education teacher with five years of teaching experience and one parliamentary term to be appointed as Prefect and thereby acquire the status of a senior civil servant. The certification procedure applicable to politically appointed Prefects and Deputy Prefects was completed by the end of 2005. Nevertheless, beginning in February 2009, these supposedly "apolitical" and "professional" officeholders were replaced following changes

in the governing coalition by other officeholders presented in similarly professional and politically neutral terms.

Such a regulatory framework creates the possibility that the power of administrative tutelage may be exercised selectively. By challenging an administrative act before the administrative courts, the Prefect may deprive it of legal effects through its automatic suspension, while the failure to challenge an unlawful act allows that act to continue producing legal effects. Consequently, although administrative tutelage is, in theory, limited to legality review, the absence of sufficient guarantees of impartiality and professional independence may transform it into an instrument of political influence, to the detriment of local territorial communities and, ultimately, of public confidence in the institution itself.

It should also be emphasized that the issue of depoliticizing the office of the Prefect is by no means a recent concern. The same problem was extensively debated during the interwar period, without any lasting solution being identified. Referring to the career civil servant Prefect introduced by Article 97(2) of the Administrative Act of 1938, Erast Diti Tarangul observed [25]:

"Replacing the political Prefect with a career civil servant had long been regarded as an imperative necessity for the proper functioning of county administration. (...) The political Prefect was, in reality, the representative of the governing political party within the county and therefore brought party politics into local administration. Subject to political interference and constant political fluctuations, the political Prefect could not become an effective administrator. Moreover, the political Prefect often lacked both an adequate understanding of the administrative system and the practical experience required to manage county administration effectively. Modern administration is complex. It requires knowledge and experience. Today, sound judgment and common sense alone are no longer sufficient. Public administration is both a science and an art; consequently, public administrators cannot simply be improvised. They must be trained and professionally developed."

Tarangul further regretted that this legislative solution was never effectively implemented and that, through a Decree-Law adopted in 1940, Romania returned to the institution of the politically appointed Prefect.

The adoption of the Administrative Code through Government Emergency Ordinance No. 57/2019 did not alter this underlying issue. On the contrary, by consolidating within a single legislative instrument the provisions governing both the institution of the Prefect and the legality review of acts adopted by local public authorities, the legislature reaffirmed the continuity of the constitutional model established by Article 123(5) of the Constitution. The Prefect continues to exercise exclusively legality review, while the lodging of an action before the administrative courts automatically results in the suspension by operation of law of the contested act. Consequently, the observations advanced in the present study concerning the need to strengthen the guarantees of impartiality and professionalism applicable to the supervisory authority remain fully relevant, although they must now be assessed in light of the legislative and judicial developments that have followed the adoption of the Administrative Code.

Against this background, the debate concerning the continued appropriateness of the automatic suspension by operation of law of administrative acts challenged by the Prefect remains open. From the perspective of strengthening local self-government and preserving the institutional balance between administration and the judiciary, a compelling argument may be made for transferring the power to order suspension exclusively to the administrative courts. Such a solution would preserve in full the Prefect's constitutional power to review the legality of acts adopted by local public authorities, while ensuring that the suspension of administrative acts becomes subject to an independent judicial assessment, thereby reducing the risk that administrative tutelage might be employed for purposes other than those envisaged by the Constitution.

3. Internal Legality Review

In our view, internal legality review exists where the internal administrative structure of a local public authority includes either a public official or a specialized administrative unit expressly empowered by law to exercise such review with a degree of institutional independence from the decision-making authorities whose acts are subject to examination.

Prior to 1938, Romanian legislation did not provide for any form of internal legality review of the acts adopted by local public authorities. Within the internal administrative

organization of local authorities, the legality of administrative acts was ensured through hierarchical supervision in accordance with the applicable internal administrative regulations.

The origins of internal legality review may be traced to the Administrative Act of 1938. Article 22 of that Act provided that every commune should have a Secretary, serving both as the head of the communal administrative office and as secretary to the communal council. The Secretary was required to countersign the acts of the mayor and to prepare the minutes of the council meetings. Although the statute did not expressly attribute legal significance to the countersignature, it clearly functioned as a guarantee of legality, since by countersigning an administrative act the Secretary validated it and thereby assumed responsibility for its conformity with the law.

It should also be noted that the Secretary enjoyed a significant degree of institutional independence from the mayor. Under Articles 37 and 40 of the Civil Servants' Statute then in force [26], Secretaries were appointed following a competitive professional examination organised at county level, while Article 136 of the Administrative Act subjected them to the disciplinary jurisdiction of the Administrative Court. These elements satisfy the conditions necessary to identify an early form of internal legality review.

The legislative solution adopted in 1938 was revived three decades later by Act No. 57/1968 on the Organization and Functioning of the People's Councils [27]. Article 30 provided that the executive bureau or executive committee of each People's Council should include a Secretary appointed by the council with the approval of the superior state administrative authority. The Secretary participated, with consultative voting rights, in the meetings of the executive body and was required to countersign its decisions.

Romanian legal scholarship has observed [28] that the appointment of the Secretary for an indefinite term, on the basis of professional competence, was intended to improve the quality of local public administration, particularly from the perspective of legality. In this context, the countersignature once again acquired the significance of a legality guarantee, even though the legislation did not expressly describe it as such. Moreover, the Secretary retained a degree of institutional independence, since appointment and dismissal required not only the decision of the People's Council but also

the approval of the superior administrative authority. Thus, the mechanism of internal legality review first introduced in 1938 was effectively reinstated.

Beginning in 1980, the Secretary was expressly entrusted with the function of preventive legality review in respect of the acts adopted by the People's Council and by its executive bureau or committee. Pursuant to Article 62(5) of the republished version of Act No. 57/1968 [29], the Secretary was under a legal obligation to inform the executive body whenever draft decisions failed to comply with legal requirements. Where an unlawful decision was nevertheless adopted, the Secretary was required to notify the superior administrative authority. This statutory provision leaves little doubt that Romanian legislation had by then established a genuine mechanism of internal legality review.

The first post-communist regulation governing local public administration, Decree-Law No. 8/1990 [30], was remarkably concise, consisting of only eleven articles. It provided that local state administrative bodies should include, among others, a Secretary whose countersignature was required for the validity of the decisions adopted by the authority. Although the legislation did not expressly define the legal significance of this countersignature, it may reasonably be interpreted, particularly in light of the preceding legislative tradition, as constituting a form of internal legality review.

Act No. 5/1990 concerning the administration of counties, municipalities, towns and communes pending the first democratic local elections [31] introduced no substantial innovations in this respect.

The Local Public Administration Act No. 69/1991 marked the completion of Romania's transition towards a system of local public authorities founded upon the constitutional principle of local self-government. In its original version, the Act required each category of local council to have a Secretary who, as a general rule, was required to possess legal or administrative higher education qualifications and was prohibited from belonging to a political party [32]. Among the Secretary's statutory duties was the endorsement of draft council decisions [33].

At the time, Romanian legal doctrine debated the legal nature of this endorsement. Given the professional qualifications required for the office, it could only be understood as a legality endorsement. Its legal effect was merely consultative, since the Act no longer

required the Secretary to countersign the adopted decisions. Consequently, Act No. 69/1991 established a specialized public official entrusted with a significantly attenuated form of internal legality review, consisting exclusively of a prior consultative legality opinion applicable only to council decisions.

In 1996, the Local Public Administration Act No. 69/1991 underwent substantial amendments through Act No. 24/1996 [34], followed shortly thereafter by its republication [35]. One of the most significant institutional changes consisted in replacing the office of Secretary of the Local Council (and, respectively, of the County Council) with that of Secretary of the administrative-territorial unit (Secretary of the commune, town, municipality or county) [36]. This legislative amendment reflected the understanding that the Secretary served the territorial community as a whole rather than merely providing administrative support to the deliberative authority, since the scope of the office extended well beyond the performance of secretarial duties.

At the same time, the mechanism of internal legality review was strengthened and explicitly articulated. The legislation reintroduced the obligation for the Secretary to countersign the decisions adopted by the local council [37] and expressly entrusted the Secretary with the duty of endorsing draft council decisions, thereby assuming responsibility for their legality [38].

Since the Secretary neither adopts the decisions nor possesses any binding authority to prevent their adoption, such responsibility cannot be understood as responsibility for the decision itself but rather as a duty of professional diligence, requiring the Secretary to issue an accurate and well-founded legality opinion.

The second essential element of internal legality review—namely, the relative institutional independence of the reviewing authority—was likewise present. The Secretary of the commune, town or municipality was appointed by the Prefect for an indefinite term following a competitive examination, upon the proposal of the local council acting on the initiative of the mayor. Dismissal likewise belonged to the Prefect but could occur only following a proposal adopted by a qualified two-thirds majority of the local council, initiated either by the mayor or by one third of the councillors.

An analogous system governed the office of the Secretary of the County, whose appointment, dismissal and disciplinary liability fell within the competence of the

Department for Local Public Administration, acting upon a proposal adopted by a qualified majority of the county council.

Against this legislative background, it may reasonably be concluded that, beginning in 1996, Romania established a genuine mechanism of internal legality review concerning the decisions of local and county councils, satisfying both the substantive and institutional conditions necessary for such a system to operate effectively.

This legislative framework, however, proved short-lived. The republished version of Act No. 69/1991 was substantially amended by Government Emergency Ordinance No. 22/1997 [39], resulting in a significant weakening of internal legality review. The Secretary of the administrative-territorial unit again became the Secretary of the Mayor's Office, while the Secretary of the County reverted to the position of Secretary of the County Council. The statutory requirement to countersign council decisions was abolished, and the qualified majority previously required for proposals concerning dismissal or disciplinary sanctions was replaced by an absolute majority.

The Local Public Administration Act No. 215/2001 [40] not only restored the integrity of internal legality review but also considerably expanded its scope.

Several legislative measures support this conclusion.

First, the legislature reinstated the office of Secretary of the administrative-territorial unit, while at county level the official title became Secretary General of the County.

Second, the previous guarantees concerning appointment and dismissal were essentially preserved. The Secretaries of communes, towns and municipalities continued to be appointed by the Prefect, whereas the Secretary General of the County was appointed by the Ministry of Public Administration. Likewise, dismissal or disciplinary sanctions could be imposed only following a proposal adopted by a qualified two-thirds majority of the relevant council.

Third, the Act expressly provided that the Secretary of the administrative-territorial unit should examine draft council decisions from the perspective of legality, assume responsibility for the legality of those drafts and countersign only those decisions considered lawful [41].

Furthermore, the Secretary was entrusted with reviewing the legality of the mayor's orders and of the decisions issued by the president of the county council. Where a council nevertheless adopted a decision that the Secretary considered unlawful, the Secretary was required to present a reasoned legal opinion to the council, to have that opinion recorded in the minutes of the meeting and, where appropriate, to communicate any objections concerning legality to the Prefect together with the adopted decision.

These provisions represented the most comprehensive legislative framework for internal legality review established in Romanian local government up to that time.

The system established by Act No. 215/2001 underwent several subsequent amendments, most notably through Act No. 286/2006 [42], which further strengthened the institutional position of the Secretary and clarified a number of responsibilities relating to legality review. Nevertheless, the fundamental structure of the institution remained unchanged until the adoption of the Administrative Code.

Following the enactment of the Administrative Code through Government Emergency Ordinance No. 57/2019, the office was reorganised and is now regulated under the title Secretary General of the administrative-territorial unit. Although the terminology was modernised and the legislative framework substantially reorganised, the essential functions of the office remained largely unchanged.

Under the current legal framework, the Secretary General continues to occupy a central position within the institutional architecture of local public administration. Beyond providing legal and administrative support to the deliberative and executive authorities, the Secretary General performs a number of functions specifically designed to safeguard legality. These include verifying the legality of draft administrative acts, countersigning the acts for legality where required by law, ensuring compliance with statutory administrative procedures, maintaining the official records of local authorities and assisting in the proper implementation of legislative requirements.

From this perspective, the Administrative Code confirms the continuity of the Romanian legislative model, according to which the Secretary General constitutes the principal internal guarantor of legality within the administrative-territorial unit.

The strengthening of statutory responsibilities, however, should not automatically be equated with a corresponding increase in functional independence. The effectiveness

of internal legality review continues to depend upon the institutional position occupied by the Secretary General within the local administrative structure and upon the legal guarantees enabling that office to issue legality opinions exclusively on the basis of legal considerations, free from administrative or political influence.

Accordingly, the effectiveness of internal legality review remains a matter not only of legislative design but also of institutional practice. Even the most carefully drafted legal framework cannot, by itself, ensure effective legality review unless it is supported by professional integrity, institutional stability and an administrative culture committed to the rule of law.

For this reason, the observations advanced in the present study concerning the institutional role of the Secretary retain their relevance even under the current Administrative Code. The codification process has consolidated the legislative framework governing the office but has not fundamentally altered the institutional challenges inherent in guaranteeing legality within local public administration.

Ultimately, the effectiveness of internal legality review depends not merely upon the statutory powers entrusted to the Secretary General but also upon the existence of institutional safeguards capable of ensuring the objective and independent exercise of those powers. In this respect, legality review should not be understood solely as a procedural requirement but rather as an essential institutional guarantee for the protection of legality, local self-government and the rule of law.

4. Concluding Remarks

The historical development of administrative control over the acts of local public authorities in Romania reveals a remarkable continuity in the legal principles underlying this institution. Although the legislative framework has undergone successive reforms, culminating in the adoption of the Administrative Code in 2019, the essential architecture of administrative control has remained largely unchanged. Administrative tutelage exercised by the Prefect and internal legality review performed by the Secretary General of the administrative-territorial unit continue to constitute the two principal mechanisms through which the legality of local administrative action is safeguarded.

The analysis undertaken in this study demonstrates that the effectiveness of administrative control cannot be assessed solely by reference to the legal powers conferred upon the supervisory authorities. Equally important are the institutional safeguards capable of ensuring that those powers are exercised impartially, professionally and independently. In this respect, legality review represents not merely a procedural requirement but a fundamental institutional guarantee serving the protection of local self-government, legal certainty and the rule of law.

The codification achieved through the Administrative Code has undoubtedly strengthened the coherence and accessibility of the Romanian legal framework governing local public administration. At the same time, however, codification has not eliminated the structural challenges identified throughout the historical evolution of these institutions. Questions concerning the political dimension of the office of the Prefect, the functional independence of the Secretary General and the effectiveness of legality review remain relevant today, albeit within a modernised legislative context.

From this perspective, the Romanian experience illustrates a broader phenomenon that extends beyond national administrative law. The effectiveness of legality review depends not only upon legislative technique but also upon the institutional design through which legal norms are implemented. Consequently, the quality of administrative governance is determined not simply by the existence of legal rules but by the capacity of public institutions to apply those rules objectively, consistently and in accordance with the requirements of the rule of law.

Against this background, the debate concerning the automatic suspension by operation of law of administrative acts challenged by the Prefect remains open. Assigning the power to order suspension exclusively to the administrative courts would preserve the constitutional function of legality review while reinforcing the institutional guarantees of impartiality and judicial protection. Likewise, strengthening the functional independence of the Secretary General should continue to represent a priority in any future reform of local public administration.

Ultimately, the Romanian system of administrative control demonstrates that the enduring challenge is not to choose between local self-government and administrative supervision, but rather to preserve an appropriate constitutional balance between them.

It is precisely this balance that enables legality to function not as a limitation upon local autonomy, but as one of its essential guarantees.

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SOME ASPECTS REGARDING THE EUROPEAN ENTRY/EXIT-SYSTEM (EES)

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Abstract:
The European Entry-Exit System (EES), a digital platform intended to gradually replace the classic passport stamping for non-EU citizens travelling to the Schengen area, was launched on October 12th, 2025 and became fully operational throughout the EU on April 10th, 2026.
The EES is an automated IT system that registers travels at the external borders of the Schengen area. Specifically, it is aimed at third-country nationals - persons who are not citizens of a member state of the European Union, of the European Economic Area (EEA) or Switzerland, who enter or leave the Schengen area, for short stays without a residence permit. For these travellers, there are changes to the border control process. The EES largely replaces the manual stamping of passports, as the travellers' biometric data are collected electronically.
Keywords: *Schengen area, registration, entry-exit system, access, security*

1. Preamble

The European Union has launched *The Digital Entry/Exit System (EES)* since the 12th of October 2025. The transition to the new system has been gradual, with appropriate information and assistance at all border crossing points. The EU Entry/Exit System (EES) has been in use throughout the EU since the 10th of April 2026.

This new digital border protocol was designed to modernize EU c, prevent visa overstays and identify potential security risks. Since its initial testing phase, the system has detected over 24,000 people who tried to enter with fraudulent documents or for unjustified reasons.[1]

The EES is one of the measures taken under the EU Common Foreign and Security Policy and contributes to achieving the objectives of the European Agenda on Security and the European Agenda on Migration, in particular as regards border management and the prevention of cross-border crime and terrorism.

A chronological analysis of events shows that the proposal for the EES was made by the European Commission as early as 2016 (April 6th 2016), as part of the revised Smart Borders package. Following negotiations with the European Parliament and the Council, an agreement was reached in July 2017. Thus, the EES Regulation [2], together with a specific amendment to the Schengen Borders Code, were adopted on the 20th of November 2017 and entered into force on the 29th of December 2017.

The European Commission proposed the introduction of a gradual start of operations for the Entry/Exit System (EES) on the 4th of December 2024. On the 19th of May 2025, the European Parliament and the Council reached an agreement, (EU) Regulation 2025/1534 on temporary derogations from certain provisions of (EU) Regulations 2017/2226 and (EU) 2016/399. As for the gradual start of the Entry/Exit System, it was adopted on the 18th of July and entered into force on the 26th of July 2025.

Immediately after this stage, on the 30th of July 2025, the Commission set October 12th 2025 as the launch date for the progressive start of operations of the Entry/Exit System (EES), the system becoming fully operational on the 10th of April 2026.

2. The need for the Entry-Exit System (EES)

The Entry/Exit System (EES) is an automated information system that allows the registration of third-country nationals - persons who are not nationals of a member state of the European Union, the European Economic Area (EEA) or Switzerland - travelling for a short stay, each time they cross the external borders of any of the European countries using the system.

For the purposes of the (EU) Regulation 2017/2226 [3], which ensures the implementation and operation of the EES, a "*third-country national*" (TCN) is a traveller who is not a national of any country of the European Union or of Switzerland, Iceland, Liechtenstein or Norway. Also, a "*short-term stay*" is considered to be a stay of up to 90 days in any 180-day period, calculated as a single period for all European countries using the EES.

The use of the EES brings a number of benefits both for the EU as a whole and for each Schengen member state, such as modern and more efficient border controls, in the sense that the EES will gradually replace the stamping of passports with a digital system

that records the entry and exit of travellers, so that border controls will be carried out more quickly and staff will work more efficiently. Border crossings are expected to be simpler and faster with the EES, with travellers waiting less time at the border thanks to faster checks, self-service options and the possibility to provide their information in advance.

An important aspect that the new system aims to address is the prevention of irregular migration [4], as people entering and exiting the Schengen area will be monitored using fingerprint and facial data to prevent people from overstaying their legal stay, using false identities or abusing the visa-free travel regime.

It also ensures increased security in the Schengen area, providing access for border guards and law enforcement authorities to important information on travellers, on which basis they can identify security risks and contribute to the fight against serious crime and terrorism. [5]

The (EU) Regulation 2017/2226, in Article 2(3), lists the categories of persons exempted from the application of the EES. These categories refer to nationals of European countries using the EES and those of Cyprus and Ireland, third-country nationals who hold a residence permit and have a direct link to an EU national. Also included in the category of exceptions are third-country nationals who hold a residence permit and have a direct link to a third-country national who can travel throughout Europe in the same way as an EU citizen, third-country nationals who travel to Europe as part of a transfer within the same company or for the purposes of research, studies, vocational training, voluntary service, student exchange programmes or educational projects and au pair work.

Furthermore, to the above-mentioned categories are added holders of residence permits and long-stay visas, nationals of Andorra, Monaco and San Marino and holders of a passport issued by the Vatican City State or the Holy See, persons who are exempt from border checks or who have been granted certain privileges with regard to border checks (such as heads of state, accredited diplomats, cross-border workers, etc., diplomats travelling for a short period may be exempted from registration in the EES under certain conditions), persons who are not required to cross the external borders only at border crossing points and only during established working hours, holders of a valid local border traffic permit; crew members of passenger and freight trains operating international

connecting routes, persons holding a rail transit facilitation document or a valid transit facilitation document, provided that they travel by train and do not get off anywhere on the territory of an EU member state [6].

The exemption from registration in the EES also applies to members of the armed forces travelling in the framework of NATO or Partnership for Peace actions, who hold an identification document and an individual or collective travel order as provided for in the Agreement between the States Parties to the North Atlantic Treaty on the Status of their Forces and may concern the civilian component or dependents referred to in the NATO Agreement on the Status of Forces.

The exemption applies to NATO international civilians established in any of the 29 European countries using the EES and their dependents.

The Entry-Exit-System is used in 29 European countries: 25 of the 27 EU member states and four European Free Trade Association Member States (Switzerland, Liechtenstein, Iceland and Norway). These countries are: Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and Switzerland.

One thing to note is that the EES regulations also apply to UK citizens entering the EU space for a short-term stay of up to 90 days.

3. Typology of data collected and stored by the EES

The efficient functioning [7] of the EES involves the collection, recording and storage of information contained in a person's travel document (full name, date of birth, etc.), date and place of each entry and exit, biometric data (facial image and fingerprints), refusal of entry (if applicable). Based on the collected biometric data, biometric templates will be created and stored in the Shared Biometric Matching Service (Shared BMS) [8]. In the event that the person holds a short-stay visa to enter the Schengen area, their fingerprints will no longer be stored in the EES as they are already found in the Visa Information System (VIS). [9]

In addition, depending on the individual's situation, the system may also collect personal information from the Visa Information System (VIS) [10], which is operational and contains additional personal information, or from the European Travel Information and Authorisation System (ETIAS) - usable from the last quarter of 2026, with a transition period of at least six months - in particular the ETIAS [11] travel authorisation status and, where applicable, the status of a family member of an EU national.

It should be noted that the collection of this data and information is based on the applicable data protection rules and rights. [12] Thus, upon first entry, biometric data will be collected, and on subsequent trips the verification will be carried out automatically, thus reducing the waiting time at the border. The data will be kept for 3 years (or 5 years in the event of refusal of entry or exceeding the legal duration of stay), in strict compliance with European data protection legislation.

The purpose of collecting and processing data in the EES is to strengthen the efficiency of the management of external borders, prevent irregular migration, facilitate the management of migration flows, and identify travellers who do not have the right to enter or who have overstayed their authorised stay. [13] The identification of travellers using false identities or passports is also added, as is the support for the prevention, detection and investigation of terrorist offences and other serious criminal offences. These are carried out [14] in accordance with (EU) Regulation 2017/2226 of the European Parliament and of the Council, in particular with Articles 14, 16-19 and 23 of Chapters II and III. This Regulation also stipulates the conditions for the collection and storage of personal data in the EES.

With regard to crossing the external borders of European countries implementing the EES for a short stay (set at a maximum of 90 days in any 180-day period), written information on the EES and related rights shall be provided to those concerned. The refusal of the person to provide biometric data shall lead to refusal of entry into the territory of European countries implementing the EES.

The information stored in the EES is protected against misuse, with access only to staff with specific functions within national authorities. Thus, access to the personal data collected is allowed to border authorities and authorities responsible for visas and immigration in European countries using the EES, for the purpose of verifying the identity

of a person and deciding whether to allow entry or stay on their territory, as well as to law enforcement authorities in countries using the EES and Europol, for the purpose of ensuring compliance with the law.

The data may not be transferred to third parties, whether public or private entities, except in precisely identified cases. Under strict conditions, the data may be transferred to another EU or non-EU country or to an international organisation, as set out in Annex I to (EU) Regulation 2017/2226: UN organisations (such as UNHCR, the International Organisation for Migration (IOM) or the International Committee of the Red Cross for return purposes [15]. It was considered that carriers would only be able to check whether short-stay visa holders have already used the number of entries authorised by their visa and would not be able to access other personal data.

The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA) [16] is responsible for ensuring the operation of the EES in accordance with applicable law. Moreover, there are strong safeguards for the effective protection of the rights of individuals in relation to their personal data. If the individual is a national of a third country to which the EES applies, he or she has the right to request access to the data or to request the rectification, completion or erasure of data in the EES.

The EES has been developed in accordance with the principle of data protection from the moment of its conception and, implicitly, this principle also applies during its operation. As such, the system is supervised both by the European Data Protection Supervisor [17] and by independent national supervisory authorities in each participating country. Full respect for fundamental rights and data protection rules requires that technological and IT systems are well designed and used correctly.

The shared biometric matching service (shared BMS) [18] will store biometric templates, which are a mathematical representation of the biometric data stored in the Visa Information System, in the EES and in other EU information systems. These allow searches using biometric data. The system is designed to guarantee data security through secure storage and regulated access controls, ensuring that personal data are safe and accessed appropriately. The sBMS will significantly improve the accuracy of identification and verification of individuals, strengthening security and controls at EU

borders, as well as improving the management of visas and asylum applications [19]. In practice, the EES uses the shared BMS for its interoperability with the VIS.

The EES Central System shall perform biometric identification and searches based either on the flat fingerprints of four fingers (index finger, middle finger, ring finger and little finger) or on the flat fingerprints of four fingers combined with the real-time facial image and using only biometric data that meet the applicable quality thresholds. It shall also perform biometric searches using the real-time facial image combined with dactyloscopic data.

4. Effects of the application of the EES system

The new European rules on smart borders were adopted in 2017, but their implementation was postponed for years, being fully applied only in April 2026.

It is important to note that the EES does not change the conditions for entry into the European Union, as border authorities can still carry out additional checks if necessary. There are also a few exceptions: in countries such as Cyprus and Ireland, passports will still be stamped manually.

Individuals have the right to receive information from passport control officers on the maximum number of days of authorized stay remaining. The online tool or equipment installed at some border crossing points can also be used.

If the number of days of authorised stay is exceeded, the system will identify him/her as an “overstayer” and his/her data will be automatically added to a list. State authorities using the EES - passport control officers, immigration officers and visa issuing staff - have access to this list.

If the person’s name is added to the list of overstayers, there may be other consequences, depending on the national law in force in the respective European country using the EES. These consequences include: removal from the territory of that country, administrative fines, deprivation of liberty or refusal of future entry into the EU territory.

If the legal period of stay is exceeded, but the person provides credible evidence to the competent authorities (border authorities or immigration authorities, etc.) regarding possible unforeseen or mitigating circumstances (e.g. hospitalization due to a serious

injury), the data can be modified in the system and the person's name can be removed from the list [20].

The calculation of the duration of authorised stay and the generation of alerts to member states using the EES when the authorised stay has expired shall not apply to third-country nationals who are family members of EU, EEA or Swiss nationals, who travel to or are already resident in a State other than their State of nationality and who accompany or join the EU, EEA or Swiss national.

In addition to the Entry/Exit System, the European Travel Information and Authorisation System (ETIAS) is expected to be introduced in the European Union in the last quarter of 2026. The ETIAS system issues an electronic travel authorisation for visa-exempt third-country nationals, which must be applied for before travelling [21]. Similar systems are already in place for travels to the USA (ESTA - Electronic System for Travel Authorisation) or the UK (ETA - Electronic Travel Authorisation).

Where a member state rectifies or completes the EES data of a third-party national included in the list, restricts the processing of such data or erases such data, the corresponding data on the list shall be amended accordingly or, where appropriate, erased from the list by the EES without delay and through an automated process. The immigration authorities shall be responsible for accessing the list of persons identified by the EES as having overstayed.

The EES shall make available to the immigration authorities, in the form of a report, a continuously updated list of persons identified by the EES as having overstayed their authorised stay. The respective report shall be securely stored in the National Uniform Interface (NUI) [22]. The EES shall control access to the report at the level of this interface, so as to ensure that only the immigration authorities may access and consult it and keep a record of all data processing operations carried out.

5.Conclusions

It is worth noting that the EES, which applies to third-country nationals who require a short-stay visa to travel to European countries using the EES or who do not require a visa to travel for a short stay to European countries using the EES, does not change the

conditions for entry into the European Union, with border authorities still being able to carry out additional checks if necessary.

The implementation of the EES brings a number of clear advantages for travellers. First of all, waiting times at the border are reduced, thanks to the automation of processes. The elimination of stamps in the passport simplifies formalities, and the possibility of pre-registration (where available) contributes to a faster experience. At the same time, the system helps prevent fraud and increase the level of security in the European space.

Twelve member states have not yet completed the necessary preparations for the implementation of the migration reform, including the development of the infrastructure required for the new border checks. Other countries have faced problems with the functioning of the biometric database [23] that will be used within the system. European public opinion [24] has become even more critical of the migration phenomenon since the adoption of the reforms, leading member states to call for additional measures to manage this phenomenon, and one solution in this regard was precisely the implementation of the European Entry-Exit System (EES), as a modern control instrument at the external border of the Schengen area.

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KEY CHARACTERISTICS OF THE EUROPEAN UNION"S JUSTICE, HOME AFFAIRS, COMMON FOREIGN AND SECURITY POLICY PRIOR TO THE THEATY OF LISBON

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Abstract:
At the height of the enthusiasm for European integration, in the late 1980s and early 1990s, economic integration was considered to be well advanced, while there was very little integration in the political sphere. The members of the European Union jealously guarded national competences in a number of political areas, especially in those considered to represent the core of national sovereignty – domestic and foreign policy. Hence the commitment to initiating political integration, for which, again, it was necessary to build an appropriate institutional framework. The Maastricht Treaty made an institutional breakthrough in that it divided all issues of European integration into three pillars. The first pillar included all common community policies, that is, those matters where Brussels has a strong and dominant influence. The second pillar was dedicated to foreign policy, and the third to internal policy. It was believed that this would encourage internal and external policies to develop like other common EU policies. In the meantime, a little over fifteen years have passed since Maastricht and the Lisbon Treaty (2006), and expectations have not been fully met. This was to be expected. Already when creating the three pillars, the "architects" designed the pillars differently. While within the first pillar, the main role, as a rule, is played by the common bodies of the Union, in the other two pillars everything is in the hands of national governments. There are only as many common policies as the representatives of the governments decide. That is why everything was different in the other two compared to the first pillar. National governments are the main proposers of measures, the Commission only participates as a secondary actor, while decisions are made by the Council of Ministers and they are mainly based on the consent regime.
Keywords: *Maastricht Treaty, Treaty od Lisbon, European Union, Security Policy, International Law*

1.1. Expanding cooperation in the field of justice and home affairs

Justice and home affairs are among the most important state issues, and EU member states have shown great reservations about any renunciation of competence in this area in favor of the Brussels body, so that only those segments in which all member states had an interest could be unified.

The question is when and how cooperation between EEA countries in the field of justice and home affairs would have developed at all, if some segments in this domain had not appeared as a bottleneck or obvious deficiency. Several phenomena are worth mentioning. First, the increased cross-border trade in goods, as a result of the customs

union, created queues and congestion at the borders of member states. Second, congestion also arose due to passenger traffic. Thirdly, there was no coordination in immigration and asylum policy, so third-country nationals used this to initiate procedures for obtaining citizenship, refugee status or asylum in several countries, which overwhelmed the relevant services in the EEA countries and led to multiple unnecessary procedures for seeking asylum, refugee status or displaced person status. Fourthly, international crime and terrorism were a growing problem, especially terrorism after the collapse of the left-wing "protest movements" of the late 1960s. It was only in the mid-1970s that member states began to cooperate in some fields, usually in the form of working groups. Thus, in 1970, the European Political and Judicial Cooperation Group was established, in 1975, the Trevi Group for the exchange of information on terrorists, international crime, and in particular, drug trafficking, and in 1978, a committee dealing with asylum issues. The exchange of information between member states on the issue of asylum, immigration, and refugees began in 1985.

Justice and home affairs constitute the so-called third pillar of the EU – the other two being the European Communities and the Common Foreign and Security Policy. The three pillars of the Union were introduced by the Maastricht Treaty and are different in character. While the first pillar, which concerns the various communities, is communitarian in nature, the other two pillars are purely intergovernmental forms of policy. The irony is that the second and third pillars are not particularly well-developed, and an indicator of this lagging behind is that they remain in the hands of intergovernmental, not shared, competences. In the first, communitarian pillar, the Commission has a monopoly on legislative initiative, the EP is consulted or co-decided, depending on the procedure, and the Council of Ministers makes definitive decisions. In the other two pillars, the practice has long been that the governments of the member states have the legislative initiative, the EP is only informed or consulted, the Commission is marginalized, the ECJ is completely excluded from dealing with issues in these two pillars, and the Council of Ministers decides. This division of competences has been subject to constant criticism. It was believed that excluding the EP from decision-making only deepened the “democratic deficit”, and that excluding the ECJ expanded the discretionary field of bureaucrats in the decision-making process. There is also the real problem of decision-making, because a

decision requires the consent of representatives of all countries, and this is not easy to achieve.

The accumulated problems influenced the expansion of cooperation in the field of justice and home affairs, and the key breakthrough was made by the Treaty of Maastricht, where the then Article K1 stated: "Member States shall regard the following areas as matters of common interest:"

a) asylum policy,

b) rules for crossing the EU's external borders,

c) immigration policy,

d) combating drug abuse,

e) combating fraud and embezzlement on an international scale,

f) judicial cooperation in civil matters,

g) judicial cooperation in criminal matters,

h) customs cooperation,

i) police cooperation in order to prevent terrorism, drug trafficking and other forms of international crime,

j) exchange of information in the above areas.

Therefore, cooperation is basically located in four areas – immigration, asylum, police and judicial cooperation, and in some of the above issues it takes place partly in the relevant bodies of the Union, which are all intergovernmental in nature, but it also takes place in other ways – regionally and through global organizations (UN, OSCE, Interpol). Also, some parts of the policies were born from informal meetings of officials of the member states, which means that reality and need stood behind them.[1]

The common policies of the third pillar cover many different issues, but the most important are securing the EU's external borders, immigration and asylum issues, combating crime and terrorism, and judicial cooperation. The Maastricht Treaty provided for three instruments for implementing the common policy in the third pillar – common positions, actions and conventions. According to the Maastricht text, the third pillar was not the responsibility of the ECJ, but of the judicial systems of the member states. The decision-making process on third pillar issues is five-tiered. At the lowest level, working groups are formed, above them are the "control groups", the K.4 Committee, COREPER

and, finally, the Council of Ministers for Justice and Home Affairs. The Council of Ministers is the highest body in this area and it decides by consensus. COREPER supervises cooperation and prepares meetings of the Council of Ministers. The K.4 Committee coordinates activities and assists in decision-making.

By the Treaty of Amsterdam of 1997, a number of issues from the third pillar were transferred to the first pillar, with effect from immediately or at the latest in five years, i.e. by 2002. These issues include:

- standards and procedures for carrying out checks at the external borders of the Union,
- rules on entry visas for third-country nationals,
- measures applicable to travel by third-country nationals within the Union,
- the question of asylum,
- the fight against organised crime,
- minimum standards for the reception of asylum seekers, conditions for obtaining and losing refugee status for third-country nationals,
- a system of cost-sharing for displaced persons,
- conditions for obtaining long-term visas and residence permits,
- measures to combat illegal entry and residence in the Union,
- conditions under which third-country nationals may move from place to place within the Union.

One of the innovations of the Amsterdam Treaty is the "framework decisions", the idea of which is to standardize provisions and interpretations in the criminal laws of the member states. Decisions on individual matters are framework in that they state the objective and leave it to the member states to find the means to achieve the objective. By the same document, the Community's contractual powers were extended to the area of aid to underdeveloped countries.[2]

1.2. The emergence of agencies

Since a large part of the competences of the third pillar were transferred to the first pillar, the third pillar has been officially called Police and Judicial Cooperation in Criminal Matters since the Treaty of Amsterdam. But, although the third pillar is so sparse in terms

of competences, a whole series of institutions were established in the next ten years. These institutions are usually characterized by specialization in only one field of work.

The first step was the creation of Europol. The Union's police force was initiated in 1991 and established in 1995. Europol only became operational in 1999, although it currently has only a few hundred employees. It is based in The Hague. As a parallel to Europol, Eurojust was also established to coordinate the work of national prosecutors in criminal matters, including a more efficient exchange of information and documents between national prosecutors' offices and courts. Eurojust was founded in 2002 and is also based in The Hague.

The European College, also known by its French acronym CEPOL, is an agency for training senior police officers. It was founded in 2001 in Copenhagen-Bromby. Senior police officers have been given a channel for cooperation in combating international crime through the Police Chief's Task Force, established in 2001. For officers dealing with external border crossings, the Common Unit for External Border Practitioners was established in Brussels in 2002. Some other agencies have also been established, for example, the Centre for Information, Discussion and Exchange of Data on Border Crossing and Immigration (CIREFI), the Centre for the Exchange of Information on Asylum (CIREA), and the European Drugs Unit (EDU).[3]

1.3. Treaty of Nice

The Treaty of Nice again amended Article 133 of the Treaty establishing the European Community. The amendments made empowered the Community to conclude international agreements in the field of trade in services and the commercial aspects of intellectual property. However, the Community's contractual powers in these areas are not unlimited. Article 133(6) of the Treaty provides that the Community may not conclude international agreements which contain provisions which fall outside the internal competence of the Community, in particular where such agreements lead to the approximation of the laws of the Member States in an area in which the Treaty excludes such approximation.

