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More strange than we can imagine. An Alternative History of a Monumental Destiny - Lawyer Petre Pandrea

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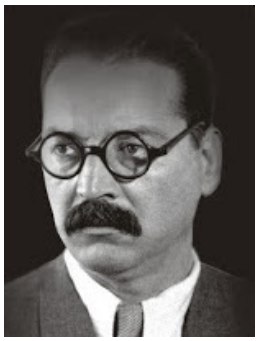

„I'm not sorry about anything. If I were to start life again, I would go on the same level and commit the same mistakes, step by step, or the same positive facts. Who can know the judgment of future history? "

„I am not Romanian, I am Oltenian and European".
Petre Pandrea

Abstract

In times of annoyance of an individual's history, it can happen to be conservative, then radically dangerous, eventually ending up with an inconvenient reactionary, and yet without changing his ideas at least once, that's what happened to him to Petre Pandrea, a Romanian passionate about his country, in the first decades of the 20th century. The time has come, therefore, for a new perspective on our recent history and personalities who have marked it, imparting to them a certain course through their destiny. Taking Petre Pandrea's guide, we get out of the way and we cure through some of the less lighted clusters of the beginning of the 20th century, Romanian, expounding both known and less known territories, discovering totally new approaches on our way to the present. We travel to the company of one of the greatest Romanian jurists, scholar, genius and eccentric of the time. It shows us that the big issues, such as capitalism, communism, justice and the Holocaust of Romanian culture, are not abstract or impossible to understand, as we all believe, but important strands that lead us to the world we live in. Petre Pandrea presents an alternate history of the most dramatic period of the 20th century, Soviet communism, loan, forced, and Romanian, native. It shows how the concentric and unpredictable universe of the communist era has become increasingly fuzzy and uncertain and how we have discovered that our world is not just stranger than we thought but to use the words of astrophysicist Sir Arthur Eddington " we can imagine. "

Keywords: *Romania, Petre Pandrea, Mandarinul Valah, communism, the Holocaust of Romanian culture*

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1. Beginner Word. The context of Petre Pandrea's epoch

In times of annoyance of an individual's history, it can happen to be conservative, then radically dangerous, eventually ending up with an inconvenient reactionary, and yet without changing his ideas at least once, that's what happened to him to Petre Pandrea, a Romanian passionate about his country, in the first decades of the 20th century. The 20th century should be known to us. It is that period of history that I most know, an epic geopolitical story, going through World War I, the Great Depression, the Second World War, the American Century, and the Fall of the Berlin Wall. But it is not known how this story leads us to the world in which we now live, this twenty-first century stunning, trapped in a network of constant supervision, unwarranted competition, in the midst of a tsunami of petty things and unrelenting occasions. The time has come, therefore, for a new perspective on our recent history and personalities who have marked it, imparting to them a certain course through their destiny. Taking Petre Pandrea's guide, we go out of the way and we roam through some less enlightened cloaks of the beginning of the 20th century, Romanian, expressing both known and less known territories, discovering totally new approaches on our way to the present. We travel to the company of one of the greatest Romanian jurists, scholar, genius and eccentric of the time. It shows us that the big issues, such as capitalism, communism, justice and the Holocaust of Romanian culture, are not abstract or impossible to understand, as we all think, but important strands that lead us to the contemporary. Petre Pandrea presents an alternate history of the most dramatic period of the 20th century, Soviet communism, loan, forced, and Romanian, native. It shows how the concentrated and unpredictable universe of the communist era has become more and more misty and uncertain and how we have discovered that our world is not just more weird than we thought, but "stranger than we can imagine."

A painful, but long-awaited history - the 1950s of the last century, the first decade of the Communist regime. Ignored by the official historiography and propaganda of the regime, known only to those who lived it, it could only be studied after 1989. Only then could the younger generations, which were the real life of the country, the Romanians managed to adapt to the new conditions. And yet, a history not yet fully known in its truth, though after 1989 there were published numerous documents, evocations, memoirs. No one has yet been able to capture the complexity of the social phenomena experienced at that time. On the one hand, the political elite and most of the cultural one woke up dislocated and thrown out of the light area of the historical scene. The way of life has changed sharply and tragically. Testimonies about the existence of this category appear mainly in criminal files,

Securitate documents, hidden journals, or memorial books published after 1990. On the other hand, several hundred thousand Romanians were designed - many in good faith, but completely deprived of the necessary culture and training - to occupy the place left vacant by the first social category. The papers are full of their actions, obviously presented in a cosmetic form. In the middle there were other Romanians, for whom the change of political regime did not bring major changes in everyday life. They got up early in the morning, went to work, returned home, and the next day they took it from the end. Even gaps and cards were not a novelty. They had been accustomed to them in the years of the war.

As for Petre Pandrea, we appreciate that he was part of the "27th Generation" which was primarily a Bucharest phenomenon, with its center in the University, at the Faculty of Philosophy and Letters. The core of the generation consisted of the students of Nae Ionescu and his collaborators from the "Word". "At first, there were highly personalized relationships between the members of the generation, which, in its first phase, resembles Junimea, the Sibiu Literary Circle or the Echinox. As the generation became increasingly noisy in the Romanian cultural life, it embraced young people from other fields of culture (writers, actors, directors, painters, ballerinas, journalists, theologians, lawyers, etc.). At the same time, it became, through contagion, a wider phenomenon, which, as Mircea Vulcănescu observed, "for the first time in the history of Romanian culture", all the cultural centers in the country ". "Thus, it turns out that the" 27th Generation "broke up not in two, but it broke in its own right in three: some went to the far right legionary, some went to the far left communist, some had remained in apolitical positions, and during times of political pressure they manifested themselves either as democrats (Eugen Ionescu) or as extremists (Constantin Noica).

From the "27th Generation" to Legionnaires went: Mihail Polihroniade, a member of the elite group of "Axa", the first to legionalize, but about which Eugen Ionescu writes that he was first communist; Emil Cioran, who was contaminated by the political morbidity in Hitler's Germany in November 1933 and combining in his project of national collectivism both extreme right elements and Communist elements of admiration for Bolshevik Russia and Hitler's Germany simultaneously; Mircea Eliade in November-December 1935; Constantin Noica, a 1937 critic of democracy that "atomizes" and questioning collectivism that "enlightens the contemporary world," became a legionary late in 1938, but with papers in order; Haig Acterian, about which two sources, Sebastian and Eugen Ionescu, say that he was initially a communist; Alexander Christian Tell, one of the Criterion rulers, as Eliade writes and confirms H.H. Stahl; Petre Țuțea, "which are known in junețe was passionate leftist, not otherwise than passionately right maturity and mumbled reactionary old age", so that balanced from communism fanatic up in 1933, right after this time; Arsavir Acterian, Marietta Sadova, and outside Criterion, at the edge of the generation, Vintila

Horia, Radu Gyr, P.P. Panaitescu, Ernest Bernea, Traian Herseni (the latter, initially suspected of communism, collaborator in Zaharia Stancu's "Today" publication, then migrating to legionaries because he had not been a teacher.)

"Petre Pandrea, former Nae Ionescu's pupil at Dealu Monastery's elite high school, was a dramatic case. In the "White Lily Manifesto" (1928) he was in national-autochthonous positions; a period of study in Germany between January 1927 and August 1, 1931, it approaches the communist movement and causes him to act as Hitler that after his return published volume, critical of Nazism, "Nazi Germany" (1933). In the interwar period he was the defense attorney in numerous lawsuits brought against the Communists; and in 1932 he approached the peasants, so his evolution is from nationalism to the far left communist and then to the democratic center. " Why have all these balances, reorientations and repositioning occurred? For each of the living on this earth there is a destiny, a path of the alchemist to go through. But these roads crossed or separated themselves in a real, well established context, even by others, in the case of Romania, and in which they were forced to cut. So, in brief words to recall the troubled period of that century that culminated in the suppression of the intellectual elite of Romania, national culture holocaust done with tragic consequences, including for our times by the allogeneic stray in this region blessed by God.

2. Suppressing the intellectual elite of Romania

As commonly known, the communist regimes in Central and Eastern Europe at the time when they took full power, destroyed the intellectual elite, doing violence to suppress and physical extermination, in prisons and camps, a large number of members of the old political classes. At the same time, they have disfigured the national culture of the respective countries and imposed, through a dogmatic ideological directive, a "new culture" under the motto of "proletarian internationalism," renamed globalization today. In Romania, 1948 is a crossroads, since then a systematic policy of communion of society was under the apparent legitimacy of the new legislative and communist essence laws. Since then, the communist regime launch the nationalization of economic enterprises and collectivization of agriculture, and political and cultural started savage repression against representatives of political and intellectual elite, along with a program of Sovietization of culture. The new 1948 law of education radically altered the structure, content and meaning of education, Marxism-Leninism becoming the official ideology of the state, and so all disciplines had to be adapted to the new "revolutionary conception" of the world.

Marxism was not a solution either for the agrarian issue in Romania or for our national problem. It could not be otherwise, because "[the Romanians] are a people without history... destined to perish in the storm of the world revolution... [They are] fanatical supporters of the counterrevolution and will thus remain until

the extinction or loss of their national character [...] Their disappearance on the face of the earth will be a step forward. "So we considered, in a totally suburban way, one of the courage of Marxism-Leninism. Here are the textual statements about the Romanians, presented in the newspaper "Neue Rheinische Zeitung", published on January 13, 1849 and republished, nor could it be otherwise, in Opere Complete volume 8, Moscow, 1977, p. 229: "Romanians are a people without history... destined to perish in the storm of the world revolution... They are fanatical supporters of the counterrevolution and will remain so until the extinction and loss of their national character, just as their own existence in general represents through them themselves a protest against a great historical revolution. Their disappearance on the face of the earth will be a step forward. "

The author of this harsh note is the great Engels himself. Friederich Engels! His eldest, Karl Marx, did not let himself down and said something definitive about us: "There is no justification for allowing primitive nations to continue to exist, since they will never be able to understand the historical mission of socialism. The Poles, the Wallachians (Romanians), the Serbs, and the Russians will never be able to get out of the stone age. "We do not know why the two geniuses judged us so harshly, pronouncing the capital sentence on a whole people: The Romanian must perish! I wonder what I so upset both of them! Do we, the Romanians, be declared "fanatical supporters of the counterrevolution" ?! However, after the death of the two geniuses of mankind, in the next century, the 20th century, their brilliant prediction was confirmed: the Romanians really behaved like fanatics of the counter-revolution! They broke the "storm of the world revolution," and opposed it, were "never able to understand the historical mission of socialism"! Stay admired when you find that the geniuses knew before a few decades how much the Romanians would be the killer of the ideals of the world revolution. Even the Romanians have proved to be a small, small but lively little buttower that will overturn the overwhelming mapmation of communism! How did Marx and Engels know that? Let us remember the anti-communist performance of Romanians in the history of the last 100 years! The unpaid benefit of the Romanians on the anti-Bolshevik, Anti-Comminternist front! Counter-revolutionary! In this part of Europe, the Romanians are the only people who did not join the Bolshevik revolution in Russia! Propaganda announcing and sustaining the "Storm of the World Revolution," which had so great success in the Russians, the Germans, across Austro-Hungary, and especially the soldiers and soldiers on both sides of the Eastern Front to the Romanians, the Romanian soldiers and the Romanian peasants, the Bolshevik, Atheist and anti-monarchical propaganda in general, in Romanian, has not been successful! On the contrary, the Romanians stood up and neutralized the "revolutionary" Hungarian hub of Bela Kuhn, his fellow-ideas from Vienna and Prague. Only the Romanian troops in Austria have not deserted, turned their weapons against the "exploiters" against

the authorities, and intervened with the utmost urgency, suppressing the attempt to give world-wide international character to the Bolshevik revolution in Russia!

Returning to the period of the beginning communism, we note that in 1948 the security was established, under the direct supervision of the Soviet agents, the main instrument of repression of the regime. It was directed to the total control of the population and potential adversaries, especially among the intellectuals. Under the motto of "sharpening the class struggle," this climate of terror continued until the end of the sixth decade when the Soviet troops stationed on Romanian territory were withdrawn (1958). In the same year, 1948, ideological censorship was institutionalized, with effects on all areas of creation or cultural activity. There have been established lists of publications, works or authors who can see the light of print, and lists of publications and works to be banned, with authors to be removed from the public circuit. Public libraries have been stripped of the forbidden works, but have been invaded by translations from Russian literature, publishers and newspapers have been under a severe ideological control, Russian films have invaded screens. The works of Marx, Engels, Lenin, and Stalin have been translated and broadcast to saturation. It was a period of gradual dislocation of the Romanian culture, from an institutional and ideological point of view, and of replacing the national values with works, manuals, ideas, themes and structures transplanted from Moscow with Soviet models. In 1947 there appeared a history of Mihai Roler, in which the formation of the Romanian people and other significant historical moments are grossly deformed in the spirit of Soviet historiography. After 1946 aggressive attacks started against the writers representing the highlights of the Romanian literature: Arghezi, Blaga, Calinescu, Voiculescu; a significant moment for the new orientation is Sorin Toma's article, published in "Scânteia", directed against Arghezi, with the title The Poetry of Putrefaction or Poisoning of Poetry in 1948.

The Romanian intellectual and political elite, in order not to resist resistance, was effectively beheaded; writers, artists, priests, scholars, intellectuals who did not adhere to the regime or were suspected as potential opponents of the regime were jailed under various pretexts, held for years in prisons or sent to work on the Danube-Black Sea Canal, to be tried, convicted in years of severe (15-20 years) imprisonment. Together with the leaders of the traditional parties and the political dignitaries from the previous period who died in prisons (Iuliu Maniu, C-tin CI Bratianu, Ion Mihalache, etc.), a series of first-class intellectuals had the same tragic fate (mention only the philosopher Mircea Vulcănescu, economist Mihail Manoilescu, historian Gh. Bratianu). Some of the intellectuals who were imprisoned (Nichifor Crainic, Petre Țuțea, Vasile Băncilă, Vasile Voiculescu, Ernest Bernea, Radu Gyr, Constantin Noica, Edgar Papu, Anton Dumitriu, Ion Petrovici, Vladimir Streinu) managed to survive this dramatic experience 1964 were released political prisoners). Other writers and thinkers have been

marginalized, taken out of universities, watched for security, forced residence, with a ban on publishing. Lucian Blaga, Tudor Arghezi, Liviu Rusu, Constantin Rădulescu-Motru, and George Călinescu (who left the university in 1949, although he led the Institute of History and Literary Theory for a while and was present in publishing). In the midst of the crackdown that followed, many writers and intellectuals settled in the West after the Second World War. They continued to write and create, in Romanian or in other languages, exile as exponents of the Romanian spirit. Along with the prominent figures of Mircea Eliade, Emil Cioran and Eugen Ionescu, we must mention Aron Cotruş, Ştefan Baciu, Vintilă Horia (who obtained the Goncourt Prize in 1960 for the novel God was born in exile), Horia Stamatu, Alexandru Busuioceanu, George Uscătescu, al. Cioranescu.

An equally strong persecution was handled by the Communist regime, especially in the first decade of its inception, and against churches and religious institutions (priests and high Orthodox prelates were imprisoned, churches organized schools, charitable activities, all activities beyond the worship places). Also under Moscow's pressure, the Greek-Catholic Church was disbanded in 1948, and its leaders were imprisoned, including Iuliu Hossu and Alexandru Todea. Atheist-scientific propaganda had the task of "emancipating" people from religious beliefs. Consequently, at the beginning of the 1950s, the communist regime had succeeded in suppressing the opposition (with the exception of the armed resistance of some groups withdrawn in the mountains) by terror, with the reference intellectuals being imprisoned or marginalized. Education, publishers, publications, radio (later on television) were rigorously controlled, and the whole culture was ideologically subordinated to the communist directives. We are in the midst of Proletculatism and Stalinist dogmatism, which covers, with a few significant nuances, the period 1948-1964. The study of the great Stalinist terror shows without doubt that the abuses and the crimes of the regime were applauded by a part of the population that not only those who were snatched, but also their children, were hated by the other Russians. Why? Very simple. The Russians were convinced that there was a deadly danger to their country for their everyday life: The class enemy. The same happened in Romania. It is the period during which, after the Phanariot era, the most terrible national tragedy was consumed, it is the period of a "holocaust" of the national culture, in which the previous cultural elite was decapitated physically or marginalized, the period when Romania lived under the aggression of a cultural model of occupation, aiming at the destruction of historical memory and the ruin of institutions, education and culture as a whole. The space of social and philosophical thinking was completely captured by the Marxist ideology in its Stalinist variant, and the modern Romanian thought, in its top expressions, was considered "idealistic", conservative and reactionary.

In artistic creation, the canon of "socialist realism" was imposed, which meant the "direct" rendering of "reality", according to the "vision of the party", in

a language "meaning the masses," a totally enshrined art of propaganda. It is the period called "proletcultist", starting from Lenin's thesis that, with the establishment of the communist regime, the new "proletarian culture" should eliminate the reactionary "bourgeois culture" to ensure the spiritual homogeneity of the new society. Under this curve, the great Romanian writers were eliminated from the curriculum, the most significant Romanian thinkers were qualified as "reactionaries"; some scientific disciplines, such as cybernetics, sociology and geopolitics, were considered "bourgeois sciences," as they developed beyond Marxism. Modern Western philosophy, with all its currents and schools of thought, was labeled "bourgeois philosophy," capable of accumulating knowledge of the "truth," because this philosophy was limited by the "class interests" it expressed, truth "remained the monopoly of Marxist thinking. National history has been disfigured by aberrant Marxist interpretations. In this suffocating climate of abusive ideology, the great values and benchmarks of the national consciousness of the public circuit were eliminated on the grounds that they were retrograde "bourgeois" creations. They have been replaced by a schematic ideology and a culture of occupation, a substitution culture, internationalist, "proletarian", in fact with elements of second-hand Russian culture. In this context, however, there are also translations from the great classics of Russian literature (Gogol, Turgheniev, Tolstoi, Chekhov, and Dostoevsky later).

Modern Romanian writers are only published fragmentarily, after a severe sorting and amputations of chapters, paragraphs or verses. Eminescu was reduced to the poetry of social protest, Emperor and proletarian, Coşbuc to We want earth; the interpretation of the works was done exclusively through the ideology of "class struggle". The works illustrating the so-called "socialist realism" are plausible in artistic terms, by schematism and didacticism, by the abusive ideology of any subject, by the rudimentary character of language. Many authors without any artistic vocation, plus some of them with notable endowments, as well as writers with a remarkable work before the establishment of the communist regime, practiced at that time a literature written in this ideological code; such works can only be included in the stalinist and communist propaganda. They excelled in this unfortunate direction, Dan Deşliu, A. Toma, Nina Cassian, Veronica Porumbacu, Victor Tulbure, Maria Banuş, Eugen Jebeleanu, Mihai Beniuc, and others. In the new literary theory, cultural, ideological and "direction" criticism (a very important area because it was meant to translate the party's guidelines into creative norms, to "direct" the creation and to establish the criteria of appreciation), the reference names were then - in addition to the ideologists of the party, Iosif Chişinevski and Leonte Răutu - Mihai Novicov, Ion Vitner, Nestor Ignat, Silviu Brucan, N. Doreanu, Vicu Mandra, Pavel Apostol, Z. Ornea, Ov.S. Crohmălniceanu, Ileana Vrancea, Paul Georgescu, Savin Bratu, Silviu Brucan, Walter Roman etc.

Obviously, after the wave of Soviets and Stalinist dogmatism has passed, many of the above-mentioned writers and ideologists have "aesthetically and politically" converted, becoming, after 1965, fierce critics of the dogmatism that they have previously advocated. Some have even become opponents and dissidents in the Ceauşist regime (Dan Deşliu, Silviu Brucan). The period of "proletculatism" and Stalinism provides dramatic testimonies of the deculture of the social environment and the imposition of this type of "official culture", totally subordinated to ideological and political criteria. Regarding this type of ideological regimentation, the indigenous intellectual environments have adopted various strategies of opposition, adaptation or dissimulation, retreating into neutral areas under ideological or less touched by the "party headquarters". As a consequence, everything that has happened during the "decade-long obsession" has cut off the thread of historical continuity on a cultural level through violent political action. In culture, it is important to build thoroughly through continuity. Romania has lived an era of effective "demolition" of national culture under the motto of proletarian internationalism. The demolition of the epoch is also illustrated by the intention of "culturists", zealous activists of the Communist Party, to physically demolish the Endless Column, raised by Brâncuşi in Targu Jiu. Why?

The Communists first changed the real names of Brancusi's works. Explieve grace, the Column of Endless Reverence, as it was called the Infinity Column, is one of the most famous works of art made in Romania. It is located in the Column Park, a green area just at the entrance to Targu Jiu, on its way to Râmnicu Vâlcea. The column is part of the trilogy of the Monumental Ensemble in Târgu Jiu, consisting of the Infinite Column, the Kiss of the Kiss and the Mass of Silence. Inaugurated on October 27, 1938, the column has a height of 29.35 meters and is composed of 16 overlapped octahedral modules, respectively having a lower and upper extremities of half a module. Modules were called "beads" by their author, Brâncuşi. Sculpture is a stylization of funerary columns specific to the south of Romania. The original name was "The Column of Endless Gratitude" and was devoted to the Romanian soldiers of the First World War who fallen in 1916 in the battles of the Jiu shore. On the other hand, if you count the modules from which the column is made, you will see a number representing the year when the first world war began for Romania and ends with half the module, that is, half the year. The Infinite Column was about to be destroyed by the Communists, because they considered it irrelevant. Sixty years ago, the Communists ordered Tarasie Lolescu to break the Infinity Column to sell it to scrap iron. Lolescu originated from Hobita, the village of the great sculptor Constantin Brâncuşi, but then he was part of UTC. He was only 24 years old and was enthusiastic about the communist ideals. In the spring, First Secretary Constantin Babalic ordered him to demolish the Infinite Column. He went to the Column along with the Milotin trainer and when they reached the Central Park in Târgu-Jiu, Lolescu and Milotin linked the tractor chain

to the first module of the Column. They fired the tractor they came with, but the chain broke. They chained the chain again, but several times around the Column, and fired again. The tractor stood on two wheels, but the Column did not move. That's how Tănănie Lolescu told that the attempt was made to break the column.

The second monument, as Brâncuşi designed, is a table surrounded by 12 chairs. So it is not "the mass of silence, but" the mass of the apostles of the nation ", and in the middle is Jesus Christ! The third monument looks like a gate, but it is not at all far the "Monument of Enlightenment of the Nation," because each pillar is made up of 4 pillars united upwards with a beam. Kiss also means unity. So these are 8 regions that were to join the motherland, Romania! The world must know that Brâncuşi was a symbolist sculptor, and Petre Pandrea was one of the few Romanian intellectuals who understood Brâncuşi in depth, supported him from the beginning, and wrote eloquently when most Romanian intellectuals were suspicious his sculptural approach. The Communists did not like the names given by Brancusi to his works. Since then they have stayed like this, and the Romanians seem to be drugged, they do not want to change anything! It is the era in which the great authors were put on "index," forbidden to read, so some students from humanities were sentenced to prison because they read Kant or other "idealists". How did the Soviet occupant succeed with such a "new" domestic element ?! Without God and without morality. The anti-religious and profoundly immoral character of the Soviet model was manifested in full, not only in Romania but also in the entire Bolshevik empire. Nobody, except Stalin, may Mao in communist China have massacred his own people!

We return to the crimes committed by the Communist regime against books and writers, in the desire to offer a landmark, among others, to all those engaged in the realization of the project of great importance, the Communist Process. Shortly after the occupation of Romania by the Soviets in 1944, and the establishment of communism (which became evident and left no room for any illusion in 1946, when the elections were falsified), many Romanian writers were arrested for political reasons sometimes only because their intellectual superiority made them susceptible to independent thinking). They have been investigated and tortured, many years of imprisonment (in some cases without trial), as political prisoners, barbaric treatment and humiliation that have been hard to imagine, have ruined their health (and some of they died during detention or immediately after release). Out of prison, they spent other years with forced residence or lived for a long time like proscribes, pursued by the Securitate and subject to a ban on publishing. The arrests of the writers took place practically uninterruptedly for about twenty years (1944-1964). However, two "waves of arrests" were noted, the first between 1946 and 1953 (since the outlaw of the PNT, the true winner of the 1946 elections, and the death of Stalin), and the second in the years 1956-1959 (in reaction to the 1956 anti-communist rebellion in Hungary and as evidence of

Gheorghe Gheorghiu-Dej's fidelity to Moscow in the circumstances of the withdrawal of Soviet troops from Romania in 1958). By the end of the years of terror, hundreds of writers had been in communist prisons. Petre Pandrea, himself a political prisoner, draws up a list of imprisoned writers, like himself, in Aiud on July 4, 1964, with a black humor list titled "Union of Aiud Writers": Ion Petrovici, Traian Brăileanu, Gane, Radu Gyr, Titus Cristureanu, Dr. Sandu Lieblich, Anton Dumitriu, George Manu, Sandu Tudor, Paul Sterian, Tudor Popescu (Prof. Theology), Dumitres Stăniloaie, Dumitrescu-Borsa, Ioan Victor Vojen, Luca Dimitrescu, Cristofor Dancu, Fane Vlădoianu, Petre Pandrea, Petre Țuțea, Ion Gheorghiți, Cuza Marinescu, Popescu-Prundeni, Romulus Şeişanu, Romulus Dianu, Sergiu Dan, Ion Dimitrescu, Arsavir Acterian, Valeriu Anania, Nicolae Pătrascu, Roman Braga, V. Voiculescu, Mironescu, Gabriel Bălănescu, Ion Manta - Cluj, Zaharia Boila, Nedelescu, Ilie Niculescu, Ion Caraion, Ernest Bernea, Radu Budişteanu, Nichifor Crainic ". Let's not look at Lucretiu Patrascanu, one of the few intellectual communist leaders, he was also arrested in 1948 under the charge of plot and "gave up the class struggle policy" because of the statement made by him: "First of all, I am Romanian, then Communist "on the occasion of a speech in Cluj. He was killed in jail in 1954.

Here is an outline of the arrests chronology: In 1945, the cultural man, pedagogue and patriot Onisifor Ghibu, who was considered a war criminal, was arrested in Sibiu. He is permanently removed from the chair so that he never passes on his ideas to the students. Also in 1945, the poet Radu Gyr (Demetrescu) was arrested and sentenced to death (but his punishment is later switched to hard labor). He is in prison until 1957; In 1958 he is again imprisoned and remains imprisoned until 1963. His rising poem "Get up, Gheorghe, get up, Jones!" is the most famous of the texts created by Romanian political prisoners in prisons (created in mind because they were allowed to write): "Not for a shred of bread,/Not for the couch, not for the fields,/but for your free air tomorrow/Get up, Gheorghe, rise up, Jones/For the blood of the people your course through the ditches,/For your song, stuck in the spikes,/For the sunshine of your sun set in chains,/Get up, Gheorghe, get up, Jones!/Not for anger scowling in the mounds,/But to gather and a little star and a hat of stars,/Get up, Gheorghe, get up, Jones!/So you can drink the freedom of the tears/And it's like a sky in bullets/And her herding over you to shake her,/Get up, Gheorghe, get up, Jones!/And to put all your kisses on the doorsteps, on the doorsteps, on the doors, on the icons, on all the slobes you laugh before,/Get up, Gheorghe, get up, Jones!/Get up, Jones, on the chains, on the ropes,/Get up, Gheorghe, the holy bulls,/Up on the last light of the storm,/Get up, Gheorghe, get up, Jane! "

In 1947, alongside other peasant leaders, Nicolae Carandino is trapped in a large trap by Securitate at Tamada. He is sentenced to 6 years in prison and 2 years in civilian degradation for "plot to betray murder", 6 years in prison for "attempted

fraudulent crossing of the border" and 6 years in prison for "overthrow of constitutional order". After the atonement of the 18 years of imprisonment, he will be sent home with compulsory residence in the commune of Rubula in Bărăgan. In 1947 NKVD Petre N. Caraman, university professor at Iasi, raised his statements on Romania's rights over Bessarabia and Northern Bukovina. After release, he will have to work as a wagon loader. Until his death (January 9, 1980), he will write over 10,000 pages of comparative folklore studies left unpublished. Also in 1947 the prose writer and journalist Mircea Damian is arrested. Admitted to Vacaresti penitentiary hospital for larynx cancer, will die in prison in a few months. Nichifor Crainic, orthodox poet and "ideological polemist" (as Tudor Vianu), mentor of Gandirea magazine and thinkerism, is judged in contumacy in 1945 and sentenced to life imprisonment. Everybody thinks he's a refugee somewhere in Germany, not even guessing that he vaguely disguised himself (with his beard) and fake papers (named Ion Vladimir Spanu) hiding in different villages in Transylvania, in the homes of priests to whom he had been professor at the theological seminary. In 1947, believing that the atmosphere had become more and more resigned, the poet would surrender to the communist authorities. They indeed cancel the unfair sentence of 1945, but keep it without trial in Aiud for fifteen years!

In 1948, brilliant essayist and memorialist Petre Pandrea was arrested. He will make a total of 10 years of imprisonment for political reasons (1948-1952 and 1958-1964). At the first arrest, in 1948, hundreds of documents from his personal archive were confiscated, as were manuscripts of literary works. On the occasion of the second arrest of 1958 - mentions Nadia Marcu-Pandrea, the daughter of the writer - the Securitate raises over 6,000 manuscript pages from his home, including the Journal of the Wallachian Mandarin held on November 19, 1952 (the day of the first release) until 23 October 1958 (the day of re-arrest). In 1948 the writer Banu Rădulescu was arrested, then a student of medicine (passed in VI). He will be released in 1954 and in 1990 he will establish and lead the prestigious magazine "Memoria".) In 1949, the critic and historian literary Adrian Marino, a PNT member, was arrested and convicted by the Bucharest Military Tribunal at 8 years imprisonment for " social order ". It passes through the prisons of Jilava, Aiud and Oradea. After his release from prison, in 1957, he has a compulsory residence in Baragan. From here, assisted by a PNT colleague, Victor Coconeți, he left several times in Cluj, clandestinely. He will be pardoned in 1964.

In 1949 he was arrested and investigated for six months by Nicolae Balotă. At the beginning of 1956 he will be arrested again and convicted by the Military Tribunal of Cluj (for "betrayal", in fact for the boldness of criticizing the communist regime), 7 years in prison, which he will spend at Malmaison, Uranus, Jilava, Fagaras, Gherla, Pitesti, Dej. Next will be 2 years of compulsory residence in the commune of Lățești on the Danube. A remarkable personality of contemporary Romanian culture will tell you, from a humanist-Christian

perspective, this experience in the Blue Book. In the autumn of 1949, at the age of 17 and a half, the prosecutor Anatolie Panis is arrested for the statement that "Basarabia is Romanian". And the list could go on! The Holocaust means the complete extermination, usually by burning, of a sacrifice in which only ashes remain. In a direct and figurative sense, after the Second World War, the Romanian culture had the treatment of a holocaust. She was thrown into the furnaces and prisons of an intolerant political ideology to leave the land of a "new" culture free. After 1944, thanks to this import ideology, all Romanian life was divided into two: in the "past" and in the "new" life, which is built by demolition, by destruction, through the holocaust of this past. The "past" was black and had to be destroyed, "the future" was bright and had to be built. All the Romanian values of the past were thrown, with no or no exceptions, to the "holocaust" of the Holocaust programmed against the Romanian culture. They meant "the past," and an almost religious rage punished whom he was trying to save or maintain the values of the "past" stomach, increasing the proportions of the sacrifice. The defeat with the symbols of Romanian life and culture was barbarous: no one did, for example, the balance of statues on the base in the first post-war decade and did not analyze how they were destroyed. The statues were also given to the Holocaust: the statuary group on the road, dedicated to Ferdinand I, the Unificator, the creation of Mestrovici, was thrown into the furnace and melted. It was more than physical destruction: the transformation of sculpture into an informative matter was also meant to the disappearance of a cultural sense.

In the same demonstration key, of particular importance to Romania's Real History, we find a set of CIA documents, which also contain a sinister information about the burning of Romanian books in public markets, to the orders of the Bolshevik cultural commissioners. Classified SECRET and distributed on January 30, 1953, the CIA Information Report reveals the anti-Romanian Bolshevism grotesque. The author of the informative synthesis appears in his account as horrified as we, describing how the works of the great names of the Romanian literature - 762 titles - from Rebreanu to Goga, and any volume mentioning the Romanian historical provinces of Bessarabia and Bucovina, are burned with the hundreds of thousands across the country, to be replaced by millions of Russian propaganda volumes. "Every book that has to do with Bessarabia and Bucovina was burned immediately, even if it was pure literature. The entire fund at the House of Schools, books on national folk culture and religious works have also been burned, "the CIA notes. At the same time, it is mentioned with a high degree of alert that a Mihai Roller's comradeship committee "purifies" the National Archives, destroying invaluable historical documents proving the Latin origin of the Romanian people. It is "a national treasure of the Romanian people," warns the CIA. "These treasures include maps, documents, photographs, and unique lexicography sheets of the Romanian language", which are "an inestimable source

of geographical and linguistic information" and "prove the Latin origin of the Romanian language." "They were burned because they did not thank the Slavic Committee (the Slavic Commission) that they researched - Emil Petrovici (a tool of the Soviets in the Academy), Sever Pop and Barbu Lazareanu himself", the CIA note deals with transformation Of the Romanian Academy in RPR Academy, according to the Soviet model, on ideological basis. Washington's final point 8, in the narrative, highlights: "The leaders of these actions are:

a) Petre Constantinescu-Iasi, described as the "hero of the Romanian national literature".

b) Mihail Roller, a Jew who paid special attention to the Romanian historical documents in the state archives. He led a special committee to seek historical evidence on the links between Romania and the USSR.

c) Barbu Lăzăreanu, a Jew, librarian of the Academy. His son is now an adviser to the RPR Embassy in Paris, after being called from the press attaché to Washington.

d) Emil Petrovici, also a pro-Soviet member of the Academy. "

On June 9, 1948, with the support of the above-mentioned characters, Simion Mehedinți, Alexandru Lapedatu (the general secretary of the old academy), Ioan Lupaş, Ion Nistor, Silviu Dragomir, Dimitrie Gusti (the president of the Academy at the time of the purge), Pantelimon Halippa, Onisifor Ghibu, Zenovie Paclisanu, Constantin Rădulescu-Motru (former president of the Academy), Lucian Blaga and others. In this earthquake - the Communist Concentration Universe - Petre Pandrea's destiny lived.

3. For Pandrea, an impressive destiny

I do not know how to do this, until today, a systematic study of this monumental chronicle of Romanian communism of inspiration and thorough Soviet assistance, of the Romanian society at one of the most black and most damned crossroads of its history. Moreover, as an unseen hand throws thick camouflage curtains over the new editions of Petre Pandrea. And this seems at least strange to me. Hence the question: Who is bothering Petre Pandrea? But even if they recite not knowing how long to send them to the print, these pages, it is difficult for us to give a satisfactory answer to our question. Maybe only the temporal leaders of today's Romania, the followers of the Communists of yesterday, the globals and the unions in Brussels! All the more so in the embarrassment of these days of harassment, revolt and national division, when all kinds of labeling and bloody so-called ideological wars in fact hide only mesmeric interests and vague political ambitions. Forming himself, as an intellectual intellectual and a fiery militant of the left, in the great western universities, in the climate of great political and social upheaval that has prepared the Second World Mind, Petre Pandrea has attracted many adversities since the first his appearances

in the press. Some have not extinguished to this day. But, as he confesses himself in these Memoirs, his option for the "dictatorship of the proletariat" had been as frank as "a pis-alle, as a necessary evil until the great Hegelian synthesis between capitalism and socialism, so much needed modern times. "Later, in the real" dictatorship of profitability "communism, as he defines it between the two stages of ruinous political jailing, he analyzes irreverently and perfectly understands the falsity and precariousness of his ideals from his youth when" I was a Communist party enrolled in the party. I was worse. I was a crypto-communist, a hidden communist, a communist without a high vision, communism masked in a journalistic term, cryptic term to bear at the foot of the bourgeois march. Oh, what naivete, how stupid, stupid! "

Through these later confessions, Petre Pandrea has sinned with sinfulness to be seduced by a utopian utopian, which ultimately proved bloody. He also remembers one of the famous Panes of Professor Nae Ionescu, his study director in the years of military high school, himself a prisoner of a black utopia - xenophobic legionarism, fascist-Nazi inspiration. "The dog must go through the groom, the kid through the scarlet and the student through socialism," the teacher had said. Strong men escape from scabbling, and scarlet fever and Marxism. "Petre Pandrea had also escaped from this disease in his youth. But at what price! However, what Petre Pandrea can not in any case be criticized for is the fact that by activating for years on the same line of conviction on this ideological and political front he would have ever pursued his own personal interests. Educated in the chivalrous spirit of the cadet school at the Deal Monastery, the good daily deed had always been in his blood and honor code, and she had constantly conceived in free defense in front of martial courts and in large sums of donated money militants and Communist detainees. In the same vein, he argues that Petre Pandrea, when Petroleum was overthrown by the Communists, did not run either by political positions or honors, as many opportunists in his wing, like Avram Bunaciu, his former secretary, came to a high dignity in the Communist state after the coup d'état of August 23, 1944. The moment when the Communist regime was placed under the direct pressure of the Soviet forces of occupation, against the will of the Romanian people, in the geopolitical conjuncture that arose after the end of the Second War world.

This process ran between 1945-1947 a period of turbulent transition that ended with the forced abdication of King Michael on December 30, 1947, and the adoption of the new Constitution of April 1948, which overturned political pluralism, devoted to the complete seizure of power by the communist forces and the establishment of the regime of "popular democracy".

These days he lived to the fullest, the one who would be a thinker, journalist, essayist and cultural theoretician, Petre Pandrea, born on June 26, 1904, in the town of Bals, Oltenia, in a modest family, being the ninth of the 12 children. Ambitious, like many other Oltenians, the parents sent all their children

to school, making great sacrifices for their maintenance and education. In the years 1911-1915, Petre attended the Primary School in Bals, graduating with the first prize with a crown. In the following period he was a scholar at "Nicolae Filipescu" Military Highschool from Dealu Monastery, near Targoviste, where he had as director of studies and professor of philosophy and German Nae Ionescu.

"Little capacity" passed to Nae Ionescu in the fourth grade of high school, and magna cum laude baccalaureate at the Carol I National College in Craiova. From a "superhuman" ambition, he enrolled at six faculties in Bucharest, but remained with the frequencies of: Law, Letters, Philosophy, as well as the course of Ancient History and Archeology, held by Vasile Pârvan. He obtained his degree in Law "Political-Judicial Philosophy of Simion Bărnuțiu", obtaining a seven-year scholarship in Berlin, when he also worked as a press attaché at the Romanian Legation of Germany. During this time he met numerous cultural and political personalities, including Lucrețiu Patrascanu, whose sister, Eliza, also married. He debuted at 19 years in "Gândirea" magazine, with the article "The Literature That We Miss". Since then he has become very active in cultural life, intensively collaborating in many magazines, some with not only different, but even opposite, orientations! He himself published the magazines "The Social Future", "The Left" and "The Free Word" and collaborated with essays on Romanian Life, New Age, Truth, Today, the Literary and Artistic Truth. After a legal stage in Paris and Italy, he returns to the country, becoming one of the best-known lawyers (Istrate Micescu). Among many well-paid processes, it protects a lot of Communists, managing to reduce their punishments, and some even escaping from death. Among the defendants were Ana Pauker, Teohari Goergescu and other major communists. Publishes over 8 books until the first arrest - legal and literary books. Among the first public in the world, Hitler Germany. The German Embassy in Romania wants to buy his work for 2 million marks, but Pandrea refuses. From 1945 until the first arrest he defends the "new oropsites of fate". He is arrested by the Communists, whom he defended in dozens of lawsuits, for the blame of Lucretiu Patrascanu's brother-in-law, but he is not judged. On November 19, 1952, passing through communist jails, including Aiud and Ocnele Mari, will be released. After the execution of Lucrețiu Patrascanu, in 1954, he was allowed to practice the lawyer's profession. Defend "lost causes", including the monks of Vldaimireşti; is again arrested and sentenced to 15 years in prison. He will be among those amnestyed in 1964. After liberation, definitively traumatized by endless inquiries, he tries his luck in literature, but he is boycotted by the literary magazines of the time. Until his death on July 8, 1968, he published a book of memories and exegesis about Consatntin Brâncuşi - the latter thoroughly brushed by communist censorship. He is rehabilitated (1968) and elected post-mortem member of the Romanian Academy (2013). After his death a few insignificant works appeared in state-owned publishing houses.

This successful lawyer has done doctoral studies and legal-philosophical specialization in Berlin, Heidelberg, Munich, Paris, Rome. He was the secretary of Professor Anibal Teodorescu (1923-1926). He pleaded in German (1938) at the Vienna Court of Appeal. He was a consultant attorney at Barcelona, Athens, Rotterdam, Philadelphia, New York, Bucharest, and other cities in the country (1923-1958). Interestingly, he becomes a member of the German Communist Party (1930), writes in the biblical journal Die Linke Kurve, knows Lucretius Patrascanu and then suddenly goes to Marxist thinking, as he passed through the worship of Iuliu Maniu and how he would coabitate in his circle Mihai Antonescu, signing in 1934 the world's first work against Hitler (Hitler's Germany), for which he will be placed on the black list of the Gestapo. He was a defense attorney at the Martial Courts. He was a journalist at the Adevărul Democratic Trust (1933-1937). He was arrested five times for pleading with Socialist Romania; He refused dignities and any careers; university chair, ambassador. He pleads as a PCRM attorney (1938-1944), saving over a thousand Communists from death and long terms of detention (he was in close contact with Ion Gh. Maurer and the team). Provides money support to the anti-fascist detainees from Văcăreşti and contributes to the financing of the People's Front and the insurrection of August 1944. Arrested, detained, unedited (14 April 1948-19 Nov 1952). Arrested, sentenced, sentenced to 15 years imprisonment (1958).

Since 2000, after a lengthy process of declassification, the SRI has returned to his daughter, Nadia Pandrea, some of the thousands of pages of manuscripts confiscated by security during the searches of the two arrests, as well as those written during “reeducation “from Aiud in the years 1961 to 1964. Among the ones returned by SRl, the best text is,” The Memories of the Mandarin Valah “. The book “Brâncuşi, amintiții şi exegeze”, edited by C. Brâncuşi Foundation, Tg. Jiu, in 2000 - uncensored text - is the most beautiful serbian work so far on the famous sculptor, Oltean by birth. So, in the twists and turns of that age, she was the unfortunate lover, the “true animator of the left wing of the 1930s generation”, the most complete and complex intellectual of the interwar Romanian left, who did not hesitate to claim personally from Nae Ionescu's school, whom he loved and worshiped, as he confesses unconditionally in the memoirs of the Mandarin Valah: “He has put the Bible of Christ in his hands, and he also has Georges Sorel, the bible of modern syndicalism.” Marxist beliefs and he mastered them in the “Five Years of German Marxism at the University of Berlin in the Weimar Democracy Age”. This “intellectual anarchist” - as he himself defined - wrote, in 1927, together with Sorin Pavel and Ion Nestor, “The White Lion Manifesto” (appeared in the Gândirea magazine, where Pandrea collaborated for a while), which sparked many reactions in era, because the authors, all three very young, “fought with all sorts of chameleons and political impostors that moved in the political and cultural fauna of the time.” Insolvent and non-conformist, he was

known in the period as part of the "three P" group: Petre Țuțea, Petre Pandrea and Petre Ștefan (with whom he was a friend, although they were on the opposite side of the ideological barricades). After setting up his former clients' regime, believing naively in their gratitude, he allowed himself a series of "extravagance" that ultimately led him to prison. In April 1948 he was arrested "for fulminant pleadings in peasant trials, with Ghiță Pop head," he says. Rather, it is believed that this was only a pretext, since his arrest was probably due to the fact that he had become inconvenient in general. During the investigation, he tried to be included in the group of his brother-in-law, Lucrețiu Patrascanu. "We escaped easily because we had taken care to distance us after 23 August 1944." Not being sued, he was imprisoned without being lawfully condemned and condemned (as was the case with others), being held closed for nearly five years. Released in November 1952, he was reinstated in all his rights, but in November 1958 he was arrested again, this time being tried and sentenced to 15 years.

The territory of the 20th century also includes dark regions, covered by thick and black forests. Officially adopted paths tend to overwhelm these portions, approaching only vaguely to them, then move away as if they were afraid of losing their loot. These are regions like communism. It is said to be complicated when you start studying them, becoming more and more frustrating along the way. At the time of their appearance they were so radical that the attempt to understand them required a major reconfiguration of the way we see the world. In the past, they seemed scary, but now things are not the same. We live in the 21st century. We are the survivors of yesterday. We are the ones who meet the day of the morning. We have the courage to move our footsteps to the twentieth-century forests where Petre Pandrea lived. At first glance, Pandrea seems normal. But he is by no means an ordinary person. If at that time there had been the US Davidson Institute to measure IQ, I think our academician would have had an IQ of 230, one of the largest, ever recorded. In other words, Petre Pandrea was one of the smartest Romanians.

The average factor of intelligence is around 100. From 100 to the beginning of smart people, people who not only know a lot but want to know more. People who ask questions about the world they are part of - about love and sex, about friendship and the need of others, about history, science and society, about who we are and what really makes us people. - free and unprejudiced. To all those who have been tormented by such questions we have offered, in abusive terms, quotes from Petre Pandrea's work, in order to demonstrate that the texts relating to re-education included in this volume are in fact the self-representation that the author has written in Aiud; as such, all its considerations and statements are made by the circumstance. That was not what he thought. Under normal circumstances, he certainly would have had other arguments to combat the ideologies he disagreed with and would otherwise have presented a number of people and situations.

(There are many testimonies - Petre Țuțea, Simion Ghinea, Dumitru Funda etc. - who claim that in the first detention at Ocnele Mari he expressed, not once, the regret of being once "an imbecile comrade" of the Communists.) For example, under the psychological pressure he was in Aiud during the re-education, he would not have made Mother Mihaela (Marieta Iordache, sister of Iordache Nicoara) the extraordinary portrait he made in his freedom and not she could have talked as beautiful as he talks about Nae Ionescu and Radu Gyr. Thoughtful and exaggerated lies, swindlers and scammers, historical fakes and inflated documents, all wrapped in the chest of a cheap but brilliant sensation, are the ingredients of a propaganda operation against Petre Pandrea and his work. It may be the conclusion of an analysis I made for the text, but also with the libraries and archives to study the problems arising from the new information that abounds in Pandrea's mumps. The subject delivered to the general public: the so-called sensational discovery of a new file on Romania's recent history, called "Petre Pandrea", which, apparently, would dramatically change the known data of the communism problem, can not change the data of the problem. Why? We will try to argue with his scientists as they were left.

4. Some reflections on the concepts and legal researches of Petre Pandrea's work

As I said earlier, Petre Pandrea is the literary pseudonym of Petre Mark, a lawyer, writer, journalist and Romanian essayist. He is the author of the Manifesto of the White Lion Manifest, which has stirred a great deal in the epoch, "dismayed and revolted generationists, even those closest to them, except Mircea Eliade being considered a demolitionist of the generational program." This terrible proclamation signed by Pandrea with the name of Petru Marcu Balş, together with Sorin Pavel and Ion Nistor and published in no. 8-9/1928 of Gandirea Magazine generated reactions from the political left. Thus, Mihai Ralea qualifies him as an explosion of cultural "rasputinism", saying the signers of the text are in "Thinking" as "home", because many of their ideas coincide with the magazine's beliefs. "On behalf of" the young generation ". The new generation presented itself as an exponent of "ideal passion, frantic optimism, intuition, momentum and ecstasy, of faith in God." Of the representatives of obsolete mentalities who "firmly believed in the humanitarian idea, in the eternal human rights, the signatories of the manifesto wrote:" With God, with the mystery, with the infinite, with the destiny of the man and the cosmos, he has done it all at once. " But not for these lines would be punished Petre Pandrea of Communists, whose program he had adhered to even before the Second World War, but because he was the brother-in-law of the proscribed Lucrețiu Patrascanu!

Lucrețiu Patrascanu's brother Petre Pandrea had been a lawyer during the interwar period, and in this capacity he often pleaded free, pathetic and offensive,

with an impressive investment of intelligence and erudition, in favor of persecuted persons or organizations: "1933-1944, for PCR and Israelites; 1947-1948, for PNT; 1953-1958, for persecuted religious orders ". He was arrested four times between 1940-1944, the maximum period of detention was eight days. After the Communists took power, he was arrested on April 14, 1948 for his involvement in an imaginary "Cambrea plot" and closed at Ocnele Mari between 19 December 1948 - March 3, 1952 without being investigated and convicted, but interned and forgotten in jail. "Because, between 19 December 1948 and 3 March 1952, I was sent there by my ex-girl Ana Pauker, from the fatal triumphant Teohari Georgescu-Ana Pauker-Vasile Luca, for the fulminating pleadings in the peasant's processes, with Ghiță Pop co-signatory of the Moscow Armistice in September 1944), and to be involved (after a long research) in the group of my brother-in-law, Lucrețiu Patrascanu. " By criminal sentence no. June 126/15, 1959, was sentenced to 15 years of hard labor and 8 years of civilian degradation. Judges decided to confiscate personal wealth. He was accused of "having grossly slandered and slandered in the most gross manner, all that is related to the Romanian Workers' Party and the Popular Democratic State", that "he maintained ties with leading elements of the Legionary Movement," " insisted that Demetrescu Radu Gyr, who was sentenced to death, is a very great poet of our country. " It was closed at Aiud between October 23, 1958 - April 18, 1964, being released under Decree no. 176/1964. According to Decision no. 28/20 August 1968, the judgments on which he was convicted were denied and Petre Pandrea acquitted.

Under no circumstances can Petre Pandrea be suspected of lack of sincerity. Of course, he did not feel sorry for anything, and with his temper he would have committed the same "mistakes" and the same "positive" facts. He did not have a quiet life, nor did he want it, preferring to pay but not to be at the heart of the events of his time. As far as the judgment of history is concerned, it is favorable to him, appreciating his culture and talent, especially the memorialist. "Strange wires also had Petre Pandrea! He showed the Communists in famous trials, some saving them from death. After 1944 he defended the Legionnaires. Although he declared himself an atheist, he defended, after the Communists had taken power, a group of nuns who had abolished the monastery. Then, although he had been sincerely on the left and was a good friend with Petru Groza, Maurer and other powerful of the day, he made ten years of prison. At the Aiud prison he held university courses! His work, published after death through family care, is a revelation. The volumes "The Memoirs of the Walachian Mandarin", "Aiud Reeducation", "Iron Guard, Journal of Political Philosophy", "The Helvetization of Romania", "The Tree of Life 1947", "The Cruz of the Mandarin (Intim Journal 1952-1958), "The White Monster", "The Ivory Tower", "The Sun of Melancholy (Memories)." The volumes of the post-mortem were made up by his descendants of manuscripts recovered from the Securitate, who confiscated them. was only partially

recovered, the SRI restituted to Petre Pandrea's descendants the manuscripts confiscated by the Communists, so they saw the light of the printing. It contributed to this also to an unprecedented, historically resolute process in the capital courts where Lucia Florica Nadia Pandrea, the daughter of the lawyer and writer Petre Pandrea (1904-1968), wants judges to declare the political character of her father's convictions. "My father, Pandrea Petre, lawyer and writer, was on April 14, 1948, by the SSI (Special Intelligence Service) agents, with no detention or legal basis, considering that the mere opposition to the established communist regime and its democratic attitude in public and in writing, would have been suf fi cient. Without being investigated, he was interned and forgotten in Aiud Penitentiary and then at Ocnele Mari.

"During my father's abusive detention and the execution of the punishment he was sentenced to, he was subjected to humiliating, degrading treatment for any human being, and all the more so for his intellectual condition. All the moral values, first of all the Christian ones, that characterized him and were part of his personality, were mocked. It was not only violated, it was simply denied its right to dignity. The situation is fully proved both by the official documents drawn up on the occasion of detentions, by his own notes and memoirs, as well as by the writings of other inmates of the time, "said Lucia Florica Nadia Pandrea. Petre Pandrea said about him:" I am not Romanian, I am Oltenian and European. "With mandarin grip and destiny, the temperamental son of Bals was thus legendary with the" Decalogue of the good politician, "as he defined him, with sadness and with some cynicism.: 1. Whoever does not physically or morally kill the enemy will be killed. 2. I come to power with foreign aid, with Tercio (Moroccan Arabs), with the English embassy (Mussolini), kill the opposition and stand for three decades in power (Mussolini) 3. I inspire myself exclusively from the sacro-egoismo Nazionale and I am ashamed (Mussolini) 4. Il Duce ha sempre ragione (The Propaganda of Pavolini) and the fascist party is never wrong 5. I and the party are never wrong (Stalin) 6. When I hear the word culture, I remove the gun and shoot (Goebbels). 7. Squeeze the anti-fascist as a lemon and throw it immediately (Paukerist valah). 8. I have three morals: one thinks, another speaks and they do what I like. Morale is the mask. 9. Use your comrade and, at the last turn, cast him into the abyss so that you can move faster and more comfortably. 10. Puts the sun of humanity on the face of the sun and puts on the honey of democracy, but holds the political opposition in the legal brigade, with timid magistrates and lawyers, the annex to the prosecutor's office. "

5. Petre Pandrea - stranger than we can imagine

From a different perspective, a witness who met the controversial Petre Pandrea in the Aiud prison and with whom the two books were reviewed and released, the Aiud re-education (2000) and the Iron Guard (2001) recovered from

the archives of the former Securitate and posthumously appeared at the Vremea Publishing House in Bucharest were written by the unfortunate "devil's lawyer" at the suggestion and with the complicated complicity of oppressors in the last phase of "reeducation" and the fact is full of consequences posterity is not allowed ignore them. It is about the historian, and former political prisoner Demostene Andronescu who no less, no less, states that "this editorial enterprise is an act of irresponsibility, both by the successors and by the editors. Moreover, in his opinion "Petre Pandrea before being a cultured man, doctor do not know how many universities, famous lawyer, writer with grace, etc., etc., was first of all a man. With the eagerness, the weaknesses, and especially the limits. At the time he wrote these elucubations, he no longer belonged and behaved like one who was disillusioned, leaving himself completely to the will of fate. In fact, this state of affairs has accompanied "mandarin" since the beginning of the second arrest. Ever since then he had quit the battle, for here he confesses: "In 1958 he was terribly beating. Only on the idea that it could harm the children or the wife, I signed them all they wanted, absolutely everything. The investigators were wondering about my benevolence. I was hurt. " If he was disgusted at then, what must have been after three years spent in Aiud's whips when he was allowed (or, more correctly, when he was "suggested") to write these pompous aberrations entitled " Journal of Political Philosophy "! Besides, Petre Pandrea was never a barricade fighter, but only a brilliant polemist. Under normal circumstances, he fought with many, but the war he wore was not a trench war, but a harp, but rather vociferous. His main weapons were the word and the pen. Spoiled by fate, he had the chance to live in an age where, while being circumstantial, he allowed himself to be cynical. In a conversation with Ion Biberi, in 1946, he says without any circumstance: "I feel embarrassed to say it, but I have always loved the cynical man, and I prove to the peremptors that solemn and sentimental are the bearded beasts that deserve the assassination. I love cynics for their intellectual freedom. I love cynics for their picturesque language, for everyday creation and effort, because a cynic does not have the right to fall into the template without banalizing and compromising its reputation for its constant effervescence, which is its glory."

Petre Pandrea has assumed cynicism by becoming terrifying. What he did in his youth was terrible. Out of teribilism, he wrote "The White Lion Manifesto", from terrorism turned left a profession of faith, and from teribilism also created the fame he enjoyed in the interwar period. As he matured, he fled, in time, into a benign cynicism, from which he made a real lifestyle. But life did not forgive him, and the "Wallachian mandarin" ended by becoming a cynical disavowal. The first detention (1948-1953) had the gift of destroying its utopia and awakening it to reality. "I was an imbecile comrade," he admitted, in the dungeon of Ocnele Mari, in front of some whom, later, during the "reeducation" in Aiud, he would be horrifying. This finding, of which he can not say that he was not sincere, did not

prevent him ten years later from accepting, from the lewdness and from human impotence, to be again, this time not just the simple comrade ", But an active contributor of torturers turned overnight into" pedagogues. " For as much respect and understanding as we have for the fine intellectual and comrades of suffering that was "ne Petrache," we have to say bluntly that during his re-education he was a doctrinal lecturer of the AU "university".

Reading carefully this new book, squeezed out of his writings during the sad memory of Aiud's re-education, I have strengthened my belief that their author was brought to this prison, reserved almost exclusively to Legionnaires, especially to give a handful of help in re-education, which, at the time of his coming (1959), was in the preparatory phase. "

"At Aiud was imprisoned in 1959, he was likely to give a helping hand to the re-education, which was then in the preparatory phase. In any case, even if the "mandarin" had been brought to Aiud for other reasons, it was skillfully used for this purpose by Colonel Gh. Crăciun, who was entrusted with the re-education and was given free hand to take it finally. The intellectual endurance of the "mandarin", his Marxist beliefs and his erudition in matter, he highly recommended Colonel Christmas as a precious auxiliary in the mission he had to accomplish. Then there was something: Pandrea was easily convinced to accept "re-education," because he did not have too much conscience problems, not being forced to reject neither the political past nor the idols. As he did so, he immediately adapted to re-education, accepting even without too much scruples to give Colonel Christmas a helping hand to complete it. In this sense, he was allowed to take direct contact with the legionnaires in prison, people he tried to get them to renounce their "hostile and criminal" ideology, and to accept re-education as the only way to improve their situation in detention, and why not, even to regain freedom. Many of them were placed in the same cell, a shorter or longer time, in order to "leisurely" them and initiate them into Marxism. "

Sometimes the prison management has been assigned to participate in the re-education clubs' debates. "I participated - he says - 120 days in the reeducation team with Biriş, Vojen, Ilie Niculescu, Chioreanu, Radu Mironovici, Augustin Bideanu, in total 40 legionary leaders. I listened to 40 "confessors" who were followed by heated talks. Sometimes it was hell, as political facts, exposed by civilized people. Sometimes it was the ibexian idea of ideas. I did not regret that, together with Professor Dumitru Stăniloae, the greatest dogmatist of contemporary Romanian Orthodox theology, we were assigned, one as a theologian and the other as a jurist and a sociologist, to participate in these debates, although we did not have degrees or membership their legionary politics. " Of course, he once enrolled in the University of Aiud, as he called re-education, perhaps borrowing the language of Christmas (who liked to use this denomination when addressing those who refused to participate in this sinister action: turned the

jail into university and you do not want to enroll in classes), he had to do his "self-presentation." Both verbally, in front of prisoners in re-education clubs, and in writing for posterity. "I write with the lamp of eternity on the table," he says in the notes of that period. "I will not hide anything, I will not forbid anything. I will be ruthlessly cruel, my first, and I will expose the deeds and mental processes of the co-inmates. " But the "lamp of eternity" on the table on which it was written was extinguished, and the facts which he exhibits do not regard him most often, but the others. He was not obliged to demolish, as I said, neither the past nor the idols.

He loved the bourgeoisie who was "stupid" and "unable to achieve real democracy", hurt in his executioners in the first detention (a long time ago in the disgrace of the party) - "a band of ideological dementia constituted in the triumvirate Vasile Luca - Ana Pauker - Teohari Georgescu, who overcame the ideals of the Communists "- and of course struck in the Legionary Movement, present it in gloomy colors. And, of course, he is also presenting Codreanu (against whom he had a tooth since he was a colleague at the military school at Dealu Monastery), and Horia Sima.

Of himself, he says most of the time, only positive things: "I have opted for the dialectical materialism for a long time, by the year 1930, and I have handled all the life with inner fruitfulness, the historical materialism in the decipherment of the Romanian and European phenomenon." Or, "I have been outlawed since 1930/1931, since I decided, unbearably and ineluctably, to break with the bourgeoisie, with the career and the conformist career, in order to revolutionize both the spiritual authenticity and the labor movement. What is incriminating about self is not at all "ruthless" or "cruel", but rather insignificant. Thus, in the text entitled "Cruel Self-criticism," he writes, among other banalities: "I set myself after 23 August throughout the revolution and I was hit hard by the dictatorship of the proletariat... I served from 1930 to in 1946 the proletariat and the peasantry, as well as their exponents. Then I started to grow up. " He also does not forget to mention in his notes that during the period 1930-1940 he was a "doctor of the lepers", that is, a defender of the Communists. "Then the proletariat was the leper. Entry into the proletariat is equivalent to entering the leprosy. I have given my hand, my heart, and my leprosy kiss. I was and I remained the doctor of the lepers. " And to adhere to the pattern of a complete self-preservation, the Communists continue to praise the Communists: "The Communists faced death. The Communists faced the executioners... the Communists did not surrender... The victory is the essence of the communist man. " Or: "The new man, the moral man, the sacrificial man is in the left camp and the left-wing democracy."

Moreover, with a real or just mimic naivety, Demonstene Andronescu wonders rhetorically, as the author was allowed with paper and pencil in the cell! "We do not know why Pandrea has left the handy tools of writing (be they reduced to the miserable shape of a pencil hat and bad paper petitions). We do not know

whether memorial memos remaining from prison years are written on his own initiative or were requested by the Securitate for the author. " He was wondering, but he should not wonder because he could have deduced from the content of these writings-or, if not, he could have learned from the survivors of that evil period-that in Aiud, in the years of re-education (1961-1964) any detainee who accepted re-education and was willing to write what was asked, especially if he was a personality, was given the opportunity to do so. The more it was allowed to Pandrea, who was known to be an adversary of the Legionary Movement and right-wing ideologies in general. In fact, he was not asked to accept "reeducation," because he did not have what to "reeducate", but was asked to collaborate on re-education. And, he accepted. In other words, Petre Pandrea was not a "student" but an "associate professor" of the "university" in Aiud. Besides being suggested to write for posterity - but also for "internal use" (material to inspire "learners") - the aberrations he wrote, he also had the mission to convince the legionary rulers to accept re-education as the only way to regain freedom. For this purpose, he was allowed to meet, alone or in groups, almost all the legionary leaders in Aiud. However, these meetings, these joint assignments in the same cell, were not accidental but had a well-determined purpose: to give them the opportunity to persuade their "friends" to accept re-education and to suggest and what to say in "self-presentation". In other words, he simply "alphabetised": "I have set up a section entitled linguistic corrections in my notebook. I was telling her the mistakes. They shrugged. I had a bookshelf that the boys were eating with fervor. They were, after so many years of jail, like dry sponges. " So he suggests future "learners" not only what to say, but also how to say to pass the "exam".

Continuing along the same path of attempting to denigrate the memory of Mandarin Valah, the critic considers that writings such as The Tree of Life, Portraits and Controversies, Brâncuşi, or the essays and articles of lesser extent, scattered through most newspapers and magazines of the times, Petre Pandrea's rhetoric, though ample, baroque, has a clear centripetal tendency to the edges of aphorism, so the one who would be tempted to make a compilation would have serious difficulties because they would lose out of context chlorophyll. Some may even seem simple pastures, common places, or intellectual misconceptions. In the Journal of the Walachian Mandarin, for example, he writes: "Man aspires to virtue and leads by vices." Brilliant moral aphorism. But, broken from context, it becomes a simple pastime for Ovidiu: "Video meliora probaque, damage sequor" ("I see the good ones and approve them, but I follow the bad ones"). Also, speaking of the charm of the tavern, of the fact that "you can not turn your house into a pub and a tavern in the home," Pandrea merely reproves a word of Baudelaire. And, concluding, "since I did not intend to systematically signal the errors, common places and lapses of Petre Pandrea, I hurry to say that his judgments in the Journal of the Wallachian Mandarin do not have the shine of

those in the Tree of Life. When he writes the Tree of Life, he is consumed by the search for wisdom. After the war, after the imprisonment, it only strives for a relative balance, rather to a "modus vivendi" with the terrible reality. He had no inhibitions. He had given "nets to nothing", wanting to reach the boundary of the cognizable with the incognostible. He had practically practiced the prophecy. It had been "paradoxically noisy". He had spoken of suffering without being known, of "spleen," of mortification of the self, of hunger for justice, of the melancholy of "those gentle on genius," of neurosis. And many others who all seemed to be accessible on the path of culture, intelligence, living, and active morals. In the "Memoirs of the Walachian mandarin" the perspective seems to have changed fundamentally. First of all, he no longer has the same aspirations, and the value system of his generation is fundamentally upset, if not worse. Although it strives to be as free in the order of spirit, morality, it fails. It is normal for rhetoric, stylistic breathing to be affected.

Whatever it says, it's visible. It often translates moral in political terms. Alean, delusion, despair: "No one is allowed to take the shackles of life in the name of empty formulas"; "The difficulties of a professional revolutionary without a lucrative profession in Walachia are immense"; "Political duplication is the greatest curse of our public life"; "A lawyer can not accuse his client, as the doctor can not poison his patient"; "Anti-Semitism is the socialism of the fools, an arrogant superstition, a retrograde, and a dagger"; "Communism is a religion and the party is an organized church"; "Worker is a tin proletariat and peasant potato bag;" "Romanians can not and do not know how to make resistance"; "We have the talent to endure suffering, to endure with resignation, cheerfulness and dignity"; "Each contimporan carries a dual consciousness, one with which he chirnises the affairs of the Ego and another in which the social consciousness, the famous Freudian Es is reflected"; "The political beast is the misery of humanity"; "When misery generalizes, it loses its pathetic character and becomes bearable for most citizens"; "Political arrests are pernicious for those who practice them and for those who endure them"; "Left hooliganism and right hooliganism are two branches that have the same stem and root: in hatred and cruelty"; "Stalinism was a Bonapartism to the smallest detail"; "In victory, the Wallachian Marxists were cruel instead of generous"; "All dictators come to believe in their own lies"; "Agentomonia is the disease of the illegal and the conspirators"; "Happiness - the favor of the wise slaves"; "You can not let go of anything you think through the hole in your lips"; "Violence has its role when you have won power"; "Out of fear is born wickedness and cunning. Cowardly is the first ephemeral aspect. Perpetual epiphenomenals, that is to say, voluntary mischief and cunning "; "The Liberals and Progressives, despots and revolutionaries have been recruited from the Wallachians and, most of all, from the meteorites"; "At crowing, banal people can become shocks." There are more bitter findings about the state of things that he was not at all capable of

anticipating, whose moral and intellectual prisoner becomes. In general, few of his thoughts now have the vocation to bypass the contingent. Only some remind us, however, of the "Tree of Life": "From the analysis of the Ego can not go as an ideological orientation than anarchism"; "The rich seeks the fight with the poor friend's candle";"The world is thirsty for medieval morality and bourgeois freedom"; "The Battle between the East and the West will end with a chess-remit"; "Without art there is no historical fact, not even a narrative"; "Culture is stronger than the law that the political man cuts"; "Healthy and satisfied people, like happy nations, have no history"; "Modern and modern modernism is characterized by the removal of nature"; "Ordinary justice is stronger than usual"; "Solitary drunkenness is a vilification specific to the villains. Collective Being is a gift of man, it is a political banquet "; "Whoever does not separate the contradiction is a larval hooligan, a neophyte or a bastard"; "Cenacle is the energy center of science and art"; "The premise of order is memory, plus tradition"; "Everything is inadvertently presided over by gambling, and universal history is led by blind forces"; "Lack of provision is typical of the city"; "The permanent analysis of others is poisonous, the permanent analysis of the ego - pernicious"; "Zgurgency is a rare disease among ordinary people, made brilliant in art and frequent among artists"; "Nothing is cheaper than pessimism in times of restraint"; "The ferocity of the solitary man is a feline as a tiger, twisted like a serpent and long-lasting like that of a noble vine"; "Cruel intellectuals are Eros psychopaths"; "The technique of humility is more effective than the technique of grandeur and frenzy"; "Dictated dignity of conviction is salubrious. Is not convention, hypocrisy or conventional lie the beginning of civilization? "; "In every lawyer, young or old, small or big, lies the nostalgia of the good judge"; "The socratic precept of knowing yourself completes with the antinomic of yourself;" "The fear of man's loneliness is deeper than the horror of living in common."

Thoughtful and exaggerated lies, swindlers and scammers, historical fakes and inflated documents, all wrapped in the chest of a cheap but brilliant sensation, are the ingredients of a propaganda operation against Petre Pandrea and his work. It may be the conclusion of an analysis I made for the text, but also with the libraries and archives to study the problems arising from the new information that abounds in Pandrea's mumps. The subject delivered to the general public: the so-called sensational discovery of a new file on the recent history of Romania, called "Petre Pandrea", which, apparently, would dramatically change the known data of the communism problem, but especially in the "Memoirs of the Walachian mandarin" the notations which, gathered, complete complex, complex portraits, made in clarobscur or in coal, some in expressionist manner, others of a frustrating realism, of larger or smaller size.

Coming back to his own person, he shouts with dismay that "I am an Oltean cobbler. I can take things and people over my leg. What does the guy mean? Strictly

account for goods, money and moral and intellectual values. On my right shoulder, push the ass. I think I have a deep stripe on the collarbone. On my left shoulder - beside my heart - there was a great bird: religious nostalgia and passion for the cosmic mystery. What can you get out of a guinea pig and a big bird? Or a divine thing or an anarchist chaos! An eloquent example, Carol II, who had come unexpectedly, had fallen from the air on June 6, 1930, without Lupeasca, without firm commitment to parties. He hated them all. Prince Carol, dismayed by his mother and his father Ferdinand - by the act of January 1926 - had lost three and a half years through France, had been expelled from England, full of debt, arm in arm with Elena Lupescu, with a small guard of loyalties playing cards in casinos and the underworld. He had been dethroned under the pretext of immoral life. The puppeteer - Prince Carol II - in June 1930, fell from the sky in Transylvania, having an airplane. A scavenger brought him a jar of water, to make his thirst for Bucharest. His thirst could not be restrained by water. He had thirst for power, thirst for vengeance, golden thirst. As Talleyrand said after helping the restoration of the Burbones, overturning Napoleon, he saw them: "They have forgotten nothing and have learned nothing! Carol Caraiman did not forget anything and did not learn anything in the wandering. He was full of debt, hateful and avid. He had become just a little more cautious. He hated the politicians, he, the great politician. He was blatantly bawling and exclaiming to his intimate assistants: "I do not have the big enough popcorn to make the politicians come to it!" It was the era when Gigurtu gave King Carol II a gift to the country, everything only in fine gold. It was the cheerful era when Carol II walked, arm in arm, with Lupeasca, and held speeches: "No furrow of earth! When he brought the massive gold map, the first question was: - How much does he weigh? (Can not pronounce on â). Engineer Gigurtu gave him a gold bust of his Mary. Maria called him Prime Minister! They surrendered territory, Carol II fled to Lisbon, and Gigurtu arrived at Jilava! "

His theological and metaphysical discussions say he would have filled the many industry knights, security spies, gold bandits, and screamers around us. The interminable colloquiums circulated around the theory of cognition and passion for Léon Daudet. Protestant and Catholic theology disturbed him, through the tortured sincerity of the Protestants and the Catholic monumentality. I repudiate Catholicism in the name of the ancestors' church of my ancestors, the need to give privileges to a humble confession of love, a confession piloted by the Apocalypse and the Gospel of John. He did not attend and did not associate with factions or lodges, although he felt very close and passionate about the high issues where they were supposed to be the Supreme and Supreme Indulgence. "

We also find Petre Pandrea something unusual for him: the concern of tomorrow (until he goes to law, he calls for expeditions, sells what is left in his house, painting books, and some earth belts on the Periş property). Also, the burden of recruitment, the concern that he does not live freely, whenever he can

be reincarnated, makes him think in terms quite imprecise to the opera, writing, although he writes daily to maintain the "ductility" of the pen. By 1957 he wrote: "My own work I have not written yet, I did not make it. I sketched it vaguely. I'm a veil. I do not have the time to write, I'm not on the site, that is, in the situation of lonely work. " Or, later: I have only written occasional opuscards, papers, articles and these. Far away from my friend, away from the clientele, I remain with myself in the bosom of my small family, which is an extension of the Ego. " He defines himself as a "beast of the word," in a psychological and moral difficulty to realize his work: "I sacrifice fifteen-month-old Valah life for an imaginary work in which I do not want to prove anything, I do not want to preach anything, a vast memorial that mirrors a whirling subconscious and an ulcerated conscience, a despised and disowned ideologue. They make a sinister experience, away from the life of the community, of inner delights, with snow on the heights, with a torrential area of Saharan desert around me." "Two vices alarm me: tobacco and writing. Tobacco is stupid and writing does not enjoy freedom. I write to maintain my ductility of the pen, waiting for the five years of total freedom when I grasp the great book as a last battle. " The irony of fate, terrible irony, the five years of so much courage, will be five and a half years in prison from the fall of 1958 (23 October) until the spring of 1964 (April 14).

What would have been these books seen through the boredom of imagination? It is hard to imagine what a fictional aesthetics might have been. But we can guess he would have written novels usually called by ideas, with autobiographical implications. The others have a beginning in previous writings, in which they find "philosophy, literature, politics, portraits of contimporans, portraits of universal history, sociology, moral, logical, pedagogical, theological or comparative religions" majority according to the criterion of "elective affinities" However, what truly, with exasperation, with the alean is, is the diary of "physiological waste, moral rubbish and ragged thoughts." The journal takes the place of the books left in sleep. His function is cataleptic: "The misery of intimate journals is both indispensable and salvatory: through the mnemotechnical diary, meaning those hilarious and malicious states of soul, spitting the weeds and removing the dejection." It is worth noting that Petre Pandrea wanted to publish the "Memoirs of the Wallachian Mandarin", the diary, not in the present form. He writes daily, some memories, impressions, thoughts on politics, history, morals, philosophy of culture, literature, according to the "surrealistic dictum method, leading to" the overthrow of the Aristotelian or subconscious katharsis " psychological abdominal fungi, all kinds of dracoenia, mashing, mud and pearls of diseased shells. " He would have decided to decantate this grate, to purify it grammatically and logically, only to the end will be "the artistic grinding of passionate gems and the selection of the last version". From the 10000 pages of compost, the "Flower-Knight's Knight" was supposed to reach 2000 pages by

"condensation", then 1,000 by "prefry" and finally by 800 by "grinding". He feared the fear of not having the time to follow this road, to miss. Considering that the notes that make up the "Walachian Mandarin" are also a borhot, "fallen from the garden of thought gathered in rush and thrown into barrels for fermentation", aims to revisit them over "a few years". He therefore urges the family not to publish "nothing out of the hole" after his death. And yet "borhotul" is fully published. Well, is it bad that the author's testamental ban was over? Given the circumstances, ie Petre Pandrea's re-enactment for another five years, and his physical impossibility to review his manuscripts confiscated by the Securitate, the family and editors did not commit abuse.