Following the logic of the Amsterdam Treaty, the Treaty of Nice further emphasized the need for cooperation between EU member states in "judicial cooperation in criminal

matters" regarding the extradition of defendants, harmonization of rules, prevention of conflicts of jurisdiction between Union bodies from different countries, etc. By the same treaty, the issues of asylum, civil law, movement of third-country nationals within the territory of the Union, border control and combating illegal immigration and return to the country of origin were transferred from a consensus decision-making regime to majority decision-making. This was done by losing the right of member states to veto "enhanced cooperation" in the aforementioned areas.

1.4. Signing of the Schengen agreement

One of the most important results in achieving the goal of free movement of people within the EU was achieved with the signing of the Schengen Agreement in June 1985, which came into force in 1990. At the time of its creation, the Schengen Agreement was not an act of the Union but only of some of the member states – Belgium, France, the Netherlands, Luxembourg and Germany were the first signatories. They were later joined by the member states Austria, Denmark, Finland, Greece, Italy, Portugal, Spain and Sweden, as well as the non-members Iceland and Norway. The agreement concerns the abolition of internal border controls between the vast majority of EU15 countries. In order for the agreement to be applicable, it was necessary for the signatories to accept the same standards for the visa regime, asylum procedure, prevention of illegal immigration, police and judicial cooperation. It was also necessary to establish a single information system for visas, asylum, immigration, etc. This was the Schengen Information System. It was not, of course, easy to reconcile all these issues, because the member states had different standards and interests. Some countries had better relations with one, and some with other countries in the world. Things went so far that in the first round, the countries from the south (Greece, Italy, Portugal, Spain) were not even supposed to participate in the Schengen Agreement. They only joined in the period 1990-1992. A single visa form was introduced only in 1995.

Before this agreement, these controls were abolished in three zones (within the UK-Ireland zone, the Benelux and between some Scandinavian countries). Norway and Iceland joined the Schengen Agreement, and the new members that joined the Union in 2004 were believed to find it much more difficult to join the Schengen Agreement than the

eurozone. This turned out to be wrong, because by mid-2008, more countries had joined the Schengen Agreement than the eurozone.

Since the Schengen Agreement abolished external border controls, the control mechanism has shifted to external borders. The consequence of the liberalization of movement within the Agreement area was, paradoxically, the deliberalization of the movement regime at external borders, which gave rise to the vision of the EU as a “Fortress Europe”. The more the Schengen Agreement area expanded, the stronger this impression became. For ordinary citizens, it was a psychological and physical obstacle. For criminal groups, it was an additional obstacle. Due to the increased activity of these groups, the member states also took additional actions to combat drug, arms and human trafficking, money laundering, terrorism and other illegal activities, especially those with an international dimension. The issues regulated by the Schengen Agreement were not originally subject to the EU Treaty, and were only included in the current Acquis after its signing. This happened only with the Treaty of Amsterdam in 1997.[4]

Some progress has also been made in the area of asylum and refugee admission, although it is not such that it can be used with the Schengen Agreement. Member States have adopted a procedure for exchanging information, partial standardization of the procedure for accepting refugees and defining their rights, and some minor developments have been made in asylum policy, family reunification, etc. For the asylum procedure, residence permit and refugee status, it has been adopted that persons seeking one of these statuses in the Union can do so only in the first Union country they arrive in. For example, someone cannot land in Rome and seek asylum or refugee status in Germany. They can only do so in Italy or leave the Union countries and try somewhere else. It is also impossible for the same person to seek asylum in more than one Union country. When a request is accepted/rejected in one country, this also applies to all other Union countries. The Union has signed readmission agreements with almost all European and some other countries, according to which the Union countries can deport to their home countries all citizens who are rejected in the Union for refugee or asylum status or if they are staying in one of the Union countries without permission. Defining political asylum seekers remains a major problem in asylum policy. Countries have different interests and different standards, as a result of which they often view asylum issues differently.

2. Foreign and security policy

Regarding the Union's foreign policy, there are a number of debates that are not characteristic of the foreign policies of nation states. In earlier periods, discussions were held about whether the Union's foreign policy is sui generis or a mixture of the foreign policies of the member states. In more recent discussions, some authors have tried to redefine foreign policy, so that it would seem that the Union has one. It follows that all the international relations of the Union would be foreign policy - trade policy, foreign aid, enlargement. It is not in dispute that it is desirable for all of them to be coordinated, in order to avoid giving contradictory signals and unnecessarily wasting resources. But foreign policy cannot be all of that, but only what its name suggests - a set of political rules, instruments and programs of the Union in its relations with various countries and international organizations. The Union's foreign policy can only be what the member states agree on, and not a policy pursued by individual members, a group of members, or the majority of members. It is understood that foreign policy can be encouraging, neutral, or punitive, and that the Union can be successful or unsuccessful in its implementation.

For almost decades, the EEC did not have a more unified and independent foreign policy. This was influenced, on the one hand, by internal factors, primarily the great differences between the member states and the reluctance to give up influence in this domain in favor of Brussels, and, on the other hand, by the Cold War, which left the Union's foreign and security policy with little choice between the United States and the Soviet Union. The EEC countries had economic and political regimes consistent with the United States, so it is logical that during the Cold War they were on that side, not the Soviet side. Since the United States dictated policy, the EEC and its members did not stand out much except in individual moments when they launched some of their own policies, such as Germany with its "Eastern Policy" during the time of Chancellor Brandt.

The European Union had common policies in various areas, but for decades there was little common foreign and security policy (CFSP). The initial treaties were more than stingy, even in mentioning the EEA's foreign policy, not to mention setting goals. Since some member states had very active foreign policies, including military interventions outside Europe, this led to constant tensions between Brussels and the member states.

The EEA countries first established cooperation and exchange of foreign policy information in the 1970s. The institutional framework was called European Political Cooperation.

The idea of developing a common foreign and security policy came relatively late, only in the late 1980s. Both external and internal factors contributed to this. First, the collapse of communism led to the political defeat of the Soviet bloc, which ended the Cold War. The Union countries gained the opportunity for a more independent foreign policy in relation to the USA. The main problem was no longer the global bipolar confrontation, but regional issues. Secondly, the countries of Eastern Europe abandoned communism, entered transition, began to approach the Union, and most of them, after fifteen years, became its full members. Thirdly, German unification increased German foreign policy ambitions. Since this country is not a permanent member of the Security Council, like Britain or France, it was necessary to find a European foreign policy channel of influence. Finally, the economic power of the Union was great and in complete disagreement with foreign policy, which was practically non-existent. Even when it began to develop, the common foreign policy of the Union was more reactive, lagging behind events, than it was a factor in influencing the resolution of individual crises. The reasons for this were the search for its own path, the lack of foreign policy experience and the very different interests of the member states.[5]

2.1. Defense policy

The Western Union (WU), the predecessor of the Western European Union (WEU), was founded in 1948 before NATO, and was joined by Belgium, Britain, France, the Netherlands and Luxembourg. They adopted a defense treaty with an obligation of mutual defense. However, the real, functional defense alliance of the West was and remains NATO (founded in 1949), while the WEU remained an organization on paper until the mid-1980s, and even then with negligible practical significance. In the period 1954-1955. year the revision of the WEU treaty took place, and Italy and Germany joined the organization. The Hague Platform (1987) by the WEU members and the Rome Declaration (1991) by NATO members marked the way towards the proclamation of a common defense policy according to the Maastricht Treaty.

In the same year (1992), the WEU members committed themselves to participating in peacekeeping and peacekeeping missions with the St. Petersburg Declaration. Later, with the Amsterdam Treaty and at the Helsinki Summit in 1999, there was talk of improving the common defense policy, and a decision was made to form a joint armed force of about 60,000 soldiers, who were taken over by the UN in the period 2003-2008. peacekeeping missions in Bosnia and Kosovo. These forces should be able to go into action within two months of issuing the order. By today's standards, this is very slow. A particular problem is that rapid reaction forces can only be activated by unanimous decision of the members. They are not intended for classical combat operations – in this regard, the Union is entirely dependent on NATO – but for humanitarian aid missions, peacekeeping and stabilization in crisis regions. By the decision of the Nice summit, the WEU became part of the Union. It is difficult to say whether this made the WEU more of a real than a virtual organization. The European Security and Defence Policy was also established, which is part of foreign and security policy. It was introduced only in 2001, after decisions at several summits, starting with Cologne and Helsinki in 1999. The most important bodies for security and defense are the European Union Military Committee (composed of defense ministers or chiefs of general staff or their deputies) and the European Union Military Staff, composed of senior military personnel from the member states.

There have also been several attempts at bilateral defence agreements between EU members, such as the Élysée Treaty between France and Germany, the Franco-German dialogue of 1983 (with the more symbolic establishment of a joint brigade) or the Franco-British initiative of St. Malo in 1998, but these moves have largely failed to produce tangible, real effects. Despite all these activities, the Union's common defence or security policy has remained deeply overshadowed by NATO. Given the existence of NATO, it seems that there is not enough will and strength to strengthen the WEU. Making robust statements about the need to create a European defence force and an independent European military capability for action only further undermines the EU's credibility in the defence and security sphere, as well as in the sphere of foreign policy.

The key bodies for conducting foreign and security policy in the Union are the European Council and the Council of Ministers. The European Council defines the principles and general objectives of foreign and security policy. It usually also makes basic

political decisions related to the CFSP, but is secondary in conducting specific foreign policy. The Council of Ministers in the Foreign Affairs Council is the most important body for conducting foreign and security policy. The European Council and the Council of Ministers are assisted in their work by a number of different bodies, such as COREPER, the Secretariat Council, the Political and Security Committee, the European Military Committee, etc. The European Commission is involved in political processes, but it does not play a major role in decision-making, but only in preparing documents. The Commission has not been more involved in this sphere because the member states feared that this would be the shortest way to transfer the levers of power in foreign policy from national governments to bodies in Brussels. The European Parliament has only a consultative role. Although this is the case, the role of the EP is not entirely insignificant, because the debates on certain issues that are held there often show the direction of foreign policy action. The European Parliament has the opportunity to influence foreign policy also by controlling expenditure for these purposes. Since this expenditure is classified as “non-compulsory”, the EP has a great influence on the spending of this type of funds. The European Court of Justice and the CFI have no role in foreign policy, except in the sphere of sanctions that the Union imposes on individual countries. And sanctions are somewhere between foreign policy and trade. The authors are right when they say that there is no justification for removing foreign and security policy from the control and supervision of the legislative and judicial authorities. This only increases the discretionary space for executive bureaucrats.

There were some other changes from 1992. The political secretariat was strengthened (attached to the Council), majority decision-making was allowed in some cases, a decision was made to hold all meetings in Brussels, it was emphasized that further work would be done on planning political actions, a High Representative for Foreign Affairs was introduced (since 1999) and it was required that political issues be considered in conjunction with defense issues.[6]

According to the Treaty of Amsterdam, the five main objectives of the CFSP are:

- “to protect the common values, fundamental interests, independence and integrity of the Union, in accordance with the principles of the UN Charter;
- to strengthen the security of the Union in all respects;

- to preserve peace and strengthen international security, in accordance with the principles of the UN Charter, as well as the principles of the Helsinki Final Act and the objectives of the Charter of Paris, including those relating to external borders;
- to promote international cooperation;
- to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms".

In a somewhat more substantive sense, the objectives of foreign policy are peace, security, the promotion of human rights, democracy, the rule of law, the market economy, free international trade, as well as the prevention of conflicts, crises and international crime.

Like the USA, the Union is an example of the transfer of the ideals of the internal order to the external plane. Thus, democracy, the rule of law and the market economy are added to the classic foreign policy goals, such as the preservation of peace and international cooperation. But, unlike the USA, which is very effective in representing its interests internationally, the Union is very often internally divided and ineffective. Moreover, the more robust the conflicts that the Union tries to influence, the smaller the role of the Union.

According to Article 12 of the Maastricht Treaty, the Union implements the stated objectives of foreign and security policy in the following way:
- by defining the principles and guiding rules of foreign and security policy,
- by deciding on common strategies,
- by adopting common actions,
- by adopting common positions,
- by strengthening the systematic cooperation of the member states in conducting policy.

There are three basic instruments of foreign policy, namely:
a) joint actions,
b) common positions,
c) and common strategies.

Common strategies are the result of an addition to the Treaty of Amsterdam. These three things are not easy to distinguish from each other. In addition to them, there are

also political statements and declarations. Their legal status is not entirely clear because they are by definition non-binding, but nevertheless they have a certain political weight.[7]

2.2. A foreign policy "dwarf" with a huge diplomatic network

The Union, however, was and remained deeply divided over almost all important political issues at the turn of the century (the collapse of the former Yugoslavia and the war in the Balkans, the fate of NATO, the wars in Africa, the Israeli-Palestinian conflict, the war in Iraq, etc.). It was often divided into more than two groups of countries, and these divisions probably had a decisive influence on weakening the already modest aspiration among the member states to do something more to establish a common foreign policy. Among the foreign policy moves where some consensus was achieved, it is worth mentioning the crisis in Macedonia in 2001 and the humanitarian intervention in Congo in 2003. In the absence of an institutionally comprehensive and politically unified foreign policy, the EU tried to do as much as was possible under the given conditions. There was no consensus on them, so all these manifestations had a non-binding character. Secondly, in matters on which the Union member states managed to reach agreement, the representatives of the Union acted on behalf of all member states, for example, the foreign ministers of the countries currently presiding over the Union acted on behalf of the entire Union in the UN, OSCE, etc. Thirdly, in matters on which they managed to reach agreement, the member states implemented certain policies related to various types of sanctions, provision of aid or humanitarian interventions. In such actions, there is a practice for those member states that do not use a certain action (if it is not high on its list of priorities) to abstain, thus enabling the other member states to implement a certain policy.[8]

Despite the difficulties in seeking even a minimal foreign and security policy, the 2004 draft constitution envisaged a complete unification of this area (cf. Articles I-39, 40). Thus, for example, Article I-15.1 states: “The Union’s competences in matters of common foreign and security policy shall extend to all areas of foreign policy and to all questions relating to the security of the Union, including the progressive framing of a common defence policy, which may lead to a common defence…” This strong formulation is followed by a much softer one in the next paragraph, which states that all Member States

shall support all the policies mentioned “without reservation” and that they shall exercise “loyalty and mutual solidarity”. Probably aware of the different interests of the Union's members, the drafters of the Constitution do not say that the Union acts with one voice if any of its members is attacked: "If a Member State is the victim of an armed attack on its territory, the other Member States shall therefore have the obligation to provide assistance by all means in their power, in accordance with Article 51 of the Charter of the United Nations. This shall not prejudice the specific character of the security and defence policies of certain Member States" (Article I-40.7). This formulation suggests that the foundations of the common defence policy of the Member States could indeed be strengthened, although this would not mean that it would become identical for every country. The draft constitution omits the common foreign and security policy as a separate pillar, which was intended to make it a classic Community policy, such as competition policy, transport or the common market, with certain minor differences – assent remains as the decision-making method, the ECJ is excluded, etc. The draft constitution also provides for the introduction of a Union Minister for Foreign Affairs. He would be appointed by the Council, with the consent of the Commission. The Minister would represent the Union in all matters of foreign affairs and would replace the current High Representative. He would also replace the Union Presidency from a member state. In short, the draft constitution provided for the Union’s foreign policy to be designed along the lines of nation states and for the Union to take over increasingly important competences. Since the draft was rejected, the solutions that existed at the time remained in force, and were largely taken over in the Treaty of Lisbon. [9]

The attempts to develop a common defense and foreign policy and the significant failures to achieve even the slightest tangible results show the enormous difference that exists between relatively successful economic and clearly unsuccessful political integration. This difference is not accidental. Market integration is in everyone's interest and there are very effective mechanisms for resolving disputes in the market between firms (this is done by the buyer, deciding on a particular product), while political integration is possible only on the basis of consensus or majority decision-making. Consensus is an excellent method of decision-making, but it is difficult to achieve, while majority decision-making brings redistribution. It is no wonder that there are many resigned and pessimistic

thoughts about progress in developing foreign policy. "Progress in foreign policy coordination is slow and mostly of an informative nature". That is why it is usually said that the EU is "an economic giant and a political dwarf". This is also evident from the wording that has been present in all international agreements and treaties signed by the Union for decades: "The European Communities and the Member States, acting within the Union..." In other words, for decades the Union did not have what lawyers call "international legal personality". It did not have this under the Maastricht Treaty either, so, for example, in 1996 the Union could not take over the international administration of Mostar in Bosnia and Herzegovina, but the administration agreement was signed by the Union and the WEU (with the member states).[10]

3.0. Conclusion

Political interference in monetary and broader economic issues is not a happy circumstance and for a good economic profile of the Union it is important to have as little of it as possible. It is possible that there is a certain frustration with political integration in the Union bodies, and then political interventions in the economy serve as a relief valve. It would not be good if that were the case, because the enlargement of the period 2004/2007. the Union has become more diverse, and thus potentially more exposed to divisions than ever. Political integration in such a situation for the EU27 is more difficult than before, but there is a possibility that only some member states will resort to it. This option would, however, activate the Multi-Speed Europe program.[11]

One of the permanent issues of foreign and defense policy is the method of decision-making. If one persists in consensus, it is difficult to achieve, and the Union is often left with an ineffective solution, i.e. without a specific policy. The shift from consensus to majority decision-making would lead to significant redistributions, and probably to a feeling in some countries that their vital interests were being violated. In the case of a common defense policy, countries would have to participate in Union actions even if they had no interest themselves, and they would not be able to act if the EU bodies decided not to intervene in a conflict, even though individual Union members might have strong interests there. As a result, some countries could leave the Union, which would not

automatically be the end of it, but it would be a significant blow and a sign of different times.

Enabling the EU to preserve its fundamental missions – growth, social cohesion, external action, stabilisation of the neighbourhood – and to avoid the three dangers of the current enlargement – reckless rushing forward, weakening of the EU and loss of citizens' trust – this option is based on the establishment of common institutions, core policies and strategic cooperation in the areas of foreign policy and defence. The main argument in favour of the partnership is its objective: the absence of satisfactory institutional and budgetary solutions that would make enlargement a success; institutional cooperation inspired by the European Economic Area; the extension of some common policies; strategic cooperation.

Such an approach would make it possible to put the political process back under control and to move away from the black-and-white scenario of the EU's current institutional offer. It is compatible with the scenario of strengthening the Eurogroup and presupposes, at the same time, a renewal of the institutional debate.[12]

The passage of the ratification bill in the British Parliament and the decision of the German Constitutional Court on the compatibility of the Treaty with German law removed the last obstacles to the implementation of the Treaty, which finally entered into force in November 1993. EU governments, institutions and other actors quickly began to make use of the Treaty's provisions. EMU was already on track, a common foreign and security policy was being implemented and member states began to cooperate much more closely on justice and home affairs issues.

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CLIMATE JUSTICE AND THE PROTECTION OF FUTURE GENERATIONS

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Abstract*:*
Changes in climate caused by global warming resulting from greenhouse gas emissions increasingly threaten our present and our future, and therefore our ability to react to protect the climate, biodiversity, and human health is at stake. The effects of climate change are complex and long-lasting for future generations, wich has led to increased international concern regarding environmental protection, the reduction of greenhouse gas emissions, and the development of legal and institutional mechanisms capable of holding states and economic actors accountable for environmental degradation.
In this context, climate change has contributed to the emergence and development of the concept of "climate justice". Climate justice is a recognition of the fact that climate change has far-reaching effects, the effects of the climate crisis being felt differently, as the UN notes, between rich and poor, women and men, older and younger generations.
The introduction of the concept of "climate justice" aimed to encourage the connection and collaboration between the climate movement and the international environmental community.
Keywords: *climate justice, equity, neutrality, climate change.*

On July 23,2025, the International Court of Justice in The Hague unanimously adopted an advisory opinion on the obligations of states on climate change. The Court ruled that climate change is ,,an existential problem of planetary proportions, which endangers all forms of life and very health of our planet.”[1]

Faced with the reality that human responsibility for global warming is ,,unequivocal” [2], and the time to keep global warming below 1,5°C is rapiddly shortening, the law has had to transform. Climate decision are being made today, but the effects of these decisions will fall disproportionately on future generations. From a legal perspective, a paradigm shift is needed to give law its rightful place in this reality of today’s society.

Climate justice seeks to align environmental protection with the principles of equity, human rights and social responsibilities, requiring that parties that have contributed significantly to climate change bear a proportionate share of the costs and remediation obligations.

Climate justice has crossed the threshold of aspirational morality and has become a justiciable legal obligation. This hypothesis is supported both at the doctrinal level [3]

and at the jurisprudential level, the last five years having contributed profoundly, through a number of decisions, to the relationship between political power and judicial control in climate matters.

The advisory opinion of the International Court of Justice in July 2025 transformed climate justice into a matter of general international law. Thus, the number of climate disputes has become impressive.According to the annual report published by the Grantham Research Institute on Climate Change and the Environment [4], by mid-2024, over 2600 climate cases werw registered globally, including the Ugenda ruling issued by the Suprem Court of the Netherlands in December 2019 and the Neubauer decision of the Federal Constitutional Court of Germany in March 2021. In Romania, the case of Declic Association v. Government of Romania, pending before the Cluj Court of Appeal, represents the first systemic climate action in our country and opened the space for doctrinal reflections on the adequacy of national legal instruments.

1. Climate Justice and Intergenerational Equity. Conceptual Foundations

Climate justice is a concept that addresses the fair and equitable sharing and distribution of the benefits and burdens of climate change and the responsibilities to address climate change. The term ,,climate justice" which emerged in the 1990s, does not refer to a single concept. Rather, it covers three different ways of understanding what is unfair when we talk about climate [5]. ,,Justice", ,,fairness" and ,,equity" are not entirely identical, but they are part of the same family of related terms and are often used interchangeably in negations and politics. The three dimensions of climate justice are: the distributive dimension, the procedural dimension and the corrective dimension.

The distributive dimension of climate justice focuses on who bears both the costs of climate change and the actions taken to address it. It is a well-know fact that high-emission countries have prospered economically over the past two centuries, while small island states, which have contributed almost nothing to emissions, are at risk of disappearing physically under water. At the individual level, the situation is similar, with the poorest producing the least emissions but suffering the worst consequences. In this sense, climate justice means a fair distribution of costs and benefits.

The procedural dimension focuses on how climate decisions are made – who is consulted, who has access to information, who can go to court. The reference instrument within this dimension is the Aarhus Convention (1998), ratified by Romania by Law no.86/2000, which established information, in the right to participate in decision-making and the right to bring an action before a court.

The corrective dimension concerns the repair of damage already caused. At the international level, this dimension was materialized in the ,,loss and damage" mechanism, recognized as the third pillar of global climate policy, along with emission reduction and adaptation, at the Conference of the Parties in Sharm el-Sheikh (2022).

The three dimensions of climate justice are complementary, having a temporal dimension, since they all raise, sooner or later, the question of future generations.

The idea that the present generation owes something to future generations is not new, it has appeared since antiquity, in philosophical reflections. What is new, however, is its transposition into law..

The american jurist Edith Brown Weiss[6] proposed a simple contruction, that of thinking about the relationship between generations by analogy with a fideicomis. As a ,,trustee" he is obliged to preserve the diversity of options of the planet, to preserve the quality of ecosystems and the maintain equitable access to resources.

The international community quickly took up this construction, the way being opened by the definition of sustainable development as development ,,that meets the needs of the present without compromising the aility of future generations to meet their own needs", in Brundtland Report (1987) [7]. In 1992, this principle entered into positive law through the United Nation Framework Convention on Climate Cange. Article 3 paragraph (1) requires states to protect the climate system ,,for the benefit of present and future generations of mankind, on the basis of equity and in accordance with their common but differentiated responsibilities".

Thus, the idea that future generations have a distinct legal status has been enshrined in a major multilateral convention.

This normative enshrinement has been criticized from the beginning, most notably by the british philosopher Derek Parfit. He argues that future generations, being unborn, cannot have rights of their own, since their existence and identity are closely linked to the

decisions we make today. It is therefore difficult to say whether a future person can be harmed by a decision without which they might not have existed [8].

The legal answer to this problem was that future generations do not need to be current holders of rights for the state to be bound by them. The state is obliged to protect fundamental interests such as life, health, the environment even now, regardless of who the people of the future will be. In practice, this idea has led to the emergence of institutions to represent future generations. A well-know example is the Commissioner for Future Generations in Wales, created by the Well-being of Future Generations Act 2015 [9]. Its role is to analyse the long-term effects of public decisions. Similar institutions have also existed in Hungary, the idea being recently supported by the UN Declaration on Future Generations, adopted in 2024.

In national doctrine, the concern for equity between generations has developed especially in recent years. Mircea Duțu, in his work Dreptul climei (2021), shows that climate change has created a distinct legal field, different from environmental law, with its own principles and instruments, and that a new right should be recognized – the right to a stable climate. This right is seen as part of the right to a healthy environment, but it also has its own content directly related to climate protection and the effects of climate change [3].

This doctrinal proposal provides an important theoretical framework for analyzing the relationship between environmental protection, climate change and responsibility towards future generations.

2. The normative framework

Climate justice can be understood more easily if we first analyze the set of rules and principles that define it. They operate on three closely related and mutually influencing levels: international, European and national.

The starting point of climate regulations at the international level is the United Nations Framework Convention on Climate Change. This document introduces, for the first time, at the international level, the idea of intergenerational equity. At the same time, the Convention defines climate change as a ,,common concern legal importance, as it

shows that the climate problem does not concern each individual state exclusively, but implies a shared responsibility at the global level''.

A decisive moment for climate regulations was the adoption of the Paris Agreement [10], ratified by Romania by Law no. 57/2017, which sets a concrete objective, namely to limit the increase in global temperature to well below 2°C and, as far as possible, to a maximum of 1,5°C compared to the pre-industrial period. To achieve this objective, states must develop nationally determined contributions (NDCs), their own plans to reduce greenhouse gas emissions. Even though each contry sets its own targets, the agreement requires them to be periodically reviewed, in the direction of more ambitious measures [10]. This mechanism, apparently flexible, has begun to be interpreted more strictly by the courts..

In September 2024, the United Nations General Assembly adopted the Pact for the Future, along with the Declatation on Future Generations. It is the first ONU document explicitly dedicated to protecting the interests of the future generations. Although it has no legally binding force, the declaration consolidates an international political consensus, which can influence the interpretation of existing obligations.

At the European Union level, climate policy is based primarily on two key instruments. The first is the European Climate Law (Regulation (EU) 2021/1119), which sets two binding targets for all Member States: achieving climate neutrality by 2050 and reducing greenhouse gas emissions by at least 55% by 2030, compared to 1990 levels. The second instrument is the European Green Deal, together with the “Fit for 55” legislative package, which translates these general objectives into concrete measures applicable to various sectors, such as energy, transportation, and the energy efficiency of buildings.

This legal framework is supplemented by the Charter of Fundamental Rights of the European Union, which, in Article 37, establishes the obligation to protect the environment and promote sustainable development. It should be noted, however, that the Court’s practice regarding climate change has so far remained quite restrictive. In *the Carvalho case* (2019), the General Court dismissed the action brought by ten families affected by climate change, finding that they were not affected “directly” and “individually” [11]. The

judgment, which was upheld on appeal, highlights the gap between the Union's lofty legislative ambitions and the limited access to climate justice before the European courts.

The European Court of Human Rights has also gradually developed significant case law in the field of environmental protection. The starting point was the case of *Lopez Ostra v. Spain*, in which the Court held that severe pollution may violate the right to private and family life, as protected by Article 8 of the Convention [12]. For Romania, an important milestone is the case of *Tătar v. Romania* [13]. In this case, the Court applied the precautionary principle and affirmed the state's obligation to assess and control environmental risks. The case remains an important precedent, with direct implications for current climate-related litigation.

In Romanian law, the foundation of environmental protection is represented by Article 35 of the Romanian Constitution [14], which guarantees the right of every person to a healthy and ecologically balanced environment. At the same time, the state has the obligation to create the necessary legislative framework to protect this right. Even if the constitutional text does not explicitly mention future generations, its wording allows for a broad interpretation, including in this direction.

The main regulation in this area is Government Emergency Ordinance no 195/2005, which enshrines principles such as prevention, precaution and the „polluter pays". Unlike other European countries, Romania does not yet have a climate framework law similar to the Climate Change Act. Currently, domestic climate regulations mainly stem from the transposition of European Union legislation and from national strategies or plans of a programmatic nature. These documents establish directions for action, but do not always create direct legal obligations but do not always create direct legal obligations that can be verified in court.

3. Case law – a benchmark for climate justice

According to the Grantham Research Institute's annual report, there were over 2,600 climate-related lawsuits worldwide as of mid-2024. Four of these rulings have had a major impact on the development of climate justice. Analyzing them is important both for the rulings themselves and for how they have strengthened the protection of future generations.

Urgenda Foundation v. State of the Netherlands was the first decision by which a supreme court obliged a state to reduce its greenhouse gas emissions. The court held that climate change threatens the right to life and privacy, protected by the European Convention on Human Rights. The decision opened the way for judicial rewiew of climate policies [15].

In the case *Neubauer v. Germany,* the Federal Constitutional Court of Germany ruled that German climate law was incomplete because it shifted the burden of reducing emissions onto future generations. The Court stated that fundamental rights must also be protected in the long term, enshrining the idea of „intertemporal guarantees of freedom" [16].

In the judgment *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland,* the ECHR established that states have an obligation to protect the population against the serious effects of climate change. The Court recognized the role of associations in climate disputes, emphasizing the collective and intergenerational dimension of the problem, directly invoking the need for a fair distribution of burdens between generations. The effects of the judgment extend beyond Switzerland. According to the mechanism of the Convention, the judgment has an authority that covers all member states of the council, including Romania.

The most recent development is *the advisory opinion of the International Court of Justice* dated July 23, 2025. The Court affirmed that the goal of limiting global warming to 1.5°C is binding and that states must adopt much more ambitious climate measures. The Court explicitly enshrined the principle of intergenerational equity and the obligation of states to protect the interests of future generations.

These decisions outlined a common doctrine of climate justice, based on four main ideas: the use of scientific consensus, the evolutionary interpretation of human rights, the responsibility of states for the long-term effects of their policies, and the recognition of acces to justice for vulnerable groups and representative organizations.

4. România in the climate justice ladscape

In Romania, environmental law has developed steadily since 1990, through the contributions of established authors [17]. An important role in the development of climate

law was played by Mircea Duțu [3], who supported the idea that climate law represents a distinct legal field and proposed the recognition of a new fundamental right, the right to a stable climate.

Article 35 of the Romanian Constitution guarantees the right to a healthy environment and establishes obligations for both the state and citizens. In its decisions, the Court has generally retained the pragmatic nature of the right to a healthy environment, dependent on the intervention of the legislator [18], but with the influence of German jurisprudence the interpretation has expanded to include concrete climate obligations for the benefit of future generations.

In 2023, the Declic Association filed Romania's first systemic climate lawsuit, calling for more ambitious measures to reduce emissions and accelerate climate neutrality. The lawsuit invoked several fundamental rights, including the concept of a right to a dignified future for future generations [19]. The case raises the issue of the Romanian legal system's capacity to address new climate-related litigation.

Romania should align its domestic climate policies with the recent findings of the International Court of Justice regarding states' obligation to adopt the most ambitious climate measures possible.

5. Conclusions

Climate justice is no longer merely a moral ideal, but a legal obligation recognized by international and European courts. It entails not only combating climate change, but also the equitable distribution of the costs and benefits of the green transition among states, generations, and social groups. In this context, environmental protection is increasingly linked to the protection of fundamental rights, such as the right to life, health, property, or a healthy environment.

At the same time, climate justice highlights the increased responsibility of states and economic actors for the long-term effects of public policies and polluting activities.

Recent developments in international case law show that courts are increasingly willing to review the adequacy of climate measures adopted by states and to sanction climate inaction.

In this context, the Romanian legal system must keep pace with the transformations occurring in international and European climate law, both by developing the regulatory framework and by strengthening judicial protection mechanisms.

The future direction will depend not only on Romanian courts and legislative action but also on the capacity of public institutions and civil society to integrate the protection of future generations into current decision-making processes.

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DEPRIVATION OF PARENTAL RIGHTS

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Abstract:
Parenthood has existed since the beginning of time. Since ancient times, the attitude towards children has been shaped within the human community depending on its tradition, but also on its economic power. The attitude towards children, their upbringing and education, has changed over the centuries. The relationship between a child and parents is established by the fact of the child's birth. As a legal relationship with certain rights and obligations, it lasts until the child reaches the age of majority, and if the child is in regular school, until the child reaches the age of 26. In this respect, the child is not only an "object of legal protection" but above all a subject of law who, through certain legal actions and activities, can have a significant impact on the making of important decisions in his or her life and development, of course in accordance with the age and maturity achieved. In addition to the fact of birth, i.e. the establishment of a parent-child relationship through natural means, parenthood can also arise through adoption, i.e. through legal means. According to the Family Law of the Republic of Serbia, the legal position of natural parents and adoptive parents in relation to a born or adopted child is equal.[1]
The work is based on the very beginnings of the proceedings in the subject matter, which are based on legal concepts, principles, practice and proceedings, without which there would be no current practice and proceedings in this very important matter.
Keywords: *parental rights, exercise of parental rights, supervision, deprivation of parental rights, procedure, effect of the decision to deprive of parental rights, restoration of parental rights.*

1. Introduction

The first documents proclaiming the rights of the child date back to the 20th century, but the establishment of a separate corpus of children's rights within international law was most significantly influenced by the adoption and almost universal ratification of the Convention on the Rights of the Child. [2] This convention encompasses a wide range of legal provisions, rights to protection and rights to participation. The legal provisions cover the fundamental rights of the child to survival and development. This includes the right to health care and normal living conditions. The convention clearly states that it is in the best interests of the child, as far as possible, to grow up with his or her parents, and that the State has an obligation to assist parents in their responsibilities. The right to

protection includes protection from physical, sexual and psychological exploitation of the child, as well as other forms of discrimination and abuse. The right to participate encompasses civil and political rights, and treats the child as an active participant in society who has the right to express his or her views and opinions. The Convention is unusual in that it combines civil and political rights, as well as economic, social and cultural rights. [3]

According to the provisions of the Convention, the child has the universal right to life, and in this connection the right to parental care. The natural right of the child to parental care is ensured in the environment of both parents and in their community of life, and the separation of the child from one or both parents is permitted only if such separation is necessary and in the interests of the child. The Family Law of the Republic of Serbia stipulates that everyone is obliged to be guided by the best interests of the child in all activities concerning the child.

The Family Law in Serbia specifically defines for the first time some of the most important rights of the child, namely: the right of the child to know who his or her parents are, that is, to know his or her origins; the right to live with parents; the right to personal relations with the parent with whom he does not live or with relatives and other persons with whom he is particularly close; the right to proper and full development; to education; the right to undertake legal affairs (the child's legal capacity) and the right to freely express his opinion.[4]

The content of the child's rights determines the content of the obligations of his parents and guardians. In order for parents to be able to raise their child as a useful member of society, they have certain rights and duties towards him. The totality of the rights and duties of parents to take care of the personality, rights and interests of their minor child is designated in our law by the term parental rights. [5]

2. The concept of parental rights

Parental rights are strictly personal rights of parents, which, as a rule, cannot be transferred to other persons, nor can parents renounce parental rights, except by giving consent to the adoption or by de facto abandonment of the child. An adopter may acquire parental rights over the adopted child, since adoption creates the relationships that exist

between the child and the parents. Parental rights consist of the duties and rights of parents related to the care of the child.[6]

Parental duties have a predominant importance in the content of parental rights, because by performing their duties towards the child, parents exercise and protect his rights and interests. Hence, parental duties are in a correlative relationship with the rights of the child. The duties of parents, or the rights of the child arising from parental rights, are aimed at physically, morally and intellectually preparing the child to become a healthy, useful and successful member of society.

The rights of parents, as an integral part of the concept of parental rights, belong to the parents so that they can perform their duties towards the child as best and most efficiently as possible, as well as to exclude any third party who would attempt to take over the exercise of parental rights without authorization.

3. Exercise of parental rights

Parents can exercise parental rights jointly or independently. Joint exercise of parental rights is achieved if the parents live together or if they do not live together and have agreed on the joint exercise of parental rights. The institute of joint exercise of parental rights is a novelty in the Family Law of Serbia. This institution has enabled parents to exercise parental rights jointly, even when they do not live together, if two conditions are met, i.e. if they have agreed on this and made a written agreement and if, in the opinion of the court, the content of the agreement is not contrary to the best interests of the child.