6. Conclusions

Without benefiting from the suggestions of my readers, I tried to offer a minimal biography of a personality who supported and believed in left-wing politics. He pro bono defended many of the Communists who were once illegally, with the risk of reluctance in the profession and in society. But he always succeeded in imposing himself. He was a lawyer of great talent and even if other authors look at things with other eyes, I still appreciate that in the medium and long term the truth will come to the surface. I think the approach of such models and incendiary titles is difficult to grapple within the Romanian legal environment. This study devoted to a scientist involved in strengthening education, economics, legal science in Romania of those years can also be a moment of balance, a moment when you are trying to see what has been done, what you have done, how things can be corrected less successful, how could you develop good things, but especially what could cause, in the medium and long term, the field in which you work. They are still untapped areas in Romania, are areas that we will assume, because the life and the dynamics of the times impose upon us. You can not achieve positive results and the success of projects without first having that idea, trying to achieve it, and implementing it, to adapt to the expectations of readers. Still, the authors of the legal book do not address the issues that readers would like to clarify, and there is still, in my view, this crevasse between the two parties - authors and readers. Probably, unfortunately, even political decision-makers can not influence reaching a common denominator. Of course it may be a beginning, but the efforts to do this are too great, the consumption of mutual energy may not have the effect that both the publisher and the author, and especially the beneficiary of this effort, the reader, Wait. I feel, from a certain point of view, a duty that we have over our legal past to take on certain projects, to persevere in others, to cut off the list or to adapt some of them. At the same time, I feel the safety that years of activity in this field give us. Perhaps, by looking at us in the near or far past and being honest with ourselves, we could foresee and understand the future. We consider it privileged, to be in this

position, to build on the basis of decades of experience, which, why not recognize, gives you another perspective and another perception.

At the same time, working day by day and month after month or year after year, you will of course have a certain stiffening of perception and personal or group availability. It is probably the thing that most of those who work for more than 5-10 years in a particular field face. I admit that I am preoccupied enough to be able to keep the dynamics and freshness that are so important and not to let me envelop you with this bubble of self-sufficiency that at some point can get you over and over and place you on an absolute pedestal subjective and from where you can not see things in the complexity of their reality. It is difficult to adapt another aspect of the problem of the history of Romanian law; it's hard to mobilize, it's hard to focus on the things of the past that may upset some of us today, and it's understandable. Especially in so controversial Petre Pandrea. To be honest I found him rather tattooed when I was documenting for the Monograph of my commune, Botenii Muscelului, and trying to discover the valences of the most representative sons of the village, I found Petre Pandrea as a friend, comrade of road and prison with Petre Țuțea. I think they both have been mistaken in one direction: their own comrades of political faith. Because they were too cultivated, terribly professional and difficult to marginalize, that's why they were thrown into prison by their own comrades! Returning to Petre Pandrea, as a lawyer, he often pleaded for free, with an impressive investment of intelligence and erudition, in favor of individuals or organizations in disgrace of the political regimes of the time.

Petre Pandrea was one of the most accurate biographers of the Romanian depths of mind. His meticulous analyzes for the years 1946-1968 give us an answer to the absurd obedience developed by the communist regime, and the realities thus cartographed give us the image of the life we live today with former Communist activists in all the structures of political, economic, social. Petre Pandrea built and defined in an original manner, combining history with sociology, psychology and anthropology, the socio-political structures that support the Romanian society. His diary, written in 1947, in direct connection with the non-positive events that were being carried out quickly over the lives of the Romanians, was put in the service of a change in the good circumscribed to the term “helvetizare”. The scheme of the transition from one reality to another is a simple one in appearance: the change of the semi-colonial lifestyle through the helvetization of the Romanian society. How is semi-colony defined? Semi-colony is defined by “political quasi-autonomy and economic dependence.” What does semi-colonial life mean? Unlike the independent countries, where “lifestyle is formed in the following way: the dominant class decides how, the taste and the way of life,” in “semi-colonies, the lifestyle is imposed from the bottom up”. In countries such as India (former British colony) and Romania (economically and politically dependent on great powers), “lifestyle is dictated from the outside, but

for maintenance, folk layers come in." One of the features of semi-colonialism is that "they can not have a unitary culture style and no unitary language." For example, the Romanian language "does not exist in the form of a cult language, that is, fixed and orderly". Inside the Romanian language there is a coexistence of "multiple languages": the archaic language of the plowman, the tongue of the martyr, the language of the jurist, the language of the Anglo-Americanized athlete, the language of recent politicians that are "terminologically incomprehensible to popular masses". The "semi-colonial land" flourishes "the selfish charlatan" that "betrays its homeland for silver or polluted pollronie". Among them, "semi-colonial politicians are charlatans to the bone marrow, and because they are moral and have no economic base, they are ripped off."

In semi-colonial Romania, "the civil servant has replaced the landlord who has fallen over his estates on an olive branch." In Romania, for over 500 years, "when you have power, you are no longer afraid of drought and the weather, and the harem is at your disposal." The semi-colonial, ordinary or not, lacks morals, "because he has several shirts: day shirts, night shirts, platinum shirts for fur, national red, yellow, and blue ribbons." The common man understands when changing the shirt, because in order to solve his everyday problems he needs many "shirts". In order to take into account the portrait or secretary, the mayor or the teacher of the child, the seller or the clerk, you have to dress like them. The semi-colonial offender is a diminutive one, lacking intelligence or vital force. It is defined by a "hatchery devoted to the crockery, something between tip, gift and milogeal." In semi-colonial societies, "the rich man can not have poor friends. He has to take good advantage of his friends who are impoverished - in semi-colonies, earthquakes and wealth zigzags are commonplace. " The rich man of semi-colonies is recognized for his "total solitude when he starts among the poor." How real is this portratization of our political barons today, though the lines were written in 1947 !?

The politician is characterized by "galling and helplessness. Impossibility is the state of colonialism, and wandering is the expression of a castrated power. The semi-colonial politician has something of a bicycle: bent back and energetic legs, with pulps developed, servile to the greatest and impertinent with the little ones. " The semi-colonial politician's career is reduced to a single truth: "sells his country and his mother, he enters unconditionally, like hobbits with eyes on prey." The semi-colonial Romanian morale "resembles a gaggle of play with which a dozen cats were played," in front of whom "foreigners nod and their natives laugh." In our lands, "the value tables are overturned, merged, and full of surprises." You often have the impression that you do not walk "among normal people, among healthy people, but among cancerists. All of Bucharest is full of political cancer, laziness, disorder, tuberculous dust and lack of beauty. " The province escalates the gap, fueling the "fascination of Bucharest" that "creates the mitochondrial psychological imbalance". What are the coordinates of Romania's "helvetization"

seen by Pandrea for a possible exit from our country's semi-colonialism? There are four benchmarks: neutrality in case of war; eliminating politicianism; respect for the cult of values and the primacy of the household. When "national income is no longer going to unproductive chapters and will help to rebuild paragons," when "politicianism will be reduced to atrophy" and "politics will turn into urban emulation, like a contest between urbanists," only then and only then "The cult of values will be automatically set up."

Currently, Romania resembles the "oil republics of Central America". Only there, in the favelas, "among the blacks and blacks, among the Aztecs and the red skulls, among the oil and rocks, among the metiers and generals with suddenly lighted stars, extinguished on the epaulets and on the political firmament, among the knights of industry and political corsairs, I'm deciphering the tragic-comic destiny of modern Romania. " For a country not to be dependent on foreign capital, the percentage of investment in industry and bank must be over 50%. As in a business or bank a capitalist can not dictate if he does not have a stake of at least 51%, so a country can not be considered as out of the semi-colonial state if it has no capital autonomous banking industry ". It must not be surprised that "the struggle for power in Valahia takes hideous forms." On the outskirts of Europe, where the Orient has sneaked for over fifty years above our faces, "satrapic and despotic customs are stronger than constitutional and administrative principles." Thus, always the "cultivated heads of the anapoda and the souls of neo-serfs in the turmoil of our lands" have sigh "after the despots lit up, after the evil egalitarianism and after the whip of the foe." This is probably due to the fact that "there is a lot of heredity trampled in Walachia: thieves, adventurers-fantastical, religious psychopaths of an ancient empire in decline, like the Roman, psychopathic sectarians of a growing Russian Empire." In the perpetual "corpse movement" by power, the most monstrous fauna and the worst flora are easily distinguishable. For more than three generations, a healthy man "tends to elementary satisfaction, at the center of which is sexuality and nutrition. Even work is not his first plan.. Inventiveness, creation itself starts from the moment of a surplus energy, of a cerebral neuralgia, whether the physiology is miserable or healthy. " An aggressive attitude of the majority towards the active man who observes his program and principles, an anti-joyful attitude towards the neighbors who enjoy life, is found everywhere. The active man is pushed to a "survival tactic" because "in Wallachia, everything is a phrase, there is a millennial levantine, asian, fanariotic, without the mandarin and mystical affinities of the Orient, a pretentious and mundane Western pospai makes the unstable majority of real life vigorous. " Of all those who survive in Wallachian lands, "the Romanians are the most cowardly, with the traditions of the Iobage, and of the Romanians, the kingdoms, and especially the Gypsies." From Pandrea's "lessons learned" in Moldo-Walachia, the rashes and midwives were "the only human categories that

were not subjected to psychic shocks derived from continued political and social obedience and intermittent fears."

The leaders of society, rulers, prelates, and boyars knew "a moral degradation without resemblance." In the Communist Walachian century, the Heghemonic Party broke the nation "in groups of heghemists proletarians who run peasants, small bourgeois and intellectuals. When I look at the native proletarians, I'm going to laugh. They are not even true proletarians. I'm a kind of tinsmith because they do not work mostly in steel but in tin. And the steelmakers are idiot by the hard physical work and the hardworking, the vinars or the farewell, mother. They have biceps on their arms, pic and brain ". But here, these "metaphysical, Pharisees' brooches, who have preached" an Asian doctrine of doctrine for the benefit of tumultuous tinkers, "have all gone unnoticed: the peasantry and the middle social strata. To leave the hand of the plea who "is never right", the destiny of your land where your destiny left you through the gambling, the future of the society in which you survive, and lastly, the steps you want to achieve in your short and unpredictable Valah life, is an anticipated and traumatic suicide. The plebeian sea that decides is structured within it like a society: we have a plebe "with titles, so-called diplomats"; we have a conformist plebe ", ie" the government plebe ", and then the great mass, the" beast unleashed "by serfs, serfs and slaves," with indescribable instincts. " Romania is always "in the midst of all historical winds, with traditions of political and economic instability", we know it in the perpetual image of a "oppressed and canonized" being. This continuing suffering created two subterfuges of existence: masquerade and protohistoric lethargy: "the mask is in the city and the protoistory in the countryside." It is very true that nowhere, in any system, "dogs do not run with pretzels in line", but only in Romania, there is a terrible tradition that goes beyond common sense history and anthropology: "two percent (2%) of the population of the country lives abundantly. The others look and swallow it. " And then, the "illegal forms" that frighten and disgust remain "because they are crimes against humanity, degrade us to primitive, tribal forms, and penitentiary cannibalism."

In conclusion, "my country is a country of gaggle and lazy. Everyone has the minimum of effort, maximum benefit. When the lazy man is given the opportunity to make big profits, he becomes haphazard. Hapsan and lazy are the two facets of a single medal: the definition of Romanianism. " Between hap and lazy, "the Romanian lichen blooms in the rot of all the broken ideals." Ideas destroyed by a "purely sociological" ringworm. In today's Wallachia you find at every step the "desolate despair in the heights, coming out to the surface, in the form of tormented wounds. Everybody wants to get to another post, everyone hates their jobs and they have another place under the sun. Lack of stability creates social psychosis. No one adheres to his branch. " No wonder the "liqueur has become the prototype of the citizen in my homeland. It's painful. It's true".

The fact that we are "in cultural inanimation" no longer surprises anyone, what about alarming? We will remain here "snowy and vegetative, with crossed arms, inactive, passive and resigned" as a "Walachian gandhism" as the only solution to the snow in which we find ourselves. " "As far as the illusions about political change are concerned, do not forget one thing: the party is a legal fiction and has exactly the value of the people who lead and guide it." That is why "the struggle for power in Valahia takes hideous forms," and "the movement of the corpses" always freshenes the lichea clique in "my country of grace and laziness."

We continue to live in the "era of perpetual attacks, even in the tram", where "people no longer hold back politeness, nor inhibitions of religious morals." Fortunately, "the amorphous people and the dead people, through banality, of societies do not make history. They are objects of history. " Provided they are not in first-rate decision-making positions. The headquarters of thought and imagination of the "digestive tract" dwells in the belly; there is "even their artistic sensibility and soul tone" of an amorphous, living-body man. "The digestive type" doubts itself, its shadow, its woman, its mistress, and his friend. It is suspicious and probusmal. He loves the charade, says yes, and thinks no, when he says he does not bend a lot. The prince occupation of the digestive tract is "from the belly down" and the royal path starts from the lips, passes through the esophagus to the large intestine. The favorite occupation is to "squeeze pleasures from his hoof, like a lemon." According to the "typical of the landlord", regional or local baron, manelist or tattooed mousse, the "digestive type" despises vigorously the work. "He has business relationships in the big world where he gets bored. He can not give up because he is not chic. " He does not have friends, and when he gets in love with someone, "his first thought is to seduce his wife, mother-in-law, nurse or maid, if they are beautiful, to defile them and to show their strength. If they are slapped, they will have their buttocks in the sight of the world. " How did it get here? Probably out of the ordinary. We have uncovered to see around us well-raised, polite people in their place; children who speak nicely; we have been disinterested in being human. We have been disinterested in having a citizenship conscience; we no longer consider members with equal rights in a civil and free civil society. We have deciphered to be somebody and a simple number of something, we have been disinterested in refusing or revolting. For 50 years, "Caesar did not adapt to the level and specificity of the soul of the people, but the people descended, groaning, smirking, wandering, at the level of thought and sensation of the caesar and his tribe of barons. It should not be ignored that "the people are included in history, but as a mere minority to power, they behave like any slave: they enjoy all that fails, everything that touches and proves the incapacity, malice and tyranny of those who have the bread and knife in hand, and the right to the bread and silence card."

We live so well integrated in the Chinese metaphor: “We are sowing with the worm trampled by the royal carriage wheels. What can the worm know what is in the king's head? “ What did the tens of thousands of worms know (for the king, it is understood), when they say, “sleep peacefully! Are we taking care of your peace of mind !? And this while the “king” shares the prey with his close ones! After 1947 we have liquidated our European elites and values, we have stripped off our thin garments of freedom and democracy, “in order to reach our continental levels of suffering, unprofitableness, and poverty at our expense.” Bismarck, at his time, said: “The peoples would be mad at the fear if they learned how little wisdom they are led.” We, the Romanians, are forced to watch a scare of fear because only wisdom can not be read on the morbid faces of those who lead us. I am nothing but the bureaucrats of a “satrapical dictatorship” that ideologically dances under the umbrella of “calmo-African totemism,” which is party clientele. This is how the “digestive type” was born. By the little favor, the little cip, the little tip. This is the “colonialist recipe that can be made of the kind of imbecile and lichens that any tyrant, despot or dictator needs to be able to control the masses of those who murmur, hesitate and swear. Powerless “. They are absolute masters over the whole suite of accessories that are called, socially speaking, privileges: uniforms, decorations, titles and functions, the driver, the villa, the car, the cell, the secretary, the skeleton, the presidium, the tribune, the microphone, last but not least, rest house, guest house, crazy house, special hospitals, special doctors, special medications, etc. Thus, “any Romanian can become a moromete, if he is moromized by a wife, friend or temptation. Any moromete can get a bum, because he is wearing the pen or the pulan of the cheek. But no morom or bum could become a new Romanian anymore; even if he is sent to work downstairs, he remains a hybrid and waste unrecoverable. “ What is to be done with the immense moromized waste that is now leading our country, to the smallest bureaucratic detail? Although any people “have their comedians that they keep,” it's “absurd to hope that comedians will be able to support a whole people.”

They can not, now in these circumstances of uncertainty, marash, impose the law of force that resembles those of 1938-1940! “I still believe in the force of the reason of this people, who must awaken, even though the Romanians have become obedient after all the masters who have always dictated for centuries what to do and what to say. The European and even the world trend was, until recently, “positive discrimination”, Euro-Atlantic integration, globalization, etc. On this background, we, the Romanians, have been so often accused of nationalism, anti-Semitism, xenophobia, that some might have the impression that we were once in a position to bring Europe to perdition through our nothingness. So we came to put ashes in our head and when it was not necessary, with the hope that only-we would be forgiven for all, for those made and for the unfulfilled. Especially because, wanting to be politically correct, we completely forgot to present

ourselves to the world as Romanians. We are Europeans and basta! Most analysts, opinion makers, service guests on plateaus, eseists, etc. do not distinguish between nation and nation, patriotism, nationalism, xenophobia, chauvinism. The definitions are simple, as in school: the patriot is the one who loves his birthplace, his parents and grandparents and not the one who hates other people's belongings; the nation is a form of human community centuries old, it is a kind of people to live together, united by language, origin, history, religion, territory, culture, traditions, etc.; all people in the world live united in communities because man is a social being; national spirit means the cultivation of one's own ethnic identity, together with the identities of others; nationalism means the glorification of one's own nation by ignoring it or sometimes at the expense of others; xenophobia is hatred of strangers, those who are not like you or your group; chauvinism marks the ideology of enmity between peoples and nations and the superiority of one nation to another/others. All of these notions have quite clear meanings, but some like to amalgamate, overlap, démonize in block, to get general confusion. On the basis of which, it can then be pissed. Present ideologues tend to portray history, that is to say, the lives of the people who have lived in the past, according to today's values, especially as today again there have been violent clashes between Islamic and Christian (European). You can not invent multiculturalism where there is confrontation between ethnicities, cultures and civilizations!

Naturally, it depends on how you present these situations, but ignoring or "adjusting" them is false and lie. And today it's too late to do this! Today, when Britain turns back to Europe to be better, when America wants to be only Americans and makes walls at the border, when Hungary, Poland or the Czech Republic praise their own nations and express, not least, reservations or even hatred towards others, towards the neighbors!

Moving on to the signed call, initiated by 83 personalities of the Romanian Academy, a call to unity, honoring the heroes and ancestors who made possible the Great Union that we celebrated and already forgot it, a post of television channel from Ardeal wrote that this exhortation is one with a "strong nationalist accent". Considering the negative connotations associated with this term, a nationalist, will not be reached at the moment when the union's corfiots will be officially portrayed as negative characters? It is noted that some representatives of the Hungarian extremist parties inflamed, although it is a call to peace, the observance of the Romanian Constitution, etc. And the Constitution does not allow territorial autonomy by any criterion. No sentence, phrase, or notion of calling appeals to any other nation or minority. Instead, if I take some examples of political discourse from the official positions of the Hungarian ruling party and the high officials there, we may see that things are totally different. I do not mean more! But this is not the problem! We have just conquered the right to freedom and democracy, the plurality of opinions! The question is form, that is, it concerns the way in which we combat

an opinion with which we disagree. We can not reject plano notions that are well-known and useful all over the world, such as "nation", "union", "sovereignty", etc., without precise reasoning, for the simple reason that they do not like some of us or that we have other commands to serve. Some words will be "blunted", but they are all the more realities they express. The most comprehensive international meeting of states is still called the "United Nations".

Some media outlets do not know the meaning of the term "nationalism" and intervene publicly to be in the job. We have come to ask whether it was good or bad to commemorate the 100 years since the Great Union, which is very serious! It means we deserve miserable, disoriented, modest fate. As a rule, commemorating is in an atmosphere of sadness, when we think of years past a man's death or a tragic event. The Great Workers of the Great Union were glad, some of them (like Gheorghe Pop de Băseşti) could not die until after the act of December 1, 1918. How to commemorate? We must rejoice and relive the "Poems of Light", as Lucian Blaga says, to fill our confidence because, together with the Italians, the Germans, the Poles, the Czechs and the Slovaks, the South Slavs, we entered the world's turn. Let us also rejoice because, on the ruins of obsolete empires, we have built strong national edifices. The most legitimate 19th-century collective movements - the "century of nations" - were the ones of national emancipation, in accordance with the principle of national self-determination, also recognized by the US under President Woodrow Wilson. Naturally, as with any human action, they could not all be satisfied in 1918. The Austrians, the Ottomans, the Germans, the Russians, and especially the Hungarians, were frustrated, angry, eager for revenge. I agree that the Hungarians have nothing to celebrate on December 1, 2018, and that they must commemorate, but in this logic the Romanians have nothing to celebrate on March 15, 2018, for 170 years since the decision of the Hungarian diet to unify Transylvania with Hungary! Here, with the holidays, we are only, but the Romanian decision of 1918 is still in practice. This is a sure difference; for the rest, through national days, we "congratulate" each other. That's how it is between neighbors! See how it is to other peoples, with pretensions, not like us! If we apply this crooked logic, then I expect some to condemn the union of the Great Union because it did not respect human rights, although they were not yet formulated, or they did not consult all citizens by referendum, though no one could have done it! We are capable of anything! It would, however, be a great shame, which would show us the true epigons. Otherwise, I would be happy to see in 2019 a united, generous and clean Europe, the welcoming homeland of all its citizens, but I fear not only to see intolerance, chauvinism, national and racial hatred, etc. and not necessarily with us, but in the countries where modern democracy, freedom, equality and brotherhood were born.

And yet, I think there are still mechanisms of regulation and self-regulation that we do not know and which we have not used yet. In spite of all evil for

thousands of years, human beings and communities (including nations) have found living, survival, and coexistence resources when less is hoped. In short, I can not convince you, because I have no certainties, but I have hopes. Our grandparents and grandparents have made the union unmoved by the divisions of disunity and convinced of the advantages of union, of humiliation and insult, of so many mistakes on foreign coordinates, eager for a shelter for this nation! What word would we have to say that they were wrong? It is obvious that we are experiencing difficult times, which some of us make ourselves even more difficult. Against the backdrop of general disorientation, there are enough to fish in troubled waters and exaggerate provincialisms, local entities. Know that some Moldovans are also urged to upset Bucharest! Where do you mention that Dodon, supported by Putin, wants Moldova big! And in our Moldova there is a marshmill from time to time: Bucovina is not Moldova, but something else, because Bucovina was under the Austrians and has risen in the rhythm of Europe! Nothing more fake: Bucovina is the Upper Upper Moldavia, with the old capitals of Baia, Siret and Suceava, with the ruins of the prince with Putna's Stephen; from Bucovina (so called late) started the whole country of Moldavia. How is Bukovina Moldova not, since it is the core, the soul of Moldova? Transylvania is more complicated! It was the most alienated and could not enjoy official Romanian life until after 1918. Today Transylvania is 40% of the country's surface and population, leaving aside the raw materials from the basement and the ground, the big cities, the dowry rich and historical, etc.

In Transylvania, the dominant “nations” and especially the Hungarians grew, generations in turn, with a mentality of masters, and the Romanians with a mentality of subjects, servants, servants. After 1918, things changed, but mentalities harder. That is why the cohabitation between the Romanians and the Hungarians was difficult. After a century, the Transylvanian Romanians are also stronger. Where do you think that they are Westerners among the Romanians and that the successful civilization in the world was the Western one, while the Byzantine-Slavic world, which has shaped our medieval destiny, has irremediably regressed and degraded into fanariotism, Balkanism, etc. From the eighteenth century on, the Romanians, through their most active and conscious elites, strive to synchronize with the West, and those who were closest to this model were the Transylvanians. Against these real and mental differences, it is easy for some to sow wind. And it was somehow found the middle way, the national states, imperfect and it. In this context, a new integrative formula called the EU, which is in deadlock, has been tried. What will be, we will see, but the subjects of law in the EU are, for the time being, the states, many of them state-nations. Attention, however, to antagonizing the Romanians on provincial criteria! There is a lot of work on it, including in the context of the discussion of regionalization, and not all “opinion formers” are pursuing honest goals towards this country.

In school, there is no time to explain to the students that we, the Romanians, have formed in the interference region between the Latin (Catholic) West and the Byzantine or Byzantine-Slavic (Orthodox) West, that we are western by language, name and form of Christianity, on the one hand, and by the church and faith (Byzantine rite), through the language of cult, culture and churches, through the everyday mentality. Only Byzantineism over which the Ottoman conqueror had overlapped for six to seven centuries was a model of losing civilization in front of the impetuous western model, uncovered mainly by the great geographic discoveries after the Renaissance and the Reformation. Europe has expanded in the world, but not all, but only through this competitive and individualist, liberal and democratic model, based on competition. Our Eastern, contemplative and isihast, lethargic and still, fatalist and tragic model, though touched by the wing of eternity - especially in outstanding artistic creation - but remained cantonable in the second. Our great lords were one and the other, proud of this complex dimension: Mircea the Elder wore Western vestments and participated in tournaments, such as the French knights; Stephen the Great addressed without complexes the pope, the Roman-German Emperor or the Senate of Venice, and was recognized in the West as the "pre-aposthetic athlete of Christ"; Mihai Viteazul moved freely to Vienna and to Prague, after Western Christian alliances, he also participated in military competitions and at stap parties dancing on Italian rhythms. That's why I always talk about our need for identity because I am Romanian. Please go out on the street and ask a few Romanians why they feel Romanian. You will see and hear the biggest supplications! And if you go to Brussels, Madrid or Vilnius, between serious people, the question that invariably comes is: how is Romania and who are the Romanians? Of course, we are self-flagging and presenting ourselves as a nation of nothing! More recently, some found the solution: something else is being given and no longer recognized by Romanians. Perhaps this laxity in dealing with serious things has saved us from time to time in the past, but it can not always be a living conduct for a decent, conscious people even in the communist era. Whoever tries to look in nuance this period can awaken with invasive of the "Ceauşist", "nostalgic" type. Why can not we openly talk about prison martyrs or resistance in the mountains, sara ira et studio? It's hard to tell you, because the problem is very complicated. You see, for more than four decades, the Communist regime has three major stages: a proletculturalist, proletarian internationalism and atrocious Stalinist dictatorship, when nothing Romanian was good, but "rotten", "bourgeois", "decadent"; a more balanced one, in which we reverted to most of our authentic values; the last, nationalist-Communist one, in which the "genius of the Carpathians" led us, and where the past, present and future were glorious auras, while we were starving, cold, dark. All this is amalgamated today, intentionally, that there is no room for shades. When you do not have a soul, especially if someone has a certain age, you call it a "communist" and you rightly accuse him of

having lived under the odious regime. I sometimes wonder how I chose to live three decades of life in that regime condemned by history! I have the impression that some even think that we have chosen communism and condemned us "with proletarian anger" for bad choice.

I see, though, in some circles, about prisons and resistance in the mountains, but the bolds are quickly brought to the ground by the new censors, by the new ideologists, vigilant not to deviate from the right path. I have escaped the unique truth under Communism and I have given the truths controlled today! Leading and dictatorial classes, especially when they are strongly challenged by an important part of the people, need a beautiful story to legitimize their power. Even though they have the same purpose, the stories are different - the "Marxist-Leninist" ideology was at the basis of the Soviet Union, while politically correct, in the European version, is still fundamental to the European Union today. A kind of Big Brother, a term we used to use when we talk about mass surveillance. In "1984," George Orwell's novel of disturbing news, regardless of the year we read it, we find the obsession with control over the way we think. The portrait of the Great Brother who "stares on you" is omnipresent. The Great Brother protects you, he's always interested in your fate, but at the same time, you can not do anything without him knowing: he is watching you for a moment. An obsession that we found during the Cold War, when Big Brother came from the USSR to dress you up, give you food, give light, warmth, work, a house, a life. In which you did not have the right to march against Communist rule, against the most advanced society, unlike the rotten, capitalist. You could not say what you really meant, unless you wanted to jail. Few know that the Socialist Republic of Romania has a Constitution. In which all the fundamental rights were guaranteed. But which were never applied. How it should, but as the Great Brother wanted in Moscow or at C.C. of the PCR. Moreover, in 1968 a new Criminal Code was drafted. Whose motivation sounds like this: "The Romanian people, under the leadership of the Communist Party, obtained results of historical significance in the development of economy and culture, in building socialist society and in raising the level of material and cultural living. The success of the country on the path of the new system has changed the looks of our society. The socialist production relations covered the entire national economy, the exploitation classes, any form of exploitation and human oppression by man. Makes rich the Party's policy of industrialization, agricultural development, the creation of a balanced, multilateral economy, based on the contemporary conquests of science and technology. The transformations that took place in the structure of our society, the intense political and educational activity carried out by the party, led to profound changes in the spiritual profile of the working people. The new morality is developed, based on the high duties towards society, the attitude towards work, public property, state laws and rules of social cohabitation. Considering that the crimes against the

socialist system, against what our people have conquered through heavy and long struggles, constitute the most serious crimes against the people, the criminal code provides for harsh punishment against those who act against the security of the state or its defense capability. “An example of such an offense was propaganda against the socialist order. This was the deed of a person who by any means and in public acts of propaganda of a fascist nature, or does acts of propaganda, take any other action in order to change the socialist order, or from which a danger to the security of the state could result.

The change of the Socialist Order was replaced by the Change of the Rule of Law. From here we could have inspired the neo-Marxers in Brussels who have the ultimate goal of becoming Sprem Head. As an irony of fate, we can say that I have jumped from Commissioner Vîşinski to the European Commissioner, but the parallel is deeper. They are the European leaders who want to lead us by the same Soviet methods, not understanding that anti-European discourse gains first and foremost because of them, how they understand politics. The European peoples, especially those who have experienced the communist experience, have little patience with this type of bureaucracy, opacity, denial of reality. Nor do I understand why I have to accept living in a system where the secret protocols of justice are a norm of the Rule of Law for 15 years in which anti-corruption policy is applied only to political opponents, where lies in Brussels are accepted with serenity, more are rewarded with a well-paid post, and the ignoring of abuses and the escape of responsibility of the guilty is blessed from the height of the European Commission. What Europeans do not understand is that the Big Brother policy has not succeeded the Russians, it will not succeed either. The policy of the fist in the mouth applied by the USSR led to permanent revolts, and the outcome was the collapse of an anchilosated and anachronistic system. As far as I am concerned, I still believe in the force of this people's reason, which must be awakened even though most media institutions in Romania are patronized or run by foreigners. This is yet another proof that, although the “boyars of the mind”, the thin spirits, the subtle philosophers of the salon accuse us of xenophobia, nationalism and even chauvinism, we are stubborn to love strangers, even those who do us bad! Naturally, these watchers at the hands of the nation - seen by them as a gloomy, peculiar mass of mass - do not find any danger anywhere, neither on the Prut and the Dniester, where we are directly threatened, not by the way, to the west, from where the cutters come from forests and new landowners, nor over the ocean, from where comes the news that NATO no longer remembers and that the US closes itself or closer, where autonomous festivals are being prepared, etc. In other words, Romania has no enemies except in our imagination! However, Romanians do not hate and hate strangers alright, ba, they are, they will also love those who do harm, according to the biblical parable.

Finally, this study of Petre Pandrea is only a part of a future monograph of all the articles devoted to the communist period in Romania, including documents and testimonies about the crimes, abuses and violations of human rights during communism, as well as studies and analyzes of the effects of the regime both in the years 1945-1989 and in the post-communist period designed to promote the memory of communism at public, national and international level, and to encourage the development of a culture of freedom, democracy and the rule of law, by celebrating the victims of communist dictatorship the analysis of the mechanisms of the totalitarian state, both in Romania and in the ranks of the Romanian exile. Our studies are aimed at all those who want to know the historical truth about the Romanian gulag, and first of all the younger generations, making it easier for them to investigate Romanian communism. And in order to correctly understand the harsh episodes of the past, it takes a historical perspective, but also a mindset. Thus, we only remain at the bottom, rudimentary level of judgment, and until we measure others, measure ourselves!

By way of judgment and measure, historically-related stories, betrayal and revolutions, coup d'etat and regime change, are rarely based on acts that are profoundly human, mercantile and cynical, for their own benefit. That's why history is so hard to write these days, even in a state of law like Romania, but it has also failed on the brink of ethical collapse like our society: affected by a terrifying epidemic of moral meningitis, as Octavian Goga, "The poet of our passion". It is a phrase written in 1916. Here is the text: "A country of cuts, a minor country, shamelessly fallen to the capacity examination in front of Europe... Here the ordinary politicians, the improvised thieves in moralists, the ministers who sold themselves a whole life, the smuggling deputies... We do not crash either by the number of the enemy or by his armament, the disease we have in our hearts, it is a terrible epidemic of moral meningitis. "In this context, Petre Pandrea's personality is mirrored with a contemporary which, history, left us seriously ill with this morbid, morbid meningitis. This is Mihai Ralea, who was born on May 1, 1896 on the Husi family home. Mihai Ralea (1896-1964) was not the only intellectual of the first hand of Romania who, skillfully and slippery, managed to occupy high dignities in the cabinets of two extremely authoritarian regimes, but his prototype is relevant to the then Romanian society, but also today. Ralea was the Labor Minister (1938-1940) during the time of Charles II dictatorship and Minister of Arts in the Groza Government (1945-1946). No more, in communism, it did not hurt her. Intelligent, frivolous and multilateral, son of the magistrate (Bulgarian) Dumitru Ralea and Ecaterina Botezatu-Ralea (Jewish), Mihai Ralea is one of the most controversial and versatile left-wing humanists I had (in my opinion, and the most endowed essayist of the "Romanian Life"). Few critics in interwar Romania call today less "dated" than he: the sociological and historical formation of ideas often combines with his speculative

finesse and talent, excellent results. He was also an exciting theorist of criticism (the "obstacle ontology" remains a fertile thesis), and his ideas about the "national specific" as transactionalism (see the Romanian phenomenon) were often invoked, including against the critic literary Paul Cernat, one of his memorable portraits outlined to Romanian personalities.

Mihai Ralea also favored the great interwar debate about the Roman, deceiving with grace. The texts about Arghezi and Sadoveanu remain relevant, as many of the interwar essays or anthropological study Explanation of Man. Nor is the work of psychology and sociology of success to be rejected - even the texts on the line of the years of the proletariat's dictatorship (travel books or The two French, in particular). Further, "The author of an unjustly forgotten doctoral thesis, supported in Paris, about the" idea of revolution in socialist ideas ", has undoubtedly surfaced on the waves of socialism, agrarianism/nationalism, peasant corporatism, communism and national-communism". Mihai Ralea was Minister of Labor in the cartier cabinet of the first single party, the National Renaissance Front. After 1944, on Communist and Masonic lines, he drew Mihail Sadoveanu into the Soviet game. He would have become an ambassador to Washington on the Masonic arrays - the critic literary Paul Cernat speculates. Indeed, even Mihai Ralea would have admitted in an official report: "My success in America was not due to the fact that I am a true democrat or that I am known as such, neither because I am a plenipotentiary minister, but for my quality of a Mason." Legend or historical fact, it is certain that Mihai Ralea was initiated into a Masonic lodge since his studies in the capital of France, which he would have modeled (beautifully) later, during the rule of Dr. Petru Groza, diplomatic career. Moreover, it is also said that, at the express mention of Anna Pauker, at that time Foreign Minister in the same government headed by Groza, Mihai Ralea would have been advanced overnight from the Master degree (Grade 3) to the Rosicrucian Knight (grade 18). So, the clever philosopher would have been scrapped in America by large horses.

Thanks to the privileged position and the dignities held - academician, head of the Philosophy and Psychology Department of the RPR Academy Institute of History, director of the Institute of Psychology, etc. - Mihai Ralea did not hesitate to hire highly valuable researchers, initially repudiated from communist public life. This is the case of the sociologist and anthropologist Traian Herseni (imprisoned in 1951-1955 because of legionary sympathies) or the psychologist Constantin I Botez, with whom Ralea published in 1958 the monumental treatise The History of Psychology. Ralea extended a hand to Constantin Rădulescu-Motru, left by the Communists to extinguish himself in misery, hiring the old and distinguished philosopher professor at the institute he controlled freely. Still opportunist Mihai Ralea is also assigned the rescue of the critic and Professor Tudor Vianu, threatened by the Communists with the exclusion from the chair and

the structures of the Academy. I welcome these gestures, whether they are interested, because - is not it? - and in the Stalinist years (or especially at that time) there was a need for an academic legacy/coincidence of the generalized cultural imposture. Former PNT member, Mihai Ralea abandons his party colleagues after the 1937 elections, when he passes with arms and luggage at the camp of King Carol II. Cataloged in state security files as a "socialist-communist who sponsored agents of the Soviet Union," the traveler Ralea has no problem in approaching, during the Antonescu dictatorship, to the weak (then) communist Romanian Communists from Moscow. It will prove to be a winning choice. Equality, but just for fools. The criticisms made before the Communists (he is the author of the theses that imbued them for immorality on the "American imperialists") will guarantee Mihai Ralea, beyond the high positions held in the state apparatus of communist Romania, and the conditions of a living on a big foot. He was one of the few spoilers of the regime that, although it foretold the abolition of bourgeois privileges and equal rights for new people, lived in a chic villa in the Dorobanti district.

Petre Pandrea satirized, caricatured, harshly on his "intellectual friend": "M. Rally has always been a liqueur. He feels good among the strong. From the boyars' feast, they also fall for the valleys. He has psychology, mentality, and great housewife manners. He accepted to be a vice chairman of the council at the time of the XIth, when all the lichels needed someone with university, political, journalistic, writer's prestige, etc. Mihai D. Ralea camouflages vermin and suffering. " Mihai Ralea was "Licheaua Nr. 1 of Romania, a worm in the anthamer's cheese ", since the typology of these" Memories "is complex and varied: writers, journalists, philosophers, actors, famous women, politicians. In general, it is a Romanian world seen, especially through its vices, the memory of diarist Petre Pandrea is scary and retains everything. Making a list of lichels, Mihai Ralea ranks first, "a ministerial cramp on various strapontines," "climbed on a social scale according to Dinu Paturica's parable," "left Ibraileanu to die on a hospital bed in poverty, almost in misery, "was a criminal against the Moldovan critic, and C. Stere and Virgil Madgearu.

And there is something very interesting, of all aspects of his existence (lawyer, writer, journalist, sociologist, economist, moralist and philosopher), which he himself listed in his famous prophecy, in which he, with astounding precision, "In 2000, there will be biographers who will investigate the enigmatic figure," his biography "more symbolic than the opera", the quality of the writer is what Petre Pandrea most probably held. Moreover, the presumed Roman Patetic Wallachia, devoted to the tumultuous and tragic 20th century Romanian, which he once saw a survivor worthy of such a mission, came to life without realizing it, or at least without to confess this to himself, through his own memorial work, of diversity, depth, and unparalleled drama. Especially, as a protein personality, he

has worked as a journalist, essayist, sociologist, economist, moralist, philosopher. He honored the lawyer's profession with probity and courage, wrote reference papers, pleaded in heavy, wide-ranging lawsuits: "I loved lawyer until dementia." Petre Pandrea's life has a deeper meaning than opera, it was a true adventure novel. "My work, says the diarist, will be my memorable life, by her parable, because it is a work done with sweat, blood and suffering."

As a lawyer, as a defender of the Law and Justice, he succeeded. But the most durable success was that of the memorialist and diary. It's true, wherever they went up to his verb sometimes brilliant, too many left standing. The impression is that he does not adhere to anything. So be it? We answer the mandarin of Valah with his inimitable rhetoric (like that of Țuțea): "Yes and no. I have a law firm. On my hand, Romania's fauna and flora in the form of criminal clientele has passed, and we kept the pathetic distance of mandarin in the ivory tower. " What is Petre Pandrea's almost unique perspective? It is in the combination of these professions that he practiced. Pandrea was a lawyer, and from this posture he saw many people naked. When you get it confused, there are two places where you go and most of the time you get dressed: a doctor and a lawyer. Petre Pandrea saw people in the nudity of their intimate actions, beyond the social conformist patronage. He saw them, he noticed, he understood the springs that had moved them. Through his job he had access to the secrets of human nature. Collect clientele and so collect knowledge. He had come to sail very low, under the radar that controls the compliance of our actions. That's why, for him, common notions, such as communist-anticommunist, had a relative value. He saw beyond such simplistic disjunctions, put into context, correlate - actually, target the essential categories. Otherwise, he added the memorialist's talent and the intelligence of the classifications. And another rare ingredient: incorruptibility. Petre Pandrea was a defensive player. He defended himself. Is not that a lawyer? Not all. The Communists also had the right of defense in the interwar period when they were outlawed. But Pandrea believed that for those outside the law there is a law that must be respected, imposed. And he became the advocate of the Communists. When a Legionnaire needed him, he also defended him. It happened even after the legionary rebellion. So did a peasant leader in the troubled years after the War. Pandrea, a man who declares himself incapable of believing - and here he saw similarities with Nae Ionescu - defended the nuns from the Vladimiresti monastery during the next communist regime. I suspect that the sense of justice is the one responsible for Pandrea and the closeness to communism, and for the impetus to defend those deprived of the regime, no matter what it is. Let us remember here the moral background of Petre Pandrea, on the basis of which he issues the judgments about fellow men. If most of them are disastrous for the people in question, it's not because Pandrea has something unbounded with them, or he sees everything in black. That's how they are in-depth, so is human nature.

But at the same time, in the alternative, Pandrea develops a theory. It would have been too much for him - and for everyone - to survive in such a corrupt country. I would call it the majority theory. According to this theory, the majority of Romania is condemned to be led by minority regimes. The scheme was retained irrespective of the scheme. In the interwar period, the minority regime had a pronounced ethnic nature. The "foreigners" took over the reins. It is also Carol II, but also many influential politicians. After the War, the ruling regime is confiscated by a rather moral minority, or more precisely amoral, an author on a "crime against humanity" escalation band. More important for the understanding of the 20th century for Romanians is, after Pandrea, the highlighting of mutations at the higher political level than the distinction of the bourgeois regime - the communist regime. I can not refrain from extrapolating here in the post-communist regime. Romania, says Pandrea's theory, has always had minority governments that, in order to resist, stimulated and maintained lichenism. Never in the twentieth century Romania has deepened and the majority has found its reflection in its own political elite. "Majority theory" allowed Petre Pandrea to believe that he came from a corner unspoiled by Romania, his native Oltenia, whose values coincide with those of Western democratic Europe. "I always say, I am not Romanian, especially I am not rum, as Nae Ionescu said, of a predilection, ie neo-serpent. I am Oltenian and European, that is, a free Romanian in my small Wallachia, framed by destiny in Central Europe, before crossing the Danube into a Carpathian corner, "said Petre Pandrea. From this perspective, many and multidisciplinary, the portraits of the bourgeois counterparts and those of the communist elite are made in grotesque groans, with hatred and contempt, the vogue of the details revealing the misery of the characters and their immoral morals. The major co-ordinator of his memoirship is the moralist, coyear (with the gossiping poets), commentator with a violently colored acidic language, various moments of involvement in the dynamics of life, as well as portraits of personalities and outstanding figures ("I met all of whom I did not know then as a columnist-journalist in three newspapers and as a lawyer of the Capital?"), without any doubt in disallowing intrigue of alcoves, to say so, obscure intimacy or miserable political snoring. "I am afraid that this Journal of Mandarin Valah - he notes in the summer of 1958 - could be foiled by children, grandchildren, brothers or other blood relatives. It would be amusing to watch fragments of hungry friends, good jokes, in the autumn and winter of life, the seasons approaching, clawing somewhere in the country, the wind, the rains, and the blizzard of the blizzard. " Petre Pandrea's memorialist fragmentation, often tumultuous, has passages of authentic evocations, along with eseistic pages, portraits made in aqua-forte, meditations, reflections (philosophical, aesthetic), pancakes, etc., especially with the condition of the gossip, so many of the things reported by him have to be taken under a spare quota, being marked by an extremely... personal viewing angle. His writing is plentiful and, above all,

pamphlet, and the characters of his "mini-portraits" are either intellectuals or politicians. In their vast majority, they seem to be part of Petre Pandrea's second sociological category, the "Shields." As for politicians and intellectuals, Petre Pandrea does not seem to make any hope. Today's politicians are "a small group of fanatics, with a group of liqueurs, who make their menders with 16 million cousins and old non-communists." Nor are the current intellectuals morally far off. "After 23 August, the intelligentsia would have been pacting from the beginning with the Red Army and Communists, unless it was the confusion of the quadripartite government," says Petre Pandrea.

Finally, for the sake of illustration, we offer readers a few miniportraits painted by Petre Pandrea in the Memoirs of the Walachian mandarin. Jurnal 1954-1956, Vremea Publishing House, Bucharest, 2011. Revision and annotation edited by Nadia Marcu-Pandrea, using the numbering of the pages from which they were extracted. The ax, around which he wraps up, more or less easily, all the memories, is the personality of Lucretiu Patrascanu (his brother-in-law, he was the son-in-law of the writer and militant DD Patrascanu - my father-in-law was a delicious gafeur) especially on the lawsuit brought against him, offering a lot of information... backstage ("I'm not interested in the fact that L. Patrascanu was killed. In the revolutions and wars die people, and he has been mixed for 25 years in the revolutionary It is indignant about the illegal mode of killing, the process with closed doors, the basic principles of advertising (closed doors), orality/defense/and contradictory/defenseless ones/are being violated/I hate the hysterical official message, terrifying the memory of a man without defense, seriously injuring his family. Where have we been, if we have maintained a liar, a provocateur a man who was a fraudster? This man was without vices: he did not drink, did not smoke, did not eat anything but cheese and drank milk. She had two hobbies: music and women. With women wrong; always lie with those in the party. He rules them and leaves them. They indignated when they took Hertha's head, they instigated their men and beheaded him. For the post of Lenin Valah, Lucreţiu Patrascanu was nominated. He had no cloth for either Lenin or Stalin. She was liquidated by Ana Pauker, becoming a... Wallachian Stalin, with Beria, the bastard of Teohari. He/she was physically liquidated.../poor Lucretiu Patrascanu, the only candidate to the native Lenin. It was defiled with feces and feces, made with egg and vinegar in the communiqué where the execution was announced "). Lucreţiu Patraşcanu, Leninist attorney atheist, firmly on a 100% radical political line, ready for revolution to blood, with delicate and firm background. 44. He had the mentality of the profession revolutionary who does not "pactise" with the enemy and sits parasitic with his arms crossed. p. 280. A pure naive, Moldovan right and fearless, without a bit of psychology and planetary perspective. p. 408. He had no confidence in the revolutionary capacity of the Wallachians. p. 502. And the list continues with:

Constantin Argetoianu, Latin and Gypsy choir, tastes and physiognomy, langage and behavior. p. 250

Tudor Arghezi, He has cloth, on a monarch farm. p. 255. Rubicond and Bordeaux, with black mustard, thick, like a sparrow. p. 252. Archery Lichea. p. 446

Dan Barbilian, In his free hours, mocked: poet Ion Barbu. p. 216

Carol II, Pramatius that troubled and shattered the Wallachian public life between 1930 and 1940. - p. 323. International derbedeu and Bucharest papugy incapable of awe. p. 301

Iosif Chişinevschi, the Iron Chancellor of the Wicked Wallachians, with caftan from Kaganovici. p. 283

Emil Cioran, I was not a friend of him. He was younger and his screaming beast in the pages of Time made no excitement. p. 549. It was an anti-air valley oblomov, anti-glazing, anti-water. p. 550.

Petre Constantinescu-Iaşi, Treated Syphilitic, to whom his wrinkles disappeared and, therefore, the memory. p. 175

Nichifor Crainic, another gypsy, who wrote verses with the alley for the coworker of Carol II to make him a minister of propaganda. p. 252

Galaction Gala, Gypsy Gypsy. p. 252. He has the physical cowardice and moral cowardice of all the Siberians, Estates, and Neronians. p. 574

Gheorghe Gheorghiu-Dej & Gheorghe Apostol, Two grotesque, two piglets, two gypsies, the pseudonyms of Iosca (Chişinevschi). One waiter, another chef. p. 174

Petru Groza, a Latin assassin follower, moved to Dacia as a lieutenant of Decebal, taught by the Hungarian gentry to dress exaggeratedly, a slicker, a provincial bitch in the Capital. p. 174

Radu Gyr, He came out after 18 years of savage, alert, lucid, polite, delicate and fine as a sword of Toledo, knight and mandarin, open to the genius of good, ready to face the genius of evil. Nothing intimidated him. He's ready to take it.

Nikita Khrushchev, This Ukrainian Nastratin. p. 305

Garabet Ibraileanu, Too bad. p. 497

Nae Ionescu, There is no shame, no shaman, no taurus. He had religious and metaphysical problems that tortured him to dementia. p. 349. He was an Indo-European, came from India with the invasion of the Tartars. It had something of a Mongolian choke, acclimated to us, acclimated, efflorescent, with indelible harmonies and strange colors. He also had Mongolian cruelty. Did not participate in the physical liquidation of Duca ?. p. 360

Mihail Manoilescu, He had no class consciousness, no race, no nation. He was the eternal wonder, eager to play a first-rate, even second-rate role, but always to play on the ramp. p. 146

Justinian Marina, An Everest of Corruption, a prelate with horse thief instincts. p. 521

King Michael, A Fonf, a Gangbang and a Nod, from which our "monks" tried to make a man and a half. Will they be able to make at least half a man? I doubt. p. 323

Constantin Noica, Fresh, effervescent, still teenage, though approaching the middle of the century. It seems to me the most apolitical philosopher I have encountered, although she has the passion for the problems of the European Citizenship and the Wallachian Citadel, as is the case with any philosopher. p. 333

Miron Radu Paraschivescu, Write without conviction. It's not a fancy liqueur. He is a craftsman, comes to the stage, to socialist command. p. 309

Ana Pauker, The Black Astral of the Romanian Political Firm. p. 243. Menopause cabotine. p. 521

Titel Petrescu, He does not have a scrupulous and overwhelming intelligence. He wrote an archive essay book about the Socialist Movement. Democratic socialism had been monopolized by Mirescu - Flueraş - Jumanca, and Communist Marxism by Ana Pauker - Vasile Luca - Lucreţiu Patrascanu. p. 220. A man of good faith and goodwill, but of the mediocrity of the moth, gray, pouring out of the lavalier and the tangled tongue. p. 500

Mihail Roller, A miserable archivist who terrorized the Academy. p. 175

Mihail Sadoveanu, He defended his personal creation. E Ceahlaul: it defends its vegetation. It grew and bred each year every day. p. 175. A pachiderm that danced "lugojana" and "puddle" with a loud boom like Paukeroaia. He cried "live the Hitler marshal of Hitler," now shout "live Stalin's aide." p. 298. The avant-garde lichen. p. 446. Ceahlau fecalin.p. 521

Alexandru Sahia, He died disappointed. It has streets, statues, poems. If he had lived, he would have come to us with us, the sympathizers of the Bolshevism and of the planned economy. p. 291

Belu Silber, I was driving him like a piratic: he was known as a security agent. Today this is called "musar", "codo", "trompetist", "spy", "theoharist". The agent was a "cinderella", a gypsy "cinghine", a moral rejection, an estrope with which you could not have any contact, not even "good-day" connections. p. 45. A corrupted, corrupt and corruptible man. p. 501

Zaharia Stancu, rushed as a hultan in journalism, where he did not have major success, because he had no patience to agonize a university culture on the stairs. He rushed in 45 years in the art of the novel, where he brought the cloak of the journalist cult. p. 316.

Iosip Broz Tito, A Sharpshooter who has pulled out the stalinist mass of Stalinism in the jaw of communism, and wants to take out the charity of the imperialist aggression in the jaw of Western capitalism. p. 305

Petre Ţuţea, Gathered from the streets, is no longer a library overturned, became wise, tender and feline. p. 409

Constantin Vişoianu, Cocor from the head of the emigrants' angle. The big cock is a louse in the sense of parasitism. He's smart, but he's lazy. It was Spin's spiders (N. Titulescu). His spouse died, he passed a louse of fish, to the largest carp of the Balkans, named Barbu Ştirbey, Queen Maria's lover. Did his carp die? He went to the red-haired pirate (Max Auschnitt). p. 137

In the end, I left an extremely complex character, about which some contemporary authors are no longer contending with praise and praise even today. It is about Acad. Ion Gheorghe Maurer with his famous Foreword, from the journal "Studies and Legal Research", an.I, no.1/1956, p.11. Petre Pandrea affirmed the one who, during his rule, sent thousands of Romanians into communist jails and camps that "On January 11, 1958, my friend Ion Gheorghe Maurer came to the head of the state. Father Sas, French Alsatian mother, remains a young widow. He grew up at the military high school in Craiova between the ages of 11-18, has all the defects and qualities of the adoption Oltean, a certain fauny of triviality, which is of great effect among proletarians and chefs. He is Gheorghiu-Dej's householder and mounted on this book. He's a political roulette player. " "Advocate Ion Gheorghe Maurer, elected to the Academy in a promotion with Tudor Arghezi without writing a volume" (p. 78) or "In the promotion with Tudor Arghezi he enters the academy, at the order of Iosca I, my friend jean Gheorghe Maurer, a lawyer and a third-grade lawyer, incapable of writing a petition with the spelling of the accusation. Is it possible to be an academician without titles and works? "(P. 105) and I think we can stop here, much more is Petre Pandrea's appreciation, but we can not forget the contribution of our academician to the assassination of Lucretiu Patrascanu.

About this Holocaust author of Romanian culture - Ion Gheorghe Maurer - Prof. univ. Dr. Mircea Duțu, Director of the "Acad.Andrei Rădulescu" Legal Research Institute of the Romanian Academy and Editor-in-Chief of the journal "Juridical Studies and Research", has only laudatory words in his study entitled "THE CONSTANTS OF FUNDAMENTAL LEGAL RESEARCH". For the accuracy of the information, we will reproduce, as I have taken from the site: http://www.rscj.ro/cuvant-inainte.html, the content of his work, leaving you, my readers and judges to appreciate. "Starting with no. 1 (57) of 2012, the journal of the Romanian Academy of Academic Research "Acad.Andrei Rădulescu" returns to its original name, the Legal Studies and Research (SCJ) (3rd Series). And this for a double reason: on the one hand, too restrictive for a period of Euro-Atlantic integration of the country and in the conditions of a globalized world, including the law, of the title adopted in December 1989 and, on the other, of desire to reveal the valences of tradition and to remain consistent with the defining missions of fundamental juridical research: to follow, in time and space, the manifestations of the constants of law. From this second perspective, the famous Word before the beginning of the SCJ in its first issue (1956), which outlined the

activity program for both the ICJ and its magazine, raised and provided an answer to a fundamental and decisive problem, that of the constants of law and turned it into a priority, which had to find its own way of working in the future. By the way the problem is raised, the contributions to solving it, and especially by transforming and formalizing the law constants as the objective of fundamental legal research in our country ("scientists grouped around the RPR Academy's Legal Research Institute, as well as the others scientists in our country, workers in the field of law "), the Word before had the value of a true manifestation of legitimacy and programmability. In order to be re-encircled to the "official list" of accepted sciences and thus to be brought under the anathema of simple expression of "bourgeois ideology" and "instrument of class struggle", law was required to be a "materialistic-dialectical conception" under the umbrella of which fundamental legal research is carried out. From this perspective, the Word before 1956 has the merit of being first offered, a new definition of the law, subordinated to the ideological exigencies of the historical moment, by virtue of which it was both a science (designed to establish its own objective legal laws) and a technique (intended to ensure the insertion of objective legal laws through norms into social life by means of a complex of "fireworks" or "procedures") and, with it, to have officially developed and accredited the theory of " law constants "which it has set as a programmatic objective of analysis and study of the fundamental scientific research in the field.

Last but not least, the "science" of law has thus been saved from remaining in the complex state of mechanical interpretation of official documents and integrated with fundamental scientific research. The formula of "compromising salvation" and acceptable is evident in the very text of the introductory study: to allow its existence, the legal research then carried out at the ICJ by the most representative personalities of the Romanian law of the time, it was necessary to accept the formulation of a " materialist-dialectic law ", and received as a rescue and solution to exit from the major moral-intellectual impas, the continuation of tradition and a certain depoliticization of research, through the subterfuge of" law constants ". Some have emerged from the moral impasse at Pitesti, Gherla, Aiud and Sighet, and others in the Romanian Academy or the Judeo-Bolshevik Nomenclature established after the coup on August 23, 1944, on Soviet tanks. From this latter category belongs our character and for recollection, we make mention that "appointed at the head of this institute during the period of unleashed Stalinism, the lawyer Ion Gheorghe Maurer (1902-2000) was a convinced communist, he was converted into a revolutionary profession yet from the years of clandestinity, has unconditionally embraced the utopian Bolshevik creed, has fully and unreservedly supported the totalitarian regime, including the abolition of the rule of law through abusive measures and the systematic violation of human rights. He never protested against the Romanian Gulag, he was Gheorghiu-Dej's

trusted man, and he enjoyed a huge relationship with the communist dictator. She had conflicts with Ana Pauker, but it was personal issues, not ideological or political divergences. Consistently Leninist, was part of the category of those true believers analyzed by Eric Hoffer in a book that remains of a terrible topicality. Maurer was the chairman of the Council of Ministers of RPR and a member of the Political Bureau of the PMR CC in 1963, five decades ago. It was the number two in the hierarchy of dictatorship. That year dies Ion Mihalache in prison.

The left-wing attorney Petre Pandrea (1904-1968), the defender of so many illegal people, and then, after 1945, of the persecuted in the new regime, the author of some exceptional works of philosophy of law, the author of a fascinating project of "Helvetization of Romania", Patrascanu's brother-in-law, made years of imprisonment when Maurer thrived, along with other former friends, including Mihai Ralea, and protectors like Avram Bunaciu. It would be normal, I think, that in a democratically routed Romania, the Institute of Legal Research of the Academy would pay tribute to the memory of Petre Pandrea, not of Maurer. Maybe he even bears his name. By betraying his call for justice, Maurer was an architect of the totalitarian system, he sustained him and justified it through all his actions. He denied Lucrețiu Patrascanu. Cinic and arivist, Maurer envies Patrascanu for his influence in the party and, especially, among the intellectuals. In addition, like Leonte Rautu, Maurer was sterile as a theorist, did not write his own books, left no memorable text behind. Appointed at the head of the MAN Presidium after Petru Groza's death in 1958, Maurer was the formal instrument for the approval of various sentences and decisions in the epoch (Noica-Pillat trial, the Foreign Trade Process, the trial of the attack on a branch of the National Bank, others). And what could be said about this "genuine Lenin of Romanian Communism", "with his seniors, cultivated and elegant, hunting enthusiast, ultra-select cognac, was what we can call a red aristocrat." But was not Petre Pandrea, but Maurer, as Walter Roman was one of the most sophisticated figures of the Soviet occupation, the leading Communist and member of the internationalist guerrillas in Spain, then head of the Russian Radio Anti-Rom Pauker, Leonte Răutu and Iosif Chisinevschi, Walter Roman returned to Romania in 1944 on Soviet tanks, as Lieutenant-Colonel at the "Horia, Closca and Crisan" Trader Division and advanced to the rank of Major General, "After we, we will all come. We do not write history, we create it. " And it was just that! After another coup, the one in December 1989, their red-eyed haters came! What a curse on this nation is we no longer escaping traitors and anti-Romans!

Bibliography

1. Sandulescu, Al. (2008), Return in Time: Romanian Memoirs, Second Edition, Revised and Added, Bucharest: National Museum of Romanian Literature, pp. 315-323;
2. Andreea Dragomir: Philosophy, Legal Psychoanalysis and Criminological Research at Petre Pandrea, Aius Publishing House, Craiova, 2012;
3. Alex. Ştefănescu, 40 years since the death of Petre Pandrea A work that lacked Romanian culture, Literary Romania no. 26/2008;
4. Ion Simut, Justice at Risk, Literary Romania, no. 3/2004;
5. Adrian Bucurescu, Petre Pandrea, an outlaw of the word, Free Romania, July 25, 2008;

Annex: Published works

Die Verwaltungsreform in Rumanien, Breslau, 1931;
Hitlerite Germany, Adevărul Publishing House, Bucharest, 1933;
Judicial psychoanalysis, Cultura Românească Publishing House, Bucharest, 1934;
Beiträge zu Montesquieus deutschen Rechtsquellen (Eine Untersuhung der 2 hinterlassenen Manuskripte), Romanian Culture Publishing House, Bucharest, 1934;
Political and legal philosophy of Simion Bărnuțiu, "King Carol II" Foundation for Literature and Art, Bucharest, 1935;
Die Vereinigten Staaten (State and the German Nation) (1938);
Criminal Procedure, Spor Publishing House, 1938;
The Foreign Exchange Act (1939);
The Modern Doctrine of Punishment (1941);
Gold and sabotage (1943);
The tree of Life. Intimate Diary, Bucur Ciobanul Publishing House, Meridian Collection, Bucharest, 1944 (first edition);
Dialectical Criminology, Publishing House of Royal Foundations, Bucharest, 1945;
Portraits and Controversies, vol. I, Editura Bucur Ciobanul, Meridian Collection, Bucharest, 1945
Portraits and Controversies, vol. II, Royal Foundation for Literature and Art, Bucharest, 1946;
Attitudes and Controversies, Minerva Publishing House, Bucharest, 1982
Iron Guard. Journal of Political Philosophy. Prison Memoirs, Vremea Publishing House, Bucharest, 2000;
Reeducation from Aiud. Penitenciary Journal 1961-1964, Vremea Publishing House, Bucharest, 2000;
Helvetizarea României, Vremea Publishing House, Bucharest, 2001;
The Crude of the Mandarin. Intim Journal 1952-1958, Vremea Publishing House, Bucharest, 2002;
The White Monk, Vremea Publishing House, Bucharest, 2003;
The ivory tower, Vremea Publishing House, Bucharest, 2004;
The sun of melancholy. Memory, Vremea Publishing House, Bucharest, 2005;
Night of Wallachia. Intim Journal 1952-1968, Vremea Publishing House, Bucharest, 2006;
Brancusi. Memories and Exegesis, Vremea Publishing House, Bucharest, 2009 (3rd edition);
Brancusi. Pravila de la Craiova. Brâncuşi's Ethics, Vremea Publishing House, Bucharest, 2010

Brancusi. Buddies and enemies. Brâncuşi's Sociology, Vremea Publishing House, Bucharest, 2010
The memoirs of the Walachian mandarin. vol. 1, Journal 1954-1956, Vremea Publishing House, Bucharest, 2011
The memoirs of the Walachian mandarin. vol. 2, Journal 1957-1958, Vremea Publishing House, Bucharest, 2012;
Collaborations with: Flame, Thought, Desire, Romanian Life, Romanian Pandets, Tomorrow's Society, Utopia, Meridian, Timokul etc. He edited the magazines Viitorul social, Left and the Free Word.

The Censorship in 2019. The Limitation of the Freedom of Free Access to and Use of Information

Bogdan-Cristian BALABAN [1]

Abstract

This paper will shed some light on how the Article 17 (from The Directive on Copyright in the Digital Single Market) will impact Europe's creative economy, limit the freedom of speech/free access to and use of information. This directive would also force online platforms (such as Facebook, Youtube, Instagram) to censor the users' posts by using upload filters. The aftereffect will probably be that the internet would change from a place where everybody can express themselves, to a censored space where grand corporate rightholders will decide what can and can't be published.

Keywords: *Copyright, Digital Single Market, economy, freedom, censorship, information*

Introduction

The purpose of this paper is to clarify about how Article 17 (formerly Article 13) from The European Parliament and Council Directive on Copyright in the Digital Single Market will have a catastrophic impact on Europe's creative economy, will limit the freedom of expression[2][3] and free acces to and use of information.[4]

This directive will also force online platforms (such as Facebook, Youtube, Instagram) to censor users to their posts, by using "upload filters."

The aftereffect will most likely be that the internet will change from a place where everyone can express themselves as they wish (with some exceptions) in a space where large corporations that own copyright will decide what can and cannot be published or posted.

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[2] "Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable." (The Constitution of Romania, article 30, Freedom of expression, paragraph 1)

[3] "Any censorship shall be prohibited." (The Constitution of Romania, article 30, Freedom of expression, paragraph 2)

[4] "A person's right of access to any information of public interest shall not be restricted." (The Constitution of Romania, article 31, Right to information, paragraph 1)

The European Union is a political and economic union of 28 Member States located mainly in Europe.[56] The EU has developed a single internal market through a standardized system of laws that applies in all Member States. Eu policies aim at ensuring the free movement of persons, goods, services and capital within the internal market,[7] the adoption of legislation in the field of justice and home affairs and the maintenance of common policies on trade,[8] agriculture, fisheries and regional development.[9] For travel to the Schengen area, passport control has been removed. A monetary union was established in 1999, came into force in 2002 and is made up of 19 EU Member States using the euro.

EU citizenship and European citizenship were established with the entry into force of the Maastricht Treaty in 1993.[10]

The directive is a legislative act setting an objective that all Member States must achieve. Each of them, however, has the freedom to decide on how to meet the established objective. An exemple would be the EU Consumer Rights Directive which prohibits the use of hidden fees and costs on the internet and extends the period that consumers have at their disposal to cancel a sales contract.

The directives require Member States to achieve a certain result, but without imposing the means by which they can do so. Member States must adopt measures incorporating the EU directives into the national law ("transposition") in order to achieve the objectives set by them. National authorities must communicate these measures to the European Commission.

Transposition into the national law must take place before the deadline set when a directive is adopted (generally within 2 years). Where a Member States does not transpose a directive, the Commission may bring an action for failure to fulfil obligations.

The procedure for adopting European Union rules, implicitly directives, is carried out through the Parliament and the EU Council that can review and amend the text of a legislative proposal in a series of readings. If the two institutions agree on amendments at first reading, the proposed act is adopted. Otherwise, there is a second reading. If no agreement is reached at second reading, the proposal is presented to a "Conciliation Committee" consisting of an equal number of Council and Parliament representatives. Commission representatives participate in meetings and can make contributions. Once the committee has

[5] https://europa.eu/european-union/about-eu/eu-in-brief_en
[6] Parts of Spain and France are located outside Europe and the geographical location of Cyprus is unclear.
[7] https://web.archive.org/web/20071001122551/http://ec.europa.eu/internal_market/index_en.htm
[8] https://web.archive.org/web/20090116092625/http://europa.eu/scadplus/glossary/commercial_policy_en.htm
[9] https://ec.europa.eu/regional_policy/index_en.cfm
[10] Craig & De Burca 2011, p. 15.

reached an agreement, the text is submitted to Parliament and the Council for the third reading, after which it is adopted. In rare cases where the two institutions cannot agree, the act is not adopted.

The Copyright Directive in the digital single market, also known as the EU Copyright Directive is a European Union directive that has been adopted but has not yet entered into force.

It was originally called the Copyright Directive and was adopted in 2001. It was considered a success for Europe's copyright laws. The 2001 Directive gave the EU Member States significant freedom on certain aspects of its transposition into EU law. It was until December 2002 that the Member States of the European Union had to implement the directive in their own legislation; however, only Greece and Denmark had implemented it by the required date.

"This Directive lays down rules which aim to harmonise further Union law applicable to copyright and related rights in the framework of the internal market, taking into account, in particular, digital and cross-border uses of protected content. It also lays down rules on exceptions and limitations to copyright and related rights, on the facilitation of licences, as well as rules which aim to ensure a well-functioning marketplace for the exploitation of works and other subject matter"[11].

The European Commission (EC) states that the aims covered by this directive are to protect press publications, reducing discrepancies between profits made by online platforms and content creators, and encouraging collaboration between the two groups.

The Directive was introduced by the Legal Affairs Committee of the European Union on 20 June 2018 and a revised proposal was approved by Parliament on 12 September 2018. The final version resulting from negotiations during trilogue meetings, was submitted to parliament on 13 February 2019. The reform was approved on 26 March 2019. Member States have 2 years to implement the appropriate legislation to meet the requirements of the Directive.

The impact of the directive on the media and the European public:

The directive was generally supported by newspapers, publications and media groups. Protests were launched by the big companies "Tech" and also by the Internet users, as it was to be expected.

The Change.org petition collected over 5 million signatures on 21 March 2019 that oppose the directive, of which 1,3 million signatures are from Germany. In February 2019 "it gathered most of the signatures in the history of Europe."[12]

[11] DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL on copyright in the Digital Single Market, article 1, paragraph 1.

[12] https://www.eff.org/deeplinks/2019/02/worst-possible-version-eu-copyright-directive-has-sparked-german-uprising

There have been numerous public protests against the proposed directive, especially against Article 17 (formerly known as Article 13). Estimates show that there were 40 thousand people in Munich and 15 thousand in Berlin during these protests. Another estimate indicates that there were 30,000 people in Berlin and more than 100,000 in Germany per total.[13]

The most prominent protester against this directive is YouTube, a website where users can watch and upload audio and video materials. "YouTube was created in February 2005 by Chad Hurley, Steve Chen and Jawed Karim. The San Bruno, California-based service uses Adobe Flash Player technology (HTML5 in 2012) to display a wide range of user-created videos, including TV or movie clips. YouTube is part of the recent phenomenon called Web 2.0."[14]

In October 2006, Google[15] announced that it had reached an agreement to acquire YouTube company for $1.65 billion. The deal ended on 13 November 2006.[16]

Until the site was launched in 2005, there were few simple ways for unexperienced users to upload Internet videos by means of its very easy-to-use interface, YouTube has made it possible for anyone who can use a computer to upload a video that can be seen by millions of people after only a few minutes, thus having a strong social impact. The great variety of topics covered by YouTube has turned the transmission of videos into one of the most important applications of the Internet.

An example of YouTube's social impact was the success of Bus Uncle's video in 2006. It contains an animated conversation between a young man and an old man on a Hong Kong bus that has been extensively discussed in television broadcasts.[17] Another clip that has received special attention is the "Guitarist," in which a piece of baroque music, the Canon of Johann Pachelbel is played on an electric guitar. The artist's name does not appear in the video. But, after being viewed millions of times, the New York Times nevertheless revealed its identity, with Jeong-Hyun Lim, a 23-year-old boy who recorded the song in his bedroom.[18]

YouTube has often been criticized for the lack of copyright verification methods.

There are still many unauthorized videos on YouTube with TV shows and movies. YouTube does not check videos before being posted on the site, but leaves copyright holders asking for their deletion on the site (if they notice).

[13] https://www.dw.com/en/eu-copyright-bill-protests-across-europe-highlight-rifts-over-reform-plans/a-48037133

[14] https://ro.wikipedia.org/wiki/YouTube

[15] https://www.wall-street.ro/articol/New-Media/130695/de-la-un-clip-banal-la-un-gigant-online-youtube-succes-la-7-ani-primul-clip-video.html

[16] https://www.theage.com.au/business/google-closes-a2b-youtube-deal-20061115-gdotv3.html

[17] http://edition.cnn.com/2006/WORLD/asiapcf/06/07/hk.uncle/

[18] https://www.nytimes.com/2006/08/27/arts/television/27heff.html?ei=5088&en=5b993ce30a7b7039&ex=1314331200&partner=rssnyt&emc=rss&pagewanted=all

Organizations including Viacom and the English 1st League have filed a lawsuit against YouTube, arguing they have done little to prevent the uploading of copyrighted materials.[19,20] Viacom has claimed $ 1 billion in damages, arguing that they have found over 150,000 infringing videos, over 1.5 billion times viewed. YouTube replied that it is not required to check each video but has introduced a system that compares uploaded videos to a copyrighted database.[2122]

In July 2008, Viacom won a lawsuit that forced YouTube to provide detailed data on the videos viewed by each user.[23]

In August 2008, a US court ruled that copyright owners cannot require the immediate removal of an online file, without first determining whether the posting was done under the terms of "fair use".[24] The case was focused on Stephanie Lenz of Gallitzin, Pennsylvania, who created a 29-second video in which her 13-month-old son was dancing on the song "Let's Go Crazy", a video which she then posted on YouTube.[25] YouTube asks its users to "mark" the videos as "inappropriate" if necessary, and then an employee checks them if they really violate any site rules or not.[26]

In order to better understand how important YouTube is in our everyday life, I will present some statistics about this website: it has over 1.9 billion users connected monthly; over 400 hours of video are uploaded every minute; nearly 5 billion videos are watched on YouTube every day; on average, 8 out of 10 people aged between 18 and 49 look on YouTube monthly; about 1 billion hours of video are tracked on this site every day (more than Facebook and Netflix together); over 100 videos generated over a billion views; on average, the number of phone views per day of the video is 1 billion; you can browse YouTube in 80 different languages (covering 95% of the population using the Internet); it has local versions in 91 countries; YouTube's annual cost of use and maintenance is $ 6.350 billion; Google's annual revenue generated by YouTube is $ 4 billion; from 2007 to 2014 paid over $ 2 billion to rights holders.

For me, as a simple user of this site that uses it mostly for entertainment only, these are huge figures.

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[19] http://news.bbc.co.uk/2/hi/business/6446193.stm

[20] https://www.telegraph.co.uk/sport/football/2312532/Premier-League-to-take-action-against-YouTube.html

[21] http://news.bbc.co.uk/2/hi/technology/7420955.stm

[22] https://support.google.com/youtube/answer/2797370?visit_id=636980150809324178-3648661837&hl=en-uk&rd=1

[23] http://news.bbc.co.uk/2/hi/technology/7488009.stm

[24] In US copyright law, the notion of fair use refers to the possibility of using, under certain conditions, materials protected by this law without the need for permission from the rights holder by the author. Similar provisions also appear in the legislation of other countries.

[25] https://www.sfgate.com/news/article/Woman-can-sue-over-YouTube-clip-de-posting-3199389.php

[26] https://www.youtube.com/yt/about/policies/#community-guidelines

The figures for these statistics will change considerably from the implementation of Article 17.

"Member States shall provide that an online content-sharing service provider[27] performs an act of communication to the public or an act of making available to the public for the purposes of this Directive when it gives the public access to copyright-protected works or other protected subject matter uploaded by its users."[28]

Basically, according to the law cited above, YouTube is held responsible for the videos uploaded by its users, which means that if a person posts a video with a song that is not owned by them and whose broadcast has not received the copyright approval of the author, YouTube will be held responsible for this, not the person who posted that audio material in the first place.

The new EU copyright law will drastically affect the users' freedom and the accessibility of the Internet. This Article 17 will result in automatic surveillance and centralized internet control.

The directive will make online platforms responsible for the content generated by their users. This means that the latest internet protectors, as we know it today, such as YouTube, Facebook or Instagram, will be legally required to monitor and censor the content posted or accessed by its users.

These online platforms will be required by law to create automatic mechanisms for filtering content that infringes copyright while protecting themselves. Such technology would essentially turn into "charge filters". The major issue with these filters is that, being automated, they will not be able to distinguish between illicit and legal content such as parody, satire, commentary, review, or other fair use. In order to balance the defects of auto-load filters, the directive also requires platforms to create customized complaints systems to remove the videos posted in an illegitimate manner.

Conclusions:

This European Copyright Directive, in particular Article 17, will have a monumental impact on Europe's creative economy; at the same time, freedom of expression, free access and use of information posted and accessed on the platforms will be restricted, this leading to even censoring users' posts by means of "upload filters".