Independent exercise of parental rights - One parent exercises parental rights alone if he lives alone with the child, and the court has not made a decision on the exercise of parental rights or if he exercises this right pursuant to a court decision on the exercise of parental rights. Parents may also conclude an agreement on the independent exercise of parental rights, which must also contain agreements on support and maintaining personal relations with the other parent and must be in the best interests of the child. A parent exercises parental rights independently even if the other parent has died, if he is unknown or is completely deprived of parental rights or legal capacity.[7]

4. Supervision of the exercise of parental rights

Parents exercise parental rights primarily to protect the personal and property rights and interests of their minor child. Most parents exercise their rights and obligations with great love and care, even though they do not know the content of the legal regulations. However, when parents, for any reason, do not achieve satisfactory results in the care, upbringing, education and education of the child, or when their actions endanger the property interests or maintenance of the child, certain family law measures may be applied to them, which are aimed at protecting the interests of the minor child. All such measures limit, to a greater or lesser extent, the powers of parents that belong to them on the basis of parental rights, but they are necessary in order to ensure the most favorable forms of protection for children.[8]

According to the solution adopted in our law, the exercise of parental rights is under the supervision of the guardianship authority. The law provides for two types of supervision over the exercise of parental rights: preventive supervision and corrective supervision.

5. Deprivation of parental rights

Deprivation of parental rights is the most severe family law sanction, which is imposed on parents in order to protect the personality, rights and interests of a minor child.[9] This institution protects the interests and rights of the child that are guaranteed by the United Nations Convention on the Rights of the Child and domestic legislation. The Constitution of the Republic of Serbia establishes that children enjoy human rights appropriate to their age and mental maturity. Every child has the right to a personal name, to be registered in the birth register, to know his or her origins and to preserve his or her identity. Children are protected from psychological, physical, economic and any other exploitation or abuse.[10] Deprivation of parental rights also represents a restriction of the right to family life guaranteed by the European Convention on Human Rights, and therefore domestic authorities, and above all courts, must be very careful when imposing such a severe family law sanction.[11]

The provisions of the Family Law of Serbia provide for special substantive grounds for full and partial deprivation of parental rights. Full deprivation of parental rights is a

family law sanction that affects a parent who abuses rights or grossly neglects duties arising from parental rights, while partial deprivation of parental rights is a sanction that affects a parent who unconscientiously exercises rights or duties arising from parental rights.

6. Complete deprivation of parental rights

In the case of complete deprivation of parental rights, the parents are deprived of their parental rights in their entirety and replaced with some other form of family law protection. The Family Law of Serbia prescribes two reasons for complete deprivation of parental rights, namely cases when the parent abuses parental rights and when he grossly neglects the duties arising from the content of parental rights.[12]

6.1. Abuse of parental rights

Abuse of parental rights means such harmful behavior of the parents, when the actions of the parents contradict the interests of the child to such an extent that his physical, moral and intellectual development is seriously endangered. It implies conscious and voluntary behavior of the parents and, as a rule, means that the malicious actions of the parents are repeated. However, abuse of parental rights can also be considered in the case of only one action by a parent, which is so dangerous for the child that it should not be expected to be repeated, for example, an attempt to murder a child, causing serious bodily harm, sexual abuse.[13]

The legal provisions state, exempli causa, that a parent abuses the rights under parental rights if he physically, sexually or emotionally abuses the child, if he exploits the child by forcing him to do excessive work or work that endangers the child's morals, health or education, or work prohibited by law, if he encourages the child to commit criminal acts, if he accustoms the child to indulge in bad habits or in some other way neglects the duties under parental rights.[14] The legislator has left the possibility for the court to assess other behaviors of parents, which are not exhaustively listed in the law, as gross abuse of parental rights.[15]

6.2. Gross neglect of parental duties

Child neglect, like abuse, has been present throughout history and is a phenomenon that occurs in all countries. This is confirmed by the fact that the different types of neglect to which children are exposed in the family show great similarity in all cultures in the world. In all types of child abuse, neglect is usually also present. It is unlikely that a child who is physically and emotionally abused will not also be neglected.[16]

7. Partial deprivation of parental rights

Partial deprivation of parental rights is a novelty in our law, and is a sanction for parents who negligently exercise the rights and duties arising from the content of parental rights. Parents who exercise parental rights and parents who do not exercise these rights are sanctioned differently.

Parents who negligently exercise parental rights may be deprived of the right and duty to care for, raise, educate, educate and represent the child, as well as the right to manage and dispose of the child's property.

A parent may be deprived of one or more rights and duties arising from the content of parental rights, depending on whether or not he or she exercises parental rights at that moment, but he or she may never be deprived of the duty to support the child. The extent of the deprivation will depend on the court's assessment of the circumstances of each individual case. The court's decision also depends on whether the parent acted negligently with regard to more than one right and duty from the content of parental rights or with regard to only some of them, however, a parent can never be partially deprived of parental rights with regard to all rights and duties from the content of parental rights, because in that case it would be a question of complete deprivation of parental rights.

8. Procedure for deprivation of parental rights

The procedure for complete or partial deprivation of parental rights is carried out in civil proceedings. In litigation for complete deprivation of parental rights, a decision is made to deprive all rights that make up the content of parental rights, so that the parent is left with the only right and duty to support the child. In litigation for partial deprivation of

parental rights, a decision is made to deprive only one or more rights belonging to the parent.

8.1. Jurisdiction

Substantive jurisdiction – The decision on the deprivation of parental rights in the first instance is made by the competent Basic Court in civil proceedings, and in the second instance by the High Court.

Territorial jurisdiction – In the procedure for the deprivation of parental rights, the court of general local jurisdiction has territorial jurisdiction, i.e. the court in whose territory the defendant's residence or place of residence is located. However, the Family Law provides for the possibility of elective territorial jurisdiction in the interests of the child, i.e. if the child files a lawsuit, in addition to the court of general local jurisdiction, the court in whose territory the child has residence or place of residence also has territorial jurisdiction.[17]

Functional jurisdiction – In the procedures for the deprivation of parental rights, a three-member panel of judges consisting of two lay judges and one professional judge decides in the first instance. In the second instance, a three-member panel of professional judges decides. Professional judges must have special knowledge in the field of children's rights, and lay judges must have professional experience in working with children and youth, so lay judges can be educators, pedagogues, psychologists.[18]

8.2. Characteristics of the procedure for deprivation of parental rights

The procedure in disputes concerning the rights of the child, or the exercise and deprivation of parental rights, differs in its characteristics from the rules of general civil procedure in the following ways:

- judges who decide in procedures related to family relations must be persons who have acquired special knowledge in the field of children's rights, and lay judges must be selected from among professionals who have experience in working with children and youth;
- any procedure related to family relations is urgent if it concerns a child or a parent exercising parental rights, but the procedure in a dispute for the protection of the rights of

the child and for the deprivation of parental rights is particularly urgent. Special urgency is defined by the rule that the first hearing shall be scheduled within eight days from the date the complaint is received by the court, and the second-instance court shall be obliged to render a decision within 15 days from the date the appeal is submitted to it;

- in a dispute for the protection of the rights of a child, i.e. in a dispute for the exercise and deprivation of parental rights, as well as in all other proceedings related to family relations, the public is excluded;

- the court decides on the reimbursement of the costs of the proceedings related to family relations at its discretion, taking into account the reasons for fairness.(19)

- in litigation for the deprivation of parental rights, the principle of disposition is significantly narrowed. The deviation from this principle is reflected in the fact that the court may ex officio initiate adhesion proceedings for the deprivation of parental rights in conjunction with proceedings in matrimonial disputes, maternity and paternity disputes, as well as in disputes for the protection of the rights of the child and in disputes for the exercise of parental rights;

- in these disputes, a judgment by omission, a judgment based on admission and a judgment based on renunciation are not permitted, nor is a court settlement permitted, which is also a manifestation of the limitation of the principle of disposition;

- the principle of officiality is reflected in the fact that in a dispute for the deprivation of parental rights that is conducted as the main proceeding, the court may, ex officio, determine one or more measures of protection against domestic violence, if it assesses that there is a need to provide this type of legal protection and if the legal conditions for determining these measures are met;

- in terms of collecting procedural material, the investigative principle prevails over the adversarial principle. The court has an active role in collecting factual and evidentiary material and is obliged to encourage the parties to present facts and offer evidence, and is also authorized to independently investigate and collect facts that the parties have not presented and to verify the truthfulness of those facts that are not disputed between the parties. The court is also authorized to present evidence that the parties have not proposed.

- When deciding on the deprivation of parental rights, the court is obliged to be guided by the best interests of the child.[20]

8.3. Initiation of the procedure

The procedure in a dispute for the deprivation of parental rights is initiated by a lawsuit. The persons with active legitimacy to file a lawsuit are the child, the other parent, the public prosecutor and the guardianship authority. In the event that the deprivation procedure was not initiated by the guardianship authority, the court is always obliged to inform the guardianship authority about the initiated procedure and request a finding and expert opinion from it regarding the reasons for the deprivation of parental rights and the need to make that decision. [21]

Example of a lawsuit for complete deprivation of parental rights

IN THE BASIC COURT IN _____

Plaintiff: _____ from _____ ul. _____ no. ___
Defendant: _____ from _____ ul. _____ no. ___

LAW
for complete deprivation of parental rights

1. The plaintiff married the defendant on _____ and the marriage gave birth to a daughter, a minor _____, born on _____.

Evidence: Birth certificate for the home area of the Municipality of _____ for _____ year.

2. The plaintiff and the defendant divorced their marriage by the judgment of the _____ court in _____, P. No. _____ of _____.

Evidence: Judgment on the divorce of the plaintiff and the defendant _____ of the court in _____, P. No. _____ of _____ year.

3. The defendant has meanwhile established a marital union with another woman and moved to live with her.

Since the birth of the minor _____, the defendant has not shown any interest in the minor _____, and has not provided support for her.

On _____ year, the defendant contacted the plaintiff, in order to see the minor _____ and spend the weekend with her. The plaintiff - the mother of the minor _____ barely agreed to this. They agreed that the defendant would come and pick up the minor _____ the next day and return her the same day by 8 p.m. The defendant left his mobile phone number for communication.

Given that after the agreed time, the daughter was not returned to her mother, and there was no contact with the minor _____, the mother contacted the police authorities in _____ who found the defendant and the minor _____ on the same day and took the child away from the defendant. A medical examination determined serious bodily injuries resulting from beatings and the use of force against the minor _____.

Evidence: 1. Police report _____;

2. Orthopedic doctor report _____.

Since the defendant grossly abused his parental rights and caused serious bodily harm to his minor daughter, the plaintiff files this lawsuit and proposes that the court, in accordance with Article 81, paragraph 2, item 1) of the Family Law, render the following

JUDGMENT

THE DEFENDANT _____ from _____, ID number _____, is COMPLETELY deprived of parental rights towards the minor daughter _____ from _____, born _____ in _____, ID number _____, from mother _____ from _____, ID number _____.

The defendant is obliged to reimburse the plaintiff for the costs of the civil proceedings within 15 days, under threat of enforcement.

On _____ _____
day of _____ year The Prosecutor

Proceedings in litigation for the deprivation of parental rights may also be conducted as an adhesion proceeding, joined to proceedings in matrimonial litigation, in litigation regarding the challenge of paternity and maternity, in litigation for the protection of the rights of the child and in litigation for the exercise of parental rights.

Proceedings in litigation for the deprivation of parental rights, as an adhesion proceeding, may be initiated by one of the litigants in the main proceedings or by the court itself, ex officio. The need for the court to initiate proceedings for the deprivation of parental rights ex officio exists when the court, based on the results of the investigation and discussion in the main proceedings, which are conducted in one of the matrimonial litigations or litigations from the parent-child relationship, comes to know that there is a need to deprive the parent of parental rights and thereby protect the personality, rights and interests of the child, and that none of the actively legitimized subjects has requested the determination of a protection measure.

A party may initiate an adhesion procedure for the deprivation of parental rights at the time of initiating the main procedure. In that case, the statement of claim combines the civil action that initiated the main procedure and the civil action that initiated the procedure for the deprivation of parental rights. [22]

8.4. The position of the child in the procedure for the deprivation of parental rights

The best interest of the child - When deciding in a dispute for the protection of the rights of the child and in a dispute for the exercise or deprivation of parental rights, the court is always obliged to be guided by the best interest of the child.

The best interest of the child is a legal standard taken from the Convention on the Rights of the Child and is assessed according to the circumstances of the specific case. The elements of the assessment of the best interests of the child are: age, gender, developmental disabilities, the child's safety, the child's wishes and feelings, the child's existential needs, the ability of the parents to recognize the child's developmental needs, the expected impact of the changed circumstances on the child and the time needed to adapt to the new environment.

Before making a decision, the court is obliged to obtain an expert report and opinion from an institution specialized in family mediation, which does not have the position of an expert in the procedure. The expert reports and opinions of these institutions must contain all elements of the assessment of the best interests of the child. However, this does not exclude the obligation of the court to hear the authorized persons and remove all ambiguities when the finding is incomplete, or when the opinion contradicts the finding.[23]

Child's legal capacity - A child of a certain age, who is capable of reasoning, is authorized by law to undertake certain legal matters and legal actions by his/her declarations of will and to independently decide on certain rights concerning his/her personality. In this way, in addition to legal capacity, the child also acquires a special legal capacity, before reaching the age of majority, within which he/she has full legal capacity and can independently undertake all legal actions in the procedure.[24]

Child's active legal capacity - According to the provisions of the Law on Civil Procedure, the capacity of a party, when it comes to a natural person, is acquired at birth and ceases at death. From the point of view of that law, a child could be a party to the proceedings, but not from the point of view of the Law on Marriage and Family Relations, according to which a child could be a party only in certain disputes arising from family relations. An important novelty of the Family Law is that a child has the status of a party in all proceedings regulated by that law, except in matrimonial disputes. According to the

provisions of the Family Law, a child is a party and can file a lawsuit for the protection of the child's rights, the exercise, or deprivation and restoration of parental rights. In these disputes, the child is an actively legitimized holder of the rights that are being protected.[25]

Representation of a child - A child is represented as a party by his or her legal representative. If the interests of the child are contrary to the interests of his or her legal representative, the child may be represented by a conflict guardian or a temporary representative.

A conflict guardian is appointed for the child by the guardianship authority in an administrative procedure. The guardianship authority may appoint a conflicting guardian on its own initiative or at the proposal of the child, or another person or institution to whom the child has addressed and requested assistance in initiating the procedure for appointing a conflicting guardian. The child has the right to initiate this procedure independently or through another person or institution if he or she has reached the age of ten and is capable of reasoning.[26]

If the court determines during the course of the litigation that there are conflicting interests between the child and his or her legal representative or that the child as a party has not been adequately represented, it must appoint a temporary representative for the child ex officio or at the proposal of the child himself or herself, or another person or institution to whom the child has addressed for assistance in initiating the procedure for appointing a temporary representative. The child may independently or through another person or institution initiate this specific adhesion procedure for appointing a temporary representative, provided that he or she has reached the age of ten and is capable of reasoning. The child's capacity to reason is determined by the court during the adhesion procedure by conducting the necessary examinations.[27]

A child cannot have two independent legal representatives at the same time. Therefore, if the guardianship authority has previously appointed a conflicting guardian, the court cannot appoint a temporary representative. The family law literature states that a conflicting guardian can also be a legal layperson, while a temporary representative must be a legal expert, i.e. a lawyer.[28]

The opinion of the child - When a party to the proceedings for the deprivation of parental rights is a child who is capable of forming an opinion, the court is obliged to allow the child to express his or her opinion directly. Due attention must be paid to the child's opinion in all proceedings concerning him or her, in proceedings in which decisions are made about his or her rights, and in accordance with the child's age and maturity.

The court and the person representing the child are obliged to provide the child with all the information he or she needs in a timely manner and to inform him or her of the consequences of accepting his or her opinion. The child's opinion shall be determined in a manner and place appropriate to his or her age, unless this would clearly be contrary to the best interests of the child.

When the child has not directly expressed his or her opinion, the person representing the child shall be authorized to convey the child's opinion to the court, unless this would clearly be contrary to the best interests of the child.

The child's opinion shall be determined in cooperation with a school psychologist, guardianship authority, family counseling center and other institutions specialized in mediation in family relations, and in the presence of a person designated by the child. Whether a child will exercise the right to express his or her opinion or not depends solely on the child's will, and the court is obliged to enable this right.[29]

9. Effect of the decision on deprivation of parental rights

The consequences of the decision on deprivation of parental rights are severe for parents, because deprivation of parental rights is the most severe family law sanction that can be imposed on parents, in order to protect the personality, rights and interests of a minor child. A parent may be deprived of parental rights for an indefinite period of time, in relation to all children or in relation to only one child. When depriving parental rights, the court may determine one or more measures to protect the child from domestic violence.[30] A legally binding court decision on deprivation of parental rights must be entered in the birth register, and if the child owns real estate, the decision must also be entered in the public register of rights to real estate.

The effect of a decision to deprive a parent of parental rights varies depending on whether the parent is deprived of parental rights completely or partially.

9.1. Effect of a decision to deprive a parent of parental rights completely

Complete deprivation of parental rights may apply to one or both parents, depending on whether both parents abused their parental rights, or grossly neglected their parental duties, or whether only one parent did so.

If only one parent is deprived of parental rights, parental rights belong to the other parent and he or she exercises them alone. If both parents are deprived of parental rights, or if the only parent who had parental rights is deprived of parental rights, the child is considered a minor without parental care, is placed under guardianship and placed in another family or institution.[31] The Family Law of Serbia stipulates the obligation of the state to provide protection in a family environment for a child without parental care whenever possible, which results in the obligation to prioritize the placement of the child in a foster or adoptive family, and only then, if the aforementioned method of placement is not possible, should the child be placed in a competent institution.

A court decision on the complete deprivation of parental rights deprives the parent of all rights and duties arising from parental rights, except for the duty to support the child.[32] It follows that the parent has no right or duty to care for the child, to educate, protect or represent the child. A parent who is completely deprived of parental rights is not required to consent to the adoption of a child.

9.2. Effect of the decision on partial deprivation of parental rights

Partial deprivation of parental rights affects one or both parents, but in a different way depending on whether that parent exercises or does not exercise parental rights. If one parent is partially deprived of parental rights, he or she continues to exercise parental rights in the part that he or she is not deprived of together with the other parent. If both parents are deprived of parental rights with respect to the same rights and duties, or if the only parent to whom that right belongs is partially deprived of parental rights, a temporary guardian must be appointed for the child who will take over the exercise of those rights and duties that the parent has been deprived of, and if necessary, the child may be cared for in a foster family, or, in the worst case, in a social institution.

A parent who is deprived of the right to decide on issues that significantly affect the child's life is not required to consent to the adoption of the child. As in the case of complete deprivation of parental rights, a court decision on partial deprivation of parental rights cannot deprive a parent of the obligation to support a child.[33]

The extent of partial deprivation of parental rights will depend on the court's assessment of the circumstances of each individual case.

10. Restoration of parental rights

A decision on deprivation of parental rights is issued for an indefinite period of time and is temporary in nature. The deprived parental rights may be restored to the parent by a court decision, in a separate civil proceeding, when the reasons for which the parent was fully or partially deprived of parental rights cease to exist.

If one parent is partially deprived of several rights and obligations arising from the content of parental rights, the decision on restoration does not have to restore all rights. For example, if a parent was deprived of representation, management and disposal of the child's property, by a decision to restore parental rights, only the right and duty to manage the child's property may be restored to the parent.[34]

A final court decision to restore parental rights must be recorded in the birth register, and if the child owns real estate, in the public register of rights to real estate, in order to inform the public that the parent has regained parental rights over his or her child.[35]

11. Conclusion

The idea that violence against children should and must be prevented is relatively new. The first documents related to the protection of children from abuse and neglect date back to the late 19th century, and it was only in the 20th century that the view that child abuse and neglect must be prevented, punished and adequately treated, began to spread.[36]

The modern family is very different from the traditional closed family model of the past. Today's diversity of lifestyles has created new concepts for forming partnerships and having children. Family units, whatever their composition, are faced with new kinds of

pressures due to rapid and profound changes in societies, and they must adapt to them. Economic and social factors are often a source of stress for parents and can undermine their efforts at parenting and their own development as individuals. The idea of children has also changed. No longer viewed in principle as “future adults,” they are now recognized as having the potential to be active and useful members of both the family and society as a whole. Children enjoy full rights and their views should be given the weight they deserve in matters that directly concern them.[37]

Definitions of the family are rare in contemporary law, since it is difficult to legally define a concept that is not static and influenced by numerous factors outside the legal domain. In social theory, definitions of the family are, on the contrary, frequent and numerous, but legal writers most often define the family descriptively (by listing the members of which the family is composed) or operationally (by listing the functions that the family customarily performs). Since such definitions do not allow us to distinguish what is essential and universal in the family from what changes under the influence of socio-historical changes, the elements on the basis of which it is possible to determine the universal characteristics of the family as a kind of social group actually originate from sociological disciplines. Thus, the three universal characteristics of the family are: first, the family is a community of parents and children who are born (or adopted) from that relationship; second, the family is the primary community in which the child’s personality develops; and third, the family is a community that ensures the psychological and social connection of its members.[38]

According to many opinions, children are among the most vulnerable victims of abuse. In some legislations, they are classified as a special category of “powerless” victims of a criminal offense. All modern legislations strive to introduce special normative rules when it comes to abused children and their role in criminal proceedings. All modern police, prosecutorial and judicial systems introduce into their practice special rules for dealing with child victims of crimes involving violence, i.e. victims of abuse. In addition, many laws impose a strict legal obligation on doctors and other health workers, social workers, teachers, and police officers to report every case of child abuse.[39]

Since it is the fundamental right of a child to live with his or her parents and to be cared for by them before all other persons, it may seem incredible that parents who have

at least average moral and mental maturity can knowingly cause harm to their child. Unfortunately, the most severe forms of neglect and abuse of children are not unknown in life. Therefore, such parents must be prevented from further exercising parental rights, and the child must be provided with another appropriate form of family protection.[40] However, due to the specific relationships between parents and children and the prevailing autonomy of will in modern family law, the role of the state and its bodies in implementing this right or obligation must primarily be preventive, and only then reactive, through the deprivation of parental rights.[41]

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THE IMPACT OF ARTIFICIAL INTELLIGENCE ON THE STRUCTURE AND DYNAMICS OF ORGANIZED CRIMINAL GROUPS

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Abstract:
This study examines the impact of artificial intelligence on the organization and functioning of organized criminal groups, starting from the premise that AI is not merely a technological tool for committing crimes, but also a factor driving the structural transformation of organized crime. The research highlights that AI resources increase the efficiency, scalability, and adaptability of illicit activities, while simultaneously lowering barriers to entry and reducing dependence on specialized technical expertise.
The analysis argues that the essential impact of AI manifests itself at the organizational level, through the erosion of traditional hierarchical models and the emergence of flexible, distributed, modular, or weakly formalized forms of organization. Consequently, the organized criminal group tends to be understood less as a stable and formalized structure and increasingly as a dynamic set of functional relationships configured around common criminal objectives.
From a criminal law perspective, the study shows that the use of AI does not, in principle, require a radical reform of the normative framework, but rather calls for an evolutionary interpretation of concepts such as "structure," "coordination," and "continuity." At the same time, the paper highlights difficulties relating to the delimitation of criminal participation, the establishment of causation, the attribution of criminal results, and the administration of digital evidence.
The study concludes that artificial intelligence places significant conceptual and practical pressure on criminal law and, with regard to organized criminal groups, compels it to move from a static approach toward a functional one, adapted to the fluid and technology-driven forms of contemporary criminality.
Keywords: *artificial intelligence; organized crime; organized criminal group; criminal liability; Artificial Intelligence Act; AI Act.*

1. Introduction

The accelerated transformations generated by digitalization, coupled with the increasingly widespread accessibility of artificial intelligence technologies, mark a new stage in the evolution of criminal phenomena. Whereas, traditionally, the analysis of organized crime has focused on the existence of a group (composed of at least three persons), hierarchical structure, coordination, purpose, and stability of criminal organizations [1], [2], contemporary reality reveals a profound tendency toward the reconfiguration of these defining elements under the influence of new technological tools.

In this context, artificial intelligence can no longer be regarded exclusively as a mere technical means of committing crimes, but rather as a factor capable of altering the very logic underlying the organization and functioning of criminal groups.

The relevance of this topic lies in the dynamic evolution of criminal activity and its adaptation to these new techno-scientific realities, as documented in the analyses conducted by institutions responsible for combating organized crime, namely Europol [3], [4], [5], [6] and INTERPOL [7]. These reports highlight the increasingly prominent role of emerging technologies in facilitating and amplifying illicit activities, extending beyond the mere automation of complex processes, enhanced operational efficiency, and rapid adaptation to preventive and enforcement measures adopted by public authorities, to include the reconfiguration of the organizational structure and operational functioning of organized criminal groups.

Accordingly, the present study seeks to clarify whether the use of artificial intelligence resources influences the internal structure and dynamics of organized criminal groups or, in other words, whether such influence is limited to intensifying the efficiency of criminal activities or instead entails a qualitative transformation of the organizational model specific to these entities.

The working hypothesis is based on the premises outlined in the EU SOCTA 2025 Report - *"The changing DNA of serious and organised crime"* [6], according to which AI-based technologies provide criminal groups with substantially expanded capabilities, enabling them to operate on a global scale, increase efficiency, and enhance adaptability. In this context, organized crime is becoming increasingly technologized, flexible, and difficult to detect and combat, leading to the conclusion that artificial intelligence fundamentally reshapes the landscape of organized crime, with criminal groups evolving toward network-type structures characterized by a global, digital, and adaptive profile.

Building upon these findings, the present study argues that the impact of artificial intelligence extends beyond the strictly operational sphere, generating structural effects on the organization of criminal groups. Thus, the use of AI contributes to the erosion of traditional hierarchical structures and encourages the emergence of more fluid organizational forms, based on ad hoc collaborations, distributed functions, and reduced

dependence on centralized coordination, resembling, in certain respects, the organizational model of terrorist networks.

The research methodology is predominantly legal in nature, relying on a normative analysis of the relevant criminal law framework, particularly the provisions relating to organized criminal groups, combined with a conceptual and functional approach to the phenomenon. At the same time, criminological and sociological considerations are taken into account in order to illustrate the evolutionary trends of organized crime under the impact of new technologies.

Finally, the present study aims not only to identify these transformations, but also to assess their implications for criminal law, particularly with regard to the adequacy of traditional concepts and existing legal instruments in addressing new criminal realities. In this respect, the analysis will highlight the need for an evolutionary interpretation of the applicable legal norms and, potentially, the opportunity for legislative interventions designed to respond effectively to the challenges generated by the use of artificial intelligence within the framework of organized crime.

2. Conceptual Framework

The analysis of the impact of artificial intelligence on organized crime necessarily requires a preliminary clarification of these two concepts.

2.1. Artificial Intelligence

In general terms, artificial intelligence is understood as the set of technologies capable of performing tasks that traditionally required human intelligence, such as learning, reasoning, pattern recognition, or content generation.

Article 3(1) of the European Regulation on Artificial Intelligence - the Artificial Intelligence Act [8] - defines an AI system as "*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*."

For the purposes of the present study, the notion of "*AI resources*" should be understood in a functional sense, encompassing both machine learning and deep learning models, as well as applications derived therefrom, such as generative systems (text, image, voice), automation tools, and predictive analytics solutions.

These technologies allow for a high degree of accessibility, since the development of commercial platforms and access to open-source solutions have effectively democratized access to such resources.

At the same time, AI enables the flexibilization of organizational structures through: the fragmentation of the criminal process into autonomous modules (data collection, attack execution, monetization, money laundering), which may be carried out independently or outsourced; the reduction of dependence on central coordination (through the assumption of functions such as target analysis, optimization of attack timing, or selection of operational strategies); automation and scalability (allowing rapid growth in operational volume without a proportional increase in resources); the continuous adjustment of tactics (depending on victims' reactions, security measures, or achieved outcomes); and transnationality without rigid infrastructure (as it enables coordination among actors located in different jurisdictions without requiring physical presence or traditional logistical structures).

Due to these characteristics, AI makes criminal activities conducted by organized groups more difficult to detect and, consequently, more difficult to combat.

From a criminal law perspective, artificial intelligence currently has no legal personality and cannot constitute the perpetrator of a criminal offense, operating instead as a material means of committing the offense in the classical sense.

2.2. Organized Criminal Group

Under Romanian law, the organized criminal group is regulated by the provisions of Article 367 of the Criminal Code, according to which it represents a structure composed of three or more persons, established for a certain period of time and acting in a coordinated manner for the purpose of committing one or more criminal offenses [1].

This definition broadly reflects the international standards established by the United Nations Convention against Transnational Organized Crime [9], which, in Article 2(a),

defines an organized criminal group as "*a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit*".

3. AI as a Factor Transforming Organizational Structures

The analysis of the impact of artificial intelligence on organized crime cannot be limited to an empirical description of certain structural changes, but instead requires a deeper theoretical - and even philosophical - approach regarding the manner in which technology reconfigures the very organizational ontology of the criminal group. In this respect, artificial intelligence does not operate merely as an external tool used by the group, but rather as a factor that transforms the internal relationships among its members, the mechanisms of coordination, and, ultimately, the very concept of "organization" in the criminal law sense.

3.1. The Organization of Criminal Groups

The relatively flexible nature of the concept of "structure," used in the definition of an organized criminal group under the relevant legal provisions [Article 2(a) of the Palermo Convention; Article 367 of the Romanian Criminal Code], allows for an extensive interpretation of the term, extending beyond the model of rigid hierarchical organization to include network-based, mixed (hybrid), or even "loosely formalized" organizational configurations.

Accordingly, the term "structure" (of an organized criminal group) may take any of the organizational forms listed above, namely:

a) ***Hierarchy***, characterized by a pyramidal structure with clearly delineated levels of authority and responsibility. Decisions are taken at the central level, while execution is carried out by lower-ranking members. This model is specific to classical forms of organized crime, in which control exercised by the upper echelon of the hierarchy and internal discipline are essential.

b) ***Network***, which implies a flexible form of organization based on horizontal relationships between members or subgroups. Communication and cooperation are not strictly centralized, and the structure allows for rapid adaptation to change.

c) ***Hybrid organization***, which combines elements of the two previous models by integrating a certain degree of central coordination with operational autonomy at the local level. This type of organization reflects contemporary tendencies toward the flexibilization and diversification of criminal structures.

d) ***"Loosely formalized" structures*** (such as ad hoc structures, crime-as-a-service criminal ecosystems, platformized structures such as darknet environments, or latently coordinated structures).

Network-based, hybrid, and "loosely formalized" models are increasingly encountered in modern organized crime, including cybercrime and online fraud, contemporary forms of drug trafficking (online distribution, darknet markets, decentralized delivery systems), money laundering (through the use of cryptocurrencies and financial mules), modern forms of human trafficking and migrant smuggling (organized through route-based networks, where each segment of the route is controlled by a different group), complex economic and financial crime (international tax fraud, "carousel VAT" schemes), as well as crime-as-a-service models.

Therefore, the emergence of digital technologies and, in particular, artificial intelligence, encourages the transition toward organizational models characterized by fluidity, decentralization, and continuous adaptability. This transformation may be interpreted as a shift from a "substantialist" model, in which the group is perceived as a fixed structure, to a "relational" or "processual" model, in which organization is defined through flows of interaction and functionality.

3.2. From Hierarchy to Heterarchy or the Reconfiguration of Authority

Artificial intelligence contributes to the erosion of the classical organizational model - hierarchy - by encouraging the emergence of heterarchical forms of organization, in which authority relationships are diffuse and coordination is achieved primarily through functional mechanisms rather than direct command. Within such a system, AI may

assume roles traditionally attributed to leadership, such as task allocation, decision optimization, or information management.

This transformation carries profound implications, as authority is no longer necessarily personalized, but instead becomes technologically mediated, while the organizational structure itself becomes less rigid and less dependent on specific individuals.

3.3. Organization as a Dynamic Network: The Primacy of Relationships over Structure

From a criminological and sociological perspective, the use of artificial intelligence accelerates the transition toward network-based or "*loosely formalized*" organizational models, in which the unit of analysis is no longer the "group" as a stable entity, but rather the relationships between actors and the functions they perform. Within this framework, organization is no longer defined by formal membership, but by participation in flows of activity.

Artificial intelligence facilitates this transformation by reducing communication and coordination costs, as well as by standardizing processes that previously required direct interaction. As a result, individuals or subgroups may collaborate efficiently without knowing one another or without belonging to a stable structure, leading to the emergence of volatile and adaptive criminal networks.

This dynamic aligns with the observations formulated in Europol reports, which highlight the transformation of criminal groups into flexible structures adapted to the digital environment - a trend amplified by artificial intelligence, which converts organization into a continuous process of configuration and reconfiguration.

3.4. The Democratization of Criminal Capability and the Dilution of Expertise

Another essential aspect of organizational transformation concerns the redistribution of competencies within criminal groups. Under the classical model, technical expertise represented a scarce form of capital concentrated in the hands of specialized members, thereby granting them a strategic role within the organization.

Through the use of artificial intelligence, a significant part of this expertise is externalized to technological systems, becoming accessible to a larger number of participants. This phenomenon may be described as a democratization of criminal capability, insofar as barriers to entry into the group are reduced and dependence on specialists decreases.

The direct consequence is a dilution of competence-based hierarchies, which contributes to the flexibilization of organizational structures. Group members may perform a variety of functions, while roles become increasingly fluid, being determined more by access to resources and operational context than by fixed qualifications.

3.5. Modularization and the Logic of the "Criminal Ecosystem"

One of the most significant effects of the use of artificial intelligence is the tendency toward the fragmentation of criminal activities into distinct components, which may be carried out independently but which together contribute to the achievement of a final result. This modular logic leads to the emergence of a genuine criminal ecosystem, in which different actors provide specialized services interconnected through functional relationships.

The concept of "crime-as-a-service" illustrates this evolution, whereby technological infrastructure, attack tools, or support services are provided for remuneration, without requiring integration into a stable group. Artificial intelligence plays a central role in this process through the standardization and automation of functions, thereby enabling their replication and scalability.

From a philosophical perspective, this transformation may be interpreted as a shift from an "organic" conception of the criminal group, understood as a coherent unit, toward an "ecological" conception, in which organized crime results from the interaction among multiple autonomous entities (a criminal ecosystem). Within this framework, the notion of an organized criminal group becomes increasingly difficult to delimit, being replaced by a network of functional interdependencies.

3.6. Implications for the Legal Concept of Organization

The transformations described above raise fundamental questions regarding the adequacy of the legal concept of the organized criminal group, as regulated by Article 367 of the Romanian Criminal Code and by the United Nations Convention against Transnational Organized Crime, both of which are built upon the premise of the existence of a relatively stable structure characterized by coordination and continuity.

In the context of new technological realities, these criteria become increasingly difficult to apply. For example, coordination may be achieved indirectly through platforms or AI-based tools, while continuity may be replaced by a succession of temporary collaborations. Consequently, a functional reinterpretation of the concept of organization becomes necessary, one that places emphasis on the existence of a common purpose and on the interdependence of activities, rather than on structural formalism.

4. Criminal Law Implications

The transformations generated by the use of artificial intelligence within organized crime do not remain without consequences for the manner in which criminal law conceptualizes, classifies, and sanctions criminal conduct. While, at the factual level, AI contributes to the flexibilization and decentralization of criminal structures, at the legal level significant difficulties arise regarding the legal classification of offenses, the delimitation of criminal participation, and the evidentiary establishment of the constituent elements of criminal offenses. In this context, the issue arises as to whether existing legal instruments are adequate to address new technological realities and whether an evolutionary interpretation of criminal law provisions is required.

4.1. Relevance to the Offense of Establishing an Organized Criminal Group

As previously noted, under Romanian criminal law, the offense of establishing an organized criminal group, regulated by Article 367 of the Criminal Code, presupposes the existence of a structure composed of at least three persons, characterized by a certain degree of durability and coordination for the purpose of committing criminal offenses [1].

In the context of the use of artificial intelligence, however, the question arises whether these criteria can still be adequately applied to forms of organization

characterized by fluidity, fragmentation, and temporary collaborations. Whereas, in classical models, the durability and stability of the structure were relatively easy to identify, in the case of AI-assisted criminal networks these elements may become far less apparent.

For example, ad hoc collaborations between individuals using the same technological resources or participating in the same criminal workflow may generate effects equivalent to those of an organized criminal group, even in the absence of a stable formal structure. The answer can only be affirmative, since, in this context, it becomes necessary to adopt an interpretation that prioritizes the functional criterion of cooperation and the existence of a common criminal purpose over a strictly formalistic understanding of organization.

4.2. Delimitation of the Forms of Criminal Participation

Another essential issue concerns the difficulty of distinguishing between the forms of criminal participation in the context of the use of artificial intelligence. Under classical criminal law, the distinction between perpetrator, co-perpetrator, instigator, and accomplice is based on the concrete contribution of each person to the commission of the offense and on the existence of a subjective link between the participants.