[27] "online content-sharing service provider' means a provider of an information society service of which the main or one of the main purposes is to store and give the public access to a large amount of copyright-protected works or other protected subject matter uploaded by its users, which it organises and promotes for profit-making purposes."

[28] DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL on copyright in the Digital Single Market, article 17, paragraph 1.

Online content sharing service providers (such as YouTube, Facebook, Instagram) will be forced to invest millions, maybe even billions of euros in those "upload filters" and block millions of videos (both already existing and new ones) in the European Union, which drastically limits the content that can be uploaded to these platforms in Europe. For example, over 35 million YouTube channels will be blocked[29], and hundreds of thousands of people will lose their jobs. (for example, YouTube content creators, those who use these online platforms for their business, artists and people who are hired by all of them, and examples can continue.) Not to mention the various ways in which the constant users of these platforms will definitely be affected.

Bibliography

1. Craig & De Burca 2011, p. 15
2. DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL on copyright in the Digital Single Market, article 1, paragraph 1.
3. DIRECTIVE OF THE EUROPEAN PARLIAMENT AND THE COUNCIL on copyright in the Digital Single Market, article 17, paragraph 1.
4. http://edition.cnn.com/2006/WORLD/asiapcf/06/07/hk.uncle/
5. http://news.bbc.co.uk/2/hi/business/6446193.stm
6. http://news.bbc.co.uk/2/hi/technology/7420955.stm
7. http://news.bbc.co.uk/2/hi/technology/7488009.stm
8. https://ec.europa.eu/regional_policy/index_en.cfm
9. https://europa.eu/european-union/about-eu/eu-in-brief_en
10. https://ro.wikipedia.org/wiki/YouTube
11. https://saveyourinternet.eu
12. https://support.google.com/youtube/answer/2797370?visit_id=636980150809324178-3648661837&hl=en-uk&rd=1
13. https://web.archive.org/web/20071001122551/http://ec.europa.eu/internal_market/index_en.htm
14. https://web.archive.org/web/20090116092625/http://europa.eu/scadplus/glossary/commercial_policy_en.htm
15. https://www.dw.com/en/eu-copyright-bill-protests-across-europe-highlight-rifts-over-reform-plans/a-48037133
16. https://www.eff.org/deeplinks/2019/02/worst-possible-version-eu-copyright-directive-has-sparked-german-uprising
17. https://www.nytimes.com/2006/08/27/arts/television/27heff.html?ei=5088&en=5b993ce30a7b7039&ex=1314331200&partner=rssnyt&emc=rss&pagewanted=all
18. https://www.sfgate.com/news/article/Woman-can-sue-over-YouTube-clip-de-posting-3199389.php
19. https://www.telegraph.co.uk/sport/football/2312532/Premier-League-to-take-action-against-YouTube.html
20. https://www.theage.com.au/business/google-closes-a2b-youtube-deal-20061115-gdotv3.html

[29] https://saveyourinternet.eu

21. https://www.wall-street.ro/articol/New-Media/130695/de-la-un-clip-banal-la-un-gigant-online-youtube-succes-la-7-ani-primul-clip-video.html
22. https://www.youtube.com/yt/about/policies/#community-guidelines
23. The Constitution of Romania, article 30, Freedom of expression, paragraph 1
24. The Constitution of Romania, article 30, Freedom of expression, paragraph 2
25. The Constitution of Romania, article 31, Right to information, paragraph 1

Cyber Crime
In Cloud Computing

Anca Iulia BALDAN

Abstract

Easy access to information and communication technology is one of the premises for the well-functioning of modern society. Cyberspace is characterized by lack of borders, dynamism and anonymity, generating both opportunities for developing the knowledge-based information society, but also risks to its functioning.

Cloud Computing is one of the most important technological developments that has emerged in recent years. The advantages of using IT in a unified way have led to the widespread adoption of these IT services and networks.

Due to its peculiarities, Cloud Computing is an information environment conducive to criminal activities. As with other components of cyberspace, for example social networks, cyber crime has grown in this cyber environment.

The cross-border nature and the prodigious dynamics of cyber crime make the phenomenon extremely dangerous, related to the seriousness of the facts that can be committed with the help of information systems.

This article aims to analyze the risks arising from careless use of these cyber facilities, the constituent material elements of criminal activity on this cyber-domain, the legal ways and means of responding to these new challenges in preventing and combating the specific cyber crime.

Keywords: *Cyber crime, risks resulting from Cloud-computing use, new challenges in preventing and fighting cyber crime*

1. Introduction. Background

The evolution of information technology, information systems, which began significantly in the second half of the last century and being in a pronounced ascension, has made its mark on all areas of social, economic, civil or military life, etc.

The huge benefits of informatics are absolutely obvious, which has a decisive influence on human progress. It is quite right to say that "the cyber revolution - especially the *revolution on the Internet* - is the third (and probably the last) industrial revolution"[1].

The development of a "spiderweb"- Word Wide Web (or Web), in the context of informatics evolution, is considered as a decisive technological factor for what we

[1] Emilian Stancu, *Criminal Treaty*, V edition, reviewed and added, Universul Juridic Publishing House, Bucharest, 2010, p. 763.

call *globalization*, along with factors such as economic globalization and political globalization[2].

Easy access to information and communication technologies is currently one of the prerequisites for modern society to function properly. Cyberspace is characterized by a lack of borders, dynamism and anonymity, creating both opportunities for developing the knowledge-based information society and risks to its functioning (individual, state and even cross-border manifestation)[3].

In an era of information technology, the speed with which the devices and services of the information technology industry have developed is truly impressive.

Information and communication technology trends and developments are generated by a less visible but truly revolutionary innovation, namely: Cloud Computing, the multi-functional technological phenomenon covering almost all aspects of information technology (data processing, storage and analysis, communications, networks and infrastructure, etc.) and is responsible, at least in part, for the speed at which new devices, applications and services are developed and brought to the market.

Cyber crime is currently a key area in criminal matters, especially in the way technology sets its mark on us. The cross-border nature and the dynamics of the legal phenomenon make it extremely dangerous, given the seriousness of the acts that can be committed with the help of information systems. According to a study by Symantec[4], IT network exploitation, identity theft, cyber espionage, propagation of malware, creating bot-nets and others equally are incidents that have spread over recent years into a major global phenomenon affecting industry, defense, law enforcement, academia and the private sector. The danger posed by this phenomenon is as real as possible.

The two reports by Symantec in 2016 and 2017 confirm this. Unlike classical or traditional (physical) forms of crime, cyber crime is rather difficult to detect, especially if it is a person who "erases" the traces of his criminal activity[5]. Moreover, this criminal phenomenon is often difficult to locate in jurisdictional terms, given the cross-border nature of it networks.

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[2] Ionut I. Gaf-Deac, *New legal horizons and globalization,* Infomin Publishing House, Deva, 2002, p. 48.

[3] Romania's cyber security strategy. [Online]. [Accessed on 20 May 2019]. Available at: http://www.securitatea-cibernetica.ro/wp-content/uploads/2014/12/Strategia DeSecuritate Cibernetica ARomaniei.pdf

[4] Symantec - Internet Security Threat Report (ISTR), 2017, p. 16-21 [Online]. [Accessed on 20 May 2019]. Available at: https://www.symantec.com/content/dam/symantec/docs/reports/istr-22-2017-en.pdf

[5] Bogdan, Alexandru Urs, *Cloud Computing - the Enabling environment for cyber crime, in Law* no.3/2018, p.146.

Whether legitimate users or cyber criminals, Cloud Computing has become extremely useful for all. There is a range of specialized cyber criminals who can use Cloud computing resources to rapidly expand their illegal activities to commit increasingly diverse and difficult to detect offenses in cyberspace (computer fraud, industrial espionage, cyber terrorism, child pornography, etc.).

The current context is a good one for the study of cyber crime in this cyber environment. The processing power and the vast amount of data stored in Cloud Computing systems and networks are becoming attractive targets for cyber criminals. According to T-CY Cloud Evidence Group[6], Cloud Computing creates challenges related to means of combating attacks (impediments to law enforcement agencies, i.e. unable to efficiently locate data stored and processed in the computer environment).

2. Cyber Crime in Cloud Computing

One of the enabling environments for cyber crime is Cloud Computing which represents one of the most important technological developments that have emerged in recent years.

Cloud Computing technology and services consist of using it networks, in particular The Internet, to allow users access to applications, programs, processing, storage and memory space[7].

According to experts from The United States National Standards and Technology Institute (NIST), *Cloud Computing* is a model that allows easy and ubiquitous access to a set of configurable IT resources (networks, servers, storage, applications and services), access that can be launched and provided through a network, with minimum management resources and reduced interaction by the service provider. In the information and Cloud Computing industry, it allows for the acquisition or, more generally, the rental of hardware or software-based infrastructure and services.

'IT Environment' can be defined as a set of hardware and software that works in a unified manner within information systems and networks, which performs various functions and interactions (between it systems or between people and information systems)[8].

[6] T-CY Cloud Evidence Group is an organization operating under the Council of Europe Convention on cyber crime (2001) and is designed to find solutions in criminal matters, such as the issue of access to evidence stored on Cloud Computing servers belonging to different jurisdictions, including international legal aid in criminal matters.

[7] Data Protection working Party established under Articles 29 - 01037/12/RO WG196, Opinion no 05/2012 on cloud computing, adopted on 1 July 2012.[Online]. [Accessed on 20 May 2019]. Available at: https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=celex:52012DC0529

[8] Bogdan, Alexandru Urs, *Cloud Computing - The enabling environment for cyber crime, in Law no.* 3/2018, p. 142.

In particular, a collection of computers, software, operating systems, equipment and networks can be used to process and facilitate the exchange of information in electronic form in various forms or ways of implementation. Whether it is Cloud Computing or other computing environment (e.g. social networking), hardware, platform and computer operating system work in a unified way under the same set of conditions.

Cloud Computing systems make it technically and legally complex.

From a technical point of view, Cloud Computing covers almost all aspects of information and communication technology. Computers, storage facilities, networking equipment, Internet, equipment for creating, processing, storing, security and flow of data in electronic form, all of which are in one form or another in this technology. The cloud is not just a server, but rather a platform that combines physical equipment (hardware) with virtualization, automated tools, operating systems, and a range of applications (software) used to perform key functions within the network.

Worldwide, there are a wide variety of Cloud Computing services that are offered by various IT industry providers. These include software, data processing systems, communications services, application development support and advanced web hosting, virtual machine, storage space[9], etc.

Legally, as with other components of cyberspace, for example social networks (emergence and development of social networks directly contribute to traditional and cyber-crime), with the increase in the number of users of Cloud Computing technology, cyber crime specific to this cyber environment has grown.

In recent years, a significant proportion of cyber crime has started moving to The Cloud Computing area. One possible explanation of this phenomenon would be that external computer resources are used to launch and execute different criminal activities at distance and from any location (often those committing computer crimes using Cloud Computing systems and services are in different countries).

According to the legal literature[10], the problem with this complex IT environment is the phenomenon of cyber crime migration. The phenomenon is from conventional cyber crime, based on relatively limited computational resources (e.g. a computer) to complex cyber crime (Cloud type, with virtually unlimited resources – infrastructure, platform and applications).

The evolution of the computing systems is closely linked to the evolution of cyber crime, so that the means to commit cyber crime have become increasingly complex.

[9] Titi Paraschiv, Viorel Iulian Tanase, Cristian Manea*, Psychological Information*, Hamangiu Publishing House, Bucharest, 2014.

[10] Bogdan, Alexandru Urs, *Cloud Computing- The enabling environment for cyber crime, in Law no.* 3/2018, p. 143.

Legally, we are directly interested in the factors that facilitate this migration process, as it is about the study of criminal phenomena (criminal law enforcement, jurisdiction, investigation of crimes and the accountability of those who commit crimes in this information environment).

3. Forms of Cyber Crime in Cloud Computing

The emergence of the information society and cyberspace (the global domain that enables the exchange of information and creates interactions between people, services and electronic devices) has directly contributed to this progress of today's society[11].

Cyberspace literature defines the global domain in the information environment, consisting of a range of networks, equipment and IT infrastructures that are designed to maintain global distribution of information and communications over the Internet. Due to the benefits of technology developments, cyberspace[12] has today become an ensemble of resources shared by citizens, businesses, information infrastructures and governments, without clearly defining between these different groups. In the coming years, cyberspace is expected to become increasingly complex with the increase in the number of networks, infrastructures and devices that are connected to the Internet.

Cyber crime has also emerged with the development of cyberspace, cyber attacks have become more common in recent years. Their complexity and frequency represent a serious threat to the safety of citizens worldwide. Examples such as recent cyber attacks capable of shutting down a nuclear power plant, changing operating parameters of air missile defense systems or stopping power or drinking water supply, make us truly understand the scale and severity of the phenomenon.

The development of Cloud Computing services has led to the development of new types of threats, vulnerabilities and challenges to environmental security, and cybercriminals have new methods and tools for committing crimes. Some examples of this include: distribution of computer contaminants, mass sending of spam, launching control and command servers, etc. interesting is that the nature of the attacks launched on the Cloud is changing today. Web application and service growth provides attackers with a common, independant platform or operating system base (Windows, Android, Linux, etc.).

The iCloud leaks case is a good example of Cloud Computing being the target of crime. In 2004, the iCloud service belonging to the US company Apple

[11] Ioana Vasiu, Lucian Vasiu, *Law of information and Communication Technology*,Albastra Publishing House, Cluj-Napoca, 2014, p. 6.
[12] Ioana Vasiu, Lucian Vasiu, *Cyberspace crime*, Universul Juridic Publishing House, Bucureşti, 2011, p. 21.

was attacked by exploiting some of the weaknesses of the API (Application Program Interface) interface that resulted in unauthorized data transfer and publication in the press of some 500 photographs of public figures in the entertainment industry.

In comparison to the past, when cyber criminals concentrated on exploiting platform or operating system vulnerabilities and sought to develop a contaminant (malware) acting on a particular platform or version of the operating system, today things are different because web application vulnerabilities are somewhat neutral and act regardless of platform or operating system (e.g. applications implemented on a JavaScript programming language).

Cyber criminals often use new methods or adapt and transform different equipment, programs or cyber contaminants to conduct their illicit activity.

They often seek to create difficulties for law enforcement bodies by exploiting gaps in national law or gaps in other states' legislation. If we relate to the consequences, criminal activity in cyberspace can take different forms depending on the negative impact on victims.

Cloud Computing has seen a huge development in the last decade, inciting the interest of important IT specialists communities, but also of many people working in other areas. The defining feature of this technology is to propose the provision of information resources in the form of services which beneficiaries can use at the time, in the form, in the quantity and quality they need, from any geographical location. The many benefits of the proposed data processing model have led to a large part of the scientific and business community working toward the massive development and integration of scientists into organizations, with a view to optimizing expenditure in the field of information technology.

In order to be able to speak of cyber crime in Cloud Computing, we need to define the concept of "Cloud crime". *The cloud crime* is thus any type of computer crime with implications in Cloud Computing, in the sense that the "environment" may be the subject, object or instrument related to the offense. This means that the "environment" is in different positions in relation to its role in cybercrime. It is considered to be "object" when the target of the offense is the service provider and the environment is directly affected, as is the case in the case of a denial of service (DoS) attack, which concerns sections of the service or even the information environment itself. The same "environment" can be considered "subject" if the document incriminated is carried out within it, for example in the event of unlawful alteration or deletion of data from the Cloud or user identity theft. The "environment" can also be a "tool" used to plan or lead to a cyber crime.

According to the literature, there are two categories or forms of offenses in Cloud Computing: The first in which the computer environment is *the target* of the crime and the second in which the environment is used as *an instrument* for

committing the crime[13]. Cloud Computing is thus becoming a powerful tool for criminals to engage in highly complex and yet difficult to detect cyber attacks. One good example of this is the High Roller Operation, which was carried out in 2012. The operation consisted of fraud on the international banking system by about $78 million. Cloud Computing servers around the world have been used to hide the identity of attackers. The complexity of the operation involved using web injection attacks (modifying browser content and collecting input for authentication) and e-mail phishing fraud that were used in conjunction with malware such as Zeus or SpyEye.

3.1. Cloud computing as a target of cyber crime

Cloud Computing benefits not only large companies (low costs, common infrastructure, outsourced resources, etc.), but also for cyber criminals, because it is a strategic target because of the high concentration of valuable information. Once exploited, vulnerabilities in the infrastructure of Cloud Computing service providers open the way to data compromise on countless users. Cloud Computing is implemented in one of three service delivery models: SaaS (Software as a service), IaaS (Infrastructure as a service) and PaaS (Platform as a service)[14].

In analyzing the criminal phenomenon targeted by the Cloud, it is very important to differentiate IT offenses according[15] to the models of service delivery. Each of these three models feature unique features, which results in specific cyber crime. With the SaaS model, we can give the example of computer fraud through e-mail web applications. The PaaS model is a target chosen by criminals seeking illegal interception of data transmission or unauthorized transfer of data. Altering the integrity of computer data and disrupting the operation of information systems, by diverting virtual machines, makes the IaaS model the main target of cybercriminals. Depending on the purpose, cyber criminals carefully choose their targets so that their attacks are as effective as possible. While Cloud Computing services are constantly monitored, IT crime is growing.

The interesting Software model as a service (SaaS) is the multitude of applications made available to users, applications available regardless of the platform or operating system, and access to Cloud services. Take for example an email service that is provided by a provider such as Google or Microsoft. The application allows for the transmission of computer data although users do not have access to the email application operating system (except for interface elements running locally) or to the physical components required for the operation

[13] The Verge – Hack leaks hundreds of nude celebrity photos. .[Online]. [Accessed on May 20, 2019]. Available at: https://www.theverge.com/2014/9/1/6092089/nude-celebrity-hack,
[14] Bogdan, Alexandru Urs, *Cloud Computing- The enabling environment for cyber crime, in Law no.* 3/2018, p. 147.
[15] *Idem*, p.148.

of the application. It is the service provider that maintains the security and availability of the application, users do not even need access to the components or the application operating system. Since software as a service is web applications, whose operation depends exclusively on Internet connection, applications are prone to a range of security defects or vulnerabilities that can be exploited with quite ease. Once the security of the application is undermined, it is very easy for an attacker to commit an it crime as it has access to a multitude of user data (identity theft, computer fraud, unauthorized data transfer, etc.).

The Platform as a Service (PaaS) provides users with a platform (an operating system or program language environment, web servers, application servers, databases, etc.) for application creators, by providing users with tool and standard packages for application development and the possibility to use distribution channels. In other words, it provides developers with an application development environment. The development platform starts from the premises of a controlled environment, in which the transmission network is well-secured. The environment is controlled, but this is not the case in practice, as the service provider does not provide a physical separation of networks, which reduces the security of the transmission of information. This makes the flow of information between the different components of the development platform vulnerable to illegal data transmission interception. The leakage of information causes significant financial damage to companies developing applications. Criminals can evade developing applications that they subsequently sell to other companies for considerable profit.

Infrastructure as a service (IaaS) is a model that provides users with a set of components, virtual machines and resources that have the capacity to deliver processing power, storage, virtual networks and other basic computing resources that require high processing power or extended storage capacity. Users have the ability to build and configure elements (e.g. a virtual router) and virtual machine (virtual computing system) in accordance[16] with their processing or storage needs. The characteristic of this model is that security of virtual machines and elements is the responsibility of users rather than service providers. The IaaS model thus becomes a safe target for a cyber criminal because, unlike other models, the service infrastructure has a much wider range of objectives and facilities. Attackers can exploit vulnerabilities within the infrastructure and thus connect to the basic operating system or install a rootkit to gather system information for later hijacking virtual machines so that they attack other systems or components in the IaaS environment. The actions of attackers usually materialize by identifying

[16] Bogdan, Alexandru Urs, *Cloud computing - The enabling environment for cyber crime, in Law* no.3/2018, p.149.

the final target or purpose and then selecting the lowest point of the infrastructure to gain access to the system.

3.2. Cloud Computing – a tool for the commission of cyber crime

The role of cybercriminals is to undermine the security of cloud computing systems and infrastructure and to make technology a tool to serve their criminal activity. The operational security model in Cloud Computing services consists of certain assumptions about software running in the it environment, availability of the operating system or platform, and user behavior. Attackers "force" the normal operating conditions and undermine assumptions made by developers of Cloud Computing systems, implemented through the operational security framework.

Cloud Computing benefits both legitimate users and cyber criminals. The distributed nature of the technology, the fact that data is scattered between different equipment and components, makes it very difficult for investigators to work, which makes it more difficult for criminals to turn to Cloud Computing. A criminal organization can choose a Cloud service provider to take advantage of storage (Amazon S3), can still obtain processing services from another provider (Microsoft Azure) and direct anonymous communications through the third vendor (Nuvio)[17]. This makes Cloud Computing an effective tool for criminal activity. The tool is all the more effective as it gives cybercriminals very high computing power for relatively low costs. Since 2009, the potential of Cloud Computing services has been speculated and used as a tool for launching cyber contaminants and a botnet command center. Having multiple uses, Cloud Computing has also been used to find or "break" the security passwords of wireless communications networks.

Cloud technology can also be used to attack targeted targets or launch distributed denial of Service (DDoS) attacks. The distributed nature of Cloud Computing allows organized cyber crime groups to act in a structured way, without the group's members being personally aware of each other[18]. Partitioning tasks and using anonymous communication tools allow them to exchange information about potential targets or the results of criminal activities they perform. Organized cyber crime groups such as anonymous adopt methods of operation, in which members are not known to each other precisely so that they can be difficult to identify by investigative bodies. Furthermore, the group members use tools to conceal their criminal activity (hiding their IP) or use fictitious identities to connect to Cloud Computing services. As most Cloud

[17] Bogdan, Alexandru Urs, *Cloud computing - The enabling environment for cyber crime, in Law* no.3/2018, p.151.

[18] EUROPOL European Law Enforcement Agency - *Internet Organization Crime Threat Assessment (IOCTA)* 2014, p. 61.

providers will require a name, address and credit card to register a user account, criminals gain this data by illegal means to create false profiles and access legitimate Cloud services. The method is to acquire illegitimate cloud computing services to be used as a tool for committing cyber crime.

Another way of acting on cyber criminals would be the mixed method, where Cloud is both the target of an information crime (illegal access) and the tool of another computer crime (use of Cloud accessed for fraud). The second method is more difficult to achieve because it involves access to all or part of the system (ability to launch commands and access it data or to conduct it operations). Once obtained, illegal access allows all dangerous attacks on data and information systems (access, copying or alteration of computer data, fraud, espionage, blackmail, forgery, propagation of computer contaminants, disruption of the operation of information systems, etc.).

Cloud Computing has directly contributed to the increase in the number of web applications and services. These applications are accessed via a web browser (using *a http or https transmission protocol)*, and user data processing and storage is minimal. Although server processing is done, web applications may have some items running locally (in the user's system). It is these elements (usually coded in JavaScript software language) that have been the target of several security vulnerabilities in recent years.

Conclusions

Together with the undeniable benefits of computerization in modern society, it also introduces vulnerabilities, so ensuring the security of cyberspace must be a major concern for all stakeholders, especially at institutional level, where the responsibility for developing and implementing coherent policies in this area is concentrated.

Cloud Computing is one of the computing environments, especially the Internet, to provide users with access to applications, programs, resources, processing capacity and data storage. Cloud Computing is a legal environment conducive to criminal activities, by allowing the use of external IT resources to launch and execute different criminal activities at a distance and from any location. Often, IT crime offenders are in different countries with Cloud Computing systems and services.

Cyber crime in Cloud Computing is complex for two reasons. The first would be related to its composition and operation, and the second reason is the complexity of cyber attacks whose target or tool is the environment, attacks that are becoming increasingly developed and targeted.

The rapid evolution of the nature of cyber threats has required the adoption of a new cyber defense policy. At European Union level, work is being taken on the adoption of a European strategy for cyber security, which harmonizes Member

States' efforts to address security challenges in cyberspace and the protection of critical information infrastructures. Follow-up initiatives have taken since the growing number of cyber crime, the increasing involvement of organized crime groups in cybercrime and the need for coordination of European efforts to combat such acts.

Because crime in the virtual space has clearly become a global danger requiring regional and global Regulation, Directive 2016/1148/EU of the European Parliament and of the Council of 6 July 2016 on measures for a high common level of security of network and information systems in the Union[19] and Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on the attacks against information systems and replacing framework decision 2005/222/JAI of the Council of the European Parliament and of the Council of the European Union.[20]

In its preamble, Directive 2016/1148/EU States that, in order to respond effectively to challenges in the field of network and information system security, a comprehensive Union approach is required, including common requirements for minimum capacity building and planning, information exchange, cooperation and common security requirements for operators of essential services and digital service providers'. It is also considered that „this directive should be without prejudice to the possibility for each member state to take the necessary measures to ensure the protection of its essential security interests, to defend public order and security and to allow the investigation, detection and prosecution of criminal offenses. In accordance with article 346 of the Treaty on the Functioning of the European Union (TFUE), no member state is required to provide information the disclosure of which it considers contrary to the essential interests of its security."

As large-scale, well-coordinated and targeted cyber attacks on member states' critical cyber infrastructures are a growing concern of the EU, action to combat all forms of cyber crime, both at European and national level, has become a pressing necessity.

Bibliography

1. Titi Paraschiv, Viorel Iulian Tanase, Cristian Manea, *Psychological Information*, Hamangiu Publishing House, Bucharest, 2014.
2. Bogdan, Alexandru Urs, *Cloud Computing - The enabling environment for cyber crime, in Law* no.3/2018.

[19] Official Journal of the European Union L 194/1, 19.7.2016, p. 8, [Online]. [Accessed on 20 May 2019]. Available at: https://eur-lex.europa.eu/legal-content/ro/TXT/?uri=CELEX% 3A32016L1148.
[20] Official Journal of the European Union L 218, 14.8.2013, p. 8, [Online]. [Accessed on 28 October]. Available at: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=OJ:L:2013:218:FULL&from=FR

3. Ioana Vasiu, Lucian Vasiu, *Law of information and communication technology*, Albastra Publishing House, Cluj-Napoca, 2014.
4. Ioana Vasiu, Lucian Vasiu, *Crime in Cyberspace*, Universul Juridic Publishing House, Bucharest, 2011.
5. EUROPOL European Law Enforcement Agency - *Internet Organization Crime Threat Assessment (IOCTA)* 2014.

WEB sources:

1. Romania's cyber security strategy. [Online]. [Accessed on 20 May 2019]. Available at: http://www.securitatea-cibernetica.ro/wpcontent/uplads/2014/12/StrategiaDe SecuritateCiberneticaARomaniei.pdf
2. Symantec - Internet Security Threat Report (ISTR), 2017, p. 16-21 [Online]. [Accessed on 20 May 2019]. Available at: https://www.symantec.com/content/dam/ symantec/docs/reports/istr-22-2017-en.pdf
3. Data protection working party established under Articles 29 - 01037/12/RO WG196, Opinion no 05/2012 on „cloud computing", adopted on 1 July 2012.[Online]. [Accessed on 20 May 2019]. Available at: https://eur-lex.europa.eu/legal-content/RO/ALL/?uri=celex:52012DC0529
4. The Verge – Hack leaks of nude celebrity photos.[Online]. [Accessed on 20 May 2019]. Available at: https://www.theverge.com/2014/9/1/6092089/nude-celebrity-hack

Efficiency of Interim Measures Taken by Arbitral Tribunals in E.U. Jurisdictions

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Abstract

The article aims to offer a concise overview on the various levels of efficiency of interim measures taken by arbitral tribunals across the jurisdictions of the member states of the European Union. In the first section, it enquires whether in these states such interim measures are available according to law and the terms under which they may be subject to local enforcement. In the second section, it reviews domestic laws of EU member states, as to whether interim measures may be taken as a result of ex parte procedures and if such measures are enforceable. In the third section, the author looks at the extent to which the arbitral rules of leading arbitration institutions seated within the jurisdictions of the EU member states, contain provisions allowing arbitral tribunals to issue interim measures. It also enquires if such rules contain emergency arbitration procedures and whether such procedures might lead to enforceable interim measures.

Introduction

Power is nothing without control. This is not only a famous long-standing slogan of a commercial brand (Pirelli & C. S.p.A, 2019). This is also a true saying in international commercial arbitration, as far as interim measures taken by arbitral tribunals (Lew, Mistelis and Kröll, 2003, pp.524-601) are concerned. It may often be useless to vest arbitral tribunals with powers to rule with final and binding effect over commercial disputes, where the law does not provide sufficient control for the arbitrators to efficiently secure their arbitral award, by way of taking effective interim measures within the arbitral process itself. While in many cases, interim measures in arbitrated disputes may be complied with voluntarily by the losing parties, this is often not enough to fully secure the arbitral claims (Blackaby et al., 2009, p.320). Losing sides may attempt to frustrate the arbitral process by concealing material evidence, changing the status-quo of the case or frustrating enforcement of arbitral awards by dissipating their assets (Lew, Mistelis, Kröll, 2003, p. 525) In turn, this has a negative impact on the efficiency and viability of commercial arbitration as an alternative dispute resolution.

It is therefore needed, both in the interest of the economic entities involved in specific arbitral cases and of the international arbitration as a community, that

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interim measures are not only taken by arbitral tribunals but that they are also efficiently implemented. Efficiency can only be maximized if the interim measures taken by arbitral tribunals are enforceable based on domestic laws of local jurisdictions, and if there are means of having such measures issued fast enough, especially in the critical period between the filing of an arbitral claim and the constitution of the arbitral tribunal.

The national jurisdictions reviewed by this article, are those of the states that form the European Union as to the date of publication of the article. We shall therefore enquire on the efficiency of interim measures taken in arbitration from two perspectives: first, from the perspective of enforceability of arbitral interim measures, as such enforceability (or lack of it) is provided by the arbitration and civil procedural laws of each Member State; second, from the perspective of emergency procedures stipulated in arbitration rules of prominent arbitral institutions seated in the national jurisdictions of the Member States.

The author might be asked what the reason behind would be, for subjecting to analysis EU jurisdictions only, since the *acquis communautaire* does not regulate domestic or international arbitration in the Member States and therefore arbitration, as a dispute resolution method, is not apparently relevant from the perspective of the EU. While this is true, arbitration being rather an alternative dispute resolution method that has developed as part of the effort of the United Nations to grow and encourage a prosperous world trade community, the European Union is nevertheless a major, cohesive, economic space of this community. In this economic space, international commercial arbitration is encouraged by EU member states (all signatories of the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards of New York of 1958, further referred to as The New York Convention) and is organically entangled with the fundamental economic freedoms of the EU, as reflected in the economy of its members. Considering all that, this article aims of creating a synthetized image of the efficiency of interim measures taken by arbitral tribunals seated in jurisdictions within the cohesive economic space of the European Union.

Being a demarche with a limited, theoretical extent, and not a practice analysis, the article focuses exclusively on the arbitration and enforcement laws of the EU member states, in force as on the date of its publication, and on the current arbitration rules of one, selected leading arbitral institution of the author's choice, seated in each EU national jurisdiction. In the case of the United Kingdom, the article will look on the jurisdiction of England, Wales and Northern Ireland (hereinafter referred to as England & Wales), as well as on the jurisdiction of Scotland.

I. **Enforceability of interim measures issued by arbitral tribunals seated in EU jurisdictions**

A vast majority of arbitration jurisdictions within the EU has laws permit the possibility of arbitral tribunals to issue interim measures in domestic and international arbitration. These are Austria (Konrad and Menssdorf-Pouilly, 2019), Bulgaria (Dimitrova, 2018), Croatia (Bekina and Kevilj, 2018), Denmark (the Danish Arbitration Act of 2005, Section 17), England & Wales (Caher and McMillan, 2018), Estonia (Klauberg and Kekalainen, 2016, p.521), Germany, (Bücheler and Flecke-Giammarco, 2018) Hungary (Pigler, 2019), Lithuania (Klauberg and Kekalainen, 2016, p.521), Luxemburg (Goossens, 2018), Malta (Refalo, 2019), Ireland (Dunleavy and Carey, 2018), Spain (Cordon and del Moral, 2019), Portugal (Albuquerque, Silva, Mesquita, 2019), Slovenia (Article 20 of the Law of Arbitration of Slovenia, in force since 2008), Slovakia (Act No. 244/2002 of 3 April 2002 on Arbitration as modified in 2009, Section 22), Poland (Article 1181 of the Polish Act of 17 November 1964 - Code of Civil Procedure, as modified in 2005), Romania (Article 585 para. 4 and Article 1123 of the Romanian Civil Procedure Code) and Sweden (Swedish Arbitration Act of 1999 as revised in 2019, Section 25, para. 4).

Notably, there are jurisdictions in which the state encourages the parties to file for interim measure in the arbitral process, adopting various policies of non-interference/limited interference of state courts in the arbitral process, once there is a functional arbitral tribunal in place. Such are England & Wales (Caher and McMillan, 2018) and Slovakia (Act No. 244/2002 of 3 April 2002 on Arbitration as modified in 2009, Section 2 para. 2).

In Cyprus (Pavlou, Philippidou and Symeonides, 2016) and Greece (Hioureas et al., 2018; Kelemenis, 2010), interim measures may be issued only in international arbitration seated on the territory of these states.

In other jurisdictions, although arbitrators may legally issue interim measures, their power to do so is limited to certain types of interim relief. In Scotland, the powers of the arbitral tribunal are expressly limited to certain types of measures pertaining to property and related evidence that is subject to arbitration (CMS Guide to Interim Measures, Section 10.2). In France, arbitral tribunals may issue interim measures except for the case of conservatory seizures and judicial securities (Naoud and Grisolle, 2019). Similarly, in Belgium, conservatory attachment orders may not be issued (Petillion et al. 2019), while in the Netherlands provisional seizures may not be established by arbitral tribunals (Smith, and Hetterscheidt, 2018).

The law is silent on the possibility of arbitral tribunals to issue interim measures, while giving state courts such powers in Finland (Ylicantola and Ruohonen, 2019), and Czech Republic (Jasek and Novotny, 2019). In Latvia, courts may do so only before the arbitral tribunal is constituted. Otherwise, the

possibility of having any interim measures in an arbitral case is barred, as courts are likely not to enforce any measure disposed by the arbitral tribunal, in the absence of any legal grounds that the tribunal might issue such measures (Klauberg and Kekalainen, 2016, p.521).

In Italy, a major EU economy and an important arbitration jurisdiction - the procedural law expressly forbids arbitral tribunals to take interim decisions (Lew, Mistelis and Kröll, 2003, p.587), except for the limited scenario of arbitrated disputes between shareholders related to company resolutions (Montinari and Frigerio, 2019).

It can be concluded then, that in most EU jurisdictions arbitral tribunals may issue interim measures. It is however widely accepted in international arbitration that in most cases, in which the parties in dispute are not particularly hostile to each other, or in which the interim measures do not contain onerous obligations for the parties, interim measures tend to be complied with voluntarily (Scherp and Norburg, 2019 and Dimitrova, 2019), which makes arbitral measures usually efficient, per se.

However, there are also cases in which parties do not comply willingly to arbitral interim measures. In such cases, the efficiency of the measures is in serious question, should the option of enforcement by way of state courts not be available. Considering that, this review shall further look at the enforcement potential of arbitral interim measures in the EU jurisdictions.

Arbitral interim measures have been found as being directly enforceable (regardless on the form under which the measure was issued by the tribunal) in Croatia (Article 16 of the Croatian Law of Arbitration of 2001), Estonia (Teder and Vaher, 2019), Hungary (Section 26 of the [Hungarian] Act LX of 2017 on arbitration), Germany (Lew, Mistelis, Kröll, 2003, pp. 609-610; Geyer and Weimann, 2019), Lithuania (Article 25 of Law on Commercial Arbitration of 2012), Malta (Cremona and Bonnici, 2018), Poland (Art. 1181 of the [Polish] Act of 17 November 1964 - Code of Civil Procedure as modified in 2005), Portugal, (Albuquerque, Silva and Mesquita, 2019) Slovakia (Act No. 244/2002 of 3 April 2002 on Arbitration as modified in 2009, Section 22c) and Slovenia (Menard and Ulčar, 2018).

In Greece arbitral interim measures may be enforced only if issued in international arbitration, upon competent state court validation, since arbitral interim measures issued in domestic arbitration are void. (Hioureas et al. 2018)

In some jurisdictions, enforceability of interim measures is uncertain in practice and controversial in doctrine, because the law does not expressly permit it. It is the cases of France (Naoud and Grisolle, 2019) and Scotland (CMS Guide to Interim Measures, Section 10.3). In such jurisdictions, the only clear theoretical possibility to attempt enforcing arbitral interim measures would be that the enforcement court deems these interim measures as constituting arbitral awards,

which are, in turn, enforceable by the effect of domestic laws or of the New York Convention.

Nevertheless, in many cases, interim measures are unlikely to be deemed as arbitral awards by courts (e.g. Sweden, see Heuman, 2003, p.333), absent clear provision for such qualification in the law, since such measures, by their nature, do not usually comply with the applicable legal requirements as to their finality - an essential feature of enforceable arbitral awards. In the jurisdiction of Cyprus also, courts do not see arbitral interim measures as content of arbitral awards, and hence they do not enforce such measures (Pavlou and Christofi, 2016).

In contrast, in the Netherlands (Smith and Hetterscheidt, 2019), Belgium (Loosvelt and Schelkens, 2019), Luxemburg (Goosens 2019) and Spain (Article 23 of the Spanish Arbitration Act of 2003), interim measures are enforceable as they are normally deemed by enforcement courts as arbitral awards. Authors comment that this would also be the case in Irish courts of enforcement (Dunleavy and Carey, 2019) even if domestic laws do not regulate the matter expressly.

In Romania, enforceability of an arbitral interim measure cannot be ensured without a full, judicial, *de novo* assessment of the measures requested. This means a separate, subsequent procedure before the competent court assigned to support the arbitral process (Art. 585 of the Romanian Civil Procedure Code), which practically equates to non-enforceability of arbitral interim measures, *per se.*

Ultimately, there are jurisdictions in which, while interim measures may be taken by arbitral forums lawfully, such measures are straightforwardly non-enforceable. Specifically, this is the case in Bulgaria (Dimitrova, 2019), and Denmark (Nielsen and Jensen 2019).

Notably, in Austria (Konrad and Mensdorff - Pouilly, 2019), where the enforcement courts find that an interim measure issued in international arbitration does not correspond to a form of measure regulated within domestic laws, adaptation of the arbitral measure to the domestic form of interim relief may be performed by courts.

In England and Wales, enforcement of arbitral interim measures is subject to a particular regime. Enforcing interim measures taken by domestic arbitral tribunals is a rather elaborate and conditioned two-step process (Caher and McMillan, 2019), where in principle courts intervene only where all arbitral means of compelling a party to comply with the measures have been exhausted. Should a party not comply with the established measure, the arbitral tribunal would issue a peremptory order (Lew, Mistelis and Kröll, pp.609-6010) setting a time for compliance. The court could enforce the peremptory order after the expiry of the allocated time, upon request of the arbitral tribunal or of a party with permission from the arbitral tribunal.

Interim measures taken by arbitral tribunals not seated in England would not be enforced, in the absence of clear legal provisions, unless these measures would

be deemed by the enforcement court as being an arbitral award, thus falling under the scope of the New York Convention (Caher and McMillan, 2019).

Last but not least, it must be stated that, as a matter of principle, in some EU jurisdictions, arbitral interim measures that affect in any way the rights or interests of third parties to arbitration may not be issued. This is the case, for example, in Austria (Konrad and Mensdorff-Pouilly, 2019), England & Wales (Caher and McMillan, 2018) and Sweden (Scherp and Norburg, 2019).

II. Provisions regarding interim measures taken by way of arbitral *ex parte* procedures and possibility of enforcement such measures

Levels of efficiency of arbitral interim measures, higher than those discussed in the previous section, can be reached in jurisdictions where such measures may legally be taken using an *ex parte* arbitral procedure. Such procedure avoids the possibility that the party on which an interim measure is imposed, might frustrate the measure in any way, after such party would find out about it by being cited and heard on the measure by the arbitral tribunal.

The European Union is nowadays an economic space where some arbitral jurisdictions have begun to permit *ex parte* procedures in arbitration, leading to interim measures. In such jurisdictions, ensuring effectiveness of arbitration through the means of arbitral interim measures taken by fast procedures leading to preliminary orders, should prevail over theoretical concerns related to preservation of party autonomy, due process and equal treatment of parties in arbitration.

This is the case of jurisdictions incorporating or following the amended version of the UNCITRAL Model Law of 2006 (Blackaby et al., pp.74-78), as are Lithuania (Article 21 of the Law on Commercial Arbitration of 2012), Ireland (the Irish Arbitration Act of 2010 which incorporates the Model Law, as revised in 2006) and Slovenia (Article 20 para.2 of the Law on Arbitration of Slovenia of 2007).

It is also the case of Germany (Lew, Mistelis and Kröll, 2003 p.614), Spain (López-Ibor et al., 2018), Hungary (the [Hungarian] Act LX of 2017 on arbitration, Section 20), which only notified the UNCITRAL secretariat as having implemented the 1985 version of the Model Law. Remarkably, Portugal also opted for this legal approach (Albuquerque, Silva, and Mesquita, 2019), being the only official non-Model Law jurisdiction within EU territory that opted for the possibility of holding *ex parte* procedures for the issuing of interim measures in the arbitral process. Also, it is worth noting that in Slovakia, the legislator has been more cautious and has chosen to grant more importance to the principle of party autonomy, allowing *ex-parte* proceedings only if the arbitration parties have expressly agreed on that (Act No. 244/2002 of 3 April 2002 on Arbitration as modified in 2009, Section 22a).

Generally, to preserve to an extent a party's rights to be heard as well as equal treatment of the parties in arbitration, the party subjected to the measure

may usually challenge and be heard on the imposed interim measure within the period in which the preliminary order is into effect (e.g. the effect is set for 20 days as per Article 17C para. 4 of the Model Law, revised in 2006). After such hearing, the tribunal may further rule on the relevant interim measure by adopting or modifying the provisions of the preliminary order.

In most of these jurisdictions, interim measures taken by way of preliminary orders are not enforceable by state courts, as the 2006 version of the Model Law proposed. Nevertheless, two of the EU territory jurisdictions, *ex-parte* procedure may lead even to enforceable interim measures. In Germany, there is doctrinal argument that interim measures are not only permitted but also find legal grounds on which they are enforceable by state courts (Lew, Mistelis and Kröll, 2003, p.614). In Spain, it is also argued that legislation permits that interim measures issued in the arbitral process by an *ex parte* procedure be enforced by courts (Remon, Lopez and Mendez, 2016).

III. Efficiency of interim measures in institutional arbitration within EU jurisdictions

In order to assess efficiency of interim measures in institutional arbitration within EU jurisdictions we shall look at three factors. First, we shall enquire if there is a basic efficiency level ensured by arbitration rules that contain provisions which allow arbitral tribunals (or, alternatively, governing bodies of such forums) to issue interim measures in support of securing evidence and of ensuring the effective compliance with the final arbitral award. Second, we shall ascertain whether the efficiency of the institutional arbitration process may be increased by emergency arbitration procedures, covering the critical time gap between the filing of the arbitral claim and the constitution of the arbitral tribunal. In this time gap, an arbitrator appointed by the governing body of the arbitral institution at the request of a party, issues a decision on the requested interim measure following a fast procedure that may take several days. (for more on emergency arbitration, see Fletcher, 2013). Third, we shall provide short comments as to whether the emergency arbitrators' decisions may be enforced by state authorities within the EU jurisdictions, which would result in a very high level of efficiency of emergency arbitration.

Our review comprises the applicable rules of arbitration of 28 selected arbitral forums seated within each of the EU jurisdictions, at the date of publication of this article. In the case of Ireland – the missing jurisdiction - while institutional arbitration does exist, no leading arbitral institution having its own arbitration rules has been identified for review. For the UK, we have reviewed arbitral institutions seated in England & Wales and Scotland. The list comprising arbitral institutions whose arbitration rules were subjected to our review, their corresponding abbreviations used herein, the jurisdictions in which these

institutions are seated and the web address where their rules are found online, can be found at the end of the article.

As a first remarkable finding, the rules of all but 4 arbitration institutions from the 28 that were subjected to analysis, do provide the possibility that arbitral tribunals may make use of interim measures. The four identified exceptions are the rules of BCCI from Bulgaria, CAC from the Czech Republic), LCCI seated in Latvia and CCGDL, in Luxembourg.

In the case of Latvia and Czech Republic the absence of interim measures regulations within institutional arbitral rules is consistent with the applicable laws of the jurisdiction where these institutions are seated, laws which do not provide the possibility that arbitral tribunals might issue interim measures in support of the arbitral claims. However, this consistency is not apparent in case of Bulgaria and Luxemburg. It is worth noting that, the case of Luxemburg is rather surprising, given the fact that interim measures are legally issuable and normally enforceable as awards, according to Luxemburg law (Goossens, 2019).

Moving further, for each of these jurisdictions and their arbitration forums: Belgium (CEPANI), Denmark (DIA), Finland (FAI), France (ICC), Italy (CAM), Lithuania (VCCA), Portugal (CCIP), Romania (CCIR), Slovenia (LAC), Spain (SCA), Sweden (SCC), England (LCIA) - the reviewed institutional arbitration rules subjected to analysis (see list of arbitral institutions below) stipulate the possibility of the parties to benefit from emergency arbitration to secure the arbitral claim, the parties interests and the evidence, before the arbitral tribunal is appointed. In Netherlands, emergency arbitration is available under the rules of the NAI only if the seat of arbitration on the merits is within the country.

It is important however to note that, considering the already reviewed legislation, only in Lithuania (VCCA), Portugal (CCIP) and Spain (SCA) decisions containing interim measures taken by emergency arbitrators under the applicable arbitral rules apparently benefit from a legal framework that would permit enforceability of such measures.

Considering most of the reviewed doctrine quoted herein (see supra, Section I), in France, Belgium and England only to the extent to which emergency arbitrators incorporate the adopted interim measures in decisions to be deemed as arbitral awards, might such measures be made subject to enforcement.

It is important to note, however, that emergency arbitration decisions, just as interim measures taken by arbitrators after the constitution of the arbitral tribunal are not necessarily deprived of efficiency by not being enforceable under domestic laws. This is because such measures might be willingly complied with by the affected arbitration parties.

Sources from the ICC (the ICC COMMISSION REPORT EMERGENCY ARBITRATOR PROCEEDINGS, April 2019, available at www.iccwbo.org) indicate that: *in the vast majority of* [ICC emergency arbitration] *cases, parties*

comply voluntarily with emergency arbitration decisions. In practice, the responding parties may be inclined to comply voluntarily with EA decisions in order to avoid the negative consequences noncompliance may have in the arbitration on the merits.

IV. Conclusions

Efficiency of the legal framework regulating interim measures taken by arbitral tribunals vary greatly across the EU jurisdictions. Adherence of EU member states to the international standard provided by the UNCITRAL Model Law, either in the 1985 version or in the 2006 one, is far from decisively channelling the legal systems of these states (and inherently of the economic space that they form) towards a common approach as to increasing efficiency of arbitration by way of interim measures. From a reversed angle, non-adherence to the UNCITRAL Model Law does not preclude some EU jurisdictions to adopt a positive approach towards interim measures taken by arbitral tribunals.

Currently, with the few exceptions shown in this article, EU jurisdictions do provide legal basis for the arbitral tribunal's powers to issue interim measures, albeit in some jurisdictions the content of such arbitral measures may be restricted. Furthermore, arbitral interim measures are qualified under domestic laws as enforceable in most cases. Arguably, where there is no legislation that expressly or clearly allow enforcement of interim measures taken by arbitral tribunals, such measures could be deemed, in certain conditions, as incorporated in arbitral awards, and enforced as such by local enforcement courts either based on the provisions of the New York Convention (all EU member states being parts to such convention) or based on domestic legislation.

Ex parte procedures held in arbitration are provided by law in certain jurisdictions, but measures taken by such procedures are rarely deemed by the EU legal systems as enforceable, due to legislators' concerns on equal treatment and due process.

In the EU jurisdictions affected by the restrictions and exceptions that reduce the efficiency of arbitral interim measures, the most reliable option that parties usually have when aiming to secure their interests in arbitration, remains that of requesting interim measures before state courts, preferably before arbitration starts. In turn, this approach may be inconvenient when arbitration parties aim to obtain certain forms of measures that cannot procedurally be taken by state courts, or when they want to preserve confidentiality of their dispute. Approaching state courts may in some cases be inconvenient, also because of potentially lengthy state court process which does not cope with the celerity that interim measures usually require in commercial disputes.

In what regards interim measures to be issued under institutional arbitration rules, a vast majority of the arbitral institutions seated within the EU do recognize such powers to the arbitrators.

Efficiency of interim measures may be increased by way of emergency arbitration, applied between the filing of the arbitral claim to the relevant arbitration institution and the constitution of the arbitral tribunal. Such procedure is stipulated by the arbitration rules of a great number of the arbitration institutions that were subject to our review, most significant being the ICC, LCIA and SCC rules.

In few EU member states, the law recognizes interim measures taken in emergency arbitration as enforceable per se, either as procedural orders, or as awards. In other jurisdictions, enforceability of interim measures taken in emergency arbitration is likely a matter of appreciation of enforcement courts as to whether such measures constitute final arbitral awards issued by arbitral tribunals (the question being if an emergency arbitrator is an arbitral tribunal), in compliance with applicable domestic laws.

Overall, the most favourable legal and institutional framework leading to a very high level of efficiency of interim measures taken by arbitral tribunals was found in Spain, Germany, Portugal and Lithuania. In these states, interim measures are enforceable, ex-parte procedures may be held to adopt preliminary orders securing interim measures, and emergency arbitration leading to enforceable decisions is possible, as a matter of principle.

At the other extreme, the jurisdictional frameworks lest favourable to interim measures taken by arbitral tribunals, were found in the Czech Republic and Latvia, where arbitrators may not legally take interim measures, and there are no institutional arbitration rules providing for interim measures or emergency arbitration.

List of Arbitration Institutions

BCCI - Court of Arbitration at the Bulgarian Chamber of Commerce and Industry (Bulgaria) - https://www.bcci.bg/arbitration/

CAC – Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic (Czech Republic) - https://en.soud.cz/rules

CAM – Milan Chamber of Arbitration (Italy) - https://www.camera-arbitrale.it/en/arbitration/arbitration-rules.php?id=64

CCGDL - Arbitration Centre of the Chamber of Commerce of the Grand-Duchy of Luxembourg (Luxembourg) - www.cc.lu/en/services/official-opinions-legislation/arbitration-centre/

CCIP – Commercial Arbitration Centre – The Portuguese Chamber of Commerce and Industry (Portugal) - https://www.centrodearbitragem.pt/index. php?option =com _content&view=article&id=9&Itemid=110&lang=en

CCIR – The International Commercial Arbitration Court of the Chamber of Commerce and Industry of Romania (Romania) – http://arbitration.ccir.ro/

CEDRAC - Cyprus Eurasia Dispute Resolution and Arbitration Centre (Cyprus) – http://www.cedrac.org/wwwroot/cedrac_rules_main.htm

CEPANI – The Belgian Centre for Arbitration and Mediation (Belgium) – https://www.cepani.be/rules/

DIA – Danish Institute of Arbitration (Denmark) – https://voldgiftsinstituttet.dk/en/arbitration/rules-arbitration/

DIS – German Institute for Arbitration (Germany) - http://www.disarb.org/en/16/rules/overview-id0

ECCI - Court of Arbitration of the Estonian Chamber of Commerce and Industry (Estonia) - https://www.koda.ee/en/about-chamber/court-arbitration

EODID – Athens Mediation and Arbitration Organization (Greece) - http://www.eodid.org/en/services/arbitration/

FAI - Finland Arbitration Institute of the Finland Chamber of Commerce (Finland) – https://arbitration.fi/arbitration/rules/

HCCI- The Permanent Arbitration Court attached to the Hungarian Chamber of Commerce and Industry (Hungary) – https://mkik.hu/en/rules-of-proceedings-2018

ICC Paris – The International Court of Arbitration of the International Chamber of Commerce, Paris (France) – https://iccwbo.org/dispute-resolution-services/arbitration/

LAC - Ljubljana Arbitration Centre of the Slovenian Chamber of Commerce (Slovenia) - http://www.sloarbitration.eu/en/Arbitration/Arbitration-Rules/English

LCCI - Court of Arbitration of the Latvian Chamber of Commerce and Industry (Latvia) - https://www.chamber.lv/en/node/30

LCIA – London Centre of International Arbitration (England, Wales and Northern Ireland) - https://www.lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2014.aspx

MAC – Malta Arbitration Centre (Malta) – https://mac.org.mt/en/Arbitration/Pages/Legislation.aspx

NAI - Netherlands Arbitration Institute (the Netherlands) - https://www.nai-nl.org/en/documents/clauses/

PAC - Permanent Arbitration Court at the Croatian Chamber of Commerce (Croatia) – arbitration rules available at www.vsrh.hr/CustomPages/Static/HRV/ Files/ Legislation__Rules-Arbitration-Permanent-Arbitration-CCCE.pdf

PCCW - Court of Arbitration at the Polish Chamber of Commerce in Warsaw (Poland) – https://sakig.pl/en/regulations-and-tariff/arbitration/rules

SAC – Scottish Arbitration Centre (Scotland) - arbitration rules available at www.legislation.gov.uk/asp/2010/1/schedule/1

SCA – Spanish Court of Arbitration (Spain) – http://corteespanolaarbitraje.es/wp-content/uploads/2014/05/reglamento-corte-espanola-de-arbitraje-en-vigor-desde-el-15-03-2011.pdf

SCC – Arbitration Institute of the Swedish Chamber of Commerce (Sweden) – https://sccinstitute.com/our-services/rules/

SCCI - Arbitration Court of the Slovak Chamber of Commerce and Industry (Slovakia) - www.web.sopk.sk/view.php?cisloclanku=90

VCCA – Vilnius Court of Commercial Arbitration (Lithuania) - http://www.arbitrazas.lt/arbitrazo-reglamentas.htm

VIAC – Vienna International Arbitration Centre (Austria) - https://www.viac.eu/en/arbitration-rules

Bibliography

1. Albuquerque, N., Silva, L. and Mesquita, M., (2019), *International Arbitration 2019 – Portugal* [Online] (updated n.d.) Available at: <https://www.globallegalinsights.com/practice-areas/international-arbitration-laws-and-regulations/portugal#chaptercontent5> [Accessed 21.08.2019].
2. Bekina, Z. and Kevilj, D., (2018), *Croatia - International Arbitration 2018* [Online] (updated n.d.) Available at: <https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/croatia> [Accessed 21.08.2019].
3. Blackaby, N. et al., (2009), *Redfern and Hunter on International Arbitration.* 5th edn. Oxford: Oxford University Press.
4. Bücheler, G. and Flecke-Giammarco, G., (2019), *Arbitration procedures and practice in Germany: Overview* [Online] (updated: n.d.) Available at: <https://uk.practicallaw.thomsonreuters.com/4-385-8191?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1#co_anchor_a199243> [Accessed 21.08.2019].
5. Caher, C. and McMillan, J., (2018), England & Wales – *International Arbitration 2018* [Online] (updated n.d.) Available at: <https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/england-and-wales> [Accessed 21.08.2019].
6. CMS Guide to Interim Measures, (2018), *Scotland* [Online] (updated n.d.) Available at: <https://cms.law/en/INT/Expert-Guides/CMS-Expert-Guide-to-Interim-Measures/Scotland> [Accessed: 22.08.2019].
7. Cordon, L. and del Moral, D., (2019), *International Arbitration 2019 – Spain* [Online] (updated: n.d.) Available at: <https://www.globallegalinsights.com/practice-areas/international-arbitration-laws-and-regulations/spain#chaptercontent5> [Accessed 21.08.2019].
8. Cremona, A. and Bonnici, A., (2018), *Malta* [Online pdf] (updated n.d.) Available at: <https://www.ganadoadvocates.com/wp-content/uploads/2018/12/Malta_ABW_2018.pdf> [Accessed:22.08.2019].
9. De Bock, B. (n.d.) *The emergency arbitrator in the 2013 CEPANI Arbitration Rules* [Online pdf] (updated n.d.) Available at: <http://loyensloeffwebsite.blob.core.windows.net/media/3377/arbitration.pdf> [Accessed 22.08.2019].
10. Dimitrova, T., (2018), *Bulgaria - International Arbitration 2018* [Online] (updated n.d.) Available at: <https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/bulgaria> [Accessed 21.08.2019].
11. Dunleavy, N. and Carey, J., (2018), *Ireland – International Arbitration 2018* [Online] (updated n.d.) Available at:<https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/ireland> [Accessed 21.08.2019].
12. Fletcher, B. (2013) *Emergency arbitration--what's it all about?* [Online] (updated n.d.) Available at: <https://www.lexisnexis.co.uk/blog/dispute-resolution/emergency-arbitration-whats-it-all-about> [Accessed 23.08.2019].
13. Gayer, C. and Weimann, T., (2019), *International Arbitration 2019 – Germany* [Online] (updated n.d.) Available at: <https://www.globallegalinsights.com/practice-areas/international-arbitration-laws-and-regulations/germany#chaptercontent5> [Accessed 22.08.2019].
14. Goossens, P., (2018), *Luxemburg - International Arbitration 2018* [Online] (updated n.d.) Available at: <https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/luxembourg> [Accessed 21.08.2019].
15. Heuman, L., (2003), *Arbitration law of Sweden*, New York, Juris Publishing.

16. Hioureas, C. et al., (2018), *Global Arbitration Review - Arbitration News, Features and Reviews* [Online] (updated 23.04.2018) Available at: <https://globalarbitrationreview.com/jurisdiction/1004956/greece> [Accessed 21.08.2019].
17. Jasek, V. and Novotny, A., (2019), *Czech Republic: International Arbitration 2019* [Online] (updated: n.d.) Available at: <https://iclg.com/practice-areas/international - arbitration-laws-and-regulations/czech-republic> [Accessed 22.08.2019].
18. Kelemenis, I., (2010), *Arbitration 2010/2011 Greece* (updated. n.d.) [Online pdf] Available at: <https://www.kelemenis.com/pdf/Arbitration_Greece_2010.pdf> Accessed 24.08.2019].
19. Klauberg, T., Kekalainen, M., (2016), *Current Status of Commercial Arbitration in the Baltic States: Latvia, Lithuania and Estonia* [Online pdf] (updated n.d.) Available at: <www.bnt.eu> [Accessed 21.08.2019].
20. Konrad,C., Menssdorf-Pouilly, F., (2019), *International Arbitration Austria 2019* [Online] (updated n.d.) Available at: <https://www.globallegalinsights.com/ practice-areas/international-arbitration-laws-and-regulations/austria #chaptercontent5> [Accessed 21.08.2019].
21. Lew, J., Mistelis L., Kröll, S., (2003), *Comparative International Commercial Arbitration*, The Hague, Kluwer Law International.
22. Loosvelt, S. and Schelkens, M., (2019), *Belgium: International Arbitration 2019* [Online] (updated n.d.) Available at: <https://iclg.com/practice-areas/ international-arbitration-laws-and-regulations/belgium> [Accessed 22.08.2019].
23. López-Ibor, A. et al., (2018), *Arbitration procedures and practice in Spain: overview* [Online] (updated n.d.) Available at: <https://uk.practicallaw.thomsonreuters. com/w-013-3979?transitionType=Default&contextData=%28sc.Default%29#co_ anchor_a410047> [Accessed 22.08.2019].
24. Menard, M. and Ulčar M., (2018), Slovenia [Online] (updated n.d.) Available at: <https://globalarbitrationreview.com/chapter/1175879/slovenia> [Accessed 22.08.2019]
25. Montinari, M., Friggerio, F., (2019), *International Arbitraiton 2019 Italy* [Online] (updated n.d.) Available at: <https://www.globallegalinsights.com/practice-areas/international-arbitration-laws-and-regulations/italy#chaptercontent5> [Accessed> 22.08.2019].
26. Naoud, T. and Grisolle, A., (2019), *France: International Arbitration 2019* [Online] (updated n.d.) Available at: <https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/france> [Accessed 22.08.2019].
27. Nielsen, M. and Jensen C., (2019), *Denmark: International Arbitration 2019* [Online] (updated n.d.) Available at: <https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/denmark> [Accessed 22.08.2019].
28. Pavlou, S., and Christofi, E., (2016), *The International Comparative Legal Guide to: International Arbitration* [online pdf] Available at: <https://www.legal500. com/assets/images/stories/firmdevs/2012/iclg_internationalarbitration_cyprus_2 016spects.pdf> [Accessed 24.08.2019].
29. Pavlou, S., Philippidou, and K., Symeonides, T., (2016), *Cyprus law and practice* [online pdf] (updated n.d) Available at: <https://www.cyprusprofile.com/wp-content/uploads/2018/04/International_Arbitration_Cyprus2016.pdf> [Accessed 21.08.2019].
30. Petillion, F. et al. (2018) *Arbitration procedures and practice in Belgium: overview* [Online] (updated 01.03.2018) Available at: <https://uk.practicallaw.

thomsonreuters.com/w-013-9378?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1#co_anchor_a832858> [Accessed: 22.08.2019].

31. Pigler, C., (2019), *Arbitration procedures and practice in Hungary: overview* [Online] (updated n.d.) Available at: <https://uk.practicallaw.thomsonreuters.com/1-502-1327?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1#co_anchor_a781045 [Accessed 21.08.2019].
32. Pirelli S.p.A, (2019), "*POWER IS NOTHING WITHOUT CONTROL" celebrates 25 years.* [Online] (updated: n.d.) Available at: <https://www.pirelli.com/global/en-ww/life/power-is-nothing-without-control-celebrates-25-years> [Accessed 20.08.2019].
33. Refalo, J., (2019), *Arbitration procedures and practice in Malta: overview* [Online] (updated: n.d.) Available at: <https://uk.practicallaw.thomsonreuters.com/8-520-7911?transitionType=Default&contextData=%28sc.Default%29#co_anchor_a77312> [Accessed: 21.08.2019].
34. Remon, J., Lopez de Argumendo, A. and Mendez, U., (2016), *Enforcement 2016 - Spain* [Online] (updated 18.11.2016) Available at: <https://globalarbitrationreview.com/jurisdiction/1000410/spain> [Accessed 22.08.2019].
35. Scherp, P. and Norburg, F., (2019), *International Arbitration 2019 Sweden* [Online] (updated n.d.) Available at: <https://www.globallegalinsights.com/practice-areas/international-arbitration-laws-and-regulations/sweden#chaptercontent5> [Accessed 22.08.2019].
36. Smith, G. and Hetterscheidt, M., (2019), *Netherlands: International Arbitration 2019* [Online] (updated n.d.) Available at: <https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/netherlands> [Accessed 22.08.2019].
37. Teder, M. and Vaher, T., (2019), *Estonia: International Arbitration 2019* [Online] (updated n.d.) Available at: <https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/estonia> [Accessed 22.08.2019].
38. Ylikantola, T. and Ruohonen, T., (2019), *Finland: International Arbitration 2019* [Online] (updated n.d.) Available at: <https://iclg.com/practice-areas/international-arbitration-laws-and-regulations/finland> [Accessed 22.08.2019].

Considerations Regarding Law as an Instrument of Communication in the Romanian Judicial System

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Abstract

This article addresses certain issues regarding law as an instrument of communication in the Romanian judicial system. The analysis of the way in which law is communicated from the legal authorities to the subjects of law is important for understanding how the provisions of law are perceived and interpreted by the subjects of law. This paper tries to analyze which communication model would be suitable in the communication of law and more appropriately in the Romanian Judicial System. Within the Romanian Judicial System, the communication of law could be envisioned as an informational system in itself in which bidirectional flows of information exist. These flows of information carry messages sent from the subjects of law to the elements of the Romanian Judicial System, respectively from the elements of the Romanian Judicial System to the subjects of law.

Keywords: *legal communication, system of law, legislative inflation, judicial system*

Introduction

The Romanian Judicial System may be envisioned as a system, from the perspective of systems theory. From a legal point of view, the judicial system comprises, among other entities, all the judicial courts in Romania. Most of the judicial procedures are taking place before these Courts. This paper tries to establish the theoretical aspects that could form a scientific basis for the analysis of communication of law within the judicial system. In specialized literature it was shown that the system of law could be considered a normative phenomenon, comprised of branches and legal institutions[2]. From the perspective of system theory, the system of law can be characterized as an open and non-linear system[3]. Both of the aforementioned definitions can be successfully applied to the judicial system. The judicial system is also comprised of branches and legal institutions

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and has the structure of an open and non-linear system. On this direction, the Romanian Judicial System is similarly configured and structured as the system of law in its whole and may be considered a subsystem of the system of law. From a communicational point of view, it is relevant to determine which model of communication is better suited to be theoretically applied to the system of law. The two main types of trials and procedures in the Romanian Courts are closely related to the sources of law, namely penal law and civil law. Therefore, trials may be conducted according to the rules of civil procedure or according to the rules of penal procedure. Usually, the lawsuits regarding civil substantial law are conducted by civil courts, while lawsuits which concern crimes and felonies are conducted by penal courts. The communication in the civil legal procedures can be oral or written. In this paper we will analyze the theoretical concepts of legal communication in the civil courts in the preliminary procedure.

Short considerations regarding the written preliminary stage in Romanian civil procedures

In civil procedures, the trial has two stages: a preliminary stage, in which the communication is exclusively written and a second stage, namely the trial itself, which comprises public hearings in which oral communication is prevalent. As shown before the communication has a written form in the early stages of the trial, and afterwards it may transform into a form of oral communication. If a person files a claim of civil nature, that person must submit a request before the civil court. To this purport the Romanian Civil Procedure Code states that an individual, for the defense of its legitimate rights and concerns can address justice by investing the court with a claim[4]. In doctrine its was shown that the right to address the court is a part of the right to a fair trial[5]. At this stage, the communication is written, as the judge which is randomly selected will analyze the request and communicate to the claimant if the request does not fulfill the requirements prescribed by the law and the measures to be taken for the request to become admissible. The claimant is given a term of ten days[6] in which he may remedy the faults of his request. This is the first stage of communication, which takes place between the claimant and the Court. The measures imposed on the claimant are established by the judge and are communicated by the clerk of the court. If the claimant does not abide by the court order and does not remedy the problems found by the court, his request will be held void by the Court. Against the ruling of the Court, the claimant has the possibility to ask for a reexamination of the ruling, which may be accepted only if the annulment of his claim has been

[4] Article 192 of the Romanian Civil Procedure Code.
[5] Gabriel Boroi et.al., *Codul de procedură civilă. Comentariu pe articole*. Vol. I, art. 1-526, Hamangiu Publishing House, Bucureşti, 2013, 451.
[6] Article 200 of the Romanian Civil Procedure Code.

pronounced by the Court against the law. If the claimant does modify the request in order to fulfill the requirements of the law, the request will be communicated by the court to the defender, which is compelled by law to submit a written defense in twenty-five days[7]. If he does not communicate a written defense in twenty-five days, he will not be able to propose evidence to be administrated and also, he will not be allowed to invoke any private order exceptions. After the defense is submitted, the Court sends it to the claimant who can make a response to the defense. Although the response of the claimant to the defense is not mandatory, he has the right to formulate an answer. The period in which this response can be communicated to the court is ten days calculated from the day he received the written defense. The ten days period is calculated according to the following rule: both the day in which the term starts and the day in which the term ends are not taken in considerations, therefor resulting a twelve-day effective period of time[8]. The same calculation rule applies to the other terms prescribed by the Romanian Civil Procedure Code. Afterwards, the date for the first public hearing is established and the stage which is exclusively written ends. Written communication may appear even after this moment, but has only a secondary role, as the principal one belongs to oral communication.

Brief theoretical observations regarding the communication systems and communication models in law

In order to find the appropriate model of communication of law, several models of communication should be analyzed. The Shannon-Weaver[9] communication model represents the classical model, which is formed in a linear way, comprising initially five elements: the source, the transmitter, the channel of transmission, the receiver and the destination. Later the model included six elements: source, encoder, message, channel, decoder and receiver. Another model, namely the transactional model emphasizes the reciprocal communication between the emitter and receiver and the functional communicational model rather than the structural model[10]. Finally, the constructionist model represents a variant of the transactional model, in which the meaning of the message is relevant, as the structure of mental representations are projected in communication behavior[11]. In specialized juridical literature theories of communication were also envisioned.

[7] Article 201 of the Romanian Civil Procedure Code.
[8] Article 181 of the Romanian Civil Procedure Code.
[9] George N. Gordon, *Communication*, Encyclopedia Britannica, https://www.britannica.com/topic/communication/Models-of-communication.
[10] Kenneth K. Sereno and C. David Mortensen, *Foundations of Communication Theory*, Harper & Row, New York, 1970, p. 85.
[11] Harry JR. Weger and Leah E. Polcar, *Attachment Style and the Cognitive Representation of Communication Situations*, Communication Studies, no. 2, 2000, p. 51.

The models of communication in law in doctrine was classified as follows: cognitive, interactive or expressive[12]. According to another scholar, the communication does not necessarily imply a transmission process[13]. It was also shown[14] that law is based on the communication between the legislative power and citizens, between the courts and litigants, between the legislative authorities and judicial authorities, in contracts, in lawsuits.

For the analysis of communication in the judicial system the constructivist model is the most suitable, as it places great emphasis on the meaning of the message that is communicated, being based on the mental representations of the participants. The legal message should be properly understood by litigants and if the message is not properly communicated, its meaning will be distorted and poorly understood or even not understood at all by the receiver, namely the subjects of law.

As shown above, the communication circuit is bidirectional, because the claimant sends his request to the Court. The Court, having received the request of the claimant, sends him its response, which can be either a letter by which the Court asks him to remedy his request in order to fulfill the legal requirements or the actual written defense.

Short observations regarding the governing aspects of communication in the Romanian Judicial System

The first aspect that should be taken into consideration when analyzing the communication of law in the Romanian Judicial System is the clarity of the messages that are communicated. The legal message sent by the litigant to the Court, in the form of a legal request or claim should be clear and without ambiguities. If this requirement is not met, the Court will sent a letter to the claimant and ask him to clarify his request, either by adding certain legal sources which support his claim or by supplementing the description of the facts that form the fundament of his request. Moreover, the Court itself sends a legal message to the claimant through the letter that it sends him. The measures and provisions of the Court should also be formulated in a clear and unambiguous manner or else the message will not be understood properly. For example, if the claimant included multiple claims in his request, but the Court asks him to clarify one of them, without specifying which one, it may be very difficult for the claimant to abide by the Court provision and his request could be held void entirely. Another aspect which must be taken into consideration is accessibility to the meaning of

[12] Jurgen Habermas, *Communication and the Evolution of Society*, trans. Thomas McCarthy, Beacon Press, Boston, 1979, p. 58.
[13] Niklas Luhmann, *Theory of Society*, trans, Rhodes Barret, Stanford University Press, 2012, p. 116.
[14] Mark van Hoecke, *Law as communication*, Hart Publishing, Oxford and Portland, Oregon, 2002, p. 7.

the messages that are being communicated. If the juridical meaning of the message transmitted by the litigant does not pose a very difficult challenge for the Court, it may be possible that the juridical meaning of message transmitted by the Court will not be accessible to the claimant. Regarding the juridical message communicated by the claimant to the Court through the written request, the Court may qualify it and interpret it from a legal point of view and if the request is still not clear enough, it may oblige the claimant to rectify it accordingly. The juridical meaning included in the message of the Court however may not be accessible to the claimant if the latter does not have legal knowledge and so may not understand properly the juridical message. However, the reason for this misunderstanding of the legal message is not caused by an unclear or ambiguous message, but by a message that has a content which is not accessible to the recipient, given his legal knowledge. Another aspect which must be taken into consideration as a factor for augmenting legal communication within the judicial system is the celerity of the civil trial. Unfortunately, the civil trials tend to encompass a great deal of time, sometimes spanning over several years. In such cases, the original legal message may become distorted and, in the end, the solution pronounced by the Court may not reflect the original meaning of the message included in the request filled before the Court.

Conclusions

In this paper I tried to tackle some issues regarding legal communication in the Romanian Judicial System. As such, I have briefly described the legal procedures regarding the preliminary written procedure in civil lawsuit, as well as the communication models best suited for the legal communication in the judicial system. Three essential aspects that condition the proper communication of the legal message have also been briefly analyzed: the clarity of the message, the accessibility of the message and the celerity of the civil trial. Legal communication is an important element in the analysis and study of the structure and development of the Romanian Judicial System and its proper understanding may lead to a more efficient way of communication and also to a more coherent and stable progress of civil trials in the judicial system.

Bibliography

1. Butculescu Claudiu D., *Cuantica dreptului – o nouă perspectivă în percepția fenomenelor juridice*, in volume Justiție, Stat de drept şi Cultură juridică, Universul Juridic Publishing House, 2011.
2. Boroi Gabriel et.al., *Codul de procedură civilă. Comentariu pe articole*. Vol. I, art. 1-526, Hamangiu Publishing House, Bucureşti, 2013.

3. Gordon George N., *Communication*, Encyclopedia Britannica, https://www.britannica.com/topic/ communication/Models-of-communication.
4. Habermas Jurgen, *Communication and the Evolution of Society*, trans. Thomas McCarthy, Beacon Press, Boston, 1979.
5. van Hoecke Mark, *Law as communication*, Hart Publishing, Oxford and Portland, Oregon, 2002.
6. Luhmann Niklas, *Theory of Society*, trans, Rhodes Barret, Stanford University Press, 2012.
7. Popa Nicolae, *Teoria generală a dreptului*, Ediția 3, C.H. Beck Publishing House, Bucureşti, 2008.
8. Sereno Kenneth K., Mortensen C. David, *Foundations of Communication Theory*, Harper & Row, New York, 1970.
9. Weger Harry JR., Polcar Leah E., *Attachment Style and the Cognitive Representation of Communication Situations*, Communication Studies, no. 2, 2000.

Criminal liability of the members of the Government

Adela Maria CERCHEZ[1]

Abstract

The Government of Romania is the public authority of the executive power, which operates on the basis of the vote of confidence granted by the Parliament and which ensures the implementation of the internal and external policy of the country, exercising the general management of the public administration. The government has the role of ensuring the balanced functioning and development of the national economic and social system, as well as its connection to the world economic system, under the conditions of promoting national interests.

The members of the Government are liable from a criminal perspective for the acts committed in the exercise of their function, according to the procedural norms enshrined in the special law on the ministerial responsibility governing the cases of liability and the penalties applicable to the members of the Government. The acts committed by the members of the Government in the exercise of their function and which, according to the criminal law, constitute crimes are subject to the special law on the ministerial responsibility. In order to commit other crimes, besides the exercise of their function, the members of the Government are liable according to the common law.