In the case of AI-assisted criminal activities, this distinction becomes more complex for several reasons. First, the use of standardized and widely accessible tools may lead to situations in which multiple participants contribute to the criminal result without direct coordination or mutual acquaintance. Second, the outsourcing of certain functions to platforms or service providers raises questions regarding the legal qualification of such contributions.

For example, the provision of an AI tool capable of being used for illicit purposes does not automatically amount to a form of criminal participation in the absence of intent to contribute to the commission of a specific criminal offense. However, insofar as there is knowledge of the illicit purpose and an effective contribution to the commission of the offense, accomplice liability may be established.

In this context, the analysis must remain grounded in the fundamental principles of criminal law, particularly the requirement of intent and concrete contribution, while avoiding an excessive expansion of criminal liability.

4.3. Artificial Intelligence - Means of Commission or Aggravating Factor?

As previously noted, from the perspective of legal classification, artificial intelligence is, under the current regulatory framework, regarded as a means of committing an offense, insofar as it constitutes a tool used by the perpetrator in carrying out the material element of the crime. This qualification is consistent with the general principles of criminal law, according to which liability rests with the person who uses the respective instrument.

However, the specific characteristics of AI - particularly its capacity for automation, scalability, and adaptability - raise the question whether its use should also be taken into account as an aggravating circumstantial factor, insofar as it increases the social danger posed by the offense. For example, the use of AI to conduct large-scale attacks or to deceive a significant number of victims may justify a more severe assessment of the gravity of the offense.

In the absence of explicit regulations, this issue may be addressed through the general mechanisms governing the individualization of punishment, which allow the court to take into account the specific manner in which the offense was committed and its consequences. Nevertheless, in the long term, the possibility of introducing specific legal provisions cannot be excluded, particularly if the use of AI becomes a constant feature of criminal activities.

4.4. The Problem of Attribution and Causation

The use of artificial intelligence also raises difficulties regarding the establishment of causation and the attribution of the criminal result. In situations where the result is produced through automated or semi-autonomous processes, the question arises as to the extent to which it may be attributed to a specific individual.

In criminal law, attribution presupposes the existence of a link between the person’s conduct and the resulting harm, as well as the possibility of reproaching that result to the individual concerned. In the context of AI use, this connection may be mediated by the

functioning of a technological system, generally of a semi-autonomous nature, which complicates the analysis.

Nevertheless, as long as the use of the AI system is controlled or determined by a person, and the result is reasonably foreseeable, the criminal liability of that person remains unaffected. The issue becomes more complex in situations where the behavior of the system exceeds the parameters anticipated by the user, thereby requiring a nuanced analysis of the form of culpability involved.

5. Evidentiary Challenges

The transformations generated by the use of artificial intelligence within organized crime also produce significant effects on the evidentiary mechanisms specific to criminal proceedings. In this context, the difficulties do not derive exclusively from the technological nature of the means employed, but rather from the interaction between the characteristics of AI - automation, opacity, and scalability - and the emerging features of criminal groups - decentralization, fluidity, and fragmentation.

5.1. Difficulties in Identifying and Individualizing Participants

One of the most evident evidentiary challenges concerns the identification of the members of the criminal group.

The use of digital platforms, encrypted communications, and AI tools for the automation of certain activities allows participants to operate without direct contact with one another and, in some cases, without even knowing each other’s identities. This situation leads to a fragmentation of the criminal chain, in which each actor performs a limited function without having a complete understanding of the overall criminal activity. Consequently, judicial authorities may encounter difficulties in establishing the existence of a link between participants and, implicitly, in proving the organized nature of the activity.

In this regard, reports issued by Europol emphasize that the use of emerging technologies contributes to increased anonymity (among the members of the structure) and reduced traceability of criminal activities, thereby affecting the effectiveness of traditional investigative methods.

5.2. The Problem of Traceability and the Opacity of AI Systems

Another major obstacle concerns the difficulty of ensuring the traceability of the use of AI systems and of understanding the manner in which they contribute to the production of the criminal result. This opacity complicates evidentiary analysis in two essential respects. On the one hand, it becomes difficult to establish the causal link between the use of the AI system and the resulting harm. On the other hand, the issue arises of demonstrating the concrete contribution of each participant, given that operational decisions are partially outsourced to the technological system.

Although the Artificial Intelligence Act introduces requirements regarding the transparency and documentation of the functioning of AI systems, the applicability of such mechanisms in a criminal context remains limited, particularly where non-compliant or modified systems are used.

5.3. The Complexity of Handling Digital Evidence

The use of artificial intelligence also increases the complexity of handling digital evidence. In many situations, the relevant evidence is not concentrated within a single system or jurisdiction, but rather distributed across multiple platforms, servers, and devices, often located in different states.

This dispersion of evidence requires the use of mechanisms of international judicial cooperation, which may prove slow and inefficient in relation to the rapid dynamics of criminal activities. Moreover, the large volume of data generated and processed through AI systems raises issues concerning the selection, preservation, and analysis of relevant information.

In this context, the role of technical expertise becomes essential. Data analysis, the interpretation of outputs generated by AI systems, and the assessment of the manner in which such systems operate require specialized competencies, which may lead to an increased dependence of judicial authorities (such as the Directorate for Combating Organized Crime, the judicial police, the DIICOT, etc.) on expert assistance [10].

Conclusions

The integration of artificial intelligence into the sphere of organized crime does not merely represent a technological evolution of criminal tools, but rather generates a structural transformation in the organization and operation of criminal groups. AI acts as a capability multiplier, increasing the efficiency, scalability, and adaptability of illicit activities, while simultaneously reducing costs and barriers to entry, thereby facilitating the expansion of criminal phenomena.

The profound impact of AI is manifested primarily at the organizational level, through the erosion of traditional hierarchical models and the emergence of flexible, distributed, and modular forms of organization. Criminal groups tend to evolve toward network-based structures or even more fluid configurations based on ad hoc collaborations, the distribution of functions, and decentralized coordination. In this context, the classical notion of the organized criminal group must be understood in a functional manner, as a dynamic set of operational relationships rather than exclusively as a formalized and stable structure.

From a criminal law perspective, these developments generate difficulties relating to legal classification, the delimitation of criminal participation, and the establishment of liability, without, however, requiring a radical reform of the normative framework. The principle of technological neutrality generally allows for the application of existing criminal provisions, although an evolutionary interpretation of concepts such as "*structure*", "*coordination*" and "*durability*" is necessary in order to reflect the reality of contemporary forms of criminal organization.

From a broader perspective, the analysis highlights that artificial intelligence affects not only the methods by which crimes are committed, but also the conceptual paradigm of criminal law concerning organized criminal groups, requiring a transition from a static vision centered on formal and rigid structures toward a dynamic approach focused on processes and functional relationships. The adaptation of the law to these transformations does not require the abandonment of fundamental principles, but rather their reinterpretation in a manner capable of responding to the increasing complexity of criminal phenomena.

In conclusion, artificial intelligence does not dismantle the existing legal framework, but it subjects it to significant evolutionary pressure, the management of which depends on the ability of criminal law to remain flexible, coherent, and adapted to contemporary technological realities.

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THE CIRCULATION OF COURT DECISIONS IN THE EUROPEAN UNION: FROM MUTUAL TRUST TO THE LIMITS OF PUBLIC ORDER

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Abstract:
This article examines the circulation of court decisions within the European Union, with particular emphasis on the relationship between mutual trust and the public policy / ordre public exception. In the field of civil and commercial matters, Regulation 1215/2012, known as the Brussels I bis Regulation, establishes a simplified regime for the recognition and enforcement of judgments between Member States. This regime is based on the presumption that national judicial systems comply with EU law, fundamental rights and the common values of the Union. However, mutual trust is not absolute. The public policy exception operates as a limited safeguard, allowing the requested court to refuse recognition or enforcement where the effects of a foreign judgment would be manifestly incompatible with the fundamental principles of its legal order. The article argues that public policy must be interpreted restrictively and cannot justify a review of the substance of the foreign judgment. At the same time, it remains necessary in order to protect procedural fairness, fundamental rights and essential principles of justice. The analysis shows that the future effectiveness of judicial cooperation in civil and commercial matters depends on maintaining a delicate balance between the free circulation of judgments and the exceptional protection ensured by public policy / ordre public.
Keywords: *mutual trust, mutual recognition of judgments, public policy exception, Brussels I bis Regulation, EU private international law.*

Introduction

The circulation of court decisions constitutes one of the core elements of the development of an Area of Freedom, Security and Justice in the European Union (EU) where mutual trust plays a fundamental role. Mutual trust implies, in particular, a mutual recognition of Member States' judicial systems entailing both a trust in the quality of those systems and an automatic enforceability of their decisions. Citizens and undertakings should benefit from a European justice area characterised by the absence of obstacles to cross-border judicial interaction. Nonetheless, the question arises of whether or not circulation is also limited by public order considerations. The article argues that public

policy / ordre public operates as a limited but necessary qualification of mutual trust in the EU system of recognition and enforcement.

This article examines whether the public policy exception still functions as an effective safeguard within the EU system of mutual recognition, or whether it has been reduced to a narrow and exceptional mechanism under the logic of mutual trust.

The principle of mutual trust in union judicial systems

The circulation of court decisions within the EU aims to promote legal and judicial cooperation in the area of civil and commercial matters, thereby enhancing the overall objective of the Union: the creation of an area of freedom, security, and justice. The principle of mutual recognition, underpinned by mutual trust, is therefore essential. This principle recognises that judgments by judicial authorities in other Member States can be executed without applying the internal jurisdictional rules and conditions.

Mutual recognition is premised on trust in the effective operation of the other Member States' judicial systems, and this trust is closely connected with the standardisation of the vesting and execution of jurisdiction in cross-border situations. It is also reflected in the provision that, in principle, acts of official authority in other Member States are deemed authentic and are automatically enforceable. The development of mutual trust within the Union's judicial area is fostered through instruments facilitating the circulation of decisions and forgoing the checks on jurisdiction that would normally pertain at the enforcement stage.

In the field of civil justice, mutual trust supports the simplified recognition and enforcement of judgments between Member States. In fact, mutual recognition as a tool to enhance judicial cooperation has been inextricably intertwined with another fundamental concept, mutual trust: the presumption that national legal systems and the corresponding judicial decisions comply with EU law, in particular the Charter of Fundamental Rights and the principles they embody, and, more broadly, with the common values upon which the Union is founded, in particular, democracy, respect for human rights, and the rule of law.

Beneath this presumption, mutual recognition operates as an automatic, legally binding mechanism. Once the issuing Member State has made its determination, no

further individual examination is permitted: the act is valid not only within the reasonable confines of the judicial system of law but also ex ante and ex post, with the sole caveat of a very limited number of defined exceptions.

The Union schemes facilitating the circulation of court decisions originate in the 1968 Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, which constituted the first coherent framework for the recognition and enforcement of judgments within the European legal space. This framework was subsequently developed through the Brussels I Regulation and, at present, through Regulation 1215/2012, commonly referred to as the Brussels I bis Regulation. The latter consolidates the principle that judgments given in one Member State should circulate freely in other Member States, subject only to limited and narrowly interpreted grounds for refusal. Accordingly, the abolition of exequatur and the reduction of intermediate procedures reflect the central role of mutual trust, while the public policy exception preserves a residual safeguard for cases in which recognition or enforcement would be manifestly incompatible with the fundamental principles of the requested legal order.

At the same time, safeguarding national public order constitutes a recognised limitation. This duality reflects the vested interest of EU Member States in promoting circulation while preventing judicial overreach by other States. The core concern pertains to the possible dissemination of decisions issued in violation of fundamental rights. Such a risk may justify the application of the public policy / ordre public exception, but only in narrowly defined circumstances. The requested court may not review the substance of the foreign judgment; it may refuse recognition or enforcement only where the effects of that judgment would be manifestly incompatible with the fundamental principles of its legal order. Restricted circulation grounds should therefore be understood primarily in relation to procedural fairness, proper service of documents, irreconcilable judgments and manifest incompatibility with the fundamental principles of the requested Member State’s legal order. Court decisions may also become subject to procedural instead of substantive scrutiny.

Public policy / ordre public as a limit to mutual recognition

In EU private international law, public policy / ordre public operates as an exceptional ground for refusing the recognition or enforcement of a judgment delivered in another Member State. Under Regulation 1215/2012, this exception must be interpreted restrictively, since the system is built on mutual trust and the free circulation of judgments. Public order constitutes an important limiting principle on mutual recognition in European Union (EU) judicial cooperation. This term encompasses all cases where the execution of a decision from other Member States poses a serious threat to fundamental rights, Union values, or the core values of the national or regional legal system [1]. Challenges concerning the rule of law and the protection of fundamental rights have contributed to renewed debates on the scope of public policy as a ground for refusing recognition or enforcement [2].

The case law of the Court of Justice of the European Union confirms that the public policy exception must be interpreted strictly. It cannot justify a review of the substance of the foreign judgment and may be relied upon only where recognition or enforcement would be manifestly contrary to a fundamental rule of law in the requested Member State. This restrictive approach reflects the need to preserve mutual trust while allowing national courts to react in exceptional cases involving serious procedural or substantive incompatibility with the forum's basic legal principles.

The European Union's (EU) principle of mutual trust among Member States, regarded as one of the foundations of the European integration process, is increasingly challenged. Such practices of restricting mutual trust in the circulation of judicial acts are alarming because they may erode the seminal basis on which EU policy has been built. To enumerate the comprehensible legal framework provided by Member States that limits the circulation of judicial decisions under public-order defences, this section classifies the legal categories and outlines the legal criteria that have been elaborated through case law in framing public-order defences within the EU context. Court decisions have shaped the current understanding of the limits of public order and the movement of judicial acts. There is substantial variation in national case law concerning public-order defences. The concept of public order is an elementary tenet of the legal system in most democratic states; it serves as a formidable barrier for the enforcement and circulation of judicial

decisions. Contributing legal elements, such as those that identify the classification of public-order defences invoked against the circulation of judicial acts and the corresponding criteria, have been widely analysed [3].

The European Union's principle of mutual trust underpins the circulation of judgments among its Member States. This section highlights relevant case law of Member States that furnish guidance on the limits set to circulation. The case law reveals a growing intersection between public order and fundamental rights regarding mutual recognition. National courts reference the European Convention on Human Rights and European Union Charter of Fundamental Rights as foundational elements of the rule of law, espouse proportionality in the public order analysis, and specify necessary prerequisites and procedural safeguards in certain circumstances. Following Aranyosi and Caldararu, the European Court of Justice underscores that mutual trust remains intact even when national courts delineate their interpretation of it.[4] Domestic jurisprudence regarding the circulation of judgments is evolving along a trajectory that remains coherent with the jurisprudence of the European Court of Justice. Member States generally do not contend that mutual trust is absent. National courts instead affix threshold standards, framing specific conditions attached to the circulation of judgments. [2]

Balancing mutual trust and public order

The concept of public order plays a crucial role in the dynamics of judicial cooperation within the European Union (EU) across the civil domain that rely on mutual recognition and automatic enforceability of decisions between Member States. Member States of the Union confront the significant challenge of effectively balancing mutual trust between national judicial authorities and public order requirements when determining whether EU court judgments or other coercive cross-border measures issued by the judiciary of another member state must be enforced. The Court of Justice of the European Union (CJEU) is regularly called upon to safeguard the application of EU law and, in parallel, to evaluate the compatibility of national law and procedures with this higher legal order. An analysis of the overall content of CJEU rulings and the central debates surrounding them reveals the significant tensions that persist. Proportionality and necessity are often at the forefront of these discussions, along with the consideration of

protection measures for fundamental rights in the context of ongoing restrictions on the transmittal of court decisions.

A comparative analysis of the contested nature of mutual trust reveals both differences and similarities across Member States. Fundamental differences arise in the persistence of reservations based on mutual recognition; the freedom of courts to engage in an examination of equivalence; the significance placed on specific domestic social and geographical contexts; and the development of a common EU legal culture in both judicial and legal professional circles in response to the particular case raised. Convergence appears across assessments of whether core principles of the European Convention on Human Rights constitute a minimum standard that would permit further scrutiny of the issue. The adoption of different forms of constitutional loyal cooperation and the articulation of a global vision of trust that engages with the constitutional traditions of the Treaties and with the national principle of the rule of law further illustrate this trajectory. Eventually, the compatibility of fundamental rights with the content of the decision serves as a litmus test to specify the threshold beyond which the transmittal of court decisions becomes constitutionally intolerable.

Comparative perspectives reveal important subtexts in the safeguarding of fundamental rights under enforcement instruments based on the principle of mutual trust. Several constitutions affirm the supremacy of human rights or enumerated rights in their respective legal orders. Varied legislative choices reflect differing legal parameters and may be deployed in opposition to further European integration. Some courts emphasise that national constitutional traditions do not permit the absolute disregard of fundamental rights for policy or technical reasons, disallowing the invocation of European assurance of respect for fundamental rights in justification of their transposition. These courts remain open to mutual recognition, but stipulate that such arrangements cannot provide a carte blanche for disregard of Constitution-level guarantees offering greater protection than corresponding European provisions.

The public policy exception cannot be reduced exclusively to the values listed in Article 2 TEU, although those values inform its interpretation. In civil and commercial matters, national courts retain a limited margin of assessment, but that margin must be exercised restrictively and consistently with the objectives of mutual recognition.

The examination of limitations on the circulation of decisions that respect public order reinforces the view that the principle of mutual trust within the European Union's judicial systems is subject to nuanced, but not absolute, constraints established at the national level. Public-order defences can be framed and interpreted in a way that avoids broad restrictions on the circulation of national decisions. Court decisions have circulated across borders with few limitations, even in difficult circumstances, and in practice it has become apparent that public-order constraints impose few, if any, real limits on the circulation of decisions of a purely civil nature. National authorities remain free to intervene if and when they consider such interventions proportional and necessary. Several aspects of the jurisprudence continue to evolve, and further clarity would benefit both other authorities within the national systems concerned and parties to proceedings of various kinds.

Although public policy remains a national concept, its application is influenced by EU law. National courts may invoke it only in exceptional circumstances, where recognition or enforcement would clearly conflict with fundamental principles of the forum.

Procedural and substantive implications for enforcement

Alongside Brussels I bis, instruments such as the European Order for Payment Regulation and the European Small Claims Regulation contribute to the broader objective of simplifying cross-border judicial cooperation in civil and commercial matters. However, Regulation 1215/2012 remains the central instrument for the recognition and enforcement of judgments between Member States.

In cross-border situations, the effects of national decisions on legal instruments depend on the type of measure issued and on whether the measure is classified within the formal framework of a judgment or judicial decision. In the first instance, the framework is that of the cross-border recognition and enforcement of judgments; whether the measure is a provisional measure or not determines if national procedures apply. In the second case, and if the issuing State does not act within the framework set by specific EU instruments for the circulation of decisions, it cannot be excluded that additional national stages occur within the deciding State prior to any enforcement operation [5].

The relevant remedies are subject to significant variation, and substantial procedural diversity continues to be witnessed between Member States in the practice of granting cross-border injunctions. With regard to enforcement at the cross-border level - namely, execution where the parties to an enforcement act are located within different territories or Member States - no uniform definition of a common enforcement title is presently available. The absence of such a definition precludes an automatic, system-wide solution at the enforcement level and sustains the integration of national doctrines centred on enforceability, a development that generates recital- and content-related complications in enforcement scenarios. The requirement that domestic enforcement statutes, applicable to the local circulation of the judgment, remain still in place reflects the fact that the Member State in which enforcement is sought has no obligation through Union law to ascertain whether the cross-border judgment is also enforceable in the Member State in which it originated. The scope of judgments that qualify for publicity-based enforcement remains similarly dependent on Member-State national law. The diversity of procedural rules, templates, and formalities characterising the Union has escalated the demand for harmonisation within circulation or enforcement systems and constitutes the operational rationale underlying the enactment of instruments such as the Brussels I Regulation.

At present, the functioning of the Common Area of Justice is materially dependent upon the fundamental requirement that national proceedings, encompassing both substance and procedure, should not breach the standards established by the Court of Justice of the European Union.

Policy implications and future prospects

The relation between mutual trust and public order remains a longstanding challenge in the evolution of cooperation between national judicial systems, and thorough guidance is necessary to establish the conditions under which trust-based circulation is compatible with the safeguarding of public order. In particular, achieving a balance requires clarifying the limits that may be imposed for public order reasons on the circulation of civil and commercial judgments. The relationship between mutual trust and public policy remains a continuing challenge in the development of judicial cooperation

between Member States. Future developments should clarify the conditions under which public policy may justify refusing recognition or enforcement, while ensuring that this exception remains proportionate, exceptional and compatible with the objectives of Regulation 1215/2012. There is also a need to explore the possibility of a more far-reaching collective notion of public order applicable across the EU to facilitate trust-based circulation, along with related safeguards.

Efforts to safeguard certain public order aspects already adopted within the Union can assist in balancing protection and trust. Possible measures include refining existing or creating new instruments to formally define specific limits to mutual recognition and circulation, for instance by instituting supplementary bases for non-recognition or non-circulation, supplemented by a proportionate necessity test. Systematic assessment of framework agreements on the recognition of judicial decisions can further identify remaining divergences in the definition and scope of such contracts, facilitating convergence on their adoption or substance. Mechanisms compatible with EU law are likely available to promote convergence in national protection of non-circumvention duties applied to mutual recognition of court decisions [6]; [7].

Conclusion

The circulation of court decisions constitutes an essential mechanism for the cooperation of judicial systems operating across national boundaries. The enhancement of judicial cooperation is one of the major objectives stated in the Treaty on European Union and is closely connected with the creation of a common area of freedom, security and justice. Within this framework, mutual trust among Member States supports the recognition and enforcement of judgments and contributes to the effective functioning of the European judicial area.

Nevertheless, since national systems and legal traditions still include substantial differences, facilitating circulation while preserving the fundamental principles of the requested legal order remains both a necessity and a challenge. Regulation 1215/2012 reflects this balance by promoting the free circulation of judgments in civil and commercial matters, while preserving limited grounds for refusing recognition or enforcement. Among these grounds, the public policy / ordre public exception occupies a particular position, as

it allows national courts to prevent the effects of a foreign judgment that would be manifestly incompatible with the basic principles of their legal order.

The public policy exception must, however, remain exceptional. It cannot be used as a means of reviewing the substance of the foreign judgment or as a general mechanism for protecting national legal particularities. Its function is rather to operate as a residual safeguard in cases where recognition or enforcement would seriously affect procedural fairness, fundamental rights or essential principles of justice. In this respect, the balance between mutual trust and public policy depends on a restrictive and proportionate interpretation of the grounds for refusal.

The Area of Freedom, Security and Justice is built on mutual trust, a principle reflected in Article 81 of the Treaty on the Functioning of the European Union. Yet mutual trust cannot be understood as blind trust. The circulation of court decisions remains legitimate only insofar as it is accompanied by safeguards capable of protecting the fundamental values of the requested legal order. Therefore, the future of judicial cooperation in civil and commercial matters depends on maintaining this delicate balance between the effectiveness of mutual recognition and the exceptional protection ensured by public policy / ordre public.

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SUSTAINABLE PUBLIC DEBT IN THE ERA OF HIGH INTEREST RATES: IS THE R–G PARADIGM STILL RELEVANT?

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Abstract:
This paper revisits public debt sustainability in a persistent high-interest-rate environment, challenging the conventional reliance on the interest-growth differential r - g as a sufficient condition for fiscal stability. While the post-global financial crisis period was marked by favourable borrowing conditions, the post-pandemic monetary tightening cycle has fundamentally altered the macroeconomic landscape, pushing many economies into a regime in which borrowing costs exceed growth rates.
To address these challenges, the paper develops an extended analytical framework that integrates stochastic debt dynamics, endogenous risk premia, and monetary–fiscal interactions. Moving beyond deterministic approaches, the study employs a Stochastic Debt Sustainability Analysis (SDSA) using a Vector Autoregression (VAR) model and Monte Carlo simulations to generate a distribution of future debt trajectories. This approach enables the explicit assessment of downside risks and the probability of adverse debt outcomes.
The results demonstrate that debt sustainability is highly sensitive to macroeconomic volatility and to interactions among policies. Even when baseline projections indicate stable debt paths, stochastic simulations reveal a substantial probability of explosive dynamics, particularly in scenarios characterised by persistent $r > g$
Furthermore, the findings highlight the critical role of fiscal policy behaviour, showing that stronger fiscal reactions are required to stabilise debt in high-interest-rate environments. The analysis also underscores the increasing relevance of monetary–fiscal trade-offs, including the risk of fiscal dominance in high-debt regimes.
By reinterpreting the r - g differential as a time-varying and regime-dependent variable, this paper contributes to the literature by providing a more realistic, risk-based framework for assessing debt sustainability. The results carry important policy implications, particularly for small open economies, where exposure to external shocks and exchange rate volatility further amplifies fiscal vulnerabilities.
Keywords: *public debt sustainability, r – g differential, stochastic simulations, monetary–fiscal interactions, fiscal dominance, VAR, Monte Carlo.*

Introduction

The last three years have marked a fundamental turning point in the global macroeconomic environment, with profound implications for fiscal policy and public debt sustainability. Following more than a decade characterized by exceptionally low interest rates and, in many cases, a persistently negative differential between the interest rate and the growth rate ($r - g$), the global economy has entered a new regime shaped by high inflation and aggressive monetary tightening. In the aftermath of the COVID-19 pandemic, inflation surged across both advanced and developing economies, forcing central banks to abandon the “transitory” narrative and implement rapid and synchronized tightening cycles. As a result, borrowing costs have increased sharply, often outpacing economic growth [7], [18].

During the low-interest-rate era, governments benefited from highly favorable financing conditions, allowing them to sustain elevated levels of public debt without significant fiscal adjustment. The theoretical justification for this outcome lies in the $r - g$ framework, which posits that debt sustainability is ensured when the interest rate on government debt is below the economy's growth rate. Under such conditions, governments can roll over debt without increasing the debt-to-GDP ratio, even in the presence of primary deficits [3], [13].

This interpretation marked a significant shift from earlier concerns about debt thresholds and fiscal limits emphasized in the literature [17], and has become a cornerstone of modern fiscal analysis and policy design.

However, the transition to a high-interest-rate environment calls into question the robustness of this paradigm. First, the assumption of a stable and predictable relationship between interest rates and growth is increasingly inconsistent with observed macroeconomic volatility. Both variables are influenced by monetary policy shifts, financial market conditions, and global shocks, implying that debt sustainability is inherently probabilistic rather than deterministic [11], [3]. Second, the traditional framework largely abstracts from regime changes, despite growing evidence that the prolonged period of negative $r - g$ was exceptional rather than structural. Third, it does not adequately account for structural heterogeneity across countries.

Small open economies, particularly those that are energy-dependent, face additional vulnerabilities stemming from external shocks, exchange rate movements, and terms-of-trade fluctuations [16], [15]. Finally, the $r - g$ approach underestimates the role of fiscal policy behavior and institutional credibility, which are central elements of modern debt sustainability frameworks, including those developed by international financial institutions [10], [11].

In response to these limitations, this paper develops an extended framework for analyzing public debt sustainability in a high-interest-rate environment. By integrating stochastic debt dynamics, regime shifts, and monetary–fiscal interactions, and by explicitly accounting for the structural characteristics of small open economies, the analysis moves beyond the traditional $r - g$ paradigm. In doing so, it provides a more realistic, risk-based, and policy-relevant assessment of fiscal sustainability under contemporary macroeconomic conditions.

This framework serves as the basis for the stochastic simulations and empirical analysis that follow, allowing for a more realistic evaluation of debt sustainability under regime uncertainty.

Literature review

The r–g Framework and Its Reinterpretation

The theoretical foundation of public debt sustainability is rooted in the intertemporal budget constraint, which requires that the present value of future primary surpluses equals the existing stock of public debt. Within this framework, debt dynamics are primarily governed by the relationship between the interest rate and the growth rate of the economy, summarized by the differential $r - g$.

Early contributions, particularly those building on Domar's analysis, established that sustained primary deficits may be compatible with stable debt dynamics, provided that growth exceeds interest rates. In contemporary macroeconomic literature, this insight has been significantly reinterpreted. In particular, it has been argued that when the nominal interest rate remains persistently below the growth rate, public debt may entail limited fiscal costs, as economic expansion reduces the relative burden of debt [3], [13].

Beyond Deterministic Debt Sustainability: Risk, Endogeneity, and Regime Shifts

A growing body of literature challenges the sufficiency of the $r - g$ framework by emphasizing the role of uncertainty, endogeneity, and structural change. First, debt sustainability is increasingly understood as a probabilistic concept, as future paths of interest rates, growth, and fiscal balances are inherently uncertain. Stochastic approaches, including those developed in IMF debt sustainability frameworks, highlight the importance of analyzing the distribution of outcomes rather than relying on deterministic projections [10], [3]. Second, the assumption that interest rates and growth are exogenous is increasingly questioned. Empirical evidence suggests that higher debt levels can raise borrowing costs through risk premia while simultaneously dampening growth, creating nonlinear feedback effects that amplify fiscal vulnerabilities [6]. Third, recent literature highlights the importance of regime shifts. The prolonged period of negative $r - g$ observed in advanced economies may represent an exceptional episode rather than a structural feature. The post-pandemic tightening cycle, documented by institutions such as the European Central Bank, suggests a transition to a regime characterized by higher and more volatile interest rates, fundamentally altering debt dynamics.

Together, these developments imply that sustainability cannot be assessed solely through average values of $r - g$, but must account for volatility, tail risks, and nonlinear dynamics.

Structural Vulnerabilities and Remaining Gaps in the Literature

An additional limitation of the existing literature is its insufficient treatment of structural heterogeneity across countries. Small open economies, in particular, face heightened exposure to external shocks, exchange rate fluctuations, and global financial conditions [10]. Among these vulnerabilities, energy dependence plays a central role, as fluctuations in global energy prices can simultaneously affect growth, inflation, and fiscal balances [16], [15].

Despite their importance, such structural factors remain underrepresented in standard debt sustainability models, which are typically calibrated for advanced

economies. This may lead to an underestimation of fiscal risks in more vulnerable contexts.

Taken together, the literature highlights three key gaps: insufficient integration of uncertainty, limited treatment of regime shifts, and inadequate consideration of structural vulnerabilities. This paper addresses these gaps by developing an extended framework that integrates stochastic debt dynamics, monetary-fiscal interactions, and structural characteristics of small open economies. In doing so, it provides a more realistic and policy-relevant assessment of public debt sustainability in a high-interest-rate environment.

Theoretical framework

The starting point for the analysis of fiscal sustainability is the law of motion governing the public debt-to-GDP ratio. In discrete time, the evolution of debt is given by:

$$d_t = \frac{1+r_t}{1+g_t} d_{t-1} - pb_t \qquad \text{which implies:} \qquad \Delta d_t = \frac{r_t - g_t}{1+g_t} d_{t-1} - pb_t$$

where d_t denotes the public debt-to-GDP ratio, r_t the effective nominal interest rate on public debt, g_t the nominal GDP growth rate, and pb_t the primary balance as a share of GDP.

The term:

$$\frac{r_t - g_t}{1 + g_t} d_{t-1}$$

captures the automatic dynamics of debt, commonly referred to as the *snowball effect*. When $r_t > g_t$, debt tends to increase mechanically even in the absence of primary deficits. Conversely, when $g_t > r_t$, the debt ratio may stabilize or decline without the need for sustained primary surpluses.

This result underpins the so-called Blanchard condition, which holds that an economy can sustain higher debt levels when the growth rate consistently exceeds the cost of borrowing. In such a regime, the intertemporal budget constraint becomes less binding because the denominator effect outweighs the accumulation of liabilities.

However, this condition is inherently static and deterministic, abstracting away from uncertainty, market reactions, and policy interactions.

Despite its analytical elegance, the $r - g$ framework suffers from several critical limitations that constrain its applicability in real-world, high-interest-rate environments.

Stochastic Nature of Debt Sustainability

Fiscal sustainability is fundamentally probabilistic rather than deterministic. The evolution of debt depends on future realizations of interest rates and growth, which can be modelled as stochastic processes:

$$r_t = \bar{r} + \varepsilon_t^r, g_t = \bar{g} + \varepsilon_t^g$$

where ε_t^r and ε_t^g represent shocks. Even if $\mathbb{E}(r_t - g_t) < 0$, the variance of these shocks may generate a non-negligible probability that $r_t - g_t > 0$ for prolonged periods, leading to explosive debt dynamics. Therefore, sustainability must be assessed using probability distributions rather than point estimates.

Endogeneity and Nonlinear Feedback Effects

The standard framework assumes that r_t and g_t are exogenous, which is empirically unrealistic. In practice, both variables depend on fiscal conditions:

$$r_t = r_t^* + \pi(d_{t-1}), g_t = g_t^* - \theta d_{t-1}$$

where $\pi'(d) > 0$ captures the increase in risk premia with debt, and $\theta > 0$ reflects debt overhang effects on growth.

This generates a nonlinear feedback mechanism:

$$\frac{\partial}{\partial d}(r_t - g_t) > 0$$

implying that higher debt worsens the interest-growth differential, thereby accelerating debt accumulation. This mechanism introduces potential instability thresholds and multiple equilibria.

Intertemporal Constraint and Transversality

In an infinite-horizon setting, sustainability requires the intertemporal government budget constraint:

$$d_t = \sum_{j=0}^{\infty} (\prod_{k=1}^{j} \frac{1 + r_{t+k}}{1 + g_{t+k}}) pb_{t+j}$$

together with the transversality condition:

$$\lim_{T \to \infty} (\prod_{k=1}^{T} \frac{1 + r_{t+k}}{1 + g_{t+k}}) d_{t+T} = 0$$

However, this condition is not empirically testable and allows for implausible fiscal paths based on distant future adjustments. As a result, the $r - g$ framework provides limited guidance for medium-term fiscal constraints.

To address these limitations, this paper develops an extended framework integrating risk, endogeneity, and policy interaction.

Endogenous Risk Premium

The interest rate is modelled as:

$$r_t = r_t^f + \alpha d_{t-1}^{\beta}$$

where r_t^f is the risk-free rate and $\alpha > 0, \beta > 1$ capture nonlinear risk pricing. This implies convexity:

$$\frac{\partial^2 r_t}{\partial d^2} > 0$$

so that borrowing costs increase disproportionately at higher debt levels.

Stochastic Debt Dynamics

Debt evolves under uncertainty:

$$d_{t+1} = \frac{1 + r_t}{1 + g_t} d_t - pb_t + \varepsilon_t$$

Monte Carlo simulations generate distributions of future debt paths, allowing the computation of:

$$\mathbb{P}(d_{t+h} > \bar{d})$$

which defines the probability of fiscal distress over the horizon h.

Monetary–Fiscal Interaction

Monetary policy affects both borrowing costs and growth:

$$r_t = r_t(i_t, \pi_t), g_t = g_t(i_t)$$

where $i_t$is the policy rate. In a tightening regime:

$$i_t \uparrow \Rightarrow r_t \uparrow, i_t \uparrow \Rightarrow g_t \downarrow \qquad \text{implying:} \quad \frac{\partial}{\partial i_t}(r_t - g_t) > 0$$

This highlights the importance of the policy mix, particularly in inflationary environments where monetary tightening may undermine fiscal sustainability.

Implications for Debt Sustainability

Under the expanded framework, the sustainability condition becomes:

$$\mathbb{E}[\frac{r_t - g_t}{1 + g_t}] + \text{Risk Adjustment} < \frac{pb_t}{d_{t-1}}$$

The "safe" level of debt is therefore:

- lower when volatility is high
- lower when risk premia are highly sensitive to debt
- lower when monetary policy is restrictive

This implies that in regimes where $r > g$ becomes persistent, fiscal space contracts significantly, and traditional benchmarks based on average $r - g$ values underestimate fiscal risks.

Monetary–fiscal interactions

The post-2021 inflationary surge triggered a sharp reversal of the "low-for-longer" monetary regime, leading to an aggressive tightening cycle across major central banks [18]. This shift has fundamentally altered public debt dynamics by increasing the interest growth differential, thereby weakening the automatic stabilizing properties of debt.

The transmission of monetary policy to public debt primarily operates through its effects on borrowing costs and economic activity. The effective interest rate on government debt can be expressed as a weighted average of past policy rates:

$$r_t = \sum_{j=0}^{\infty} \omega_j i_{t-j}$$

while output growth responds negatively to tightening:

$$g_t = \mathbb{E}_t g_{t+1} - \psi(i_t - i_t^*) \qquad \text{implying:} \quad \frac{\partial}{\partial i_t}(r_t - g_t) > 0$$

Thus, monetary tightening increases the *snowball effect* and raises the fiscal effort required to stabilize debt. In small open economies such as Serbia, these effects are amplified by exchange rate depreciation, which increases the burden of foreign-currency-denominated debt [16].

The interaction between monetary and fiscal policy can be characterized through reaction functions. Under monetary dominance, central banks independently pursue price stability, while fiscal authorities adjust primary balances to ensure sustainability. Conversely, under fiscal dominance, insufficient fiscal adjustment forces the price level to absorb fiscal imbalances, consistent with the Fiscal Theory of the Price Level [12].

Recent developments suggest that rising debt levels and higher interest rates increase the likelihood of tensions between these regimes. In particular, tighter monetary policy may become counterproductive when higher interest costs destabilize public finances, implying a positive relationship between policy rates and debt dynamics.

Finally, the retreat from quantitative easing has removed an important stabilizing force in sovereign bond markets. Without central bank support, borrowing costs become more sensitive to debt levels and market volatility, reinforcing nonlinear feedback loops between debt, risk premia, and interest rates [1].

Overall, these interactions highlight that debt sustainability cannot be assessed independently of the policy mix. In a high-interest-rate environment, the joint behavior of monetary and fiscal authorities becomes a central determinant of fiscal stability.

These theoretical insights provide the foundation for the empirical analysis that follows, where the interaction between interest rates, growth, and fiscal behavior is examined within a stochastic simulation framework to assess the probability and distribution of debt sustainability outcomes.

Table 1. Summary of the Theoretical Framework

Component	Specification	Economic Interpretation
Debt dynamics	$d_{t+1} = \frac{1+r_t}{1+g_t} d_t - pb_t$	Standard evolution of the debt-to-GDP ratio
Snowball effect	$\frac{r_t - g_t}{1+g_t} d_t$	Automatic debt accumulation when $r > g$
Interest rate formation	$r_t = r_t^f + \alpha d_{t-1}^{\beta}$	Endogenous risk premium increases with debt

Growth dynamics	$g_t = g_0 - \theta d_{t-1} + \delta I_t$	Debt overhang reduces growth; investment increases it
Monetary transmission	$r_t = \sum \omega_j i_{t-j}$	Policy rate affects borrowing costs with lags
Policy interaction	$g_t = \mathbb{E}_t g_{t+1} - \psi(i_t - i_t^*)$	Tightening reduces growth
Fiscal reaction	$pb_t = \gamma d_{t-1} + \eta_t$	Fiscal policy responds to debt levels
Risk framework	$d_{t+1} = \ldots + \varepsilon_t$	Stochastic shocks introduce uncertainty
Sustainability condition	$\mathbb{E}[\frac{r_t - g_t}{1+g_t}] + \text{Risk} < \frac{pb_t}{d_t}$	Risk-adjusted fiscal sustainability
Key implication	$\frac{\partial}{\partial i_t}(r_t - g_t) > 0$	Monetary tightening worsens debt dynamics

Source: Author

Empirical strategy and model simulation

The empirical analysis is based on a Stochastic Debt Sustainability Analysis (SDSA) framework, designed to evaluate public debt dynamics under uncertainty and to move beyond deterministic projections. In contrast to traditional approaches, which rely on baseline scenarios, this framework explicitly models the joint distribution of key macroeconomic variables and allows for the assessment of downside risks and tail events [4], [8], [10].

Model Specification

The starting point is the stochastic law of motion for the debt-to-GDP ratio:

$$d_{t+1} = \frac{1 + r_t}{1 + g_t} d_t - pb_t + \varepsilon_t$$

where ε_t captures exogenous shocks, including macroeconomic disturbances, exchange rate movements, and contingent liabilities. This formulation is consistent with the theoretical framework developed in Section 3 and widely used in empirical debt sustainability analysis [8], [4].

To capture the joint behavior and interdependence of macroeconomic variables, the model employs a Vector Autoregression (VAR):

$$X_t = A_0 + \sum_{k=1}^{p} A_k X_{t-k} + u_t \quad \text{where:} \quad X_t = \begin{bmatrix} r_t \\ g_t \\ pb_t \end{bmatrix}, u_t \sim \mathcal{N}(0, \Sigma)$$

This specification allows for endogenous interactions among interest rates, economic growth, and fiscal balances, reflecting empirical evidence that these variables are jointly determined and mutually reinforcing [4]. [6].

The model is estimated using quarterly data, with lag length selected based on standard information criteria. The covariance structure Σ captures cross-variable correlations, ensuring realistic propagation of shocks across macroeconomic variables [8].

Simulation Strategy

The estimated VAR model is used to generate simulated paths of macroeconomic variables through a Monte Carlo procedure, with 5,000–10,000 iterations to ensure convergence of the distribution [14]. For each simulation s, sequences of shocks $u_t^{(s)}$ are drawn from the estimated distribution, generating trajectories:

$$X_{t+h}^{(s)} \Rightarrow d_{t+h}^{(s)}$$

These simulations produce a full distribution of possible debt paths, allowing the computation of risk-based metrics, including median projections, interquartile ranges, and upper percentiles representing adverse scenarios [9].

This probabilistic approach is consistent with modern IMF debt sustainability frameworks, which emphasize the importance of assessing fiscal risks through distributions rather than point estimates [10], [11].

Fiscal Policy and Scenario Analysis

To incorporate policy behavior, the model includes a fiscal reaction function:

$$pb_t = \alpha + \gamma d_{t-1} + \delta Z_t + \nu_t$$

where γcaptures the responsiveness of fiscal policy to debt levels. This allows for testing whether fiscal policy is sufficiently stabilizing, in line with empirical approaches in the literature [6], [1].

The analysis is complemented by three types of scenarios:

- Baseline scenario, based on expected macroeconomic trajectories
- Deterministic stress tests, including interest rate shocks (e.g., +200 basis points) and growth shocks (−1 to −2 standard deviations)

- Fully stochastic simulations, capturing the joint distribution of macroeconomic risks

These approaches follow established methodologies used by international institutions while extending them through a fully stochastic framework [4], [10].

Empirical results

The empirical analysis is based on a panel dataset covering the period 2005-2023, allowing for the inclusion of both the low-interest-rate environment following the global financial crisis and the recent post-pandemic tightening cycle. The sample includes a mix of advanced and emerging economies, with particular attention to small, open, and energy-dependent countries to capture structural heterogeneity in debt dynamics.

The baseline projections suggest a relatively stable path of the debt-to-GDP ratio over the medium term. Under expected macroeconomic conditions, the debt ratio either stabilizes or exhibits a gradual decline, reflecting moderate growth and a fiscal stance broadly consistent with debt sustainability.

However, this baseline outcome is highly sensitive to the assumed values of the interest–growth differential. In particular, even small deviations in either interest rates or growth can significantly alter the trajectory of public debt, highlighting the limitations of deterministic projections.

The fan chart reveals three key patterns. First, the dispersion of debt trajectories increases significantly over the forecast horizon, indicating that uncertainty compounds over time. While the median projection remains stable, the upper percentiles (e.g., 90th and 95th) show a marked upward deviation, suggesting a non-negligible probability of adverse outcomes. Second, the distribution of outcomes is asymmetric, with a heavier upper tail. This implies that the risks to debt sustainability are skewed toward deterioration rather than improvement. Such asymmetry is consistent with the presence of nonlinear feedback mechanisms, particularly those related to risk premia and the snowball effect. Third, the probability of exceeding critical debt thresholds increases under adverse scenarios. For a subset of simulations, the debt-to-GDP ratio follows an explosive path, even when the baseline suggests stability. This finding underscores the importance of assessing fiscal sustainability probabilistically rather than relying solely on point forecasts.

The stress-testing analysis further highlights the vulnerability of debt dynamics to macroeconomic shocks.

An interest rate shock (e.g., +200 basis points) leads to a significant upward shift in the distribution of debt trajectories, reflecting the amplification of the snowball effect.

The results also emphasize the importance of fiscal policy responses. Simulations incorporating a stronger fiscal reaction (higher γ) show a significant reduction in the dispersion of debt trajectories, as well as a lower probability of extreme outcomes.

However, the analysis indicates that the level of fiscal adjustment required to stabilize debt in a high-interest-rate environment is substantially higher than historical norms. In many cases, the implied primary surpluses exceed those observed in past periods, raising concerns about the feasibility and political sustainability of such adjustments.

For small open economies such as Serbia, the results suggest heightened vulnerability to external shocks. Exchange rate depreciation and exposure to global financial conditions amplify the impact of interest rate increases, widening the dispersion of debt outcomes.

The empirical results demonstrate that debt sustainability in a high-interest-rate environment is fundamentally characterized by uncertainty, asymmetry, and nonlinear risk. While baseline projections may suggest stability, the distribution of outcomes reveals a substantial probability of adverse scenarios, particularly under persistent $r > g$ conditions. These findings highlight the limitations of deterministic frameworks and underscore the need for a risk-based approach to fiscal policy, where the focus shifts from expected outcomes to the management of downside risks.

Conclusion

This paper demonstrates that the global macroeconomic environment has undergone a structural shift, marking the end of the “low-for-longer” interest rate regime and fundamentally altering the conditions for public debt sustainability. The central finding is that the interest–growth differential ($r - g$), long considered a stabilizing mechanism, can no longer serve as a reliable anchor for fiscal policy. The transition toward persistently

higher interest rates has pushed many economies into a regime where borrowing costs exceed growth, thereby weakening the automatic stabilizing properties of debt dynamics.

In this environment, debt sustainability becomes highly sensitive to macroeconomic volatility, endogenous risk premia, and nonlinear feedback effects. The stochastic simulations show that even when baseline projections suggest stable debt paths, there remains a substantial probability of adverse outcomes. In particular, relatively moderate shocks to interest rates or growth can generate explosive debt trajectories, especially when financial markets respond strongly to rising debt levels.

The results underscore the critical importance of fiscal policy behavior. Stabilizing public debt now requires stronger, more credible, and more forward-looking fiscal responses than in the past. At the same time, the composition of fiscal policy becomes central: growth-enhancing public investment plays a key role in improving debt dynamics, while consumption-driven fiscal expansion provides limited support for sustainability.

For small open economies such as Serbia, these challenges are further amplified by exposure to external financial conditions, exchange rate volatility, and global monetary policy spillovers.

From a policy perspective, several implications follow. Fiscal frameworks must be recalibrated to reflect a persistently higher $r - g$ environment, implying more conservative debt thresholds and stronger fiscal reaction functions. In addition, policymakers should prioritize the quality of fiscal adjustment, shifting toward investment-led strategies that enhance long-term growth and resilience. Equally important is the need for close coordination between monetary and fiscal authorities, particularly during periods of aggressive monetary tightening, in order to avoid destabilizing policy interactions.

Finally, debt sustainability assessments must move beyond deterministic projections and systematically incorporate risk-based metrics, including the probability distribution of adverse outcomes.

By moving beyond the traditional $r - g$ paradigm, this paper contributes to the literature by developing a unified stochastic framework that captures uncertainty, nonlinear feedback effects, and policy interactions, thereby offering a more realistic and policy-relevant assessment of debt sustainability.

In sum, the era of passive reliance on favorable macroeconomic conditions is over. Sustainable public finances in the 21st century require active fiscal management, credible policy frameworks, and a systematic integration of risk into policy design.

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SHARE TRANSFER. THE LEGAL NATURE OF THE SHAREHOLDERS' REGISTER

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Abstract
This paper analyses the legal regime of share transfer within joint-stock companies, with particular emphasis on the moment at which ownership of shares is transferred, the legal nature of the shareholders' register, and the legal effects of entries made therein. The study is prompted by a specific case pending before the courts, in which the legality of amendments made by a company director in the shareholders' register was challenged, following the registration of a share transfer and a subsequent reversal of that operation.
Starting from the interpretation of Article 98 of Law no. 31/1990, read in conjunction with the provisions of the Civil Code and the regulations governing shareholder records, the paper examines the two doctrinal and jurisprudential approaches concerning the effects of recording a share transfer in the shareholders' register: the view that such registration has an exclusively declaratory, opposability effect, and the view that it has a constitutive or translative effect.
It is submitted that, in the case of registered shares, particularly dematerialised shares, entry in the shareholders' register constitutes the legal condition for the transfer of ownership, producing constitutive and translative effects, without excluding its function of publicity and opposability. In this context, the provisions of Law no. 31/1990, the Civil Code, Government Decision no. 885/1995, as well as relevant doctrinal opinions and case-law solutions are analysed.
Furthermore, the paper argues that the shareholders' register and the operations carried out therein have the legal nature of civil law acts, rather than mere legal facts, which justifies their subjection to judicial review and the application of civil law sanctions in case of breach of legal provisions. The conclusions aim to contribute to the clarification of a controversial and current issue within company law and commercial law.
Keywords: *transfer of shares, assignment, legal nature, shareholders' register, commercial law*

Introduction

This paper originates from a legal issue identified in judicial practice, concerning the legal effects of the transfer of shares issued by a joint-stock company, as well as the legal nature of the shareholders' register and of the operations carried out therein.

Practical experience shows that, although the transfer of shares is a well-established institution in Romanian company law, numerous aspects relating to the moment of transfer of ownership over shares, the effects of entries in the shareholders' register, and the legal nature of this record continue to generate doctrinal controversy and

divergent case-law solutions. In such situations, the difficulty lies not so much in identifying the applicable legal rule, but rather in determining its true normative content and the effects that the legislator intended to attach to the mechanisms of publicity and record-keeping specific to joint-stock companies.

The relevance of the topic extends beyond the particular dispute that triggered this analysis. The question of whether entries in the shareholders' register have a constitutive effect or, on the contrary, merely a declaratory effect of opposability concerns the very legal structure of share circulation and the relationship between general rules of private law and the special provisions of company law. At the same time, the legal qualification of the shareholders' register and of the operations carried out therein directly influences the legal regime of the remedies available to persons allegedly harmed by unlawful entries.

This analysis is also prompted by a judicial trend which tends to attribute to entries in the shareholders' register an exclusively publicity and opposability function, thereby diminishing the significance of the mandatory provision contained in Article 98 of Law no. 31/1990. In our view, such an interpretation calls for a careful reassessment both from the perspective of the applicable legal provisions and in light of the internal logic of the legal mechanisms governing the circulation of securities.

The present study does not aim merely to examine a specific judicial solution, but rather seeks to contribute to the clarification of a legal issue of relevance for the entire field of company law. At the same time, it represents a first step in a broader research endeavour devoted to the relationship between legal publicity mechanisms and the constitutive effects of certain legal operations in private law.

To the extent that the arguments developed herein contribute to the deepening of doctrinal reflection and to the consolidation of a coherent judicial practice, the purpose of this study may be considered achieved.

1. The issue of share transfer and the transfer of ownership rights

A primary issue that arises is how and when the transfer of ownership of shares issued by a joint-stock company established in accordance with the provisions of Law No. 31/1990 and the applicable legal provisions takes place.

Clearly, the analysis must begin with the provisions of Article 98 of Law No. 31/1990, which uses the terms “transferor” and “transferee”, a reference to the provisions of Article 1566 et seq. of the Civil Code governing the assignment of claims and, more specifically, Articles 1587 et seq. of the Civil Code, which govern the assignment of a claim evidenced by a registered instrument to order or to bearer and which, in accordance with the provisions of Article 1566 (2) (b) of the Civil Code, have the character of a special rule.

The transfer of securities is carried out in accordance with the provisions of Article 1588 of the Civil Code, which distinguishes between registered securities, for which the transfer is recorded both on the instrument itself and in the register maintained for their record-keeping, order securities, for which endorsement is required, carried out in accordance with the applicable provisions regarding bills of exchange, and bearer securities, which are transferred by the physical delivery of the security.

In examining the issue of share transfers, the transfer of title to shares from the transferor to the transferee, as well as the legal nature of the shareholders’ register and of the entries recorded therein, we started from a dispute pending before the Constanța Tribunal (Romania), Commercial Case nr. 8167/118/2022, one of the county-level courts within the Romanian judicial system. The facts of the case reveal that two share transfer agreements were concluded between two shareholders acting as transferors and the same transferee, only one of those agreements being disputed. Under the terms of the agreements, title to the shares was to pass upon payment of the purchase price. The price was transferred immediately after the conclusion of the share transfer agreements into an escrow account and could be withdrawn by the transferor-beneficiary upon submission of the documents stipulated in the escrow agreement within the contractual deadline.

Following the deposit of the purchase price into the escrow account, the sole director of the company whose shares had been transferred, considering that title to the shares had passed from the transferors to the transferee, recorded the share transfer agreements and the transferee’s status as shareholder in the shareholders’ register, in accordance with Article 98(1) of Law No. 31/1990. Furthermore, although under no legal obligation to do so, the sole director also carried out the formalities required for the

registration of the relevant particulars with the Trade Register, and such registration became final.

Subsequently, one of the transferors, despite the fulfilment of all conditions necessary to withdraw the funds from the escrow account, reconsidered the transaction and refused to collect the purchase price for the shares. Upon expiry of the term stipulated in the escrow agreement, the amount was consequently returned to the transferee's account. In these circumstances, the sole director of the company, acting without any request from the transferor and taking the view that title to the shares had not been transferred due to non-payment of the purchase price, amended the shareholders' register, invoking an alleged error, and re-entered the transferor as shareholder. The same sole director subsequently requested the rectification of the alleged "error" before the Trade Register, and that request was granted.

In the present dispute, the claimant, as transferee of a significant block of shares in the joint-stock company, sought a judicial declaration of the absolute nullity, or alternatively the annulment on the grounds of relative nullity, of the amendments entered in the shareholders' register concerning the number and proportion of shares held. The claimant also sought restoration of the parties to their previous legal position, by reinstating the number and proportion of shares recorded in the shareholders' register prior to the unlawful amendments made by the company's sole director.

The claim was dismissed as inadmissible. The court held that nullity, as a sanction under civil law, cannot apply to the shareholders' register or to the entries made therein, since such entries do not constitute civil legal acts but rather legal facts. Consequently, they produce only a declaratory effect in terms of enforceability against third parties (opposability) and cannot give rise to any constitutive or proprietary transfer effect.

A first issue that arises concerns the manner and moment at which the transfer of title to shares issued by a joint-stock company incorporated under the provisions of Law No. 31/1990, as well as the applicable legal provisions, takes place.

Evidently, the analysis must begin with the provisions of Article 98 of Law No. 31/1990, which employ the terms "transferor" and "transferee," thereby referring to Articles 1566 et seq. of the Civil Code governing assignment of claims, and more specifically to Articles 1587 et seq. of the Civil Code, which regulate the assignment of a

claim evidenced by a nominative, order, or bearer instrument, and which, pursuant to Article 1566(2)(b) of the Civil Code, constitute special rules.

The transfer of negotiable instruments is governed by Article 1588 of the Civil Code, which distinguishes between nominative instruments, in which case the transfer must be recorded both on the instrument itself and in the register kept for their record-keeping; order instruments, for which endorsement is required in accordance with the provisions applicable to bills of exchange; and bearer instruments, which are transferred by mere delivery of the instrument.

The solution to determining the moment at which the transfer of title occurs in the cases governed by Article 98 of Law No. 31/1990 is intrinsically linked to the constitutive (translative) and/or declaratory nature, or alternatively the enforceability (opposability) against the company and third parties, of the entries in the shareholders' register.

2. Entries in the shareholders' register

According to a minority opinion, entries in the shareholders' register are not constitutive in nature but merely declaratory, serving purposes of opposability, and the moment of transfer of ownership of shares is governed by the general rules of law.

Thus, it is argued that: "In essence, a share purchase agreement gives rise to at least two obligations on the part of the seller-transferor. In the first phase, an obligation to transfer arises in the seller's patrimony, namely, the obligation to transfer title to the shares. It is considered that, in the absence of modalities (conditions or terms), this obligation is deemed fulfilled at the moment of signing the share purchase agreement. Similarly, it is considered that this obligation is also fulfilled at the moment the relevant modality is achieved (fulfilment of a suspensive condition or arrival of a suspensive term), or upon the parties' waiver of such modalities. Thus, at the aforementioned moments, from a legal standpoint, title leaves the seller's patrimony and enters the buyer's patrimony. In the second phase, and subsidiary to the obligation to transfer, an obligation to do arises, namely, to ensure, from a material standpoint, the formalities required for the registration of the share transfer. It is considered that this is the element governed by the provisions of Article 98(1), the obligation to act being deemed fulfilled at the moment the transferor signs the declaration in the shareholders' register. However, non-performance

of this obligation does not affect, from a substantive perspective, the existence of ownership rights in the transferee-buyer's patrimony" [1], [2].

In the same sense, Judgment No. 1422/27.12.2023 delivered by the Constanța Tribunal in case file No. 8167/118/2022, referred to above, relies on the normative act regulating the shareholders' register, namely Government Decision No. 885/1995, which provides that the register serves to ensure the record-keeping and publicity of issued shares. It is argued that the shareholders' register is an internal document kept up to date, containing the information set out in Annex No. 1, and that the records therein are subject to updating operations carried out on the basis of the list of shareholders existing at the beginning of the relevant period, taking into account the balance of securities resulting from all share transfers recorded in the register during the period concerned.

Consequently, under Government Decision No. 885/1995, the shareholders' register functions as a ledger for the record-keeping of shareholders and their shareholdings, in which changes occurring in share ownership are recorded, irrespective of the legal nature of the transfer, and which ensures annual publicity of the situation of issued shares, as this information must be published together with the annual financial statements, as required by Article 71 of Law No. 31/1990.

It is further reasoned, with reference to Article 177(1)(a) and (2) and Article 178(1) of Law No. 31/1990, that "the text does not indicate any ad validitatem nature of the register, insofar as it does not condition its public character on the verification of the validity of share acquisition by the shareholders entered in the register," and that "the registers referred to in Article 177 (1) (a) of Law No. 31/1990 are evidentiary legal instruments (instrumentum) required by the legislator ad probationem, the accuracy of which may be examined only through evidentiary means, under Articles 303–304 of the Romanian Code of Civil Procedure."

3. Case-law and the effects of the publicity of rights, legal acts, and legal facts

Another textual argument relied upon in the aforementioned civil judgment concerns the provisions of Article 20 (1)–(3) of the Civil Code regarding the effects of publicity [3].

Furthermore, the effect of opposability of the registration of the transfer of ownership over shares in the shareholders' register is even more evident in the case of bearer

shares, in respect of which, without any doubt, ownership is transferred by mere delivery, as in the case of other bearer instruments. In such a case, the company recognizes as shareholder the person in physical possession of the shares, which means that, for the exercise of the rights conferred by such shares, the holder must deposit them with the company in order to prove entitlement to exercise those rights.

Reference is also made to the case law of the supreme court, namely Decisions No. 2436/2009 and No. 1386/2014 of the High Court of Cassation and Justice.

Decision No. 2436/2009 – "from the economy of this provision it does not result that the law prohibits other forms of transfer of ownership over nominative shares issued in dematerialized form than by declaration made in the Shareholders' Register. Accordingly, such transfer may also be made by a share transfer agreement. In the present case, this latter method of transfer was used by the claimant and the two defendants."

Decision No. 1386/2014 – "(...) the failure of the parties to register the transfer in the shareholders' register is not capable of attracting the nullity of the contract. Registration in the shareholders' register concerns only the establishment of ownership vis-à-vis the company and third parties, not the contractual relationship between the parties. The lack of formal notification to the company produces the same effects as in general law, namely unenforceability against the company. The declaration signed by the transferor and transferee and the endorsement made on the certificate must be qualified merely as evidentiary requirements (ad probationem), and the obligation to register in the shareholders' register must be regarded solely as a legal publicity requirement" (www.scj.ro).

Another author supporting this view argues that "the lack of formal notification to the company, respectively to the Trade Register, produces the same effects as in general law, namely the unenforceability against the company and third parties of the transfer; otherwise, the transfer is fully valid between the parties from the moment of the agreement of will, according to general civil law. The registration formalities of the assignment are prescribed for the purpose of establishing ownership vis-à-vis the company and third parties, ownership otherwise being determined under general law" [4].

However, this view entirely disregards the provisions of Article 98 of Law No. 31/1990 and the distinctions drawn therein, while, in our view, it misinterprets the aforementioned case law.

First, Article 98 of Law No. 31/1990 distinguishes between shares issued in material form and shares issued in dematerialized form, as defined in Article 91 of the same law. Article 91 of Law No. 31/1990: (1) In a joint-stock company, share capital is represented by nominative shares issued by the company. (2) The type of shares is determined by the articles of incorporation. Nominative shares may be issued in material form, on paper support, or in dematerialized form, in which case they are registered in the shareholders' register.

Where shares are materialized, they exist in a tangible form and contain the elements provided by Article 93 of Law No. 31/1990, constituting securities that incorporate and evidence the rights and obligations arising from shareholder status.

As regards dematerialized shares, these have no material existence and, as civil legal instruments, cannot exist outside the shareholders' register, given their dematerialized nature, which implies that the shareholders' register itself functions as an abstract legal instrument.

Thus, Article 177(1)(a) of Law No. 31/1990 provides, in mandatory terms for dematerialized shares, the content of the shareholders' register, namely the surname and name, personal numerical code, denomination, domicile or registered office of shareholders holding nominative shares, as well as payments made in respect of the shares.

All changes in share ownership are recorded in chronological order in the shareholders' register, regardless of the legal nature of the transfer—assignment, succession, and others.

The content of the shareholders' register is further regulated by Government Decision No. 885/1995, and pursuant to Article 5 thereof: "(1) Upon registration in the shareholders' register, as well as in the share register, of changes in ownership of shares, the following shall be taken into account: (a) in the case of assignment carried out in the situations provided for in Article 43 of Law No. 52/1994, the signature in the share register

of both transferor and transferee or their representatives is mandatory, as well as the submission of documents proving compliance with legal provisions."

Ownership over shares issued in material form is transferred by a statement made in the shareholders' register and by the endorsement on the share certificate, signed by the transferor and transferee or their authorized representatives, the wording being almost identical to the provisions of Article 1588(1) of the Civil Code. As regards ownership over dematerialized shares, it is transferred by a statement made in the shareholders' register, signed by the transferor and transferee or their authorized representatives.

It should be noted that, in both cases, the legal text conditions the transfer of ownership over shares upon the registration of the operation in the shareholders' register.

It therefore follows that, in this case, registration in the shareholders' register has a translative effect, and consequently the moment at which ownership over shares is transferred from transferor to transferee is the moment of registration in the shareholders' register, even where the parties have concluded a written share transfer agreement providing for a different moment of transfer.

Such a clause is evidently affected by absolute nullity, as it contravenes the mandatory rule set out in Article 98 of Law No. 31/1990.

The negotiable character of shares is an essential element in configuring the legal regime of this type of security.

The transferability of the instrument is explicitly governed by company law (Article 98 of Law No. 31/1990), whereby the formal requirement of registration in the shareholders' register prevails over the parties' agreement, thereby departing from the civil law principle of consensualism.

Specifically, the corporate regime governing the circulation of shares, as set out in Article 98 of the Companies Law, establishes the rule that ownership over nominative shares issued in dematerialized form is transferred by a declaration in the shareholders' register signed by the contracting parties. The moment of registration in the shareholders' register marks the change of shareholder, with the consequence of transferring all rights deriving from this status.

In conclusion, the rule of company law is that, prior to registration in the shareholders' register, no person, including a contractual transferee, is considered owner of the share and may not exercise the rights attached thereto.

An analogy may be drawn with Article 885 of the Civil Code, which enshrines the constitutive effect of registration in the land register. The current Civil Code maintains the principle of consensualism in the formation of contracts; however, in the case of agreements concerning immovable property, it provides that rights over such assets are constituted or transferred only through registration in the land register. In other words, the mere conclusion of a contract is not sufficient for acquiring rights over immovable property, registration being additionally required [5].

Registration in the land register of real rights over immovable property is based on documents evidencing the legal act or fact giving rise to those rights. In order to serve as a basis for registration, such documents must be valid, the land register officer being empowered to verify their formal legality.

In the present case, the sole director of the company whose shares were transferred may be assimilated to the land register officer, pursuant to Article 177 (2) of Law No. 31/1990.

In the same sense, there are express legal provisions referring to the constitutive effect of certain entries in publicity registers, an effect provided for in the Civil Code, such as Article 20 concerning the effects of publicity and Article 22 (1) concerning the absence of publicity and sanctions.

4. The constitutive (translative) effect of the registration of certain acts in the shareholders' register

Against these legal provisions, the court of first instance, by Civil Judgment No. 1422/27.12.2023 delivered by the Constanța Tribunal in Case No. 8167/118/2022, held that "the Shareholders' Register does not play a validating role in respect of acts subject to registration, insofar as the registration procedure in this register is purely administrative (…)".

The constitutive (translative) effect of the registration of share transfers in the shareholders' register, from transferor to transferee, pursuant to Article 98 of Law No. 31/1990, represents a majority opinion in legal doctrine [6].

A relevant application of Article 98 of Law No. 31/1990 [7] occurred in Case No. 230/1285/2008 [8], finally adjudicated by the High Court of Cassation and Justice, which held that it was wrongly considered by the first-instance court and the court of appeal that the provisions of Article 98 of the Companies Law would, in a specific case, produce only effects of opposability against third parties, even though they generally produce constitutive effects; such a conclusion cannot be accepted in the sense that the legal provision would produce general effects in principle and more limited or different effects in particular cases.

This constitutive character of the registration of share transfers in the shareholders' register does not exclude its declaratory function and its effect of opposability, notwithstanding all the textual arguments invoked in Civil Judgment No. 1422/27.12.2023 of the Constanța Tribunal in Case No. 8167/118/2022.

In addition to the shareholders' register, the certificate of shareholder also has the nature of a probative instrument (instrumentum probationis), in accordance with Article 7 of Government Decision No. 885/1995.

Given that Article 98(1), third sentence, of Law No. 31/1990 provides that the articles of incorporation may stipulate other forms of transfer of ownership over shares, the provisions of Article 98 have a supplementary (default) character [9].

As regards "other forms of transfer of ownership over shares," these may evidently only be those governed by general civil law, namely sale, exchange, donation, etc.

It therefore follows that, where the company's articles of incorporation expressly derogate from Article 98 of Law No. 31/1990 and provide that the transfer of ownership over shares may be carried out through a share transfer agreement, the rules of general civil law become applicable with regard to the conditions of validity thereof, both as to substance and form, as well as those concerning the moment of transfer of ownership, which occurs in accordance with Article 1674 of the Civil Code, in the matter of sale, as expressly provided by the reference norm in Article 567(2) of the Civil Code.

We consider that, in this context, the case law of the Supreme Court, namely Decisions No. 2436/2009 and No. 1386/2014 of the High Court of Cassation and Justice, cited above, must be analysed. A separate issue may arise if the analysis were extended to the sphere of publicity of administrative acts [10]; however, this aspect falls outside the scope of the present paper and will be addressed in a separate study.

As regards the legal nature of the shareholders' register and of the entries therein, the court of first instance, in Civil Judgment No. 1422/27.12.2023 of the Constanța Tribunal in Case No. 8167/118/2022, qualifies the registration operations in the shareholders' register as "legal facts" to which Government Decision No. 885/1995 and Law No. 31/1990 attach certain legal effects.

In legal doctrine [11], legal facts are regarded as sources of concrete civil legal relationships, namely circumstances (acts or events) to which civil law attaches the birth of a concrete civil legal relationship. It should be emphasized that the act or event constituting the source of a concrete civil legal relationship simultaneously constitutes the source of the subjective civil rights and civil obligations forming the content of that legal relationship.

A civil legal act is defined as a manifestation of will made with the intention of producing legal effects, namely to give rise to, modify, or extinguish a civil legal relationship. A licit or illicit legal fact is defined as an event performed without the intention of producing legal effects (although legal effects nevertheless arise, as the law attaches such effects to its occurrence), similarly to natural events which occur independently of any manifestation of will by a legal subject. Such non-intentional facts are also capable of producing legal effects as determined by the legislator.

Licit civil legal facts are expressly and exhaustively provided by law, in the current regulation under *Chapter III. The Licit Legal Fact, Title II. Sources of Obligations*, namely management of affairs, undue payment, and unjust enrichment.

A first line of arguments supporting the view that both the shareholders' register and the entries therein constitute civil legal acts is grounded in the theory of the civil legal act.

Thus, Professor Gheorghe Beleiu shows that from the definition of the civil legal act the following constitutive elements arise:

- the existence of a manifestation of will originating from a subject of civil law (the electronic shareholders' register represents the manifestation of will of the company and its shareholders who have chosen this method of keeping the register; entries in the register are made through the manifestation of will of the company's director, Petre Nicolau);
- the manifestation of will must be expressed with the intention of producing civil legal effects (both the shareholders' register and the entries therein may only be made with the intention of producing legal effects, these entries having a constitutive character with respect to ownership over shares – this aspect will be further developed when presenting doctrinal opinions regarding the shareholders' register from the perspective of commercial law);
- the intended legal effects may consist in giving rise to, modifying, or extinguishing a concrete civil legal relationship (both the shareholders' register and the entries therein give rise to, modify, or extinguish legal relationships between shareholders or between shareholders and the company).

Therefore, if both the shareholders' register and the entries therein meet all constitutive elements of a civil legal act in the sense of negotium iuris, it follows that they are civil legal acts.

In doctrine, it is stated that "analysing the legal nature of the shareholders' register as a legal act (negotium iuris), it follows from the corroboration of Article 73(1)(c) and Article 98 of Law No. 31/1990 that the shareholders' register is a unilateral legal act, drawn up by a joint-stock company, which includes the entirety of entries concerning the issuance, transfer, and, where applicable, cancellation of shares of the company, respectively the constitution, transfer, or extinction of ownership rights over the company's shares."

It is observed that both the shareholders' register and the operations related to its drafting, amendment, updating, etc., represent manifestations of will, since, on the one hand, they are carried out through voluntary, express, and conscious acts of the company, its shareholders, or its director (as in the present case), and, on the other hand, they

cannot be qualified as legal facts, as they do not occur either unintentionally or naturally, without the intervention of a legal subject.

The fact that the shareholders' register constitutes a record of shares, shareholders, security interests over shares, etc., does not deprive it of its nature as a civil legal act. Likewise, entries and amendments in the shareholders' register are legal acts, since the company's director performs a manifestation of will aimed at producing legal effects, namely the modification of the shareholding structure and/or proportions.

Commercial law doctrine, in relation to the transfer of shares, observes that, in our view, the law currently adopts a different solution. The former Article 171 of the Commercial Code provided that ownership over nominative shares "is established" by registration in the register, which clearly indicated that the matter concerned proof of rights and their opposability towards the company and third parties. Article 98 of the Companies Law, however, states just as clearly that registration constitutes a condition for the transfer of ownership. The wording does not allow any other interpretation [12].

In light of these clarifications, namely that the registration of share transfers in the shareholders' register constitutes a condition for the transfer of ownership, it follows that the entries in the register produce the effect of giving rise to, modifying, or extinguishing a concrete civil legal relationship.

A further argument supporting the view that the shareholders' register is a civil legal act in the sense of negotium iuris derives from the classification of legal acts into causal and abstract civil legal acts, the latter being those embodied in negotiable instruments. Commercial law [13] further clarifies that a share is a security; it incorporates and evidences the rights and obligations arising from shareholder status. Shares issued by companies are instruments that incorporate patrimonial value and are therefore considered securities or credit instruments and are referred to as transferable securities.

It is further noted that there is a shift in the legislator's conception of the share, which is no longer regarded solely (or primarily) as a fraction of share capital. Instead, the modern conception prevails, according to which the share is regulated as a transferable security conferring upon its holder a series of rights against the issuer, primarily a claim right. Given that shares, as securities, have an autonomous character, the rights and obligations arising from them are independent from the legal act from which they

originated, so that the acquirer, as holder of an independent right, does not lose this status except under the conditions provided by law.

In conclusion, shares are securities which constitute abstract legal acts, and which, in turn, are a subcategory of civil legal acts.

Dematerialized shares, as civil legal acts, cannot exist outside the shareholders' register precisely because of their dematerialized nature, which implies that the register itself is a civil legal act, and, for identical reasons, the entries therein are also civil legal acts.

In Civil Judgment No. 1422/27.12.2023 delivered by the Constanța Tribunal in Case No. 8167/118/2022, the court of first instance reaches an incorrect conclusion, namely that the sanction of nullity "concerns only legal acts." The sanction of nullity as a civil law remedy does not concern only legal acts, but has a much broader scope of application. An example in this respect is provided by Section II – Chapter II – Title IV of the Civil Code, which regulates the nullity of legal persons. It therefore follows that the sanction of nullity is not specific exclusively to civil legal acts, and it is not inadmissible to request before a court the absolute or relative nullity of unlawful entries in the shareholders' register made by the sole director of a company.

Conclusions

The analysis carried out allows for the conclusion that the issue of share transfer and the legal effects of entries made in the shareholders' register cannot be reduced to a mere matter of administrative record-keeping or opposability vis-à-vis the company and third parties. An examination of the provisions of Article 98 of Law no. 31/1990, in conjunction with the legal regime of shares as securities and the special rules governing their circulation, leads to the conclusion that entry in the shareholders' register constitutes, in principle, the legal condition for the transfer of ownership over shares, thus producing constitutive and translative effects.