Keywords: *criminal liability, punishment, ministerial responsibility, members of the Government*

The government, according to its Government program accepted by the Parliament, ensures the realization of the internal and external policy of the country and exercises the general management of the public administration and cooperates in the fulfillment of its tasks, with the interested social bodies. The Constitution of Romania enshrines by the provisions of Art. 101 paragraph (1) the main attribution of the Government, namely the realization of the internal and external policy of the country and the exercise of the general management of the public administration in accordance with the Government program accepted by the Parliament.[2]

According to the provisions of Art. 102 paragraph (3) of the Constitution of Romania[3] in conjunction with the provisions of Art. 6 of Law no. 115/1999 regarding

[1] PhD.

[2] The Constitution of Romania republished in the Official Gazette of Romania no. 767 of October 31st, 2003.

[3] The Constitution of Romania republished in the Official Gazette of Romania no. 767 of October 31st, 2003.

the ministerial responsibility[4], the government consists of the prime minister, ministers and other members established by organic law, appointed by the President of Romania on the basis of the confidence vote granted by the Parliament.

The Government is organized and operates in accordance with the constitutional provisions, based on the Government Program accepted by the Parliament, and for the implementation of the Government Program, the Government exercises the following functions: the strategy function, which ensures the elaboration of the strategy for implementing the Government Program; the regulatory function, which ensures the elaboration of the necessary normative and institutional framework in order to achieve the strategic objectives; the function of administration of state property, which ensures the administration of public and private property of the state, as well as the management of services for which the state is responsible; the representation function, which ensures, on behalf of the Romanian state, internal and external representation and the function of the state authority, which ensures the monitoring and control of the application and compliance with regulations in the field of defence, public order and national security, as well as in the economic and social fields and the functioning of the institutions and bodies operating in the subordination or under the authority of the Government[5].

Law no. 115/1999 regarding the ministerial responsibility regulates both the political and legal responsibility of the members of the Government. In accordance with the provisions of Art. 5 of the law on ministerial responsibility, "besides the political responsibility, the members of the Government, can also pay civil, legal, disciplinary or criminal sanctions, as the case may be, according to the common law in these matters, insofar as this law does not contain derogatory provisions".[6]

According to the provisions of Art. 109 of the Constitution of Romania regarding the accountability of the members of the Government, the Government politically responds only to the Parliament for its entire activity.[7] Each member of the Government is jointly and politically liable with the other members for the activity of the Government and for its acts. At the same time, in the light of the

[4] Law no. 115/1996 for the declaration and control of assets evaluation of the officials, magistrates, civil servants and persons with management positions published in the Official Gazette of Romania no. 263 of October 28th, 1996.

[5] Law 90/2001 on the organization and functioning of the Government of Romania and of the ministries, as subsequently amended and supplemented, published in the Official Gazette of Romania no. 164 of 02.04.2001.

[6] Law no. 115/1996 for the declaration and control of assets evaluation of the officials, magistrates, civil servants and persons with management positions published in the Official Gazette of Romania no. 263 of October 28th, 1996.

[7] The Constitution of Romania republished in the Official Gazette of Romania no. 767 of October 31st, 2003.

provisions of Law no. 115/1999 on the ministerial responsibility, republished, the Government is politically liable only to the Parliament, following the vote of confidence granted by it on the occasion of the investiture, and each member of the Government is politically and jointly liable with the other members for the activity of the Government and for its acts.[8] The political responsibility of the Government consists, according to the law of the ministerial responsibility, in its dismissal, as a result of the withdrawal of the confidence granted by the Parliament, by the adoption of a motion of no-confidence, according to the provisions of Art. 113 and 114 of the Constitution of Romania.[9]

The Parliament exercises an highly political control over the Government. At the same time, the instruments and formalities of parliamentary control, including the applicable sanctions, are an exclusively political purpose. The mechanism of the relations between the Parliament and the Government is expressly established in the Constitution of Romania which regulates the forms of action, namely: informing the Parliament, the procedure of questions and interrogations, the motion of no-confidence, the commitment of the Government's responsibility and the legislative delegation. The study of the constitutional provisions, of the principles of constitutional law as well as of the practice of the various states, shows that the Government functions to the fullest extent of its competence, in order to carry out its tasks, the parliamentary control being confined only to the constitutional provisions. Currently, the parliamentary control is one of the essential components of the parliamentary activity in all countries of the world.[10]

In the doctrine of our country, parliamentary control instruments or procedures can be structured as follows: prior approval by the Parliament of some acts of the executive power and prior consultation of the President of Romania or the approval by the legislative forum of the exceptional measures taken by the head of the state in accordance with the constitutional provisions; granting and withdrawing the trust granted to the Government; questions and interpellations; simple motion; parliamentary investigations; commitment of the Government's responsibility for a program, a general policy statement or a draft of a law; suspension from office of the President of Romania; impeachment of the President of Romania; requesting the criminal prosecution of the members of the Government for the acts committed in the exercise of their function.

Regarding the criminal liability of the members of the Government, Law no. 115/1999 of the ministerial responsibility incriminates a series of crimes the

[8] Law no. 115/1996 for the declaration and control of the assets evaluation of the officials, magistrates, civil servants and of persons with management positions published in the Official Gazette of Romania no. 263 of October 28th, 1996.
[9] The Constitution of Romania republished in the Official Gazette of Romania no. 767 of October 31st, 2003.
[10] Cerchez A.M., Forms of legal responsibility in domestic law. PhD thesis in law, Chisinau, 2016.

active subject of which can only be a member of the Government, whether or not he/she holds the capacity of parliamentarian and at the same time consecrates a special criminal prosecution procedure, in relation to the high dignity of the state, held by the one in the government chair.

The Constitution of Romania states by the provisions of Art. 109 paragraph (3) in the sense that the special law on ministerial responsibility regulates the cases of liability and the penalties applicable to the members of the Government. The members of the Government, namely the prime minister, ministers and other members established by the organic law, are criminally liable for the acts committed in the exercise of their function, according to the procedural rules established by Law no. 115/1999 on ministerial responsibility. The acts committed by the members of the Government in the exercise of their function and which, according to the criminal law, constitute crimes are subject to the special law on ministerial responsibility. In order to commit other crimes, besides the exercise of their function, the members of the Government respond according to the common law.

Within the meaning of the provisions of Art. 10 and Art. 11 of Law no. 115/1999 of the ministerial responsibility, the members of the Government are criminally liable for the acts committed in the exercise of their function, from the date of taking the oath and until the termination of the office, under the conditions provided by the Constitution, the criminal liability being personal and targeting each member of the Government, separately.[11]

In accordance with the provisions of Art. 8 of the special law, the following acts committed by the members of the Government in the exercise of their function[12] constitute offenses and are punished with imprisonment from 2 to 12 years:

a) preventing, by threat, violence or by the use of fraudulent means, the exercise in good faith of the rights and freedoms of any citizen;

b) the submission, in bad faith, of inaccurate data to the Parliament or the President of Romania regarding the activity of the Government or of a ministry, in order to conceal the deed of acts that are likely to harm the interests of the state.

At the same time, the following acts committed by a member of the Government constitute offenses and are punished by imprisonment from 6 months to 3 years:

[11] Law no. 115/1996 for the declaration and control of the assets evaluation of the officials, magistrates, civil servants and of persons with management positions published in the Official Gazette of Romania no. 263 of October 28th, 1996.

[12] Law no. 115/1996 for the declaration and control of the assets evaluation of the officials, magistrates, civil servants and of persons with management positions published in the Official Gazette of Romania no. 263 of October 28th, 1996.

a) the unjustified refusal to present to the Chamber of Deputies, the Senate or their permanent commissions, within the term provided in Art. 3 paragraph (2), the information and documents required by them in the activity of informing the Parliament by the members of the Government, according to Art. 111 paragraph (1) of the Constitution of Romania, republished;

b) issuing the normative orders or instructions with a discriminatory character on the basis of race, nationality, ethnicity, language, religion, social category, beliefs, age, sex or sexual orientation, political affiliation, wealth or social origin, likely to infringe human rights.

According to the provisions of Art. 9 of the special law, in the case the members of the Government commit offenses in the exercise of their function, other than those regulated by the provisions of Art. 8, the punishment provided by the criminal law for those offenses shall apply, and in addition to the main punishment, the complementary punishment of the prohibition of the right to hold a public dignity or a public management function for a period of 3 to 10 years shall apply.[13]

Regarding the procedure of criminal prosecution and trial, in the light of the provisions of Art. 109 paragraph (2) of the fundamental law, "only the Chamber of Deputies, the Senate and the President of Romania have the right to request the criminal prosecution of the members of the Government for the acts committed in the exercise of their function". If the criminal prosecution has been requested, the President of Romania may order their suspension from office, and if a member of the Government has been ordered to be sued, the Minister of Justice or, as the case may be, the Prime Minister informs the President of Romania the date on which the High Court of Cassation and Justice was notified, with a view to suspend him from office."[14]

The criminal prosecution of the members of the Government for the acts committed in the exercise of their function is carried out, as the case may be, by the Prosecutor's Office attached to the High Court of Cassation and Justice or by the National Anti-corruption Directorate, and their judgment, by the High Court of Cassation and Justice, according to the law.

The debate on the proposal to initiate the criminal prosecution in the Chamber of Deputies or in the Senate is based on the report prepared by a permanent commission that, within its competence, has conducted an investigation regarding the activity carried out by the Government or a ministry or a special commission of

[13] Law no. 115/1996 for the declaration and control of the assets evaluation of the officials, magistrates, civil servants and of persons with management positions published in the Official Gazette of Romania no. 263 of October 28th, 1996.

[14] The Constitution of Romania republished in the Official Gazette of Romania no. 767 of October 31st, 2003.

investigation constituted for this purpose. After the commencement of the criminal prosecution, the member of the Government who is also a deputy or senator can be searched, detained or arrested only with the approval of the Chamber of which he/she is part, after his/her hearing, in compliance with the provisions of Art. 72 paragraph (2) of the Constitution of Romania, republished, and of the rules of procedure contained in the regulation of the Chamber of which it is part.

From the perspective of the provisions of the law on ministerial responsibility, the request for criminal prosecution of the members of the Government and, as the case may be, for the waiver of the parliamentary immunity is adopted in compliance with the provisions of Art. 67 and Art. 76 para. (2) of the Constitution of Romania, the vote being secret, expressing itself through balls.[15] At the same time, in the debates of the two Chambers of Parliament the presence of the one in question is compulsory, without the unjustified absence of the member of the Government to prevent the work being carried out. In the event that the person in question is objectively unable to present himself, the Chamber of Deputies or the Senate, on the occasion of the debates, will set a new term, the one in question having the right to express his/her point of view on the fact what is the subject of the request to be prosecuted, as well as the request for the waiver of the parliamentary immunity, when appropriate.

The President of Romania is notified to request the criminal prosecution of a member of the Government by the Prime Minister, the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice or by the Chief Prosecutor of the National Anticorruption Directorate. At the same time, any citizen who is aware of the commission of a criminal act by the members of the Government in the exercise of their function may address the Prime Minister, the Prosecutor General of the Prosecutor's Office attached to the High Court of Cassation and Justice or the Chief Prosecutor of the National Anti-Corruption Directorate, in order to asked to notify the President of Romania.

In the exercise of the right to request the criminal prosecution of a member of the Government, the President of Romania, at the proposal of the special commission set up to analyze the notices regarding the commission of an offense in the exercise of the function by the members of the Government, sends a request to the Minister of Justice in this respect, in order to proceed according to the law. As regards the special commission set up to analyze the notifications regarding the commission of a crime by the members of the Government in the exercise of the function, it consists of 5 members appointed for a 3-year mandate, which cannot be renewed, and its composition is approved by a decree of the President

[15] Law no. 115/1996 for the declaration and control of the assets evaluation of the officials, magistrates, civil servants and of persons with management positions published in the Official Gazette of Romania no. 263 of October 28th, 1996.

of Romania, at the proposal of the Minister of Justice and of the Minister of Administration and Interior.

The special commission, based on the analysis of the notification, the evidence submitted in support of it, the statements and evidence invoked by the member of the Government against which the criminal investigation is requested, will submit to the President of Romania a report with proposals regarding the criminal prosecution or classification of the complaint. The meetings of the commission are not public. The member of the Government for whom the referral was made has the right to be heard by the commission before the drafting of its report.

The President of Romania decides on the report submitted by the special commission and orders the communication of the media solution. If the member of the Government for whom the President of Romania has requested criminal prosecution is also a deputy or senator, the Minister of Justice or, as the case may be, the Prime Minister will request the competent Chamber to initiate the procedure for adopting the request to initiate the criminal prosecution. In the situation in which the Minister of Justice is concerned, the request is addressed to the Prime Minister. The President of Romania will be notified about the registration of the report on the agenda of the meeting of the Chamber of Deputies or the Senate.[16]

The members of the Government, in case of flagrant crimes, can be detained and searched. The Minister of Justice will inform the President of the Chamber to which the member of the Government is part or, as the case may be, the President of Romania, without delay, and in the case in which the Minister of Justice is concerned, the referral shall be made by the Prime Minister.

The rules of procedure established by the special law on the ministerial responsibility are supplemented by those stipulated in the regulations of the two Chambers of Parliament and in the Code of criminal procedure, insofar as they do not contravene the provisions of the special law.

Criminal prosecution and trial of former members of the Government for the criminal offenses regulated by Law no. 115/1999 on the ministerial responsibility, carried out in the exercise of their function, is carried out according to the rules of criminal procedure of common law. The procedural provisions of the special law do not apply to the former members of the Government under any circumstances.

The final judgment of conviction of a member of the Government is published in the Official Gazette of Romania, Part I, and until the final judgment of the sentence of conviction, the members of the Government are considered innocent. The members of the Government, convicted by a final court decision, will be dismissed by the President of Romania, at the proposal of the Prime Minister.

[16] Law no. 115/1996 for the declaration and control of the assets evaluation of the officials, magistrates, civil servants and of persons with management positions published in the Official Gazette of Romania no. 263 of October 28th, 1996.

Bibliography

1. Cerchez A.M., *Forms of legal responsibility in national law*. Doctoral thesis in law, Chişinău, 2016.
2. The Constitution of Romania republished in the Official Gazette of Romania no. 767 of October 31st, 2003.
3. Law 90/2001 on the organization and functioning of the Government of Romania and of the ministries, as subsequently amended and supplemented, published in the Official Gazette of Romania no. 164 of 02.04.2001.
4. Law no. 115/1996 for the declaration and control of the assets evaluation of the officials, magistrates, civil servants and of persons with management positions published in the Official Gazette of Romania no. 263 of October 28th, 1996.

The Evolution of Concerns of the European Union in the Field of E-Justice

Nicoleta DIACONU[1]

Abstract

The need for cooperation in the field of justice and home affairs resulted from the evolution of cross-border phenomena regarding organized crime, international terrorism, drug and human trafficking.

The need for digitization in the European Union's justice system results from its benefits: the speed of execution of certain activities, the ability to quickly and remotely transmit information, data and evidence by the judicial authorities, the accuracy and accuracy of the digital content transmitted.

E-justice is a policy through which access to justice is simplified and improved, and cross-border judicial procedures are digitized.

E-justice is not limited to a particular branch of law and is addressed to citizens, businesses, practitioners in the field of law and judicial authorities.

Keywords: *Justice and Home Affairs; "The area of freedom, security and justice"; digitization; e-Justice*

1. From cooperation in the field of justice and home affairs - at the area of freedom, security and justice

The evolution of cross-border phenomena regarding organized crime, international terrorism, drug trafficking and persons has necessitated the cooperation in the field of justice and home affairs.

The rise of crime at European level initially led to unofficial cooperation of security services and police forces in European states.

Justice and home affairs have recently entered the sphere of cooperation of the European Union.[2]

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[2] In 1972 the Pompidou Group on drugs was established, first within the Council of Europe, and then within the European Political Cooperation at EU level; In 1975, the Rome European Council set up the Trevi Group to coordinate anti-terrorist activities. In 1992 the Trevi initiative expands, by creating new groups aimed at coordinating on other issues of cross-border public order and international crime. The Shengen Agreement and the Implementation Convention represented an important step in the process of community coordination in the field of justice and home affairs.

• The Maastricht treaty was a first step in this evolutionary process of communitarianizing cooperation in the field of justice and home affairs. The treaty reorganized the community architecture into three pillars, respectively:

- Pillar I - Community;
- Pillar II- CFSP;
- Pillar III- JHA.

Within this new architecture, only the first pillar was community-based, the other two pillars representing areas of intergovernmental cooperation.

"Cooperation in the field of justice and home affairs" was regulated as a policy within the European Union by the provisions of the Maastricht Treaty.

• Subsequently, through the provisions of the Treaty of Amsterdam, some of the components of cooperation in the field of justice and home affairs, as well as aspects relating to the free movement of persons, visas, asylum and immigration, were communicated.[3]

Communitarianization is the way of transferring some attributions of the European Union, from the intergovernmental domain, to the union domain, to be managed through the community method. The Community method consists in coordinating between national interests and common Union interests, respecting national diversity, but at the same time affirming the European Union's own identity. The Community method allows the unity in diversity of the interests of the European nations to be realized. The essence of communitarianization is community integration, whereby the Member States have transferred some of their own competences in well-delimited areas to a new supranational entity, created by their sovereign will.

• The Lisbon Treaty finalizes the process of communitarianizing the JHA pillar components, abolishing the architecture structured on community pillars, all the JHA component domains being centralized in Title V, called the "Area of freedom, security and justice" of the Treaty on the Functioning of the European Union (TEU), in art. 64 to 89.

The Lisbon Treaty, however, maintains in the field of intergovernmental cooperation a number of procedures specific to the common foreign and security policy, including defense policy. Most of the areas that are currently being treated by the intergovernmental method will be able to be communityised in the future.

The communitarization of the field of police and judicial cooperation in criminal matters attracts some very important changes at the legislative and institutional level:

- extension of the European Parliament's decision-making powers in the field of police cooperation;

[3] Title VI, art. K1 and K9 corroborated with art. 100 C and 100D of the C.E Treaty, supplemented with declarations on asylum and police cooperation.

- extension of the powers of control of the Court of Justice;
- the use of Community-type legal instruments (directives and regulations);
- application of Community principles regarding the implementation of European Union law at national level.

The notion of a space of freedom, security and justice responds better to the current international context, reinforcing the coordinated concerns at European Union level for the creation of a European security climate.

These changes facilitate the creation of a more complete, legitimate, efficient, transparent and democratic decision-making process in the common area of freedom, justice and security, as it eliminates the frequent blocking of proposals due to the unanimity rule.

Article 3 (2) TEU states that the Union provides its citizens with an area of freedom, security and justice, without internal borders, within which the free movement of persons is ensured, in conjunction with appropriate measures regarding control at the external borders, the right to asylum, immigration, and crime prevention and combating this phenomenon.

Developing the content of the European policy on the area of freedom, security and justice, Article 67 (1) of the Lisbon Treaty (ex Article 61 TEC and ex Article 29 TEU) states that:

- The Union constitutes an area of freedom, security and justice, respecting the fundamental rights and the different legal systems and legal traditions of the Member States.
- The Union acts to ensure a high level of security through measures to prevent crime, racism and xenophobia, as well as to combat them, through measures of coordination and cooperation between police and judicial authorities and other competent authorities, as well as by mutual recognition of judicial decisions in criminal matters and, as appropriate, by the approximation of criminal laws.
- The Union facilitates access to justice, in particular on the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.

The Treaty of Lisbon clearly defines the objectives and values of the European Union regarding peace, democracy, respect for human rights, justice, equality, the rule of law and sustainability.

In articles 67 - 89 the components of the area of freedom, security and justice are stated and presented, respectively:

- policies on border control, asylum and immigration;
- judicial cooperation in civil matters;
- judicial cooperation in criminal matters;
- police cooperation.

Derivative law complements the legal framework set out in the TEU and the TFEU with specific regulations on the concrete aspects involved in the cooperation in the mentioned fields.

In this regard, the official portal of the European Union offers information on the legislative summaries, in a clear, concise and legible presentation.[4] The summaries of EU legislation contain information on the main aspects of EU legislation, policies and activities, and cover 32 topics that correspond to the activities of the European Union.[5]

2. The evolution of European action in the field of e-Justice

The need for digitization in the European Union's justice area results from its benefits: the speed of execution of certain activities, the ability to quickly and remotely transmit information, data and evidence by the judicial authorities, the accuracy and accuracy of the digital content transmitted.

A) Commission communication "Towards a European e-Justice strategy".[6]

The concept of e-justice was defined by the European Commission in its communication of 2 July 2008 addressed to the Council, the European Parliament and the Economic and Social Committee entitled "Towards a European e-Justice strategy".

The Communication proposes a strategy in the field of e-Justice aimed at increasing citizens' confidence in the European area of justice. The main objective of e-Justice is to ensure a more efficient administration of justice throughout Europe, for the benefit of the citizens.

European e-justice contributes to ensuring greater coherence with the general framework of e-Government, which is described in the Commission Communication on the "European Interoperability Strategy" (EIS) and the "European Interoperability Framework (EIF)".[7] E-justice is a specific independent field within e-governance and encompasses all areas of law that have cross-border dimensions in the areas of civil, criminal and administrative law.

E-justice is a tool for policy making through which access to legal information is simplified and improved, and cross-border judicial procedures are digitized.

[4] https://eur-lex.europa.eu/browse/summaries.html?locale=ro

[5] Regarding the area of freedom, security and justice, the summaries include the derivative law regulations, structured on the following subjects: Free movement of persons, asylum and immigration; Judicial cooperation in civil matters; Judicial cooperation in criminal matters; Police and customs cooperation; Citizenship of the Union; Discrimination; Fight against terrorism; Fight against organized crime; Trafficking in human beings; Fight against drugs; Justice, freedom and security: extension; Cooperation between EU countries; European statistics.

[6] COM(2008) 329 final.

[7] COM (2010) 744 final.

E-justice involves the use of electronic technologies in the field of justice in order to allow citizens to have access to information without being hindered by linguistic, cultural and legal barriers that result from the multitude of existing systems.

The use of new technologies is one of the cornerstones of e-justice initiatives: interconnecting national records, developing electronic signatures, secure networks, virtual exchange platforms and increased use of video conferences will be essential elements of e-Justice initiatives. over the next few years.

E-justice is largely defined, which covers the use of electronic technologies in the field of justice, but this definition is not limited to the concept of e-justice defined by the European Commission in its communication of 2 July 2008 to the Council, the European Parliament and the Economic Committee and Social entitled "Towards a European strategy in the field of e-justice" and in the comments made by the Council working group on e-justice. Questions about e-justice are not limited to certain legal areas. These are relevant in many areas of civil, criminal and administrative law. Consequently, e-justice is considered a horizontal issue in European transnational procedures.[8]

• *The basic principles of the e-Justice action are:*[9]

- The principle of voluntary action, in the sense that the states voluntarily participate in the projects of the e-Justice system, unless they have adopted a European Union legislative instrument that includes a requirement to implement a specific project in the context of the e-Justice system. - European justice;

- The principle of decentralization, in the sense that the concept of European e-justice is based on the principle of a decentralized system at European level that connects the different independent and interoperable national systems in the Member States. In accordance with this principle, each Member State is responsible for ensuring the implementation and technical management of national e-justice systems, necessary to facilitate the interconnection between Member States' systems.

- The principle of interoperability, which allows the interconnection of the systems of the Member States and the use of centralized solutions when necessary. The compatibility between the different technical, organizational, legal and semantic aspects selected for the applications of the judiciary should be ensured, while ensuring maximum flexibility for the Member States.

- The principle of the European dimension, which involves launching projects with a European dimension in the civil, criminal and administrative law fields.

[8] Dragoş Călin, "*E-Justice in the European Union",* https://www.researchgate.net/ publication /228189269_E-Justice_in_the_European_Union

[9] https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=celex:52013XG1221(02)#ntr1-C_2013376RO. 01000701-E0001.

Projects developed within the European e-Justice, in particular all projects to be included in the portal, should have the potential to involve all EU Member States and all Member States should be encouraged to participate in all projects, in order to achieve them. it ensures their long-term viability and cost efficiency. All projects should have the potential to provide a direct practical benefit especially to citizens, businesses and/or judicial systems. The development of the European e-justice system should also take into account national projects that offer European added value

- Cooperation with practitioners, who should be involved in the implementation of the action plan, as advisers or partners in projects that are based on their participation or which could benefit from it.

• *The objectives of European e-Justice*

The draft strategy on European e-Justice 2014-2018 sets out the objectives of the action program, respectively:

- Access to information in the field of justice in the European Union;

- Promoting electronic communications in the field of justice - improving access to courts and facilitating the use of extrajudicial procedures by using electronic communication in cross-border situations;

- Interoperability - simplifying and encouraging electronic communication between the judicial authorities of the Member States.

• *The main achievements of the e-Justice system*[10]

- The European e-Justice portal was conceived as a future online contact point in the field of justice, providing, in 23 languages, information on the judicial systems and facilitating access to justice throughout the European Union. The e-Justice portal, which is hosted and operated by the Commission in accordance with the Council guidelines, was launched on 16 July 2010.

- Pilot projects e-CODEX ("e-Justice Communication via Online Data EXchange") - project that offers the technical infrastructure for interoperability between national systems, respectively - secure data exchange between the judicial system, governmental organizations, practitioners in the legal field, citizens and businesses; The large-scale e-CODEX pilot project was launched as part of the 2009-2013 multiannual action plan on European e-justice[11] in order to contribute exclusively to the fulfillment of some of the planned functions of European e-justice.

- Interconnection of national databases (Interconnection of insolvency registers, Find a lawyer, Find a notary, etc.);

- Introducing video conferencing systems in legal procedures;

- European Judicial Network/Judicial Atlas;

[10] https://eur-lex.europa.eu/legal-content/RO/LSU/?uri=CELEX:52014XG0614(01)
[11] JO C 75, 2009, p. 1.

- The European jurisprudence identifier (ECLI).

The projects of the e-Justice system are aimed at:
- Development of the e-Justice portal;
- Interconnection of national criminal records;
- Creation of a European register of convicted third-country nationals;
- The use of machine translation is a useful tool and can foster mutual understanding between relevant actors in the Member States. creation of a database of legal translators and interpreters so as to determine an improvement in the quality of legal translation and interpretation.

B. The draft strategy on European e-Justice 2014-2018[12] *and the Multi-annual Action Plan 2014-2018,*[13]

The draft strategy on European e-Justice 2014-2018 provides a clear vision on three priority objectives regarding:
- access to information;
- electronic communications in the field of justice;
- Interoperability.

This strategy highlights the growing importance of information and communication technology (ICT) as a means of improving the efficiency of legal processes and authorities among EU countries. It is based on what has already been undertaken, including the e-Justice portal, as an access point - unique, multilingual and accessible to users - to the entire European e-Justice system and the first multi-annual action plan on European e-Justice (2009-2013)[14].

• The e-Justice strategy is supported by a 2014-2018 Multiannual Action Plan[15], which establishes a priority mechanism for the implementation of all new and ongoing e-Justice projects.

The implementation of the strategy followed:
- the development of the European e-Justice portal must be a one-stop shop;
- ensuring organizational, legal, technical and semantic interoperability;
- ensuring consistent use of modern information and communication technologies in the implementation of new EU justice legislation, including changes and reforms of existing legislation;
- development of a European legal semantic network, which aims to improve the accessibility and processability of legal information by ensuring an interoperable character for identifying legal data and their semantics;

[12] Draft Strategy on European e-Justice 2014-2018 (OJ C 376, 21.12.2013, p. 7).
[13] The 2014-2018 multiannual action plan on European e-justice (OJ C 182, 14.6.2014, p. 2).
[14] https://eur-lex.europa.eu/legal-content/RO/LSU/?uri=CELEX:52014XG0614(01)
[15] JO C 182, 14.6.2014, p. 2.

- promoting the interconnection of national registers containing information relevant to the field of justice;

- facilitating the functioning of the various networks existing at European level in the field of justice, such as the European Judicial Network in civil and commercial matters and the European Judicial Network in criminal matters;

- cooperation with legal practitioners and other users of European e-justice;

- The e-Justice portal to provide reliable translations of its content in all the official languages of the European Union;

- developing cooperation with third countries in the field of e-justice. This possible cooperation must be implemented in compliance with the institutional norms established at European Union level;

- protection of personal data.

• The draft strategy on e-justice 2019-2023 and the Action Plan 2019-2023 on European e-justice develop the objectives proposed in the Strategy on European e-justice and the Multi-annual Action Plan for 2014-2018 regarding:

- a) Access to information (general information about justice; Development of the e-justice portal; Interconnection of registers; Access to data sets; Access to legal information; Access to legal data; Interconnection of legal data; Artificial intelligence.

- b) Electronic communications in the field of justice (Secure data exchange; Secure communication between citizens, practitioners and judicial authorities;

- c) Interoperability (e-CODEX; Semantic interoperability).

The action plan contains a list of the projects envisaged to be implemented during the period 2019-2023, indicating the participants, the actions for the implementation and the respective contributions of the participants. The project leader may be a Member State, the Commission, the Publications Office, another organization or a combination thereof, which will assume responsibility for coordinating and conducting the work of a project aiming at its successful completion. All participants and all stakeholders are responsible for completing their own section of the project.

As with the 2014-2018 e-Justice Action Plan, the e-Justice portal continues to provide general information to citizens, businesses, practitioners in the field of law and judicial authorities on EU and Member State legislation and case law. In parallel, the EUR-Lex website provides information on EU law and case law, along with information on how Member States transpose EU directives.

Bibliography

1. Dragoş Călin, *E-Justice in the European Union*, https://www.researchgate.net/publication/228189269_E -Justice_in_the_European_Union.
2. Contini Francesco and Lanzara Giovan, *The Circulation of Agency in e-Justice*, Dordrecht, Springer. (2014).
3. Nicoleta Diaconu, *European Union Law*, European Union Policies, Universul Juridic, 2017.
4. Draft strategy on European e-Justice 2014-2018 (OJ C 376, 21.12.2013,),
5. The 2014-2018 multiannual action plan on European e-justice (OJ C 182, 14.6.2014).
6. The 2014-2018 multiannual action plan on European e-justice (OJ C 182, 14.6.2014).
7. Commission Decision 2014/333/EU of 5 June 2014 on the protection of personal data within the European e-Justice portal (OJ L 167, 6.6.2014),
8. The draft strategy on e-justice 2019-2023 and the Action Plan 2019-2023 on European e-justice (OJ C 96/05, 13.3.2019).

Compulsory education in the educational systems of European Union

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Abstract
The development of compulsory education in Romania compatible with the extended European area of education takes into account the objectives and content of the compulsory education reforms of the last decade at European level, as well as the perspectives created by the recent evolutions in the educational policy promoted at the European Union level. For this, we found it useful to investigate the legislative policy of establishing the compulsory education in some European Union countries, especially regarding the duration of compulsory education, both by raising the age of completion of studies and by decreasing the age of beginning of education required.

Keywords: *compulsory education; compulsory education; national education system; comparative legislation; European Union*

1. Introduction

Compulsory education refers to a period of education with a required daily frequency for all students. This period regulated by law is usually determined by the age of the students.

The additional compulsory education with a reduced frequency means that after the end of the compulsory education period with the usual daily frequency and up to a certain age, the minimum formal requirement for all young people is to participate in the reduced frequency training.

Starting age refers to the official age at which students begin compulsory education; moreover, the maximum age refers to the legal age at which students must complete compulsory education. These definitions do not take into account the possibility of early entry into primary education, nor the specific conditions of admission of officially recognized students with special educational needs.

In Romania, the legal issue regarding the compulsory education goes down to the middle of the 19th century, when, along with the unification of the Romanian Principalities in 1859 under the ruler Alexandru Ioan Cuza, the implementation of the peace programs is started, one of the directions being the reorganization of the public instruction. Thus, at the request of the School Council of Iasi, Vasile Boerescu alone makes a draft law, which he publishes in October

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1863 under the name of Draft Law on the reorganization of public education in Romania. The Minister of Cults and Instruction - Dimitrie Bolintineanu, supported the project. It has been approved in December 1863 by the Council of Ministers and sent for deliberation to the Legislative Chamber. Debated on March 11, 1864, voted overwhelmingly. Thus, the law was submitted to the ruler for sanction. On December 5 1864, Alexandru Ioan Cuza promulgated the law of instruction, the first law by which the education was organized in a unitary manner and the study years were established: primary, four-year, free and compulsory education, secondary, seven-year and university, three years.

A.I. Cuza's school law was part of the program of laws for the renewal of the Romanian society. It has put the primary public education on solid foundations, dominated by the principles of obligatory and free, thus placing our country ahead of Italy, France, England or Switzerland. With a series of changes, it will be in effect for a quarter of a century.

The basic principles contained in the law also refer to the obligation and free of charge of primary public education. The instruction was compulsory; the law sanctioning parents whose children were not enrolled or who did not attend school were fined.

At present, the general legal framework regulating the structure, functions, organization and functioning of the national education system in Romania is established by the Constitution, the Law of national education no.1/2011 - organic law, the ordinary laws and the governmental ordinances.

The constitution, in art. 32, establishes the right to education, which is ensured through compulsory general education, through high school and professional education, through higher education, as well as through other forms of education and training. The state education is free and the state grants social scholarships for children and young people from disadvantaged and institutionalized families, according to the law.

The compulsory education in Romania stated in art.16 and 24 of Law no. 1/2011 and tangentially in art. 25. Thus, until recently art.16 paragraph (1) provide that “General compulsory education is of 11 classes and includes primary education, secondary education and the first 2 years of higher secondary education. High school education becomes mandatory by 2020 at the latest.” Second paragraph of the same article states: “The obligation to attend the compulsory education of 11 classes, in the form with frequency, ceases at the age of 18”.

Then, Article 24 paragraph (1) states: “Compulsory general education consists of primary education, lower secondary education and the first 2 years of upper secondary education”.

Art. 25 states that the forms of organization of pre-university education are: frequency education and low frequency education, and compulsory education is frequency education. Exceptionally, for people who have exceeded the age of

more than 3 years, the compulsory education can also be organized in the form of reduced-frequency education, in accordance with the provisions of a methodology developed by the Ministry of national education".

The recent Law no.56/2019[2] amended art.16 paragraph (1) and art. 24 paragraph (1) of Law no.1/2011, which become identical with the following content: "The general compulsory education includes the primary education, the gymnasium education and the first 2 years of upper secondary education. Higher secondary education and the large group in pre-school education become compulsory by 2020 at the latest, the middle group by 2023 at the latest, and the small group by 2030".

Paragraph (2) of art.16 was also modified, because the old form provided "The obligation to attend the compulsory education of 11 classes, to the form with frequency, ceases at the age of 18", and now it has been clarified in the sense that "The attendance of compulsory education can cease to be the frequency with 18 years."

These changes sparked controversy, given that there were already 11 years of compulsory education that did not solve functional illiteracy and school dropout. It claimed that another 5 years added until 2030 would not lead to an increase in the quality and performance of the education system. Even more because compulsory education should be linked to the right to work, because according to the international labour law from the age of 16 you can work.

Therefore, we considered it useful to look at the reforms in the field of compulsory education in some countries of the European Union, with remarkable results in international tests.

2. The compulsory education in the law of the EU countries

Article 14 of the **Austrian** Constitution states that the fundamental values of education are democracy, humanity, solidarity, peace and justice, as well as honesty and tolerance towards people, based on which it assures for the whole population, regardless of origin, social and financial situation, a maximum educational level, protecting and permanently developing the optimum quality. Regarding the legislative and executive competences in the field of education, the same article of the Constitution establishes that the kindergartens are in the responsibility of the provinces, there is also a large private sector, and regarding the schools, the responsibility is divided between the federation and the provinces. Schools are institutions in which students will be educated collectively, in accordance with an established education program and with a comprehensive educational objective in terms of knowledge sharing and skills development.

[2] Law no. 56/2019 for amending the law of national education no.1/2011 was published in the Official Gazette no 252 of April 2, 2019.

In addition, the Constitution stipulates in art. 14 paragraph (7a) that the duration of compulsory education is of a minimum of 9 years, there being also a duration of compulsory vocational education, but from 2010 the compulsory attendance of the kindergarten has been introduced since the age of 5 years, that is, one year before entering primary school.

The legal framework in this area is represented by the Federal Law on the organization of education (1962), as amended and supplemented[3], the Federal Law on the organization of education in schools regulated by the Law on the Organization of Education (1986)[4], the Federal Law on Compulsory Education (1985)[5]. Thus, by law, the duration of compulsory education is a minimum of 10 years from the age of 5 years to 15 years and includes 1 year of kindergarten, primary education (grades 1-4), secondary education, ie lower secondary level (grades 5-8)) and the upper secondary level (grades 9-13), the latter segment being not compulsory.

Denmark has a good public school, "Folkeskole". Under this name are included primary and lower secondary schools[6]. "Folkeskole" consists of one year of preschool, 9 years of primary and lower secondary education and one year of 10th grade.

Education is compulsory in Denmark for everyone between 6-7 years and 16 years. Whether the education is done in a public school, a private school or at home, it is a matter of individual choice, as long as the accepted standards are respected. Education itself is compulsory, not school.

Folkeskole was founded in 1814 and since then, all children have been entitled to seven years of education. The school subjects taught then were religion, reading, writing and arithmetic. From that time until the end of the twentieth century, only five major changes were made in the legislation.

In **Estonia**, the education system is decentralized. The division of responsibility between the state, the local administration and the school is clearly defined.