Within the same legal logic lies the qualification of the shareholders' register and of the operations carried out therein. Beyond their function of record-keeping and publicity, these operations produce direct legal effects on the relationships between shareholders and on the structure of ownership rights over shares, a circumstance that justifies their

analysis through the conceptual tools of the general theory of civil legal acts and company law.

The opposing view, which reduces the role of the shareholders' register to a mere formal reflection of legal operations completed prior to and independently of it, does not appear to adequately reflect the specific nature of the regulatory framework established by the legislator, nor the special character of the rules governing share transfers within joint-stock companies.

As regards the case that gave rise to this study, it is submitted that the arguments developed lead to the conclusion that the subsequent amendments made to the shareholders' register raise serious issues of legality and require an effective judicial review, which is incompatible with a finding of inadmissibility of the action. For this reason, the legal position advocated in this paper will continue to be promoted and relied upon in the appeal proceedings in the case, in order to submit it to the scrutiny of the higher courts.

Beyond the specific outcome to be rendered in the dispute under analysis, the issues examined remain open to doctrinal development. The complexity of the relationship between the transfer of ownership over shares, legal publicity, and the legal nature of the shareholders' register justifies further in-depth analysis, both from the perspective of company law and from that of the general theory of legal acts and civil publicity mechanisms.

This paper does not aim to provide the final word on these matters, but rather to contribute to a necessary legal debate, generated by a specific case, yet whose implications extend beyond the private interests of the parties and affect the interpretation and application of fundamental institutions of contemporary commercial law.

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THE IMPACT OF TOTAL QUALITY MANAGEMENT ON THE PERFORMANCE OF PUBLIC UTILITY COMPANIES AND CUSTOMER SATISFACTION: EVIDENCE FROM SERBIA

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Abstract:
This paper examines the impact of Total Quality Management (TQM) on the performance of public utility companies and citizen satisfaction with communal services in Serbia. Quality management in public administration is understood as a systemic approach aimed at continuous improvement of processes, efficiency, and accountability, with citizen satisfaction as the central indicator of organizational performance. While the transfer of private sector quality management practices to public administration is often debated, evidence suggests that utilities operating under market-like conditions, such as water supply, district heating, and waste management, are particularly suited for the implementation of TQM principles. The empirical analysis is based on Standing Conference of Towns and Municipalities (SCTM) surveys from 2019 and 2023 and indicates an increase in satisfaction with certain communal services, such as water supply and public safety, while dissatisfaction remains pronounced in areas such as transport and parking. The findings indicate that the integration of TQM principles with European instruments such as the Common Assessment Framework (CAF) can strengthen institutional capacities, enhance transparency, and foster citizen trust. The authors believe that this article will contribute to the academic and policy debate on how modern quality management approaches can enhance the efficiency, accountability, and legitimacy of public utilities in Serbia.
Keywords: *Total Quality Management (TQM); Public utilities; Citizen satisfaction; Communal services; Serbia.*

Introduction

In the contemporary context of globalization, digital transformation, and growing citizen expectations, public administrations worldwide face the challenge of increasing efficiency, quality, and transparency, while at the same time preserving legitimacy and public trust. These demands are particularly evident in the area of communal services,

where the performance of public utility companies directly affects citizens' everyday lives and the quality of their living environment. For this reason, in recent decades, the introduction and implementation of quality management systems (QMS) in the public sector has gained increasing importance, aiming to ensure the continuity, reliability, and sustainability of services, while simultaneously strengthening citizen satisfaction.

Total Quality Management (TQM) represents one of the key instruments of this approach, as it rests on the assumption that quality is the outcome of systemic and integrated efforts of all employees and organizational processes. The foundations of TQM lie in principles such as prevention rather than correction, continuous improvement of processes, fact-based decision-making, teamwork, and long-term orientation in management decisions. In this sense, TQM is not merely a set of techniques for process improvement, but a transformation of organizational culture that places citizens as end-users at the center of public administration.

However, practice in Serbia demonstrates that public utility companies, despite their strategic importance, often achieve modest results. Their monopolistic position and political pressures to maintain socially acceptable service prices jeopardize long-term business sustainability. The non-profitability of these systems requires continuous budget subsidies, which burden the fiscal deficit and increase the country's external debt. Under such circumstances, improving service quality and strengthening user satisfaction is not only a matter of managerial efficiency but also a crucial factor of economic stability and social sustainability.

Against this background, this paper focuses on the analysis of citizen satisfaction with communal services in Serbia, relying on data and surveys conducted by the Standing Conference of Towns and Municipalities (SCTM) in 2019 and 2023 [30] [31]. The research objective is to examine the extent to which the application of quality management principles influences citizens' perceptions of service quality, as well as to identify the main obstacles and opportunities for improving the performance of public utility companies. Special attention is given to the potential integration of TQM principles with European quality instruments, such as the Common Assessment Framework (CAF), with the aim of strengthening institutional capacities and enhancing citizen trust in public administration. In this way, the research seeks to contribute to a deeper understanding of how modern

quality management approaches can support more efficient, transparent, and citizen-oriented public utilities in Serbia.

Theoretical Background and Legal Framework in Serbia

Quality management in public administration has evolved through several stages, beginning with a focus on compliance with established norms and procedures, progressing toward effectiveness in service delivery, and finally reaching the stage in which the satisfaction of citizens is considered the central criterion of quality [24] [25]. This progression reflects a broader shift from a bureaucratic and process-oriented understanding of quality toward a results-oriented and citizen-centered perspective.

The application of Total Quality Management (TQM) in the public sector has raised debates regarding its feasibility, since many experts argue that direct transfer of private sector practices into public administration is limited due to different institutional environments, accountability structures, and political influences [11][5]. Nonetheless, research indicates that TQM and business-oriented quality systems achieve the best results in public enterprises that operate under market conditions, such as utilities providing water supply, district heating, waste management, or transport services [8][27]. In these organizations, the logic of efficiency, cost-effectiveness, and customer orientation is directly applicable, while central-level administrations and ministries, more strongly driven by political considerations, face significant barriers to adopting and sustaining quality management principles.

Despite these differences, public and private organizations share the same imperative of continuous improvement, particularly in enhancing service provision and overall organizational performance. Quality management is therefore seen as a systemic approach whose primary objective is the constant upgrading of processes and organizational systems, through the continuous creation of value for citizens in line with the principle of excellence [17]. The integration of quality management systems with organizational strategies and plans is thus regarded as an essential element of a comprehensive and holistic approach to governance.

The adoption of quality management systems in public administration is grounded in the recognition that citizen satisfaction must represent the ultimate measure

of organizational performance. By emphasizing the user-oriented dimension of governance, public administrations have gradually moved away from purely bureaucratic compliance toward the continuous improvement of services. Quality in this context is a dynamic category, constantly evolving in line with the expectations of citizens and the broader requirements of governance reform. Decision-makers in municipal and utility companies are thus expected to anticipate resistance to change, manage organizational transformation, and create the conditions for transparency, accountability, and improved efficiency [4] [25].

Within this framework, ISO standards, particularly ISO 9001 represent codified management process standards that prescribe how organizational activities should be carried out. Unlike product standards, which enable compatibility or connectivity [3] process standards such as ISO 9001, ISO 14001, or ISO 50001 define legitimate and structured methods of performing work [32][28][15]. In public utilities, these standards provide written procedures, clear responsibilities, and a documented basis for decision-making, thereby reducing operational errors and increasing service reliability [14].

The economics of innovation perspective suggests that the adoption of such standards can be explained through a cost-benefit rationale. Early adopters tend to be economically motivated, often customizing standards to fit their organizational environments, thereby reaping greater benefits. In contrast, late adopters are frequently driven by external pressures, such as demands from customers or regulatory bodies, and tend to implement standards with little customization, yielding fewer advantages [36][2][10]. In both cases, however, research demonstrates that the benefits of ISO certification, including improved efficiency, reduced losses, and enhanced customer trust, generally outweigh the costs [13][37].

From an institutional perspective, quality standards are best understood as norms rather than laws. They lack formal legal force but nevertheless exert significant influence on how organizations structure and legitimize their activities [29]. In this sense, ISO 9001 is classified as a private-decentralized standard, whose adoption spreads through normative and mimetic pressures rather than through legal mandates [32]. For Serbian public utilities, however, the diffusion of such standards is reinforced by both normative and legal frameworks. The Law on Public Services and the Law on Public Enterprises

require regularity, continuity, and quality in the delivery of services of general interest, while the Public Administration Reform Strategy 2021-2030 [22], emphasizes citizen orientation, efficiency, and alignment with European quality management principles such as the Common Assessment Framework (CAF).

In practice, the introduction of TQM and ISO standards in Serbian public utilities highlights both opportunities and challenges. On the one hand, the codification of processes, internal audits, and management reviews provide mechanisms for continuous improvement and enhanced citizen satisfaction. On the other hand, the implementation process often encounters obstacles in the form of politicization, resistance from entrenched bureaucratic structures, and practices of political appointments. These challenges underscore the need for a new organizational culture in which efficiency, transparency, and responsiveness to citizens are prioritized [14]. In this respect, TQM in utilities such as water supply, heating, and waste management represents not only a managerial tool for improving performance but also a means of strengthening legitimacy and public trust in local governance.

In the Serbian context, this theoretical background is complemented by a specific legislative framework. The Law on Public Services (Official Gazette RS, no. 42/91 and subsequent amendments) establishes the obligation that services be delivered regularly and with quality in order to safeguard citizens' rights and meet their needs. Similarly, the Law on Public Enterprises [21] obliges enterprises to ensure the continuity and efficiency of services of general interest. At the strategic level, the Public Administration Reform Strategy of the Republic of Serbia 2021-2030 places quality management [22], citizen orientation, and efficiency at the center of the reform agenda, explicitly aligning national practices with EU principles such as the Common Assessment Framework (CAF) and the SIGMA standards.This theoretical and legislative basis underlines the importance of exploring how Total Quality Management contributes to both organizational performance and citizen satisfaction, particularly within public utility companies, where efficiency indicators such as loss reduction, collection rates, and reliability of services are directly tied to the quality of life of end users.

Research Methodology

The research is focused on citizens' perceptions of the quality of communal and local services in local self-governments (LSGs) in Serbia. The starting point is the obligation from Article 13 of the Law on Communal Activities, which stipulates that the assembly of an LSG must ensure continuous feedback from users on the quality of communal services. In this way, citizen satisfaction is positioned not only as a tool for improving communication between citizens and service providers but also as a basis for planning service development, allocating resources, and ensuring the sustainability of the communal services system. The analysis of citizen satisfaction with communal services is observed through the lens of the quality management system (QMS) principles. QMS is based on the management of business processes with the aim of achieving the satisfaction of both external users, citizens, and internal users employees and management within public enterprises. In this regard, Total Quality Management (TQM) emphasizes preventive actions rather than reliance on corrective activities, reducing variation in operations to improve service consistency, commitment of all employees (especially senior management), continuous improvement of all aspects of operations, teamwork and problem-solving, as well as decision-making oriented toward long-term benefits rather than short-term expediency.

The empirical part of the research relies on the results of the *Citizen Satisfaction Survey on Local Services* conducted by the Standing Conference of Towns and Municipalities (SCTM) in 2019 and 2023 [30] [3]. In addition, qualitative insights from the SCTM 2023 [32] National Report were considered, offering more detailed explanations of citizens' perceptions. The application of Total Quality Management (TQM) principles in public utility companies allows the results of citizen satisfaction surveys such as the SCTM data from 2019 and 2023 to be interpreted not only as indicators of citizens' perceptions but also as guidelines for improving business processes in line with quality management standards [30][31].

The results show that citizens are more satisfied with water supply and sewage services, while in the area of transport there is almost an equal share of satisfied and dissatisfied respondents. Parking availability remains a significant issue, with 45% dissatisfied, while one-third of citizens are not satisfied with the cleanliness of their living

environment [31]. On the other hand, higher levels of satisfaction are recorded for the availability of shopping facilities (69%) and markets (56%), although a portion of citizens expressed indifference in these areas [31].

The data are analyzed comparatively for the years 2019 and 2023, with changes in perceptions expressed in percentage points. The results are presented in **Figure 1,** with the aim of identifying the areas where citizen satisfaction has increased, stagnated, or decreased. The research is focused on providing descriptive and analytical insights into how citizens perceive the quality of services in their LSGs and how these changes can serve as a basis for strengthening quality management systems in communal enterprises. Figure 1 shows a comparative overview of citizen satisfaction with selected local services in Serbia for 2019 and 2023, indicating visible improvements in most service areas, particularly in water supply, education, and public safety.

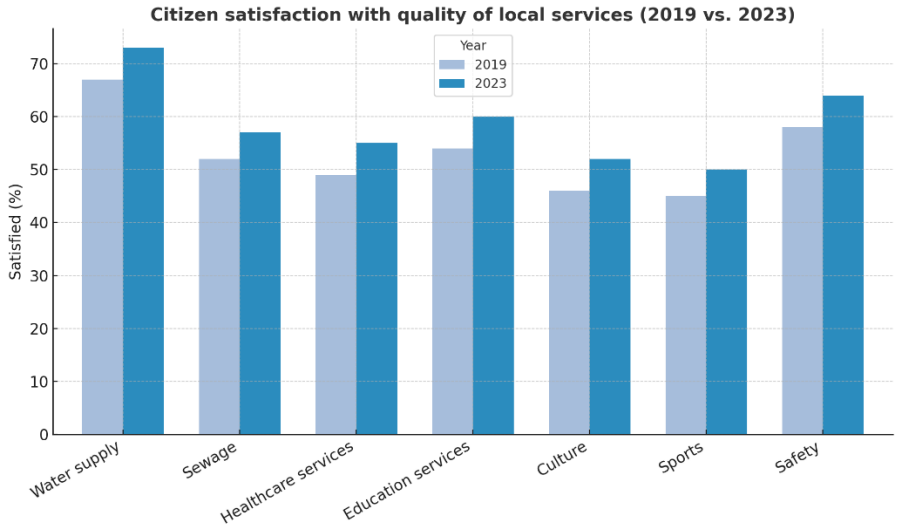

Figure 1. Citizen satisfaction with quality of local services in Serbia (2019 vs. 2023). Source: Standing Conference of Towns and Municipalities (2019; 2023) surveys [30][31], author's elaboration.

In 2023, citizen satisfaction with local services increased across all observed areas compared to 2019. The largest improvements were recorded in water supply, healthcare, education, culture, and safety (+6 percentage points) [30][31], while sewage and sports showed slightly smaller but still significant growth (+5 percentage points). These results indicate gradual progress in the quality of public and communal services,

with the most visible improvements in key infrastructure and social services directly affecting citizens' everyday life.

The purpose of assessing user satisfaction is to ensure that communal services are as closely aligned as possible with the needs and expectations of users, thereby contributing to the adjustment of the work of public utility companies (PUCs) and the quality of services to concrete demands, in accordance with available material, administrative, and human resources. At the same time, the assessment emphasizes the responsibility of PUCs for the quality of services and the respect of users' rights and needs.

For users, on the other hand, the assessment should provide better information about their rights and obligations. In this sense, the assessment of satisfaction contributes to improving communication between PUCs and the users of communal services, increasing transparency, and enhancing the processes of planning and developing PUCs and the system of communal service delivery. The assessment of user satisfaction should also improve communication between citizens and service providers by enabling citizens to better understand the system of communal service provision and its importance for the quality of their everyday life, environmental protection, and the sustainable development of local communities, as well as to increase their involvement and, consequently, their willingness to pay a certain price for communal services. In addition, the assessment should serve as a basis for service development planning and resource allocation, investment planning, and human resource management.

Discussion and Recommendations

Quality in public services is increasingly recognized as a multidimensional concept that encompasses both the quality of organizational processes and the quality of delivered services [9]. Measuring quality in public organizations is particularly complex, yet the adoption of mechanisms such as Customer Satisfaction Management (CSM) and ISO 9000 standards has been promoted as a rational approach to improving performance and ensuring greater accountability [6]. In this framework, citizen satisfaction becomes not only an indicator of service outcomes, but also a reflection of the organization's commitment to quality improvement.

In the context of Serbian public utilities, the Law on Communal Activities [20] establishes a legal obligation for local self-governments to regularly measure user satisfaction with communal services (Article 13). This provision links the concept of service quality with citizen participation and transparency. However, it also raises several methodological and practical challenges. For example, satisfaction with communal services may vary depending on the season or the intensity of use: heating services should be evaluated during the heating season, while the quality of water supply is most relevant in the summer months. Furthermore, the law recognizes 15 different communal activities, which makes it impractical to cover all services in a single survey without overburdening respondents and reducing response rates [19].

Another significant issue concerns the legal requirement that, if the majority of users express dissatisfaction with a specific communal service, the local self-government must initiate a review of the service provider's performance and order corrective measures within 90 days. While this regulation strengthens user participation, promotes independent control, and increases transparency, in practice it is difficult to secure the participation of a majority of service users in any survey. Additionally, user feedback is inherently subjective and may not always reflect the actual technical quality of the service. Therefore, the methodology of citizen satisfaction surveys must rely on statistically representative samples rather than universal participation, balancing methodological rigor with feasibility [31].

Overall, citizen satisfaction surveys represent a new practice for Serbian communal enterprises. They not only introduce citizens into the decision-making process but also create opportunities for public utilities to adopt modern quality management approaches, improve communication with users, and strengthen organizational accountability in line with the principles of Total Quality Management (TQM).

Research findings indicate that citizens are often not fully aware of the responsibilities and activities of public utility companies [31], which may influence their attitudes toward surveys and their willingness to participate in evaluations. This highlights the need for more proactive communication and the provision of continuous and accessible information regarding the purpose, scope, and objectives of citizen satisfaction surveys [25]. It is particularly important that the approach is open, transparent, and

citizen-oriented, since the very nature of these surveys involves questions and clarifications from users [34].

A recurring problem in the perception of public utilities is their frequent association with political structures, which fosters negative attitudes among citizens and may reduce the objectivity of survey responses [4]. For this reason, ensuring impartiality and neutrality during the implementation of surveys is essential. Enumerators and survey staff should not be individuals previously involved in political campaigns or party activities, as such associations may further undermine user trust and lead to perceptions that the survey is politically motivated [31].

Given that the measurement of satisfaction with communal services largely reflects subjective opinions that may not always be grounded in verifiable evidence [1], it is crucial to secure respondents' trust in the anonymity and confidentiality of the process. Encouraging citizens to freely express both positive and negative views contributes to the collection of more representative and reliable data. This fosters a new relationship between service users and providers, one that emphasizes two-way communication, transparency, and trust [23].

When properly designed and implemented, satisfaction surveys can provide valuable information for improving the quality of services [30] [31]. However, to maximize their impact, equal attention must be devoted to the preparation phase (organization, training, and staff capacity) and the actual survey implementation. This ensures that the results do not remain merely declarative but instead serve as a foundation for real improvements in the quality and efficiency of communal services.

Based on the conducted research [30] [31] and the review of relevant literature, the evidence suggests that the implementation of a certified quality management system exerts a long-term positive impact on organizational performance, primarily through qualitative changes in the structural elements of management [2][10].The very decision to introduce a quality management system represents a significant organizational shift, which also has a psychological effect on improving performance. Such changes enable organizations, including public utilities, to better take advantage of opportunities created by the regional and macroeconomic environment. However, quantifying the positive influence of certified quality management systems on one side, and macroeconomic

stability on the other, is not a simple task, since the achieved results often reflect the synergy of these two factors alongside a variety of additional influences [36]. Ultimately, the essence of quality management lies in the philosophical approach that performance is not something to be expected, but something to be actively managed [17].

In this context, the CAF model (Common Assessment Framework**)** emerges as one of the most important European instruments for promoting excellence in public administration. By setting common assessment criteria and a unified methodology, CAF provides a tool for comparability, transparency, and continuous improvement [7].

In Serbia, its implementation has only recently begun, supported by the Ministry of Public Administration and Local Self-Government and the EU-funded Public Administration Reform project [31] [14]. The Public Administration Reform Strategy (2021-2030) obliges the Government to introduce CAF in ten institutions by 2025, which demonstrates a clear commitment to strengthening institutional capacity for quality management [22]. Nevertheless, the success of CAF in Serbia will depend on its ability to move beyond formal adoption and to become an integral part of the culture of public administration and public utilities at both the central and local levels.

The analysis further indicates that local public utilities often adopt quality and sustainability management practices as internally oriented initiatives, without sufficient cooperation across levels of government or active involvement of stakeholders [9]. This undermines the potential benefits of such reforms and reflects the persistent gap between formal frameworks and their practical application. Literature suggests that such challenges stem from the complexity of applying private-sector management tools in public organizations [16], resistance from employees, insufficient management capability, and a lack of systematic human resource development [12] [26]. Furthermore, the absence of meaningful stakeholder involvement reduces the legitimacy of reforms and weakens corporate governance practices in LPUs, contrary to OECD guidelines [18].

Therefore, the sustainability of quality management reforms in Serbia requires a stronger focus on participatory mechanisms that ensure citizens' feedback is systematically translated into concrete service improvements [1] [31]. At the same time, continuous investment in the training and development of human resources is necessary to reduce resistance, raise awareness of standards, and strengthen organizational

capacities. The neutrality and transparency of citizen satisfaction surveys also need to be ensured, so that trust in the process is maintained and data collected are both credible and useful [23]. Extending the CAF methodology to local public utilities could create a more coherent quality management framework across sectors, while embedding good corporate governance practices would allow boards of directors in public utilities to balance the claims of all relevant stakeholders [38]. In conclusion, Serbia has made important progress in aligning its public administration with European standards of quality management. However, the next stage requires moving from formal compliance to genuine integration of quality principles into everyday practice. Only by building institutional capacity, fostering transparency, and ensuring stakeholder involvement can quality management systems in public utilities deliver lasting improvements in efficiency, accountability, and citizen satisfaction.

Conclusion

The ongoing alignment of national administrations with European and international practices has placed quality management at the very center of modern public sector reforms. The application of this concept enables public organizations to operate more rationally, improve service delivery, adopt strategic planning approaches, and implement structural reforms. Within this framework, the modern concept of management in the public sector emphasizes the introduction, continuous implementation, and improvement of quality management systems as a fundamental precondition for ensuring efficiency, accountability, and responsiveness at all levels of government.

A particularly important role within this paradigm belongs to Total Quality Management (TQM), which provides multiple benefits for public sector organizations. At the organizational level, TQM contributes to a clearer definition of development vision, better distribution of responsibilities, evidence-based decision-making, and stronger internal communication. At the level of users and society, the benefits are reflected in more reliable and accessible services, higher employee satisfaction, improved return on investment, stronger supplier partnerships, and compliance with legal and regulatory requirements. In this context, user satisfaction emerges as a central indicator of organizational performance and accountability. Quality management is not only about

meeting expectations but about exceeding them, generating loyalty and long-term value for citizens, regardless of whether the outcome is reflected in financial indicators or in the broader societal impact of public services.

The implementation of a quality management system in public administration includes organizational structures, procedures, processes, and resources designed to prevent non-compliance and to promote continuous improvement. In Serbia, important progress has been achieved in recent years through the development of evidence-based policy frameworks and the adoption of the CAF model (Common Assessment Framework**)** as a European tool for quality management. CAF has been recognized as a practical and accessible methodology that encourages self-assessment, improves daily work processes, and strengthens teamwork. Its systematic introduction, as foreseen in the Public Administration Reform Strategy (2021-2030), represents a step forward in building a modern and accountable public administration [22].

However, quality improvement is not an isolated or purely technical process. It requires the active involvement of employees, the support of decision-makers, and above all, the engagement of citizens and other stakeholders. The concept of stakeholder engagement, which has evolved globally into a recognized professional discipline, highlights the need for participatory processes that move beyond the traditional “announce and defend” approach to a “debate and decide” paradigm. As articulated in the Brisbane Declaration on Community Engagement (2005), transparent and accountable governance is inconceivable without active and meaningful dialogue with citizens [33].

For Serbia, this means that the sustainability of reforms in local public utilities and public administration depends on three interconnected factors: the institutionalization of quality management systems, the genuine application of tools such as CAF, and the systematic inclusion of citizens and stakeholders in decision-making processes. Only through this integrated approach can public administration achieve long-term improvements in efficiency, transparency, and citizen trust, thereby aligning itself with European standards of good governance and ensuring sustainable development at the local and national levels.

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ROMANIAN CONSTITUTIONAL EVOLUTION AND POLITICAL REGIMES IN COMPARATIVE PERSPECTIVE: FROM ORGANIC REGULATIONS TO EUROPEAN INTEGRATION

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Abstract:
This article examines the evolution of Romanian constitutionalism from the adoption of the Organic Regulations in the nineteenth century to the contemporary constitutional framework shaped by European integration. Using a comparative historical approach, the study analyzes the relationship between constitutional change and political regime transformation, emphasizing the influence of European constitutional models on Romanian institutional development.
The analysis focuses on three major periods. The first explores the constitutional foundations of the modern Romanian state through the Organic Regulations, the Union of the Principalities, and the Constitution of 1866. The second investigates the constitutional transformations associated with democratic governance, authoritarian rule, and socialist constitutionalism during the twentieth century. The third examines the democratic transition after 1989, the impact of European integration, and the contemporary challenges facing constitutional democracy.
The findings indicate that Romanian constitutional development largely followed the dominant constitutional trends of successive European historical periods while preserving important national characteristics. Constitutional reforms were closely linked to broader processes of political modernization, state-building, ideological change, and international integration. The comparative perspective also reveals significant similarities between Romania and other Central and Eastern European states that experienced comparable constitutional trajectories.
The article concludes that Romanian constitutionalism evolved through a continuous process of institutional adaptation shaped by the interaction between external influences and domestic political realities, contributing to the broader understanding of constitutional development and political modernization in Europe.
Keywords: *constitutionalism; constitutional development; political regimes; Romanian constitutional history; political modernization; European integration.*

Introduction

The evolution of constitutional systems represents one of the most significant indicators of political modernization and institutional development. Throughout European history, constitutional reforms have frequently accompanied major political transformations, reflecting changing conceptions of governance, state authority and the relationship between citizens and public institutions. Consequently, the study of

constitutional development provides valuable insights into the broader processes of state-building and political change.

Romania offers a particularly relevant example of the interaction between constitutional evolution and political transformation. From the Organic Regulations of the nineteenth century to the constitutional framework associated with European integration, Romanian constitutionalism developed under the influence of both domestic political realities and broader European constitutional trends. Liberal constitutionalism, authoritarian governance, socialist constitutionalism and democratic reconstruction each left a significant mark on the institutional structure of the Romanian state [1].

The objective of this article is to examine the evolution of Romanian constitutionalism from a comparative perspective, emphasizing the relationship between constitutional change and political regimes. Particular attention is given to the manner in which successive constitutional frameworks reflected the dominant political and ideological orientations of their respective historical periods. At the same time, the article highlights the influence of European constitutional models on Romanian institutional development and the gradual integration of Romania into the European constitutional space [2].

Methodologically, the study combines historical and comparative approaches. The historical perspective facilitates the analysis of constitutional developments across different periods, while the comparative perspective allows the identification of similarities and differences between Romania and other European states that experienced comparable processes of political modernization. Through this approach, the article seeks to demonstrate that Romanian constitutional evolution was characterized by a continuous interaction between external influences and domestic political realities.

The article is structured into three main sections. The first examines the constitutional foundations of the modern Romanian state between 1831 and 1918. The second analyzes the relationship between constitutional regimes and political transformation during the twentieth century. The third investigates the impact of democratization and European integration on contemporary Romanian constitutional development. The study concludes by evaluating the broader significance of Romanian constitutionalism within the context of European political modernization.

1. Constitutional Modernization and State Building in Romania (1831–1918)

The origins of Romanian constitutionalism are closely connected to the broader process of political and institutional modernization that transformed Europe during the nineteenth century. In the Romanian Principalities, the Organic Regulations adopted in 1831 in Wallachia and in 1832 in Moldavia represented the first coherent legal framework for the organization of public authority and administration. Although they did not establish a democratic constitutional regime, they introduced principles of institutional governance that contributed to the gradual transition from traditional structures of authority toward a modern state model [1].

The constitutional evolution of the Romanian territories was strongly influenced by the liberal and national movements that emerged throughout Europe during the first half of the nineteenth century. The revolutionary events of 1848 played an important role in promoting constitutional ideas, political representation and national unity. These developments encouraged the formation of a political elite increasingly concerned with administrative reform, legal modernization and the consolidation of state institutions [2].

A decisive stage in the process of state-building was represented by the Union of Moldavia and Wallachia in 1859. The election of Alexandru Ioan Cuza as ruler of both principalities created the foundations of the modern Romanian state and accelerated the implementation of institutional reforms. Administrative, judicial, educational and agrarian reforms contributed to the modernization of public authority and facilitated the transition toward a more centralized and efficient political system [3].

The culmination of this process was the adoption of the Constitution of 1866, widely regarded as the first modern constitution of Romania. Inspired primarily by the Belgian Constitution of 1831, the new fundamental law established constitutional monarchy, representative government, ministerial responsibility and the separation of powers. These principles aligned Romania with the dominant constitutional traditions of Western Europe and provided the institutional stability necessary for further political development [1].

The Constitution of 1866 played a fundamental role in the consolidation of Romanian statehood. It created a legal framework capable of supporting the country's independence, proclaimed in 1877, and the subsequent transformation of Romania into

a kingdom in 1881. At the same time, the constitution contributed to the development of parliamentary institutions and strengthened the legitimacy of the modern state within the European political system [4].

From a comparative perspective, Romanian constitutional modernization followed patterns similar to those observed in other European states engaged in nation-building processes. Constitutional borrowing, institutional adaptation and administrative centralization represented common features of nineteenth-century modernization. Nevertheless, Romanian constitutional development retained specific national characteristics determined by the interaction between domestic political realities and external constitutional influences. This combination of adaptation and continuity would remain a defining feature of Romanian constitutionalism throughout its subsequent evolution [1].

2. Constitutional Regimes and Political Transformation in Romania (1918–1989)

The end of the First World War and the creation of Greater Romania generated profound political, social and institutional transformations. The incorporation of Transylvania, Bessarabia and Bukovina into the Romanian state required the establishment of a constitutional framework capable of ensuring legal unity and political cohesion. In this context, the Constitution of 1923 became one of the most important constitutional acts in Romanian history, consolidating the principles of national sovereignty, representative democracy and political pluralism within a unified state [5].

The Constitution of 1923 largely preserved the liberal principles established by the Constitution of 1866 while adapting them to the realities of an enlarged national state. The extension of political participation and the strengthening of parliamentary institutions reflected broader European democratic tendencies that emerged after the First World War. At the same time, the constitutional framework sought to facilitate the integration of territories that had previously functioned under different administrative and legal systems [6].

The interwar constitutional order represented the highest point of democratic constitutionalism in pre-communist Romania. Nevertheless, like many European democracies of the period, Romania faced significant challenges generated by economic

instability, political fragmentation and ideological radicalization. The growing influence of authoritarian doctrines gradually weakened confidence in parliamentary governance and contributed to the emergence of alternative political models [7].

These developments culminated in the adoption of the Constitution of 1938 under King Carol II. The new constitutional framework fundamentally altered the balance between state institutions by strengthening executive authority and reducing the role of representative political structures. The Constitution of 1938 reflected a broader European tendency toward authoritarian governance observable in several states during the late interwar period. Consequently, constitutional change became directly linked to the transformation of the political regime itself [8].

The outbreak of the Second World War and the subsequent geopolitical reconfiguration of Eastern Europe produced another major constitutional rupture. Following the establishment of communist rule, Romania abandoned the liberal constitutional tradition that had characterized much of the modern period. The Constitution of 1948 introduced a new model of state organization inspired by Soviet constitutional principles and established the foundations of socialist constitutionalism [9].

The Constitutions of 1952 and 1965 further consolidated the political monopoly of the Communist Party and institutionalized the ideological objectives of the socialist regime. Although these constitutional texts formally proclaimed extensive social and economic rights, political pluralism and genuine constitutional control mechanisms were absent. As a result, constitutional provisions functioned primarily as instruments of political legitimacy rather than effective guarantees of individual rights and institutional balance [10].

From a comparative perspective, Romanian constitutional development during the socialist period followed patterns similar to those observed throughout Central and Eastern Europe. However, certain distinctive elements emerged during the later decades of the communist regime, particularly the emphasis placed on national sovereignty and political autonomy within the broader socialist bloc. Despite these particularities, constitutional governance remained subordinated to ideological objectives and centralized political authority [11].

The period between 1918 and 1989 illustrates the close relationship between constitutional frameworks and political regimes. Democratic constitutionalism, authoritarian governance and socialist constitutionalism each generated distinct institutional arrangements reflecting the dominant political priorities of their respective eras. These constitutional experiences would profoundly influence the democratic transition initiated after 1989 and the subsequent reorientation of Romania toward European constitutional values.

3. Europeanization and Contemporary Constitutional Challenges (1990–2025)

The collapse of the communist regime in December 1989 initiated a new stage in Romanian constitutional development. The transition to democracy required the reconstruction of political institutions and the establishment of a constitutional framework based on the rule of law, political pluralism and the protection of fundamental rights. The Constitution of 1991 represented the legal foundation of this transformation and marked Romania's return to the European tradition of democratic constitutionalism [12].

The adoption of the Constitution of 1991 was part of a broader process of political and institutional reform that affected the states of Central and Eastern Europe after the end of the Cold War. Similar constitutional transformations occurred in Poland, Hungary and the Czech Republic, where democratic governance replaced socialist political systems. In Romania, constitutional reform was accompanied by the gradual development of competitive elections, independent public institutions and a constitutional system designed to prevent the concentration of political power [13].

A major objective of post-communist constitutional development was integration into Euro-Atlantic structures. Romania's accession to NATO in 2004 and to the European Union in 2007 accelerated legislative harmonization and institutional modernization. Constitutional development became increasingly connected to European legal standards, particularly in areas concerning democratic governance, judicial independence and the protection of fundamental rights [14].

The constitutional revision adopted in 2003 represented an important stage in this process. The amendments introduced provisions necessary for European integration, clarified aspects of constitutional governance and strengthened mechanisms intended to

guarantee the supremacy of constitutional norms. As a result, Romanian constitutionalism entered a new phase characterized by the interaction between national constitutional traditions and supranational legal obligations [15].

European integration has generated significant benefits for constitutional development, but it has also produced new debates regarding constitutional identity, sovereignty and the relationship between domestic and European legal orders. Similar discussions have emerged in several member states of the European Union, demonstrating that constitutional adaptation remains an ongoing process rather than a completed project. The Romanian experience reflects these broader European trends and illustrates the challenges faced by contemporary constitutional democracies [16].

Another important issue concerns the resilience of democratic institutions. Recent European debates regarding the rule of law, judicial independence and institutional accountability have emphasized the importance of constitutional safeguards in protecting democratic governance. In this context, Romania's constitutional framework has generally demonstrated stability, while continuing to evolve in response to new political, social and legal challenges [17].

From a comparative perspective, contemporary Romanian constitutionalism represents both a continuation of earlier modernization efforts and a response to the realities of European integration. The constitutional trajectory followed after 1990 demonstrates the capacity of Romanian institutions to adapt to changing political circumstances while preserving the fundamental principles of democratic governance. Consequently, the contemporary constitutional order can be understood as the result of a long historical process linking constitutional modernization, political transformation and Europeanization [18].

Conclusions

The constitutional evolution of Romania illustrates the close relationship between legal institutions, political regimes and state modernization. From the Organic Regulations to the constitutional framework associated with European integration, constitutional reforms have reflected the major political transformations that shaped Romanian society during the nineteenth, twentieth and twenty-first centuries.

The analysis demonstrates that Romanian constitutional development largely followed the dominant constitutional tendencies of successive European historical periods. Liberal constitutionalism influenced the formation of the modern Romanian state during the nineteenth century, democratic principles shaped the constitutional framework of Greater Romania after the First World War, while authoritarian and socialist regimes generated fundamentally different constitutional arrangements during the twentieth century. Following the collapse of communism, democratic reconstruction and European integration became the principal factors influencing constitutional development.

The comparative perspective reveals important similarities between Romania and other European states that experienced processes of nation-building, authoritarian transformation, democratic transition and Europeanization. Nevertheless, Romanian constitutionalism also developed distinctive characteristics resulting from the interaction between domestic political realities and external constitutional influences.

The post-1989 period represents the most successful phase of constitutional consolidation in modern Romanian history. Democratic institutions, constitutional guarantees and the rule of law have been significantly strengthened through domestic reforms and European integration. At the same time, contemporary debates concerning constitutional identity, judicial independence and democratic resilience demonstrate that constitutional development remains an ongoing process.

Ultimately, the Romanian experience confirms that constitutional modernization is neither linear nor uniform. Instead, it is shaped by historical circumstances, political choices and institutional adaptation. As such, the evolution of Romanian constitutionalism contributes to a broader understanding of the relationship between constitutional change, political regimes and democratic development in Europe.

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AMICUS CURIAE

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Abstract:
This study represents a comprehensive analysis based on documentary research, case-law analysis, and practical observation. The issue of the existence of amicus curiae *oscillates between doctrinal and jurisprudential support and the need for legal regulation within a statutory legal text. The study makes a clear distinction between intervention as a procedural mechanism regulated by codes and* amicus curiae*, arguing for the usefulness of such briefs at the level of all courts in Romania. For the moment, this mechanism is frequently encountered at higher courts, including and especially before the Constitutional Court, but it is not encountered to the same extent at the level of tribunals and courts of first instance, so that the need for legislative support for an* amicus curiae *brief appears as an objective necessity at the level of the practice of all courts in Romania.*
Keywords: amicus curiae*, doctrinal approaches, jurisprudential approaches, advantages, support.*

1. Origins and historical evolution

The concept has its roots in Anglo-Saxon law (common law), where it appeared in the 15th century, being less frequently used in classical legal systems. It was later adopted and adapted over time by international courts, such as the CJEU, the ECHR, and the International Criminal Court, and in Romania it penetrated mainly into Romanian judicial practice through the influence of European law (after 2007), the need to resolve complex technical cases, and the pressure exerted by civil society organizations for greater transparency.

2. Definitions

In Romanian legal doctrine, three levels of definition are distinguished:

- **Restricted definition:** A person who submits a brief in order to inform the court;
- **Intermediate definition:** A third party with specific expertise, admitted to contribute to the resolution of the case;
- **Broad definition:** Any intervention by a third party that does not pursue the acquisition of party status.

An *amicus curiae* (literally: friend of the court; plural: *amici curiae*) is someone who is not a party to a case pending before a court, but who provides information related to that case, without having been requested by any of the parties to provide assistance before the court [1]. More precisely, an amicus curiae is a natural or legal person, who is not a party to a trial, but who requests the court to allow the submission of a brief (letter, report, opinion) with the purpose of assisting it in making a correct and informed decision. In this context, such an "interlocutor" does not have the status of a party and, as a rule, cannot formulate its own procedural claims (e.g. annulment of the act); it is a "counsel" who brings an external, complementary perspective, and the purpose is the improvement of the quality of justice, not the representation of a direct private interest.

From a "procedural" point of view, there are two variants through which an amicus curiae may be submitted:

A] By invitation ("by invitation") the court, recognizing the complexity of an issue, officially **invites** an authority (e.g. the National Bank in currency-related cases, the National Authority for Consumer Protection in consumer cases, etc.) or an expert to submit a brief, this being the case where the initiative of this approach belongs to the court, which resorts to this method in order to ascertain the truth and clarify the complex aspects of the case brought before it.

B] By permission ("by leave of the court"): The interested person submits an **application for the admission** of the amicus curiae brief. The court approves or rejects it, assessing whether the contribution is useful and does not delay the proceedings. This is the most frequent route in practice.

3. Regulation and recognition

It is noted that there is **a formal legislative gap** in the civil and criminal procedure codes. Instead, practice has been important and adapted from the following sources:

- **International and European law** (the practice of the ECHR and the CJEU is rich in amici curiae);
- **Doctrine**;
- **Case law;**

Even though in Romanian legislation we do not find an “expressis verbis” text to support the existence of this means of legal expression, by analogy, reference may be made to several internal and international normative acts that may be invoked in this matter, as follows:

- Code of Civil Procedure (New CPC);

Does not expressly mention "amicus curiae", but provides openings through:

Art. 5. – *(1) Judges have the duty to receive and resolve any claim falling within the jurisdiction of the courts, in accordance with the law.*

Art. 254 (5). *Likewise, the judge may, ex officio, raise for discussion with the parties the need to administer other evidence, which he or she may order even if the parties oppose it.*

- Code of Criminal Procedure;

Nor does this one expressly mention *amicus curiae*; however, there are several articles that lead to the permissibility of accepting it, as follows:

Art. 97 (2) *Evidence is obtained in the criminal proceedings through the following means:*

e)*documents, expert reports, minutes, photographs, material means of evidence;*

f) *any other means of evidence that is not prohibited by law.*

– Constitutional and Conventional Bases.

– **Art. 21 of the Constitution:** Free access to justice

– **Art. 6 ECHR:** *European Convention on Human Rights* – Right to a fair trial, interpreted as including the court’s right to be properly informed.

– **Art. 47 of the Charter of Fundamental Rights of the EU:** Right to an effective remedy and to a fair trial

Considering that such approaches are not studied at the level of higher education and that cases where they are included in university curricula are rare, we consider that

a short guide for drafting an *amicus curiae* would be welcome. In our opinion, the request addressed to the court should include the following elements:

– To present itself and indicate its expertise or legitimate interest;

– To briefly describe its position and the relevance of its arguments for the case;

– To attach the *amicus curiae* **memorandum** itself.

Content of the *amicus curiae* memorandum:

- A concise presentation of the case (from the third party's perspective);
- Legal, economic, social, or technical arguments;
- References to relevant legislation, doctrine, and case law (including international sources).
- **Clear conclusions and suggestions for the court.**

Important: It must not overtly support one side, but rather shed light on a particular issue.

The court, upon receiving such a memorandum, may either **admit** it and make it available to the parties so that they may express their point of view, **or reject** it if it considers it unnecessary, dilatory, or if the third party is in fact promoting a private interest "as a party."

4. Doctrinal approaches

In doctrinal understanding, ***amicus curiae*** is a sophisticated mechanism that transforms judicial proceedings from a simple dispute between parties into a broader forum for social and technical debate. It encourages **transparency, quality, and the legitimacy** of judicial decisions by allowing civil society and experts to contribute to the administration of justice. Although in Romania it is less regulated than in common law systems, its practice is continuously developing and consolidating, aligning itself with European standards. In the Romanian legal system, ***amicus curiae*** is more a **jurisprudential and doctrinal** practice than one exhaustively regulated by codes.

Also from a doctrinal perspective, at the level of approaches in Romania, *amicus curiae* is defined as a modern instrument, necessary for quality justice.

Thus, it is seen as **a consequence of the principle of judicial cooperation and of the right to a fair trial**, which requires the court to have access to all relevant information. At the same time, it is argued that it is a means of "democratizing justice,"

allowing civil society to participate in the shaping of case law in matters of public interest. On the other hand, doctrine clearly distinguishes between a party, an intervening **party, and an *amicus curiae***. The *amicus* does not have a direct material interest in the outcome of the dispute, but rather an interest of a general nature (professional, social, or principled).

At the doctrinal level, there are quite few approaches to this subject, which is why, when such opinions appear, they deserve to be highlighted. I find the approach particularly well grounded by Prof. Tudor Dumitru in the article **"Amicus curiae – between necessity and abuse" [2]**, who argues that *"although the presence of this institution in the Romanian system is beneficial (allowing the contribution of experts or organizations in cases with general impact), the lack of a detailed procedural framework in the codes or in special laws leads to:*

Uncertainty and lack of uniformity in judicial practice (some judges accept amicus briefs, others reject them arbitrarily).

The risk of abuse, through the submission of subjective opinions disguised as neutral experts, capable of influencing the court.

The need for a clear regulation of: the conditions for admissibility, time limits, form, the parties' rights to challenge the amicus brief, etc."

The same position is also maintained in his/her civil procedure manual (*"Civil Procedural Law. The General Part"*, recent editions), where a specific paragraph is devoted to the institution of *amicus curiae*. This is one of the few studies dedicated to this subject in the Romanian specialized literature, which is why we also seek to contribute additional aspects intended to clarify this "legal institution," which tends to take shape and which, in our view, should find support in our legislation, moving beyond the doctrinal and jurisprudential sphere.

Also from a doctrinal perspective, he/she considers essential for the admission of an *amicus curiae* brief the following conditions:

The existence of expertise or a unique perspective, more precisely, the third party must provide knowledge or a point of view that the court or the parties do not possess.

To be useful for the resolution of the case, namely the information must be relevant and help clarify a factual or legal issue.

The opinion expressed must be impartial and objective, so that its purpose is to enlighten the court, not to militantly support one of the parties. (In practice, this condition is applied with flexibility).

The opinion expressed must not limit the rights of the parties, meaning that the intervention must not unjustifiably delay the proceedings or infringe the parties' right to a fair trial.

In Romanian doctrine, there are still sufficiently many elements of doctrinal controversy. Thus, we can distinguish a current that perceives a conflict between celerity and exhaustiveness. In this context, some authors [I. Leș] warn of the danger of "overloading" case files with such briefs. Other authors [M. Vidu] support the justification of these briefs from the perspective of the quality of the decision that is to be adopted.

5. Jurisprudential approaches

Romanian judicial practice progressively recognizes and uses *amicus curiae*, especially at the level of higher courts. In this context, we will attempt to structure the jurisprudential sources according to the following courts:

5.1. The Constitutional Court of Romania (CCR)

Analyzing at the jurisprudential level the use of *amicus curiae*, we find that the CCR **is the most receptive forum** in this matter. The CCR has developed a consistent practice, acknowledging the value of opinions and briefs submitted by entities with authority.

Notable examples: In numerous referrals concerning the unconstitutionality of laws, the CCR has expressly requested opinions from:

- **The Superior Council of Magistracy (CSM)**
- **The National Authority for the Protection of the Rights of the Child (ANPDC)**
- **The Ombudsman**
- **Relevant public institutions** (e.g. the National Bank of Romania – NBR – for financial legislation)
- **Professional associations** (e.g. the National Union of Romanian Bar Associations – UNBR)

These opinions ***are explicitly cited in the legal reasoning*** *of the CCR's decisions, becoming sources.*

5.2. The High Court of Cassation

In civil and commercial matters, the High Court of Cassation and Justice (HCCJ) has admitted and taken into consideration briefs submitted by third parties with expertise, as follows:

- **As an emblematic decision, we mention here Decision no. 3583/2015 of the HCCJ, Commercial Division [3]:** The court admitted a brief submitted by an association of electronic payment companies in a public procurement case. In the judgment, the judges made explicit reference to the **arguments contained in that brief** in order to reinforce their own reasoning.
- As a clarifying position, we refer here to other decisions of the High Court of Cassation and Justice, in which it emphasized that the submission of such a brief **does not confer party** status and does not allow the third party to challenge the judgment or to lodge an independent appeal.

5.3. The Bucharest Court of Appeal, Administrative and Fiscal Litigation Division

In cases with environmental or urban-planning impact, the courts have admitted and cited reports or opinions submitted by environmental associations or by the local urban planning commission.

In these cases, the court examined whether the brief brings new and useful elements, beyond those presented by the parties. If it is merely a repetition, the *amicus curiae* will be ignored.

5.4. National vs. international jurisprudence

Romanian courts are increasingly invited by the European Court of Human Rights (ECHR) to take into account *amicus curiae* opinions in cases pending in Strasbourg. This international exposure has contributed to the internalization of the practice.

In cases involving European law, Romanian courts refer to *amicus* briefs submitted in the case law of the Court of Justice of the European Union (CJEU) on similar issues.

At this jurisprudential level, the opinion expressed by ***Prof. Gheorghe Buța*** [4] who served as Romania's agent before the European Court of Human Rights and, as a careful observer of the practice of the Constitutional Court, made interesting references to *amicus curiae*. In this context, he commented on **Constitutional Court Decision no. 685/2018**, which represented a key moment in the recognition of *amicus curiae* in the Romanian system. His position (as inferred from the published analyses) is as follows:

- He supports the usefulness of *amicus curiae* intervention in constitutional proceedings, especially in cases with major social impact, where civil society organizations or independent experts can bring complementary perspectives, assisting the court in a collective effort to find the best possible solution.

In general terms, his perspective (in line with the majority doctrine) is that *amicus curiae*:

– Is essentially different from an expert appointed by the court, having a role closer to that of an "informal party" who brings legal and principled arguments, rather than factual findings.

– Its intervention should be regulated through a simple and discreet procedure, which should not turn the proceedings into a "polyadic" one (with too many interveners that make it cumbersome).

While Prof. Tudor Dumitru wrote a fundamental article calling for express regulation in order to prevent abuses, Prof. Gheorghe Buta is rather associated with the analysis and legitimation of the role of *amicus curiae* in constitutional jurisprudence, emphasizing its value in strengthening judicial deliberation in cases of principle.

As **a synthesis of the Romanian jurisprudential position, we note**:

– **It is admissible**, although it is not expressly regulated.

– **It is appreciated** especially at the level of higher courts (the Constitutional Court and the High Court of Cassation and Justice) in complex cases.

– **The safest course** is for the third party to **submit a request for the admission** of the brief, accompanied by a motivation highlighting its expertise and usefulness.

– **Its effect is not binding**. The court has **discretionary power** to take it into account or not. However, if it does take it into account, it must address the relevant arguments (even if only to reject them).

– **It does not create procedural** rights for the third party (the third party cannot lodge an appeal against the judgment).

Differences between ***amicus curiae*** and intervention

***Amicus curiae* is a neutral consultant** (or one with a public-interest agenda), whereas intervention involves an active interested party that enters into the conflict between the original parties.

***Amicus curiae* cannot be ordered to pay legal costs** (it is not a party), whereas the intervener may be required to bear legal costs.

Amicus curiae appears mainly **in cases with constitutional, social, or principled implications**, whereas intervention appears in **ordinary litigation** with direct implications for third parties.

6. Organizations/institutions that frequently submit *amicus curiae* briefs in Romania:

From the analysis of jurisprudence, we can exemplify a series of organizations and institutions that have resorted to this mechanism, as follows:

- The Ombudsman;
- The Superior Council of Magistracy (CSM);
- Associations of lawyers (UNBR);
- Specialized NGOs (in the fields of environment, human rights, consumer protection – e.g.: APADOR-CH, Society for Justice, the Prosumers Association, etc.);
- Professional and employers' associations (for economic regulations);
- Public institutions with authority in the field (ANPC, ANRE, etc.).

7. The roles that *amicus curiae* may fulfill

The *amicus curiae* brief may have several crucial roles, as follows:

– **Technical/scientific information:** It presents data, studies, and experts in complex fields (medical, IT, engineering).

– **Social or economic perspective:** It shows the potential impact of a ruling on the community, the market, or a social group.

– **Comparative legal analysis:** It presents how a similar issue has been regulated or adjudicated in other states or before international courts.
– **Protection of the interests of large groups:** NGOs may represent the interests of categories that are not physically present in the proceedings (e.g. consumers, minorities, persons with disabilities).
– **Highlighting constitutional implications or human rights issues:** Often used by the Ombudsman Institution, associations, or even by the courts themselves when referring matters to the Constitutional Court.

8. The manner of handling *amicus curiae* in different legislative systems

In the American system, considered to be the most permissive in this field, we note the following:
– *Amicus curiae* involves minimal standards of admissibility;
– The weight of this approach is increased in judicial decisions;
– The risk of "amicus overload" but on a permanent basis.

In the French system, considered the most restrictive in this field, we note the following:
– *Amicus curiae* may be introduced only mandatorily through a lawyer;
– It may be introduced almost exclusively in the field of administrative litigation;
– It may be submitted under the strict control of the court.

In our legislation, which may be considered a mixed system between the two mentioned above, *amicus curiae* has the following legal features:
– It is close to the German model, meaning that it is flexible and subject to judicial control;
– It is influenced by the practice of the ECHR, more precisely, human rights standards are observed;
– It has a rapid evolution, namely a tendency can be observed from systematic rejection (the 2000s) to selective acceptance (after 2010).

Conclusion

The present study seeks to support the usefulness of the legal regulation of *amicus curiae*, bringing as arguments both domestic and international doctrine, but especially

judicial precedents from Romania, which have been relied upon mainly by higher courts, as well as by the Constitutional Court, and less so by lower courts. The reluctance to accept this mechanism, which contributes to the grounding of judicial decisions, is also due to the quasi-nonexistence of an academic approach to this institution by Romanian law faculties, despite the fact that it is particularly effective and frequently encountered, especially in the Anglo-Saxon legal system. The adaptation of *amicus curiae* to Romanian legislation has already been achieved through the jurisprudence of the higher courts in our country.

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THE NEW EUROPEAN AIR QUALITY STANDARDS: LEGAL AND INSTITUTIONAL IMPLICATIONS FOR ROMANIA

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Abstract
Air quality protection has become one of the main priorities of European environmental policy, given the significant impact of air pollution on human health and ecosystems. The adoption of Directive (EU) 2024/2881 on ambient air quality and cleaner air for Europe establishes more stringent protection standards, bringing European requirements into closer alignment with the levels recommended by the World Health Organization and imposing additional obligations on Member States regarding the monitoring and reduction of atmospheric pollutant emissions. This article examines the evolution of the European regulatory framework governing air quality, the main innovations introduced by the new directive, and its legal and institutional implications for Romania. The study highlights the need to adapt the national legislative framework and strengthen administrative implementation mechanisms in order to achieve the European air quality objectives by 2030 and to ensure the effective protection of the fundamental right to a healthy environment.
Keywords: air quality; Directive (EU) 2024/2881; air pollution; environmental protection; public health protection; right to a healthy environment; sustainable development.

Introduction

Air quality protection has become one of the major priorities of the European Union's environmental policy, given the significant effects of air pollution on human health, ecosystems, and socio-economic development. Despite the considerable progress achieved over the last two decades in reducing atmospheric pollutant emissions, air pollution remains the most significant environmental health risk facing the European population. According to the European Environment Agency, a large proportion of the urban population in the European Union continues to be exposed to pollutant concentrations exceeding the levels recommended by the World Health Organization, resulting in adverse health effects and substantial economic and social costs [6].

In this context, the European Union has strengthened its regulatory framework on ambient air quality through the adoption of Directive (EU) 2024/2881 on ambient air quality and cleaner air for Europe. The new Directive establishes more stringent air quality standards that are more closely aligned with the levels recommended by the World Health

Organization and imposes additional obligations on Member States regarding the monitoring, prevention, and reduction of air pollution, as well as the development of roadmaps aimed at achieving compliance with the new standards by 2030 [3].

For Romania, the new European requirements entail a reassessment of the national legislative and institutional framework governing air quality protection and require the adoption of legislative and administrative measures capable of ensuring compliance with the new European standards. Reducing the concentrations of particulate matter, nitrogen oxides, and other atmospheric pollutants necessitates the development of effective monitoring and control mechanisms, as well as strengthening public policies in the fields of environmental protection and public health.

The objective of this study is to analyse the legal and institutional implications of Directive (EU) 2024/2881 for Romania by examining the evolution of the European regulatory framework on ambient air quality, the obligations incumbent upon Member States, and the main challenges arising from the implementation of the new European air quality standards. The research is based on legal analysis and documentary research methods and draws upon European Union legislation, national legal instruments, public policy documents, and reports issued by European institutions and international organisations.

1. Air Quality Protection within the European Union's Environmental Policy

1.1. Evolution of European Regulations on Air Protection

Air quality protection constitutes one of the fundamental components of the European Union's environmental policy and is the result of a gradual and complex regulatory and institutional process developed in response to the increasing effects of air pollution on human health and the environment. The evolution of European regulations in this field reflects the transition from an approach primarily focused on economic integration to a comprehensive policy framework in which environmental protection and sustainable development have become core objectives of the European Union.

The original Treaty establishing the European Economic Community, signed in 1957, did not contain explicit provisions on environmental protection. However,

accelerated industrial development and urbanisation within the Member States led to the emergence of environmental problems of a transboundary nature, of which air pollution was a prominent example. In the absence of specific environmental competences, the first European environmental measures were adopted through legal provisions aimed at achieving the common market and approximating national legislation.

A significant milestone in the development of European environmental policy was the adoption of the First Environmental Action Programme in 1973. This programme recognised that economic development and environmental protection are complementary objectives and highlighted the need to prevent and reduce air pollution through coordinated action at the European level.

The formal recognition of environmental protection as a European competence was achieved through the Single European Act of 1986, which introduced a distinct title on environmental policy and established several fundamental principles of environmental law, including the precautionary principle, the preventive action principle, the principle that environmental damage should be rectified at source, and the polluter pays principle. These principles subsequently became the cornerstone of the European legal framework governing air quality protection. Their legal significance has been extensively examined in the literature on European environmental law, which regards these principles as the normative foundation of contemporary European environmental policy [13]. The gradual strengthening of European environmental legislation further demonstrates the increasing importance attributed to preventive and precautionary approaches in European Union environmental law [14].

Subsequently, the Treaty on European Union (Maastricht Treaty) and the Treaty of Amsterdam reinforced the environmental dimension of European integration by recognising sustainable development as a fundamental objective of the European Union and requiring environmental protection requirements to be integrated into the definition and implementation of all Union policies and activities [1] [15]. Consequently, air quality protection ceased to be merely a sectoral environmental concern and evolved into a cross-cutting policy closely connected to public health, energy, transport, industrial activities, and territorial development.

Over time, the European Union has developed an extensive regulatory framework aimed both at reducing atmospheric emissions and at establishing common standards for ambient air quality. This framework has progressively strengthened the obligations imposed upon Member States regarding air quality monitoring, the assessment of pollution levels, and the adoption of measures necessary to limit public exposure to harmful concentrations of atmospheric pollutants.

The need for the continuous strengthening of air quality protection is justified by the persistence of elevated pollution levels in several regions of Europe. According to the European Environment Agency, despite significant progress achieved during the last two decades in reducing emissions and improving air quality, air pollution remains the most significant environmental risk to human health in Europe. More than 90% of the urban population in the European Union continues to be exposed to concentrations of pollutants exceeding the levels recommended by the World Health Organization, resulting in adverse health effects and considerable economic and social costs [6].

Against this background, the evolution of European regulations on air quality protection demonstrates a consistent trend towards increasingly stringent standards and stronger obligations for Member States regarding the prevention and reduction of air pollution. This process has culminated in the adoption of Directive (EU) 2024/2881 on ambient air quality and cleaner air for Europe, which inaugurates a new stage in European air quality policy characterised by higher protection standards and a stronger focus on safeguarding human health and promoting sustainable development [3].

1.2. Air Quality as an Objective of the European Union's Environmental Policy

Air quality protection has become one of the priority objectives of the European Union's environmental policy due to the significant consequences of air pollution for human health, biodiversity, ecosystems, and socio-economic development. In the current context, characterised by increasing environmental challenges and the need to achieve sustainable development, ensuring a high level of air quality protection has acquired strategic importance within the European Union's policy framework.

The legal basis of the European Union's environmental policy is established by Articles 191 to 193 of the Treaty on the Functioning of the European Union (TFEU). Pursuant to Article 191(1) TFEU, Union policy on the environment shall contribute to preserving, protecting, and improving the quality of the environment, protecting human health, and promoting measures at the international level to address regional and global environmental problems [1]. Within this framework, air quality protection serves the dual purpose of environmental improvement and the protection of public health, which confers a complex and multidimensional character upon this policy area.

European air quality policy is founded on several fundamental principles of environmental law enshrined in Article 191(2) TFEU, namely the precautionary principle, the preventive action principle, the principle that environmental damage should, as a priority, be rectified at source, and the polluter pays principle [1]. The application of these principles requires the adoption of proactive measures aimed at preventing and reducing atmospheric emissions, as well as the establishment of effective mechanisms for monitoring and controlling air quality. Romanian environmental law doctrine has consistently emphasised that the precautionary and preventive principles impose positive obligations upon public authorities to adopt effective measures aimed at preventing environmental degradation and mitigating pollution risks [11].

The strategic importance of air quality protection has been further reinforced through its inclusion in the European Union's principal policy documents concerning sustainable development and ecological transition. In this regard, the European Green Deal seeks to transform the European Union into a modern, competitive, and resource-efficient economy while pursuing, among its main objectives, a substantial reduction in pollution and the creation of a healthier environment for European citizens [4]. Likewise, the European Union's Zero Pollution Action Plan for Air, Water and Soil establishes the objective of significantly reducing the impact of pollution on human health and ecosystems by 2050 [5].

The need to strengthen air quality protection measures is also supported by scientific evidence concerning the adverse effects of air pollution on public health. According to the European Environment Agency, air pollution remains the most significant environmental health risk in Europe and is associated with respiratory and cardiovascular

diseases, as well as a considerable number of premature deaths [6]. Although air quality has progressively improved across Europe over the last two decades, pollutant concentrations continue to exceed the levels recommended by the World Health Organization for most pollutants. Furthermore, more than 90% of the urban population in the European Union remains exposed to pollution levels exceeding those recommendations [6].

Beyond its effects on public health, deteriorating air quality also generates substantial economic consequences. The costs associated with healthcare expenditure, reduced labour productivity, and absenteeism attributable to pollution-related illnesses constitute a significant burden on Member States. The European Environment Agency estimates that the economic impact of air pollution amounts to approximately EUR 600 billion annually, representing nearly 4% of the combined gross domestic product of the Member States [6].

Under these circumstances, air quality protection has evolved beyond the scope of a merely sectoral environmental policy and has become a cross-cutting objective of European Union action, situated at the intersection of public health, energy, transport, industrial, and sustainable development policies. This evolution is also reflected in the broader assessments of European environmental policy undertaken by the European Environment Agency, which emphasise the increasing interdependence between environmental protection, public health, climate action, and sustainable development objectives [7]. This integrated approach explains the continuous strengthening of European air quality standards and justifies the adoption of increasingly stringent legislative measures aimed at reducing public exposure to air pollution and ensuring a high level of protection of both the environment and human health.

2. The Relationship between Air Quality Protection and the Right to a Healthy Environment

Air quality protection is not merely an objective of environmental policy but also constitutes an essential condition for the effective enjoyment of the fundamental right to a healthy environment. The deterioration of air quality directly affects human health, quality of life, and the exercise of other fundamental rights, including the right to life, the

right to physical and mental integrity, and the right to health protection. Consequently, air quality protection has acquired a significant legal dimension and has gradually become embedded in international, European, and domestic legal frameworks. International environmental law scholarship has increasingly recognised the close relationship between environmental protection and the effective enjoyment of fundamental human rights, particularly the rights to health and to a healthy environment [12].

At the European Union level, environmental protection is recognised under Article 37 of the Charter of Fundamental Rights of the European Union, which provides that a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development [2]. Although the Charter does not expressly recognise an individual right to a healthy environment, it imposes an obligation upon the European institutions and the Member States to incorporate environmental protection requirements into all Union policies and activities.

At the national level, the Romanian Constitution explicitly recognises the right to a healthy and ecologically balanced environment. Article 35 provides that the State shall recognise the right of every person to a healthy environment, ensure the legislative framework necessary for the exercise of this right, and require natural and legal persons to protect and improve the environment [9]. Consequently, the right to a healthy environment is not merely declaratory in nature but gives rise to positive obligations for public authorities, requiring them to adopt appropriate legislative, administrative, and institutional measures aimed at preventing and reducing environmental risks.

In the field of air quality protection, these positive obligations assume particular importance. Air pollution is associated with numerous adverse health effects and has been identified as the most significant environmental risk to human health in Europe. According to the European Environment Agency, despite the progress achieved in recent decades, a large proportion of the European population continues to be exposed to levels of air pollution exceeding those recommended by the World Health Organization, thereby contributing to an increased incidence of respiratory and cardiovascular diseases and to a considerable number of premature deaths [6].

The relationship between environmental protection and fundamental rights has also been reinforced through the case law of the European Court of Human Rights. Although the European Convention on Human Rights does not explicitly recognise a right to a healthy environment, the Court has consistently held that severe environmental pollution may interfere with the effective enjoyment of rights guaranteed by the Convention, particularly the right to life and the right to respect for private and family life. The Court has repeatedly emphasised that States are under a positive obligation to adopt adequate and effective measures aimed at preventing and reducing environmental risks that can affect the population.

Similarly, the Court of Justice of the European Union has consistently underlined the binding nature of European environmental legislation and the necessity of ensuring a high level of protection of human health through the effective implementation of European air quality legislation. The Court's case law demonstrates that obligations concerning the monitoring and reduction of air pollution are not merely formal requirements but require the adoption of concrete and effective measures designed to achieve compliance with the air quality standards established by European Union law.

Accordingly, air quality protection should be regarded not only as an objective of environmental policy but also as an expression of the State's obligation to ensure the effective enjoyment of the right to a healthy environment and to guarantee a high level of human health protection. In this context, the strengthening of European air quality standards and the adoption of more stringent measures for preventing and reducing air pollution constitute not merely matters of public policy but also legal requirements derived from the obligation to safeguard fundamental rights and promote sustainable development.

3. Directive (EU) 2024/2881 and the New European Air Quality Standards

3.1. The Context of the Adoption of the New Directive

The adoption of Directive (EU) 2024/2881 on ambient air quality and cleaner air for Europe is the result of a comprehensive reassessment of the effectiveness of the European regulatory framework governing air quality protection. This reassessment was

prompted by the persistence of elevated levels of air pollution across Europe and by the need to strengthen the protection of human health and the environment. Despite significant progress achieved over the last two decades in reducing atmospheric pollutant emissions, scientific evidence and institutional assessments continue to demonstrate that air pollution remains the most significant environmental threat to public health in Europe [6].

According to the European Environment Agency, concentrations of several major pollutants have shown a downward trend in most European countries. Nevertheless, a significant number of monitoring stations continue to record exceedances of air quality standards, particularly in relation to particulate matter (PM10), ground-level ozone (O3), and benzo(a)pyrene [6]. Furthermore, when assessed against the recommendations issued by the World Health Organization, the situation appears even more concerning. The European Environment Agency has reported that more than 90% of the urban population in the European Union remains exposed to pollutant concentrations exceeding the levels recommended by the World Health Organization, highlighting a considerable gap between the legal standards in force and the level of protection required to prevent adverse health effects [6].

The consequences of air pollution are not limited to public health concerns but also encompass significant economic and social impacts. The costs associated with pollution-related diseases, reduced labour productivity, and increased expenditure on healthcare constitute a substantial burden for Member States. According to estimates provided by the European Environment Agency, the economic costs of air pollution amount to approximately EUR 600 billion annually, corresponding to nearly 4% of the gross domestic product of the Member States of the European Union [6].

The adoption of a new European legislative framework on ambient air quality was also driven by the commitments assumed by the European Union under the European Green Deal and the European Zero Pollution Action Plan for Air, Water and Soil. These policy documents establish the objective of achieving pollution levels that are no longer considered harmful to human health and ecosystems and promote the gradual alignment of European standards with the levels recommended by the World Health Organization [4], [5].

Against this background, Directive (EU) 2024/2881, which entered into force on 10 December 2024, establishes a new legal framework for air quality protection and introduces more stringent standards that will become applicable from 2030 [3]. The Directive requires Member States to assess, during the period 2026-2029, the likelihood of achieving the new standards and, where there is a risk of non-compliance, to prepare and implement air quality roadmaps aimed at ensuring compliance by 2030 [3].

The adoption of Directive (EU) 2024/2881 therefore reflects a significant shift in the European Union's approach to air quality protection. Whereas previous regulatory instruments were primarily oriented towards the progressive reduction of pollutant emissions and the establishment of minimum protection standards, the new directive adopts a more ambitious approach centred on closer alignment with scientific evidence and on strengthening the responsibility of Member States to guarantee a high level of protection of human health and the environment.

3.2. Main Legislative Changes Introduced by Directive (EU) 2024/2881

Directive (EU) 2024/2881 on ambient air quality and cleaner air for Europe represents one of the most significant reforms of the European legal framework governing air quality protection. The new legislative instrument responds to the need to strengthen the protection of human health and the environment and seeks to bring European standards closer to the levels recommended by the World Health Organization. To this end, the directive introduces substantial changes concerning air quality standards, monitoring obligations, planning mechanisms, and compliance requirements applicable to Member States [3].

One of the most significant innovations introduced by the directive is the revision and tightening of the limit values applicable to major atmospheric pollutants. The new standards establish more stringent requirements for particulate matter, nitrogen dioxide, sulphur dioxide, and other pollutants recognised as posing significant risks to human health and the environment. This legislative approach reflects scientific findings and institutional assessments indicating that adverse health effects continue to occur even at pollution levels below those permitted under the previous regulatory framework [3], [6].

Another important development concerns the progressive alignment of European air quality standards with the levels recommended by the World Health Organization. Although the new limit values do not fully coincide with the WHO Air Quality Guidelines, they constitute a significant step towards strengthening public health protection and demonstrate the European Union's commitment to reducing the risks associated with exposure to air pollution [8]. According to the European Environment Agency, concentrations of several pollutants in Europe continue to exceed the levels recommended by the World Health Organization, thereby justifying the adoption of more ambitious standards and additional measures aimed at further reducing air pollution [6].

Directive (EU) 2024/2881 also introduces a strengthened planning and compliance mechanism. Where there is a risk that the new standards applicable from 2030 will not be achieved, Member States are required to assess, during the period from 2026 to 2029, the likelihood of attaining the prescribed standards and, where necessary, to prepare air quality roadmaps [3]. These roadmaps must identify specific legislative, administrative, and technical measures, establish implementation timelines, and provide mechanisms for monitoring progress towards compliance.

The directive further reinforces obligations concerning air quality monitoring and assessment. Member States are required to improve monitoring systems, strengthen their networks of monitoring stations, and ensure a more accurate assessment of pollution levels. The European Environment Agency has emphasised that existing monitoring networks will need to be adapted in order to comply with the new requirements and to enable a more precise evaluation of compliance with the standards that will become applicable in 2030 [6].

Particular emphasis is also placed on the preventive dimension of environmental protection. The new legislative framework expressly recognises that reducing air pollution constitutes not only an environmental obligation but also an essential instrument for preventing disease, reducing premature mortality, and limiting the economic costs associated with pollution-related health effects. In this respect, the European Environment Agency has underlined that reducing air pollution may generate substantial public health benefits while simultaneously reducing healthcare expenditure and productivity losses attributable to pollution-related illnesses [6].

Accordingly, Directive (EU) 2024/2881 goes beyond a mere revision of technical air quality standards and establishes a new regulatory model characterised by higher protection standards, strengthened monitoring mechanisms, and enhanced responsibilities for Member States concerning the prevention and reduction of air pollution. From this perspective, the Directive constitutes one of the most important legal instruments adopted by the European Union for the achievement of sustainable development objectives and the effective protection of human health and the environment.

3.3. The New Limit Values for Major Atmospheric Pollutants

One of the most significant changes introduced by Directive (EU) 2024/2881 concerns the revision of the limit values applicable to major atmospheric pollutants in order to ensure a higher level of protection of human health and the environment. The new regulatory framework seeks to progressively align European standards with the levels recommended by the World Health Organization, taking into account the scientific evidence demonstrating that prolonged exposure to atmospheric pollutants continues to have significant adverse effects on public health [3], [8].

According to the European Environment Agency, in 2024 a considerable number of monitoring stations across Europe recorded concentrations of major pollutants exceeding the standards applicable at the time, particularly in relation to particulate matter (PM10), ground-level ozone (O3), and benzo(a)pyrene. Moreover, for most pollutants, concentration levels remain above those recommended by the World Health Organization, thereby justifying the adoption of more stringent standards and the implementation of additional measures aimed at reducing air pollution [6].

Against this background, Directive (EU) 2024/2881 lowers the limit values applicable to several pollutants that are considered particularly harmful to human health, especially particulate matter and nitrogen dioxide. These pollutants are associated with the development and aggravation of respiratory and cardiovascular diseases and contribute to increased premature mortality and significant social and economic costs resulting from air pollution [6], [8].

The reduction of the limit values for $PM_{2.5}$ and PM_{10} is of particular importance because these pollutants are among the most hazardous components of air pollution. Due to their small size, particulate matter can penetrate deep into the respiratory system and enter the bloodstream, thereby increasing the risk of cardiovascular diseases, chronic respiratory conditions, and certain forms of cancer [8]. According to the European Environment Agency, concentrations of $PM_{2.5}$ and ground-level ozone continue to exceed the levels recommended by the World Health Organization in most European regions, highlighting the need for additional measures aimed at reducing public exposure to these pollutants [6].

Regarding nitrogen dioxide (NO_2), the reduction of the annual limit value reflects the European legislator's concern with mitigating the impact of emissions originating primarily from road transport and industrial activities. At the same time, the new requirements concerning ground-level ozone and sulphur dioxide underline the necessity of adopting an integrated approach to air quality management based on continuous monitoring of pollution sources and the implementation of appropriate prevention and control measures.

The new limit values established by Directive (EU) 2024/2881 therefore represent a paradigm shift in European air quality policy. Whereas previous standards were primarily intended to promote the gradual reduction of emissions and establish minimum protection requirements, the new regulatory framework is expressly aimed at effectively reducing risks to public health and progressively aligning European standards with the scientific recommendations of the World Health Organization. Consequently, Member States are required to adopt more ambitious public policies and legislative measures capable of ensuring compliance with the new European requirements by 2030 and contributing to the achievement of a cleaner and healthier environment for present and future generations [3], [6], [8].

3.4. Obligations of Member States for the Period 2026-2030

The entry into force of Directive (EU) 2024/2881 marks the beginning of a transitional period during which the Member States of the European Union are required to adopt the measures necessary to achieve the new air quality standards by 1 January

2030. During this period, the obligations imposed upon Member States extend beyond the mere formal transposition of the directive into national law and require the development of legal and administrative mechanisms capable of ensuring the effective reduction of air pollution and the protection of public health [3].

One of the principal obligations introduced by the new directive concerns the periodic assessment of air quality conditions and the likelihood of achieving the standards applicable from 2030. During the period 2026-2029, Member States are required to assess whether existing pollution levels permit the attainment of the prescribed standards and to identify sectors and geographical areas where there is a risk of exceeding the applicable limit values. Where such assessments indicate that compliance may not be achieved by 2030, Member States are under an obligation to adopt additional measures and to develop specific planning instruments [3].

For this purpose, Directive (EU) 2024/2881 introduces the obligation to prepare air quality roadmaps. These documents are intended to identify the legislative, administrative, and technical measures necessary to reduce pollutant concentrations and ensure compliance with the new European standards. The roadmaps must establish clear objectives, implementation timelines, and mechanisms for monitoring and evaluating progress, thereby constituting an important planning and accountability instrument for national authorities [3].

Member States are also required to strengthen their air quality monitoring systems. According to the European Environment Agency, existing monitoring networks will need to be adapted to meet the new legislative requirements, including by increasing the number of monitoring stations and improving mechanisms for collecting and analysing data on air pollution. Accurate and continuous assessment of air quality constitutes an essential precondition for identifying high-risk areas and adopting appropriate intervention measures [6].

Another important obligation concerns the adoption of effective measures aimed at preventing and reducing emissions originating from the principal sources of pollution. In this respect, Member States are required to integrate air quality objectives into policies relating to transport, energy, industry, urban development, and spatial planning. The cross-sectoral nature of air quality protection requires coordinated action across different

economic sectors, given that air pollution results from multiple sources and the interaction of numerous economic and social factors.

The Directive also highlights the need for a preventive approach focused on reducing public exposure to atmospheric pollutants and mitigating their adverse effects on human health. The European Environment Agency has emphasised that reducing air pollution generates significant benefits both from the perspective of public health and in economic terms, by decreasing healthcare expenditure and limiting productivity losses associated with pollution-related diseases [6].

From the perspective of European Union law, the obligations established by Directive (EU) 2024/2881 are mandatory in nature and require the adoption of concrete and effective measures by Member States. The mere formal transposition of the Directive into national legislation is insufficient to fulfil the European requirements. Rather, effective implementation necessitates the development of public policies capable of reducing pollution levels and ensuring compliance with the new air quality standards by 2030.

Accordingly, the period from 2026 to 2030 assumes particular importance for the Member States of the European Union, as it represents the timeframe within which the transition towards a new model of air quality protection must be achieved. This model is characterised by higher standards of health protection and enhanced obligations concerning monitoring, planning, and intervention in the field of ambient air quality [3], [6].

Conclusions

Air quality protection has become one of the principal priorities of the European Union's environmental policy in light of the significant impact of air pollution on human health, ecosystems, and socio-economic development. The evolution of the European regulatory framework in this field demonstrates a consistent trend towards strengthening environmental protection standards and integrating environmental requirements into all Union policies, in accordance with the principles of sustainable development and the objective of ensuring a high level of human health protection.

The adoption of Directive (EU) 2024/2881 on ambient air quality and cleaner air for Europe marks a new stage in the development of European air quality policy. By revising and tightening air quality standards, bringing them closer to the levels

recommended by the World Health Organization, and introducing additional monitoring and planning obligations, the new directive seeks to reduce public exposure to atmospheric pollutants and mitigate the adverse consequences of air pollution for human health.

The analysis undertaken in this study demonstrates that the obligations imposed upon Member States extend beyond the mere transposition of European legislation and require the adoption of concrete and effective measures aimed at preventing and reducing air pollution. During the period from 2026 to 2030, Member States are expected to develop more efficient monitoring systems, prepare air quality roadmaps for areas exposed to the risk of non-compliance, and integrate air quality objectives into policies relating to transport, energy, industry, and urban development.

For Romania, the new European air quality standards pose significant challenges from both legal and institutional perspectives. Achieving the objectives established for 2030 requires the adaptation of the national legislative framework, the strengthening of air quality monitoring and control mechanisms, and the development of public policies capable of effectively responding to the new European requirements. In the Romanian legal system, the general legal framework governing environmental protection and the obligations of public authorities in this field is established by Emergency Government Ordinance No. 195/2005 on Environmental Protection [10]. Equally important is the need to intensify measures aimed at preventing air pollution and to develop administrative and technical instruments capable of reducing emissions originating from the principal sources of pollution.

Furthermore, air quality protection must be considered in light of the fundamental right to a healthy environment. In this respect, the obligation of the State to ensure a high level of environmental protection requires the adoption of effective legislative and administrative measures aimed at reducing risks to public health and guaranteeing the effective enjoyment of fundamental rights. Contemporary international environmental law increasingly recognises environmental protection and the safeguarding of human health as mutually reinforcing objectives that require integrated and preventive legal responses [16].

In conclusion, Directive (EU) 2024/2881 constitutes a particularly important legal instrument for strengthening air quality protection within the European Union and for promoting the objectives of sustainable development. However, the effectiveness of the new European standards will ultimately depend upon the capacity of Member States to transform their legal obligations into coherent and effective measures capable of reducing air pollution and improving public health outcomes. For Romania, the coming years represent an important opportunity to modernise its legislative and institutional framework governing air quality protection and to consolidate public policies aimed at ensuring a cleaner and healthier environment for both present and future generations.

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CENTRAL AUTHORITY AND ADMINISTRATIVE INSTITUTIONS IN MEDIEVAL TRANSYLVANIA: HISTORICAL-LEGAL AND COMPARATIVE PERSPECTIVES

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Abstract:
This study examines the organization of central authority in medieval Transylvania from an interdisciplinary perspective situated at the intersection of history, law, and public administration. It proceeds from the premise that institutions cannot be adequately understood solely through the description of their historical evolution but must be analyzed simultaneously in relation to the context of their emergence, the legal form they acquired, and the administrative function they performed within the organization of public authority. To this end, the study employs a three-dimensional analytical model applied to the principal institutions of central authority in medieval Transylvania, namely the Voivode, the Voivode's Council, the General Congregations, the Prince, the Princely Council, the Governor, the Gubernium, the Aulic Chancellery, and the Diet.
The research also includes a comparative analysis of the principal European models of central authority, not as an end in itself, but as a methodological instrument for highlighting the distinctive features of the Transylvanian institutional model. The findings demonstrate that the evolution of central administration in Transylvania reflects a continuous process of institutionalization of public authority, characterized by the adoption, adaptation, preservation, and development of administrative structures shaped both by the European politico-legal context and by the historical realities of the province.
The contribution of this study lies both in its integrated historical-legal and administrative interpretation of the institutions of central administration and in its proposal of a methodological framework applicable to the study of institutions in the history of the state and public administration.
Keywords: *institution; central public administration; Transylvania; Middle Ages; public law.*

Introduction

The study of the institutions of central authority in medieval Transylvania occupies an important place both in Romanian historiography and in scholarship devoted to the history of the state, law, and public administration. Over time, institutions such as the Voivode, the General Congregations, the Prince, and the Diet have been examined primarily from a historical perspective, with particular emphasis on their origins, evolution, and competences within the politico-administrative organization of the province. Existing

approaches, however, generally examine these institutions separately—as historical realities, legal institutions, or administrative bodies—without systematically addressing the relationship between the historical context of their emergence, the legal form they acquired, and the administrative function they performed in the organization of public authority.

The present study seeks to analyze the institutions of central authority in medieval Transylvania from an interdisciplinary perspective situated at the intersection of history, law, and public administration. The research problem does not consist in describing the evolution of each institution individually, but rather in explaining the manner in which these institutions contributed to the organization and institutionalization of public authority within a political space characterized by multiple politico-legal influences and successive constitutional transformations.

The principal objective of this study is to examine the process through which central authority was organized and institutionalized by means of the administrative institutions of medieval Transylvania, highlighting both institutional continuities and the transformations resulting from the evolving relationship between the province and the political authorities upon which it depended throughout the Middle Ages and the early modern period.

The research is based on the hypothesis that the evolution of the institutions of central administration in Transylvania cannot be explained solely by the succession of historical events or by changes in the political status of the province, but rather through an analysis of the manner in which each institution reflects the broader process of organizing and institutionalizing public authority. Accordingly, the fundamental research question comprises two interrelated components: how was public authority organized in medieval Transylvania through its central institutions, and to what extent does this process reflect both the influences of and the particularities inherent in the European model of the organization of political authority?

From a methodological perspective, the study employs a three-dimensional model for the analysis of institutions, based upon the simultaneous examination of the historical context of their emergence, the legal form they acquired, and the administrative function they performed in the organization and consolidation of public authority. Such an

approach makes it possible to integrate historical inquiry, legal analysis, and institutional-administrative interpretation within a coherent research framework. The comparative analysis of the principal European models of central authority serves as a methodological instrument designed to highlight the distinctive characteristics of the Transylvanian model, rather than constituting an independent object of investigation.

The validity of the conclusions advanced in this study rests upon three complementary criteria. First, every assertion is examined in relation to the historical sources and the historical context in which the institution under consideration emerged. Second, it is assessed in relation to the legal foundations governing its organization and operation. Third, it is evaluated according to the administrative function performed by the institution within the broader process of organizing public authority. We contend that only through the simultaneous application of these three criteria can institutions be understood as expressions of the institutionalization of authority rather than as mere historical phenomena.

Within this framework, the institution constitutes the fundamental unit of analysis. The contribution of the present study therefore lies not in cataloguing the institutions of central administration, but in explaining the manner in which they reflect the transformation of political authority into institutionalized authority. History provides the context for the emergence of institutions; law explains their legal form and legitimacy; and public administration makes it possible to understand the functions through which they organize the exercise of power. Together, these three perspectives establish a coherent analytical framework for interpreting the organization of public authority in medieval Transylvania.

1. The Concepts of “Power” and “Institution” in Medieval Europe: The Conceptual Framework of the Organization of Authority

Throughout history, the concept of *power* has been the subject of scholarly inquiry in various fields, particularly in public administration and legal studies. As has been observed, “just as social structures are fluid and hierarchy is not ossified, neither are the boundaries between different discourses on power—whether hidden or public—separated by impenetrable walls [...]” [1].

An understanding of the institutions of central authority in medieval Transylvania necessarily requires that they be examined within the broader process of the organization and institutionalization of political authority in medieval Europe. Despite the diversity of forms of government and the politico-legal traditions characteristic of individual territories, medieval European states underwent a common process of consolidating central authority, manifested through the emergence and development of institutions entrusted with ensuring the exercise, continuity, and legitimacy of political power.

The evolution of these institutions cannot be explained solely by the succession of historical events or by an examination of the legal norms that formally established their existence. Rather, it reflects a broader process of organizing public authority, whereby political power acquired stability through institutional structures capable of transcending the personal nature of rulership and ensuring the continuity of the exercise of public functions. From this perspective, institutions constitute the organized expression of authority, and their development offers one of the most meaningful perspectives for understanding the formation and consolidation of central authority in medieval society.

The analysis of these mechanisms necessarily requires a comparative approach, since the institutional forms developed across the various European political entities responded to similar needs regarding the organization of authority, even though the solutions adopted differed according to the political, legal, and social context of each state [2]. Accordingly, comparison is not intended to identify identical models of institutional organization, but rather to highlight the common functions performed by medieval institutions in the exercise and consolidation of public authority.

Furthermore, beginning in the second half of the thirteenth century [3], the social estates/social classes throughout Europe gradually organized themselves and established representative institutions within the administrative systems of medieval states. Similarly, in the Romanian lands, the estates began to assert their political role by organizing themselves and securing representation within the central administration of the state.

Before proceeding further, however, it is appropriate to provide a brief clarification of the concept of *estate*. According to the *Explanatory Dictionary of the Romanian Language* (*Dicționarul explicativ al limbii române*), the term *stare* (estate) denotes, inter

alia, “a condition in which a person or thing exists; a manner, form, or state in which a person or thing presents itself; the fact of being in a certain position; bodily posture; physical or moral condition; material condition (prosperity); wealth; a social category, group, or stratum; rank, hierarchy, or social status” [4].

2.1. „The Institution” as an Expression of Public Authority in Medieval Europe

The institution constitutes one of the fundamental forms through which political authority acquires legal expression and administrative organization. Beyond the diversity of structures characteristic of individual medieval polities, institutions represent the mechanisms through which power is organized, legitimized, and exercised over the community. In this sense, an institution cannot be reduced to the mere existence of an office or an individual authority; rather, it embodies the stability of political organization and the continuity of the exercise of power beyond the person holding office.

This perspective makes it possible to move beyond an exclusively descriptive approach to the history of medieval institutions. Institutions are not merely administrative structures belonging to a particular historical period; they are legal forms through which political authority acquires stability, continuity, and the capacity to produce legal and administrative effects within the community [5]. From this standpoint, history explains the circumstances surrounding the emergence of an institution, law defines its legal form and legitimacy, while public administration enables an understanding of the functions through which it organizes the exercise of authority.

In the theory of the state, the existence of public authority presupposes not only the recognition of a power to command but also its institutionalization through stable mechanisms of organization and exercise. In medieval society, this process manifested itself through the gradual transformation of the sovereign's personal authority into authority exercised through permanent institutions endowed with their own competences and integrated into an evolving system of government.

Within this context, the concept of legitimacy acquires particular significance. The exercise of power depends not only upon the existence of political authority but also upon the legal and social recognition of the competences of the institutions through which such authority acts. Legitimacy gradually ceases to belong exclusively to the ruler and

becomes attached to the institutions exercising public functions on his behalf, thereby contributing to the stability and continuity of political organization.

Consequently, the process of centralization characteristic of medieval Europe should not be understood solely as the progressive concentration of power in the hands of the monarch, but also as a process of institutionalization of public authority. The historical and constitutional development of the central institutions of medieval Transylvania requires us to distinguish between the successive stages of its constitutional evolution. As Ioan Lupaș observed, these stages arise “naturally from the very characteristic features of this country's past, and therefore from the specific character of Transylvania” [6]. The development of royal councils, chanceries, advisory bodies, and other permanent institutions reflects the transformation of the personal exercise of power into an institutional system capable of ensuring the continuity of government and administration.

2.2. The Process of Centralization in Medieval Europe

The consolidation of central authority constitutes one of the defining transformations of medieval Europe. Although the evolution of the various European kingdoms and principalities followed distinct trajectories and assumed different institutional forms, the scholarly literature identifies a common tendency towards transcending the exclusively personal character of authority and developing permanent institutional structures capable of ensuring the continuity of governance.

In Western historiography, the process of consolidating central authority and the development of medieval institutions have been examined from complementary perspectives. Marc Bloch emphasized the distinctive characteristics of feudal society and the authority relationships that underpinned its political organization [6]. Other scholars have interpreted the development of medieval institutions as one of the essential preconditions for the emergence of the European state. At the same time, considerable attention has been devoted to the relationship between administrative organization and the evolution of state structures.

Beyond the particularities of each political entity, the process of centralization cannot be reduced to the mere concentration of power in the hands of the monarch. It equally

represents a progressive process of institutionalization of authority, through which the exercise of power was gradually transferred to stable institutions endowed with their own competences and integrated into an administrative system characterized by increasing specialization. From this perspective, centralization and institutionalization should not be regarded as distinct phenomena but rather as two complementary dimensions of the same process of organizing public authority.

2.3. European Models of the Organization of Central Authority

Although medieval European states developed institutional arrangements adapted to their own political and legal realities [7], a comparative analysis reveals the existence of common administrative functions that were indispensable to the organization and exercise of central authority. Across the major political entities of medieval Europe, one encounters institutions responsible for exercising sovereign authority, advising the ruler, representing the privileged estates, and organizing the activities of the chancellery, even though their designation, structure, and competences varied from one polity to another.

In France, the consolidation of royal authority was reflected in the development of *the Royal Council* and the *Royal Chancellery*, institutions that contributed significantly to the professionalization of government and the strengthening of monarchical administration. In England, the *Curia Regis* constituted the institutional nucleus from which the kingdom's principal administrative, judicial, and advisory bodies gradually emerged, while *Parliament* acquired an increasingly important role in representing the political interests of the estates.

Within the *Kingdom of Hungary*, royal authority was exercised in close cooperation with *the Palatine* and the central institutions of the realm, while *the Diet* evolved into the representative assembly of the nobility and the other privileged estates.

In Poland, the organization of *the voivodeships* and the operation of the central institutions reflected the adaptation of royal authority to the territorial structure of the kingdom. Similarly, *the Holy Roman Empire* developed a complex institutional system in which *the Imperial Chancellery*, *the Imperial Council*, and *the Imperial Diet* embodied the distinctive constitutional character of imperial political organization.

Considered comparatively, these institutional models reveal the existence of common functions of central authority irrespective of the particularities of individual states: the exercise of political authority, the provision of counsel to the ruler, the representation of the political interests of the privileged community, and the organization of the administrative apparatus through the chancellery. The diversity of institutional forms, therefore, does not preclude the existence of a common logic underlying the organization of authority throughout medieval Europe.

Against this background, the question naturally arises that guides the next part of our study: *where does Transylvania stand in relation to these European models of the organization of central authority?* The answer cannot be obtained merely by identifying institutional similarities. Rather, it requires an examination of the manner in which the Transylvanian political space adopted, adapted, and developed its own institutional structures for the exercise of authority within the broader context of its historical evolution and its integration into the Kingdom of Hungary.

3. The Particularities of the Organization of Central Authority in Medieval Transylvania in the Context of European Models

The analysis of the organization of central authority in medieval Transylvania requires that it be examined both within the general framework of European institutional development and in light of the specific politico-legal characteristics of the Transylvanian polity. While the European models reveal the existence of common institutional functions in the organization of public authority, the case of Transylvania illustrates the manner in which these functions were adapted to a distinctive historical and constitutional context shaped by its incorporation into the Kingdom of Hungary and by subsequent political developments.

From a historical perspective, Transylvania did not experience an isolated institutional development. Rather, it became integrated into the politico-administrative system of the Kingdom of Hungary, within which the central institutions were organized in accordance with the interests of the Crown and the administrative requirements of a frontier territory situated on the eastern border of the kingdom. At the same time, the

ethnic, social, and confessional particularities of Transylvania gave rise to institutional arrangements that cannot be explained solely by reference to the Hungarian model.

Accordingly, the evolution of central authority in Transylvania may be understood as the result of the interaction between the politico-legal framework of the Kingdom of Hungary and the adaptations required by local realities. The Transylvanian institutions were neither simple reproductions of external models nor entirely autonomous creations; rather, they constituted the outcome of a continuous process of institutional borrowing, adaptation, preservation, and development. In this respect, it may be observed that the process of political differentiation was also made possible by the emergence of a hierarchical structure incorporating newly established institutions as well as institutions that had evolved from earlier, unspecialized forms, such as *corporate bodies*, *orders* or *estates*, *representative assemblies*, and *lands*, all of which will be examined in the following sections [8].

The adoption of European institutional models (particularly those of the Kingdom of Hungary) provided the general framework for the organization of authority. Their adaptation to the specific conditions of Transylvania resulted in the development of distinctive institutional competences and relationships. At the same time, certain administrative structures and practices were preserved over several centuries, thereby ensuring the stability of political organization, while the transformations associated first with *the Voivodeship* and later with the establishment of *the Principality of Transylvania* encouraged the emergence of new institutions corresponding to the changing nature of political authority.

Consequently, the distinctive character of the organization of central authority in medieval Transylvania does not derive from the existence of institutions fundamentally different from those found elsewhere in medieval Europe, but rather from the specific manner in which they were incorporated into a unique politico-legal system. It is precisely this combination of external influences and internal institutional evolution that confers individuality upon the Transylvanian institutional model and justifies the analysis of each institution with reference to the historical context of its emergence, the legal form it acquired, and the administrative function it performed within the organization of public authority.

In the following part of this study, this analytical framework will be applied to the principal institutions of central authority in medieval Transylvania in order to highlight the role each played in the process of organizing and institutionalizing public authority.

4. The Institutions of Central Authority from the Perspective of the Three-Dimensional Analytical Model

The analysis of the institutions of central authority in medieval Transylvania marks the stage at which the methodological framework outlined above is put into practice. From this perspective, each institution has been examined according to a predetermined analytical model. Consequently, an exclusively chronological approach, as well as a mere inventory of the powers and competences attributed to each institution, has deliberately been avoided.

The consistent application of this methodological framework has made it possible to move beyond a purely descriptive account and to demonstrate the manner in which each institution contributed to the organization, consolidation, and institutionalization of central authority. Accordingly, the analysis of every institution concludes by assessing its contribution to the broader process of the centralization of public authority. This approach enables individual observations to be integrated into a coherent explanation of the evolution of political organization in medieval Transylvania.

4.1. The Institution of the Voivode

The institution of the Voivode constituted one of the oldest and most significant forms of public authority in medieval Transylvania, embodying both the continuity of indigenous politico-administrative structures and their adaptation to the new constitutional framework established through the incorporation of Transylvania into the Kingdom of Hungary [9]. The emergence and development of the Voivodeship must be understood within the broader context of the evolution of pre-state political formations, namely the Romanian knezates and voivodeships, which preceded the feudal organization of the province and provided the foundations of its administrative system. The gradual conquest of Transylvania by the Hungarian Crown did not lead to the abolition of these structures; rather, they were incorporated into a new politico-legal order in which the institution of the

Voivode retained its name, its essential character, and a substantial part of its traditional competences.

From a legal perspective, the Voivode occupied the highest office within the central administration of Transylvania, exercising authority in the name of the King of Hungary, who possessed the power to appoint and dismiss him. His legal status reflected the distinctive relationship between the institutional autonomy of Transylvania and the suzerainty of the Hungarian Crown. Although he served as the king's representative within the province, the Voivode cannot be regarded merely as a royal official, since the institution itself predated the Hungarian conquest and possessed an established legitimacy within the political organization of Transylvania. The preservation of the Voivodeship, despite repeated attempts during the twelfth and thirteenth centuries to replace it with the institution of the Prince, demonstrates both the resilience of local politico-legal traditions and the compromise that characterized the constitutional organization of the province. In this respect, the continued existence of the institution of the Voivode may be interpreted as an expression of the continuity of indigenous administrative structures, adapted to the requirements of a new framework for the exercise of political authority.

From an administrative perspective, the functions of the Voivode extended far beyond the strictly military responsibilities suggested by the etymology of the title. As head of the province, he exercised administrative, judicial, fiscal, and military powers; coordinated the activities of local officials; convened and presided over assemblies of the nobility; and represented central authority in the relationship between Transylvania and the royal government. At the same time, he was responsible for the defence of the province, supervised the collection of revenues owed to the Crown, and participated in the administration of justice, thereby contributing to the maintenance of public order and the enforcement of the law. The breadth of these competences demonstrates that the institution of the Voivode concentrated within itself the principal functions of medieval central administration, serving as the essential link between monarchical authority and the administrative organization of the province.

Examined through the three-dimensional analytical model proposed in this study, the institution of the Voivode illustrates the manner in which public authority was

organized through the combination of indigenous politico-legal traditions and the structures of power characteristic of the Kingdom of Hungary. The Voivode thus represents not merely the highest administrative office of medieval Transylvania, but also the institutional expression of a broader process of adaptation and consolidation of public authority. Through this institution, central authority acquired a stable legal form and an administrative mechanism capable of ensuring the effective exercise of public competences throughout the province. Consequently, the institution of the Voivode demonstrates that the process of centralization in medieval Transylvania was achieved not through the replacement of traditional structures, but through their integration and transformation into an institutional system compatible with the politico-legal organization of the kingdom, while preserving the distinctive administrative identity of Transylvania.

4.2. The Voivode's Council

Within the central administration of the Voivodeship of Transylvania, the Voivode's Council performed an advisory function, assisting the Voivode in the exercise of his authority and contributing to the consolidation of the provincial administrative apparatus [10]. Although the surviving historical sources provide less extensive information than in the case of comparable institutions in the other medieval Romanian principalities, the existence of an advisory body surrounding the Voivode reflects the broader tendency towards the institutionalization of political authority and the gradual specialization of administrative activity.

From a legal perspective, the Voivode's Council did not constitute an authority distinct from the Voivode, but rather an institution designed to assist him in the performance of his official duties [11]. The development of the Council was closely linked to the evolution of the Voivodal Chancellery and to the progressive professionalization of the administrative apparatus. During the early stages of the Voivodeship, responsibility for drafting and preserving the records of the General Congregations rested primarily with ecclesiastical authorities. Subsequently, these responsibilities were assumed by the Voivodal Chancellery, marking a significant step in the consolidation of secular administration.

Within the Chancellery served the Prothonotary of Transylvania, an official responsible for drafting official documents and dealing with a variety of legal matters. Over time, his role evolved from that of head of the Chancellery to the exercise of increasingly important judicial responsibilities. The development of the Chancellery, the creation of the office of the Secretary to the Voivode, and the gradual separation of administrative from judicial functions during the sixteenth century illustrate the differentiation and specialization of the provincial administrative apparatus.

From an administrative perspective, the Voivode's Council provided the technical and legal support necessary for the effective exercise of voivodal authority. The activities of the Chancellery, the drafting of official documents, the preservation of administrative records, and the management of legal instruments constituted indispensable elements of the functioning of central administration. At the same time, the presence of specialized officials (such as the Prothonotary, the Secretary, and the Judge of the Voivode's Court) demonstrates that the exercise of authority was no longer dependent solely upon the personal authority of the Voivode, but increasingly relied upon an administrative apparatus undergoing continuous organization and professionalization.

Examined through the three-dimensional analytical model employed in this study, the Voivode's Council illustrates the transition from the personal exercise of authority [12] to its exercise through specialized administrative structures. The institution demonstrates that the centralization of authority was achieved not only through the strengthening of the position of the Voivode, but also through the development of an administrative apparatus capable of ensuring the continuity of government, the preparation of official acts, and the performance of legal and administrative functions. From this perspective, the Voivode's Council represents one of the earliest manifestations of the institutionalization of the administrative function within the central authority of medieval Transylvania.

4.3. The General Congregations

The General Congregations constituted one of the most significant institutional manifestations of public authority in Voivodal Transylvania, reflecting the participation of the privileged estates in the exercise of political power and in the administration of provincial affairs. Their emergence and development must be understood within the

broader context of the consolidation of the county (*comitatus*) system and the need to assemble representatives of the nobility, the Saxons, and the Székelys in order to address matters of common concern. Convened, as a rule, by the Voivode, the General Congregations gradually evolved into the institutional forum in which the principal administrative, judicial, and political issues affecting Transylvania were debated and resolved.

From a legal perspective, the General Congregations were not merely occasional assemblies but institutions endowed with clearly defined functions within the organization of provincial authority. The congregations of the nobility, usually held at Turda (Torda), brought together the lawful representatives of the counties and adopted decisions concerning territorial administration and the settlement of legal disputes. Contemporary documentary evidence further demonstrates that no strict separation existed between the powers of the feudal state. Consequently, feudal lords and high-ranking officials exercised both administrative and judicial authority, combining the functions of governance and adjudication within the same institutional framework [13].

Alongside these noble congregations, the Saxon and Székely communities possessed their own representative institutions, embodied in the district congregations (*scăunale*) and in the general assemblies of the Universitas Saxonum and the Universitas Siculorum, respectively. These bodies exercised administrative, judicial, and political competences within the framework of their traditional autonomies, thereby contributing to the institutional diversity that characterized medieval Transylvania.

From an administrative perspective, the General Congregations constituted the principal forum for cooperation between the voivodal authority and the privileged estates of the province. Through these assemblies, measures were adopted concerning the administration of the counties, the organization of justice, the defence of the territory, and the regulation of relations among the various privileged communities. The existence of separate assemblies for the nobility, the Saxons, and the Székelys illustrates the distinctive politico-legal structure of Transylvania, characterized by the coexistence of central authority with well-established forms of local autonomy.

Viewed through the lens of the three-dimensional analytical model employed in this study, the General Congregations demonstrate that the institutionalization of authority in

medieval Transylvania was achieved not solely through the consolidation of the central administrative apparatus but also through the incorporation of the representative structures of the privileged estates into the mechanisms of governance. These institutions exemplify the distinctive nature of the Transylvanian model, in which the centralization of authority coexisted with the preservation of traditional forms of representation and autonomy, thereby conferring upon the province's politico-administrative organization a character that distinguished it from other European models.

4.4. The Institution of the Prince

The institution of the Prince marks a fundamental transformation in the organization of central authority in Transylvania, following the collapse of the direct authority of the Hungarian Crown after the Battle of Mohács (1526) and the establishment of the Principality of Transylvania as a distinct political entity [14]. This new constitutional arrangement did not constitute a radical break with the voivodal period; rather, it represented the adaptation of existing institutions to a new politico-legal framework shaped by the relationship between the Principality, the Ottoman Empire, and, subsequently, the Habsburg Monarchy.

From a legal perspective, the Prince became the holder of supreme authority within the state, exercising political, military, administrative, and judicial powers. Although elected by the Diet, the effective exercise of princely authority was, during different periods, contingent upon confirmation by the Ottoman Porte and, later, upon recognition by the Habsburg sovereign. This constitutional feature distinguishes the institution of the Prince both from that of the Voivode, who acted as the representative of the King of Hungary, and from the rulers of the Western European monarchies, whose sovereignty generally enjoyed a greater degree of constitutional independence.

From an administrative standpoint, the Prince directed the entire system of central administration, conducted foreign policy, exercised supreme military command, appointed the principal dignitaries of the state, and supervised the activities of the central institutions. Around the Prince developed an administrative apparatus considerably more sophisticated than that of the voivodal period, reflecting the increasing institutional specialization characteristic of the early modern era.

Examined through the three-dimensional analytical framework adopted in this study, the institution of the Prince demonstrates that the institutionalization of public authority in Transylvania entered a more advanced stage of development, characterized by the consolidation of political autonomy and the expansion of the competences of central administration. The transformation of the Voivodeship into the Principality therefore represents not merely a change in political title but the emergence of a new model of government adapted to the European political realities of the sixteenth and seventeenth centuries.

4.5. The Princely Council

The exercise of princely authority was supported by the Princely Council, an institution that ensured both the collegial character of political decision-making and the continuity of central administration. The emergence and development of this body reflect the progressive professionalization of government and the gradual differentiation of administrative functions from the personal authority of the ruler.

From a legal perspective, the Princely Council functioned as an advisory institution without diminishing the authority of the Prince. Nevertheless, it participated consistently in the formulation of decisions concerning provincial administration, foreign relations, fiscal policy, and military affairs. Its membership comprised the principal dignitaries of the Principality together with representatives of the nobility, thereby endowing the institution with both political legitimacy and an important role in maintaining the balance between central authority and the provincial elites.

From an administrative perspective, the Princely Council coordinated the activities of the principal central institutions and ensured the continuity of government by contributing to the preparation of the Prince's administrative and legal decisions. Its existence reflects the transition from an individual mode of governance to an institutional model in which political decision-making increasingly depended upon permanent administrative structures.

From the perspective adopted in this study, the Princely Council demonstrates that the evolution of central administration was achieved not solely through the strengthening

of the ruler's authority but also through the development of consultative institutions capable of ensuring the stability and continuity of government.

4.6. The Governor

The institution of the Governor emerged within a new constitutional framework shaped by the incorporation of Transylvania into the Habsburg Monarchy and the subsequent reorganization of the province's administration in accordance with the interests of the Imperial Court in Vienna. The office of the Governor embodied the continuity of central authority within a political system in which the Prince no longer represented the supreme authority of the state.

From a legal perspective, the Governor acted as the representative of the Habsburg sovereign in Transylvania, exercising his functions in accordance with the directives issued by the Imperial Court. He did not possess sovereign authority in his own right; rather, he governed the province on behalf of the Emperor, in close cooperation with the other central institutions of the Habsburg administration.

From an administrative standpoint, the Governor coordinated the activities of the provincial administration, supervised the implementation of imperial policies, and maintained continuous cooperation with the Gubernium and the Aulic Chancellery. These institutional relationships illustrate the integration of Transylvania into a centralized administrative system characteristic of the Habsburg Monarchy.

Viewed through the three-dimensional analytical framework employed in this study, the institution of the Governor demonstrates that the institutionalization of public authority continued even after the end of the autonomous Principality, albeit within a different legal and constitutional framework. The exercise of authority was now incorporated into an imperial administrative system distinguished by a considerably higher degree of centralization and bureaucratic organization than that which had characterized the preceding constitutional order.

4.7. The Gubernium, the Aulic Chancellery, and the Diet

The consolidation of Habsburg rule in Transylvania led to the development of specialized central institutions designed to ensure the effective exercise of imperial

authority throughout the province. Among these, the Gubernium, the Aulic Chancellery, and the Diet occupied a central place in the organization of provincial administration and in the institutional evolution of Transylvania.

Established by the Imperial Diploma of 16 October 1690, the Gubernium became the principal collegiate administrative body of the province. Composed of twelve councillors and presided over by the Governor, it exercised extensive responsibilities relating to the administration of justice, the collection of public revenues, the maintenance of public order, and the implementation of directives issued by the imperial authorities. At the same time, the Gubernium represented an institutional continuation of the Princely Council, adapted to the new politico-legal realities imposed by Habsburg rule.

Parallel to the activities of the Gubernium, the Aulic Chancellery of Transylvania served as the permanent institutional link between the provincial administration and the Imperial Court in Vienna. It was responsible for drafting official acts, communicating imperial decisions, and coordinating administrative relations between the central imperial authorities and the provincial administration. Through these functions, the Chancellery contributed significantly to the standardization of administrative practice and to the integration of Transylvania into the bureaucratic system of the Habsburg Monarchy.

The Diet retained its role as the representative institution of the privileged estates, participating in the adoption of the principal decisions concerning the organization of the province and cooperating with the imperial authorities in the exercise of government. Although its competences were progressively restricted, the Diet remained one of the essential components of the Transylvanian institutional system, reflecting the continuity of representative traditions within a fundamentally altered constitutional framework.

Considered together, the Gubernium, the Aulic Chancellery, and the Diet illustrate the final stage of the process of institutionalization of public authority examined in the present study. Whereas the institutions of the Voivode and the Prince embodied authority concentrated in the person of the political ruler, the institutions established during the Habsburg period reveal the emergence of a specialized administrative system characterized by the distribution of competences among distinct public authorities and by the increasingly bureaucratic nature of governance. From this perspective, the evolution of the central institutions of medieval and early modern Transylvania confirms the central

hypothesis of this research, namely that the organization of public authority developed through a continuous process of institutionalization, shaped by historical transformations and by the influence of European politico-legal models.

Conclusions

The analysis of the institutions of central authority in medieval Transylvania confirms that the organization of public authority cannot be adequately understood solely through the chronological succession of institutions or by describing their respective competences. Beyond the political and constitutional transformations that occurred throughout the period under consideration, the evolution of central administration reflects a continuous process of institutionalization of authority, within which administrative structures were constantly adapted to historical developments and to the influence of European politico-legal models.

The present research demonstrates that the distinctive character of the Transylvanian institutional model does not derive from the existence of institutions fundamentally different from those found elsewhere in medieval Europe. Rather, it lies in the manner in which these institutions adopted, adapted, preserved, and further developed mechanisms for organizing authority that were compatible both with indigenous politico-legal traditions and with the evolving constitutional relationships between Transylvania, the **Kingdom of Hungary**, the **Ottoman Empire**, and the **Habsburg Monarchy**. Accordingly, the institutions examined in this study reflect both the continuity of established administrative structures and their capacity to respond to successive political contexts without interrupting the broader process of organizing public authority.

The application of the three-dimensional analytical model has made it possible to examine each institution in relation to the historical context of its emergence, the legal form it acquired, and the administrative function it performed within the framework of central administration. This methodological approach has demonstrated that institutions should not be regarded merely as historical phenomena or autonomous legal constructions, but rather as successive expressions of the same process of institutionalizing public authority. From this perspective, the research hypothesis is

confirmed: the organization of central authority in medieval Transylvania can be properly understood only through an integrated analysis of the historical, legal, and administrative-institutional dimensions of each institution.

Furthermore, the comparative examination of the principal European models of central authority has demonstrated the value of comparative analysis as a methodological instrument of interpretation rather than as an autonomous object of research. Continuous reference to institutional developments across medieval Europe has made it possible to determine the place occupied by Transylvania within this broader context, while also demonstrating that the evolution of Transylvania's central administration formed part of a wider European process of consolidating and specializing public authority, albeit while preserving its own distinctive institutional identity.

The principal contribution of the present study lies both in its reinterpretation of the institutions of central administration in medieval Transylvania through an interdisciplinary approach and in its proposal of a methodological framework that may also be applied to the study of other institutions in the history of the state, law, and public administration. From this perspective, institutions are understood not merely as components of a historical administrative organization [16], but as the legal forms through which political authority acquires juridical expression and administrative effectiveness within the community. It is precisely this integrative perspective that offers a more comprehensive understanding of the process through which public authority was organized and consolidated in both the Romanian and the broader European medieval context.

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