At the state level, the Estonian Lifelong Learning Strategy 2020 guides long-term developments. National standards (the national curriculum for pre-

[3] Bundesgesetz vom 25. July 1962 über die Schulorganisation (Schulorganisationsgesetz) (https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009265)

[4] Bundesgesetz über die Ordnung von Unterricht und Erziehung in den im Schulorganisationsgesetz geregelten Schulen (Schulunterrichtsgesetz - SchUG), https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009600

[5] Bundesgesetz über die Schulpflicht (Schulpflichtgesetz 1985) http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009576

[6] http://eng.uvm.dk/primary-and-lower-secondary-education/the-folkeskole/about-the-folkeskole

school childcare institutions, the national curriculum for elementary schools, the national curriculum for upper secondary schools, the national curriculum for vocational studies, the standard of higher education and the standard of vocational education) guarantee the quality of education. Laws and regulations establish the principles of education financing, state supervision and quality assessment.

Basic education (grades 1-9) is compulsory in Estonia. It starts with the first complete school year, after the children have reached the age of seven and continues until the students have satisfactorily graduated from the basic education or have reached the age of 17 years. The system does not differentiate between primary and secondary education - the basic school is a stage. After the satisfactory completion of the basic school, the students can continue their studies in the secondary schools (grades 10-12) or in the vocational education institutions free of charge[7].

The goals of the education system in **Finland** are fairness, trust and responsibility, as well as lifelong learning. Thus, Law no. 628/1998 on basic education, in art.2, provides that the purpose of education is to support the growth of students to become ethically responsible members of the society and to provide them with the knowledge and skills needed in life. In addition, the purpose of pre-school education, as part of early childhood education, is to improve children's ability to learn.

In Finland, education is one of the fundamental rights of all citizens. As a result, compulsory education and the right to free basic education apply to all those who have permanent residence in Finland, not only to Finnish citizens.

Art. 9 of the Law no. 628/1998 stipulates that the duration of the basic education programs is 9 years, and Article 25 specifies that the compulsory school begins in the year when the child turns 7 years old and ends at the conclusion of the basic education programs or 10 years after the beginning of compulsory schooling. However, if, due to the disability or illness of the child, the objectives set for basic education are not met in 9 years, compulsory education starts one year earlier than the planned one and lasts 11 years.

The compulsory school is a single system of structures called basic education and comprises grades 1-9. Education is free for students, as well as learning materials, daily meals at school, health, social and transport services from home to school, if the road is long or dangerous.

In **France**, the Education Code, in art. L111-1 of Chapter I - General provisions states that education is the first national priority. The public education

[7] Mihkel Lees, *Estonian education system 1990-2016: Reform and their impact 2016* (http://4liberty.eu/wp-content/uploads/2016/08/Estonian-Education-System_1990-2016.pdf).

service is designed and organized according to students and college students. It contributes to equal opportunities and to the fight against social and territorial inequalities in terms of school and educational success. He recognizes that all children have the ability to learn and progress and ensures the inclusive education of all children, without any distinction.

According to art.111-2, the school education promotes the development of the child, allows him to acquire a culture, to prepare him for a professional life and to exercise his responsibilities as a man and a citizen. In order to promote equal opportunities, appropriate provisions of the Code make it possible for all, depending on their specific skills and needs, to access different types or levels of schooling. The state guarantees respect for the child's personality and the educational activities of the families.

According to this article, education in France is compulsory between the age of 6 years (which corresponds to the beginning of elementary school) and the age of 16 years (which does not correspond to the end of the school cycle). A draft law before the Parliament provides for the decrease of the age from which the compulsory education begins from six to 3 years. Thus, France would join Hungary, the only EU country that has already set this threshold. Already adopted by MPs, this measure is expected to come into effect in September 2019, following the Senate vote.

Article L311-1 of the Education Code establishes that education is organized in cycles for which the national training objectives and programs are defined with periodic and progressive evaluation criteria, and the number of cycles and their duration are established by decree. The organization of pre-university education presents as follows:

Preschool education, carried out in *kindergartens*, lasting 3 years (pupils from 2-3 years to 6 years), is still optional, but attended by almost all children from the age of 3 years. Therefore, it is an integral part of the education system and, together with the elementary schools, covers the "primary" education; in France the name, "preschool" does not exist.

Elementary education, compulsory, taught in *elementary schools*, lasting 5 years (students between 6 and 11 years). At the end of elementary school, children automatically go to the next level of education without going through selection procedures (exams) or orientation.

Lower secondary education in *colleges* for 4 years (pupils between 11 and 15 years). Training in colleges is compulsory and common to all students. At the end of the course, they take a national exam to obtain the national patent diploma, which, however, does not condition the access to the cycle of upper secondary studies. The orientation of the student takes place at the end of the school (at the age of 15, one year before the end of compulsory education): the school guides each student in one of the three paths offered in the upper secondary education

(general, technological or professional) based school results and student motivation.

Higher secondary education in *high schools* (general and technological high schools and vocational high schools) for 3 years (pupils between 15 and 18 years). Offers three paths of preparation: the general path (which prepares students for higher long-term education), the technological path (which prepares them primarily for short-term higher education, of a technological nature) and the professional path (which mainly leads to active life, but also allows further education in higher education). A national diploma certifies the end of upper secondary education: the baccalaureate. This conditions access to higher education. In the professional high school, students can also prepare, in two years, a certificate of professional skills; then either join the active life or support the professional baccalaureate in one year.

The development of the educational system of the Federal Republic of **Germany**[8] differs from the other European countries due to the unification of East Germany and West Germany. In order to achieve German unity in the field of culture, education and science, the Unification Treaty (Einigungsvertrag) concluded between the Federal Republic of Germany and the German Democratic Republic on August 31, 1990 contains fundamental provisions aimed at establishing a comparable common structure in education - in particular in the school system.

Since October 3, 1990, the fundamental law has been binding on the entire German nation. Germany is a federal republic with 16 provinces. Each land has its own responsibility, including individual legislation in accordance with the guidelines of the constitutional law system. A central element of this statute is the so-called cultural sovereignty (Kulturhoheit), which is the predominant responsibility of the provinces for education, science and culture.

Usually, general compulsory education begins for all children in the Federal Republic of Germany in the year they reach the age of six and involves 9 years of day-to-day education. Those young people who do not attend a general education school or a vocational school at the upper secondary level, after completing their compulsory general schooling period, must attend the low-frequency schooling. This usually lasts for 3 years.

In **Netherlands**, freedom of education is guaranteed by Article 23 of the Dutch Constitution and includes the freedom to set up schools, organize education and go to a school based on the student's own beliefs. The educational system is, therefore, diverse and reflects different religious, ideological and educational beliefs. As a result, there are both public and private schools in the Netherlands.

[8] https://www.european-agency.org/country-information/germany/legislation-and-policy

Public schools are open to all children, regardless of religion or future prospects, and offer education on behalf of the state. Public schools are subject to public law. The municipal council, a public legal entity or a foundation set up by the council administers these.

Schools with private status are subject to private law and are founded by the state, although they are not established by the state. The board of the association or foundation that founded them manages these schools. These so-called confessional schools base their teaching on religious or ideological beliefs. They include Catholic, Protestant, Jewish, Muslim, Hindu and Anthroposophical schools. Some private schools base their teaching on specific educational ideas, such as the Montessori, Jenaplan or Dalton method. The denominational schools may refuse to admit students whose parents do not adhere to the faith or ideology on which the teaching is based[9].

The freedom to organize teaching means that private schools are free to determine what is taught and how. However, this freedom is limited by the qualitative standards imposed by the Ministry of education, culture and science in the educational legislation. The standards, which apply in both public and private education, provide the subjects to be studied, the objectives to be achieved, the content of national exams, the number of training hours per year, the qualifications that teachers must have the right of parents and students to have a say in school problems and so on.

The constitution in art.23 paragraph (5) - paragraph (7) places the public and private schools on an equal financial basis. The standards to be met by schools funded partially or completely from public funds are regulated by law, taking due account, in the case of private schools, of the freedom to provide education in accordance with religious or other beliefs. These standards for primary education are regulated so that the quality of education in private schools fully funded from public funds and the one of public schools to be fully guaranteed. These regulations respect in particular the freedom of private schools to choose auxiliary staff and to appoint teachers. Law establishes the conditions under which secondary and pre-university institutions receive contributions from public funds.

The current educational system consists of primary education for children aged 4-12 (approximately), secondary education for children over 12 years and higher education. Starting with 1985, pre-schoolers (those over 4 years old) were integrated into the general school system.

The Dutch pre-university education system is governed by different normative acts. Each type of education has its own legislation:

- For primary education: the Law on primary education of 1998;
- For special education: Law of Expertise Centre of 1998;

[9] https://www.perfar.eu/policy/education/netherlands

- For secondary education: the Law on secondary education 1998.

The first law that imposed the compulsory education, adopted in 1900 and entered into force in 1901, made primary education compulsory for all children between 6 and 12 years. The law was repeatedly amended and eventually replaced by the Compulsory Education Act of 1969, which required children to attend day school between the ages of 6 and 16. In 1985, the Law on primary education stipulated that the compulsory school should start at the age of 5 years. For example, if a child reaches the age of five in March, he or she should start school in the next month of the same year. In practice, however, most children in the Netherlands go to school starting at the age of four. This additional year is especially important for children whose mother tongue is not Dutch[10].

In 1971, the Law on compulsory education was extended to include an additional year of compulsory education with a reduced frequency of two days per week. This can be combined with practical training or employment. Children up to 12 years old may be punished for not attending school. For students over 14 years of age who are facing problems related to day-to-day education, a special program can be created that combines general education with easy work.

Then, the Law on compulsory education of 2007 forced the students to attend the school until they obtained a basic qualification (five-year general education level, six-year pre-university education or vocational education). This means that young people between the ages of 16 and 18, who have completed the compulsory education cycle but have not yet obtained a basic qualification, are now required to continue attending school.

For compulsory education, up to the age of 18, no tuition fees are charged. For higher education or for vocational education after the age of 18, tuition fees are charged. Depending on the parents' income, students may receive a grant to pay tuition fees and books.

The law on compulsory education is implemented by the local authorities, which verifies that the children of school age who are registered as residents in the area are enrolled as pupils in a school. The local authorities ensure compliance with the law in both public and private schools, through the school inspector designated for this purpose.

Then, since 1995, local authorities are responsible for registering early school leavers and coordinating regional policy in this area. In 2001, Parliament passed the law on regional registration and coordination. This law contains amendments to the educational legislation aimed at preventing and combating early school leaving in middle and special schools, in vocational secondary

[10] http://education.stateuniversity.com/pages/1067/Netherlands-EDUCATIONAL-SYSTEM-OVERVIEW.html

education and in general secondary education for adults. The main purpose is for all young people to complete their education with a basic qualification certificate.

In August 2007, the Law on compulsory education was amended. In addition to the obligation to go to school up to the age of 16, students must obtain a basic qualification, which is a certificate at the levels of general education of five years, pre-university education of six years or vocational education. Young people between the ages of 16 and 18 who have completed compulsory education, but have not yet obtained such a basic qualification, are now required to attend school, either day courses or in combination with a job. This extension of compulsory education has been introduced to ensure that all young people make a good entry into the labour market. Therefore, the Law on primary education and the Law on secondary education have been amended. An additional specification has been included, which stipulates that primary and secondary education must "stimulate active citizenship and social integration".

In **Portugal**[11], Law no. 46/1986 on the education system, with the subsequent modifications, establishes the general framework of the education system. According to this law, the educational system works through structures and actions of the initiative and responsibility of the different public, private and cooperative institutions and organizations. Public education is free and universal.

The educational system includes all the means used to ensure the right to education, expressed by guaranteeing a continuous training, meant to favour the general development of the personality, the social progress and the democratization of the society.

The Portuguese educational system is very centralized in terms of organization and funding. However, preschool, elementary and secondary schools have a certain autonomy, namely at pedagogical level, as well as in the schedules and management of the teaching staff.

The Portuguese pre-university education system is divided into pre-school education (up to the beginning of basic education), in basic education (between 6 and 15 years) and in secondary education (15-18 years).

Participation in pre-school education is optional, recognizing the importance of the role of families in children's education. However, by Law no.85/2009, amended by Law no.65/2015, was established the generalization of the kindergarten attendance from 4 years.

The basic education lasts 9 years and is divided into three sequential cycles. Each cycle must complement and get base on the previous one, from a global perspective:

- The first cycle corresponds to the first four years of schooling (grades 1-4);

[11] https://eacea.ec.europa.eu/national-policies/eurydice/content/organisation-and-governance-60_en

- The second cycle corresponds to the following two years (these two cycles together represent primary education) (grades five and 6);

- The third cycle lasts three years and corresponds to the lower secondary education (grades 7-9).

Secondary education lasts for 3 years and corresponds to higher secondary education. It is organised in different forms depending on different purposes, either focusing on access to further studies or preparing for professional life. It grants permeability between these two paths[12].

The compulsory education lasts 12 years, starting with the age of six and ending at the age of 18 or with the completion of the secondary education.

Regardless of where they live, all children and young people in **Sweden** must have equal access to the public education system.

In 1994 (with effect from January 1, 1995), in the Swedish Constitution, by art.18, a specific right to free education was included, which stipulates that "all children included in compulsory education have the right to free elementary education within of the public education system ".

Over time, the school system has changed and today it consists of 9-year basic education (*grundskola*), followed by 3-year upper secondary education (*gymnasieskola*), which is optional.

The public school system for children and young people includes[13]:

• Preschool education (*förskolan*).

• Preschool class (*förskoleklassen*). This is mandatory from 2018 for all children from the year they turn 6 years old.

• The compulsory school (*grundskolan*) starts at age 7 and ends at age 16.

• The upper secondary school (*gymnasieskolan*) consists of 18 national programs and 5 introductory programs for students who are not eligible for a national program. National programs include 12 vocational programs (yrkes-program) and 6 preparatory programs for higher education (högskoleförberedande program). Students usually start high school at the age of 16 and finish their secondary education at the age of 19. Students who have not finished upper secondary school may attend municipal adult education (kommunal vuxenut-bildning, Komvux) or popular high schools (folkhögskola).

• Education for students with severe intellectual disabilities (särskolan)

• Schools for students with hearing impairments (special school);

• The saami school (sameskolan) for students who speak Saama.

According to the Law of Education (Skollagen, SFS 2010: 800), all children between the ages of 6 and 16 are entitled to education in the public education system and school attendance is compulsory. As a rule, compulsory education

[12] https://eacea.ec.europa.eu/national-policies/eurydice/content/portugal_en

[13] https://eacea.ec.europa.eu/national-policies/eurydice/content/organisation-and-governance-80_en

begins in the fall of the calendar year in which the child turns 6 years old and ends at the end of spring in the year when the young person reaches the age of 16 years. However, children can be enrolled sooner or, in certain circumstances, later if parents so wish. The school principal makes such decisions. The compulsory school can be terminated earlier if the child demonstrates that he/she has a level of knowledge corresponding to a completed compulsory school. The compulsory school is 10 years old, regardless of when the child starts school. In the Education Law, approved by the Parliament (Riksdag) and implemented starting with the 2011/12 school year, the government proposed that in some cases the obligation to go to school be extended by one year. For example, for children who repeated a year or started school a year later.

According to art. XI of the Constitution of **Hungary**, which entered into force on January 1, 2012, all Hungarian citizens have the right to education. Hungary ensures that this right is respected by expanding and generalizing public education, by providing free and compulsory primary education, free and generally available high school education and higher education available to all persons according to their abilities and by providing financial support to the beneficiaries of the education system, as provided by law.

In Hungary[14], schools and kindergartens are set up and maintained by the state, local administrations, local minorities administrations, legal entities (foundations, churches, etc.), as well as natural persons. About 90% of children attend public sector institutions.

In recent years, the support of the education system was more organised. In January 2013, the state took over the maintenance of public education institutions (with the exception of kindergartens) from the local authorities. However, local governments receive contributions from the central budget to finance kindergarten education, but they are responsible for organizing early childhood care and education.

Participation in education is compulsory at the age of 3 to 16 years. 10 years of school plus 3 years of kindergarten is compulsory. However, the studies were founded up to the age of 18. The kindergarten (óvoda) is available for children between the ages of three and six and is compulsory from the age of 3 years. The kindergarten offers care and education to children between 3 and 6 years old (until they enter school). According to article 8 of the Law on Public Education[15] (Act CXC of 2011 on Public Education), kindergartens can also admit children who will turn 3 years old within six months of admission (but only if they have free

[14] https://eacea.ec.europa.eu/national-policies/eurydice/content/hungary_en

[15] Act CXC of 2011 on National Public Education (http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106832/131356/F-1702001629/act_national_education.pdf).

seats for all children 3 years old and registered in the district)[16]. Children over 5 years old are required to attend preschool 4 hours a day. However, starting with September 1, 2014, kindergarten is compulsory for children from 3 years. The kindergartens offer both day care and an education program. Children who reach the age of six until August 31 become pupils on September 1 of the same year. The law on public education of 2011 strengthens the mandatory date for entry into school through a new regulation: the start date can be delayed by no more than one year, with the kindergarten notice, which determines if the child is ready for school. However, the law allows children to go to school before the age of six, if parents so request, and child development permits.

Primary and lower secondary education is organized as a single-structure system in 8-grade elementary schools (általános Escola) (usually for pupils between the ages of 6 and 14). Higher secondary education (usually for pupils between the ages of 14 and 18, usually covering grades 9-12) provided by general secondary schools (gymnasium), vocational secondary schools (szakgimnázium) or vocational schools (szakközépiskola) or special education vocational schools (szakiskola).

3. Conclusions

From the examination of the legislation on education in the countries of the European Union, day-to-day education is organised mostly in schools. However, in some education systems, some compulsory education programs may combine low-frequency school and part-time courses. In such cases, students are evaluated in/for both parties. In most countries, under certain conditions, compulsory education can be provided at home.

As a first general finding, regarding the structure of compulsory education, it is clear that the reforms in education at European level aimed at both the extension of the duration and the modification of its stages or cycles.

Thus, in most education systems in Europe, compulsory education begins with the beginning of primary education, usually at the age of 6 years. In some countries, the commencement of compulsory education is set at the age of five, in others, such as Greece, the Netherlands and Portugal, the school compulsory lower to 4 years. The youngest age of education, respectively 3 years, is in Hungary. On the other hand, in Estonia and Finland, compulsory education begins at the age of seven, taking into account the mental and psychosomatic development of a child, but also for climate reasons.

In most European education systems, full-time compulsory education lasts 9 or 10 years and ends at the age of 15-16. In Belgium, the Netherlands and

[16] https://eacea.ec.europa.eu/national-policies/eurydice/magyarorsz%C3%A1g/organisation-education-system-and-its-structure_en

Portugal, the duration of compulsory education is 12 years, and in Hungary, 13 years of attendance are compulsory for all students. Romania currently has 11 compulsory years, but in two years it will be 14 years, and in 2030, 16 years, so far beyond any of the countries of the European Union.

The duration of the compulsory education period usually covers the levels of primary and lower secondary education. Only Romania will also include higher secondary education in 2020. However, in countries such as the Netherlands and Portugal, education up to the age of 18-19 is compulsory. However, in these countries, between the ages of 15-16 and 18-19, students can attend compulsory education programs, which combine low-frequency education with work-related courses. Only the programs in which the students are tested for both the school courses and the courses at the workplace are considered as "compulsory full-time education".

The research carried out does not show the existence of a standard model of internal structuring of compulsory education at European level. National traditions, resources, theories in the fields of psychology, sociology and pedagogy from national educational policies, etc. condition the model of compulsory education.

Aspects Regarding the Exercise of Civil Action in the Criminal Trial

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Abstract

As a consequence of the mixed system of actions in the criminal proceedings, the injured person who has not been a civil party in the criminal trial may introduce, in order to compensate for the damage caused by the offense[3]*, respectively by the deed which is the object of the criminal action, expressly regulated by the provisions of art. 27 par. (1) C.C.P.*

Also, according to the current regulation, in case the conditions required by art. 20 par. (1) and (2) C.C.P., the reparation of the damage can no longer be carried out in the criminal proceedings, but the civil action before the civil court remains open, according to the express provisions inserted in art. 20 par. (4) C.C.P. These provisions are intended to create a partial sanction to the detriment of the injured person who has dismantled the provisions of the law which were intended to create the possibility of exercising civil action in the criminal proceeding, without penalizing it fully, thus without depriving him of the right to appeal to civil jurisdiction.

Also by sanction, art. 25 par. (6) C.C.P. provides that the claim for damages can no longer be settled by the criminal court, but only by way of a separate action at the civil court, provided that, due to passivity, the term of at most two times stipulated in art. 24 paragraph (1) and (2) C.C.P. for the exercise of civil action by or by the successor.

Keywords: *sanction, civil party, damages liability, infraction, term*

Introduction

The constitution of the injured person as a civil party in the criminal proceedings offers him advantages over the separate exercise of civil action.

From these legal provisions above, briefly reviewed, it follows that:

- on the one hand, in the case of the commission of an illicit act that could constitute an offense, civil action can be exercised in the criminal proceedings only if there is a manifestation of will in this respect, which can be achieved through the constitution of a civil party. Thus, *the constitution of a civil party is a condition of the civil action in the penitentiary process*, except in the cases in which it is exercised, according to the law, ex officio[4];

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[3] Gh. Mateuț, *Tratat de procedură penală. Partea generală,* vol. 1, C.H. Beck Pub. House, Bucharest, 2006, p. 667.
[4] Regarding this, see T. Joița, *Actiunea civila in procesul penal,* National Pub. House, Bucharest, *1999,* p. 94.

- on the other hand, in order for a civil party to be able to have the expected effect, it is absolutely necessary for it to meet the requirements of the law (term, form, content), first of all the criminal procedural law as mandatory, primordial and, in the alternative, civil and procedural law (if we refer to the common express nature of the provisions of Article 2 of the Code Civil Proceeding). Therefore, *a constitution as a civil party in accordance with the law is a condition of the very admissibility of the principle of its training in the criminal trial.*

Themes and definition

The doctrine has shown that committing an offense can, among other consequences, cause material and moral damages at the expense of a natural person or of material damage to the detriment of a legal person[5]. We have shown, in the previous title, that international doctrine and practice do not exclude the existence of moral damage by legal entities, even if it has a material component by humanizing the legal person[6]. Also, domestic, civil and criminal law[7] does not provide for any express distinction between the types of damage that can be recorded by natural or legal persons. As for our internal practice, when faced with a claim for compensation for the moral prejudice of the legal person, we must proceed to a thorough and concrete analysis of the evidence, without going back to the rejection of the claim on the ground of inadmissibility. The current reluctance to recognize the moral prejudice of legal persons does not prevent the possibility of evolving judicial practice in this respect.

The legal basis in fact of establishing a civil party is *an offense which may, by its nature, create material or moral damages*[8], since the obligation to award

[5] Neagu, *Tratat. Drept procesual penal penal. Partea generala,* Global Lex Pub. House, Bucharest, 2006, p. 151; I., Neagu, *op.cit.,* p. 312.

[6] Gh. Mateuţ, *Tratat de procedura penala. Partea generala, vol. I,* C.H. Beck Pub. House, Bucharest, 2007., p. 579.

[7] See, in this regard, provisions of art. 19 para. (1) şi (2) C.C.P. but also art. 14 old C.C.P.

[8] The Supreme Court, Criminal part, Dec. no. 1264 of 1983, apud I. Neagu, op. cit., 2006, p. 152, and I. Neagu, op. cit., 2 C1H p. 314 and p. 190. It is shown that the driving of a motor vehicle on public roads without a driving license does not always have the effect of generating material damage to other persons through its object. As a result, the person has suffered a damage caused by a defendant on the occasion of driving under such conditions, the vehicle can only be compensated by an action brought before the civil court, but can not be a civil party in the criminal proceedings; a situation that has remained unchanged, as it results from the ICCJ decisions, decisions made in the resolution of appeals in the interest of the law no. 29/2008, M. Of. no. 230 of 8 April 2009, and no. 43/2008, no. 372 of June 3, 2009 [even if they appear to be in a seeming conflict with another decision pronounced and in the interest of the law: ICCJ, dec. no. 1 of 23 February 2004, M. Of nr. 404 of 6 May 2004]; in the same sense, the Romanian Association of Criminal Sciences, Criminal Law Review. Judicial Studies and Practice 1994-2006, ed. 2nd, reviewed and cared for by G. Antoniu, V. Brutaru, p. 77, referring to C. Ap. Bucharest, s. 11, p. no. 345 / MJJ no. 4/1996, p. 148.

damages in the criminal proceeding can not be based on an extrapolated offense[9]. Referred to the terminology provided by art. 19 para. (1) C.C.P. we may consider that the factual basis of the civil action is the act which is the subject of the criminal action that may constitute an offense.

The legal basis of civil action, and therefore of civil party constitution, is the *violation of legal provisions*, which gives the right to civil damages[10].

In order to remedy this prejudice, the injured person has at his disposal the civil action he can exercise, due to the mixed system embraced by the Romanian legislator, and in the framework of the criminal trial.

Therefore, the formation of a civil party in the criminal proceeding is made only if the natural or legal person injured, materially and/or morally prejudiced by an act which is the object of the criminal action, *wishes and demands* compensation for the damage caused by it in the criminal proceeding . Thus, the injured person acquires the capacity as a civil party in the criminal trial - art. 20 par. (1) and (2) C.C.P., art. 24 paragraph (2) the old C.C.P.

The person who has suffered material or moral damages by a criminal offense, may apply as a civil party in the criminal proceeding (art. 19 para. (1) and (2), in conjunction with art. 20 par. (2) C.C.P., art. 14 par. (2) the old C.C.P.], thus manifesting its right to the option of joining the civil action to the criminal one in the criminal proceeding, as governed by the principle of *electa una via non datur recursus ad alteram*, with the exceptions provided by the law[11]. This is the general *rule*.

Exceptionally, in accordance with the provisions of art. 17 par. (1) the old C.C.P. [and art. 18 para. (2) the old C.C.P.], as amended by Law no. 281/2003[12], in the old criminal procedural law, civil action was started and exerted ex officio, when the injured person was a person with little or no exercise capacity. *At present*, even if the legislator has continued to opt for the protection of these categories of people, their defense is no longer done under any circumstances and at any price, but attenuated compared to previous regulations. We observe that the civil action is expressly exercised by its legal representatives or by the prosecutor, but in both hypotheses with the necessity to observe the cumulative conditions provided by art. 20 par. (1) and (2) C.C.P.

Consequently, in the case of victims who lack the capacity to exercise or have limited capacity, it is now necessary to invite the court with a request for

[9] The Supreme Court, Criminal part, dec. no. 616 of 1976, RRD no. 10/1976, p. 65; The Supreme Court, Criminal part, no. 23 /19811, *apud* I. Neagu, *op. cit.,* 2006, p. 153.
[10] M. Udroiu, *Fişe de procedură penală,* Universul Juridic Pub. House, Bucharest, 2012, p. 61.
[11] Gh. Mateuț, *op.cit.,* 2006, p. 582.
[12] Law no. 281/2003 amended these articles as a result of declaring those provisions unconstitutional as regards the issue of the entities referred to in Article 145 of the old Criminal Code, by decision no. 80/1999 of the Constitutional Court.

civil party in the name and on behalf of these disadvantaged categories of persons, legal representatives or, as the case may be, the prosecutor, and this request must comply with the legal requirements regarding: moment, form, content. Thus, for these disadvantaged categories of persons, the legal representatives, respectively the prosecutor, take up the right to request tort liability, but strictly under the new criminal procedural provisions, which, unless otherwise stipulated, can not be extended.

Consequently, due to the fairness of the new legal provisions, the court has been relieved, as compared with the previous legislation, of the responsibility for establishing the damage, the ex officio administration of the probation and the resolving of the civil action, as it results from the interpretation of the provisions of art. 25 and art. 397 C.C.P.

In conclusion, we can consider that at present, even if these people remain protected by art. 19 para. (3) C.C.P. in fact, we no longer have to deal with an ex officio civil action in the proper sense, but only limited, in the light of the powers of the legal protectors and the prosecutor to exercise civil action, within the limits and under the conditions stipulated by the law. By the provisions inserted in the current Code of Criminal Procedure, the rule that the constitution of a civil party is made in the criminal trial only if the injured person wants and requests the reparation (regardless of who is represented or who is exercising for and on behalf of her civil action) tends to regain power.

Another exception to the principle of availability on the way forward stems from the provisions of Art. 348 thesis of II-a and C.C.P. since the court automatically settled the civil action automatically, even if there was no civil party, when it was about restitution of the work, the dissolution (total or partial) of a document or the restoration of the previous situation. Similar provisions are partly maintained in the present regulation - Art. 25 para. (3) of the C.C.P. - regarding the abolition (total or partial) of a document or restoration of the situation prior to the commission of the offense.

The current regulation no longer provides for the resolving of the civil action by way of restitution of the work without the express request of the civil party (in the absence of such a request as the object of the action itself), which is deduced from the provisions of art. 25 par. (2) and (3) C.C.P.

The stipulations in Art. 397 par. (3) C.C.P. are not able to lead to the invalidation of the provisions of art. 25 par. (2) and (3) C.C.P. despite the contrary view that an ex officio resolving of the civil action is now resolved by the restitution of the work, which becomes mandatory in relation to art. 397 par. (3) C.C.P. The author argues that, although from the art. 25 C.C.P. is clear that the restitution of the work is no longer obligatory, and a manifestation of will in this sense is necessary, from the corroboration of art. 397 par. (3) with art. 255 C.C.P.

results that the court will order the restitution of the work also in case it is established, on request or ex officio, that the things taken from the suspect or defendant or from any other person who has received them to keep them are the property of the injured person or other person, or have been unjustly taken from their possession or detention.

We can not agree with this opinion, not only in relation to the provisions of art. 25 par. (2) C.C.P. (which stipulate that the restitution of the work is ordered *when the civil action has as its purpose the reparation of the material damage by restitution of the work*), but also in relation to the provisions of Article 25 paragraph (3) of C.C.P. (stipulating that the court orders the total dissolution or partial registration of a writ or restoration of the situation prior to the commission of the offense even when there is no civil party.) Accordingly, from our point of view, Article 397 paragraph (3) of the C.C.P. must be interpreted in meaning that the restitution of the work is definitively possible, but only if there is a request in this respect, and not of its own motion. However, as the provisions of Article 397 (3) C.C.P. they are not clear enough, they can cause confusion and lead, by way of interpretation, to the ineffectiveness of the provisions of Article 25 (2) and (3) C.C.P., an intervention i.e. the legislature in order to clarify its intention to return the work, since inconsistency is inadmissible.

For details on these two exceptions of the old and current regulations on this subject, we refer to what will be stated in this paper.

Another apparent exception to the availability rule on the way to recover the damage, also mentioned in the literature[13], was the obligation for the units referred to in Art. 145 of the old C.C.P. to form civil parties in criminal proceedings (art. 221 par. (4) the old C.C.P.], but it is not possible, after the appearance of Law no. 281/2003 that the civil action should be initiated and ex officio exercised in the case of these units.

Such a provision was an unwanted reminiscence of the old regulation in which, for the entities referred to in Art. 145 of the old C.C.P. the civil action was set in motion and exerted ex officio (meant to help the judicial bodies know the extent and evidence of the damage). Such an obligation was likely to violate the right of option on the way to go, since non-compliance with the legal provisions should result in sanctions, either invalidity or deferral. In such a case, where the entity referred to in art. 145 of the old C.C.P. would not have complied with its obligation under art. 221 par. (4) of the old C.C.P., apparently, would have meant that this entity would not have been able to redress its claims on a separate civil action, which would have been excessive, inequitable, such as to make it obligatory to resolve such civil action exclusively in the criminal proceedings,

[13] G.-A. Radu, *Drept procesula penal, Partea generala,* C.H. Beck Pub. House*, Bucharest,* 2012, p. 113.

even if, following the Law no. 281/2003, such civil action was no longer initiated and exercised ex officio. Equally unfair would have been that non-compliance with legal provisions, even deficient, would remain unchanged. That is why we considered that such a provision, as in Article 221 (4) of the old C.C.P. obligation should have been eliminated and, in protecting the public interest, the only obligation that ought to have existed was the obligation of the entity to seek reparation, either way or no matter, irrespective of the jurisdiction before which it would be required compensation for the damage.

As this provision, in identical or similar form, is no longer found in the present Code of Criminal Procedure, it means that the legislator has removed this reminiscent of legal reasoning, leaving the right of option as to the jurisdiction to be followed in order to recover the damage caused by crimes in the patrimony of the legal entities with capital, totally or partly state, to function in its fullness.

Among the limitations of the right of option was also mentioned the one in which the settlement of the civil action *would delay the trial of the criminal case*[14], a hypothesis now expressly inserted in art. 19 para. (4) and Article 26 (1) Thesis I C.C.P.

We consider that in this situation, it is not a limitation of the right of option, because it has already been exercised, the victim having previously opted for joining his civil action to the criminal one. By dismantling the civil action and solving it separately from the criminal action, also by the criminal court - art. 26 par. (1) the 11th sentence of C.C.P. - we can not talk about a genuine limitation of the right of option on the way forward, which is expressly maintained as the same - that of criminal jurisdiction - but about a more celerity of criminal action, which takes precedence precisely because of its public character .

Definition

Civil party formation can be defined as *a manifestation of will* by the full-bodied physical person or the legal person (through its legal representatives). Injured through an act which is the subject of criminal proceedings and which may constitute an offense, to be compensated for the material and/or moral prejudice suffered as a result of committing a crime by joining the civil action to the criminal one in the criminal proceeding in order to lead them to civil liability of the persons responsible under civil law for the damage caused by the offense.

We have used the term "*injured*", referring to the fact that the terminology used by the legislator – in art. 19 and following C.C.P., art. 24 paragraph (2), art. 14 par. (2) and Art. 15 par. (1) C.C.P. is a permissive and general one, not a limiting one, to leave the doctrine and the jurisprudence the purpose of defining and interpreting the notion of "injured person" in the context of civil action in the

[14] *Ibidem.*

criminal trial. In the light of this evolution both internally and internationally (the example of French doctrine and jurisprudence being remarkable), it can be concluded that the notion of "criminal victim" in the context of civil action in the criminal trial tends to overlap with the notion of "civil victim" in the civil process, appreciating, *judiciously, that there is no justification for introducing discrimination on the two forms of litigation*.[15]

Injured people are both direct and indirect victims.

In this regard, it has been shown that, in relation to the patrimonial nature of the damage, a civil party may be established in the criminal proceeding in their own name or may continue the civil action initiated by the civil party and the heirs or successors in title or the liquidators of the injured party, in which the death of the natural person occurred, namely the dissolution, dissolution or reorganization of the legal person[16].

Also, alongside the direct victim, other offenders (called victims through the ricochet) may be civilians in the criminal proceedings even if the direct victim does not die, claiming personal and direct harm[17].

Summing up here, we will show that the injured individual or legal person, who has suffered material or moral damage by crime in order to be a civil party in the criminal trial, must fulfil *formal* conditions[18] (in the sense of manifesting his will to be compensated in the criminal proceeding) and *substantial* (i.e. there must be material damage and/or we add morally, caused by the act that is the object of the criminal action and which can constitute a crime).

In any case, the constitution of a civil party in the criminal trial is a prerogative of the passive subject of the act provided by the criminal law, which becomes an active subject of civil action in the criminal trial.

[15] 1. Deleanu, *Acțiunea civilă în procesul penal, part 1.* in „Dreptul" no. 5/2009, p. 43.
[16] G. A. Radu, *op.cit.,* pp. 108-109.
[17] J. Pradel, A. Varinard, *Les grands arrets de la procedure penale, 3e edition,* Dalloz, 2001, p. 123, regarding Crim. 21 march 1989, Bull. crim. no. 137; respectively Crim. 23 may 1991, Bull. crim. no. 220, 1992. Somm. 95; Eric Mathias, *Procedure penale,* Breal editions, 2003, pp. 112-113, regarding Crim., 9 february 1989, p. 614, *note* Bruneau; François Fourment, *Procedure penale,* Paradigme Publications Universitaires, 2003, pp. 162-163; Trib. Cluj, dec. crim. no. 179/A/2011 (unpubl.), and C. Ap. Cluj, dec. crim. no. 1676/R/2011 (unpubl.), both in file no. 1553/242/2008.
[18] I. Neagu, *op.cit.,* 2010, p. 191.

Substantial and Procedural Rights in the Matter of Transaction

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Abstract

This article is the expression of a new approach to the transaction contract, namely from the point of view of the rules governing it: at the border between substantive rules of law and civil procedural law.

The analysis made from this point of view revealed new features of the transaction and offered openings for more comprehensive and deeper future legal explorations.

The study also advocates the principle of the active role of the judge in verifying the legality of the transaction, reiterating the notion that it cannot only circumvent the transaction agreement, but also that it has the obligation to verify whether the parties are failing to blame or injure public or private interests of third parties.

Lastly, we have to consider the author's proposal to adopt another name of the transaction contract, namely the "contract of indulgence", a term more appropriate to the legal nature of this type of contract, at least in our legal system.

Keywords: *transaction, concessions and reciprocal waiver; acknowledgment of; Discontinuance; confirmation (ratification); compromise; indulgence; active role of the judge*

1. The location of the matter and the notion of a transaction contract

The present study has as a starting point the observation that, in our opinion, doctrine did not put enough emphasis on the approach of the transaction contract from the point of view of the place where it is located, namely "at the border between civil law and civil procedural law"[3], and in particular in terms of highlighting the legal effects that a convention of such a nature gives rise to.

Therefore, the transaction contract is governed by substantive rules of law, but also by provisions of civil procedural law, in the latter case, when dealing with the judicial transaction and when "its mechanism and field are impregnated by rules of civil Procedure"[4].

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[3] See R. Sanilevici, Civil Law. Contracts, Junimea Publishing House, Iaşi, 2004, p. 260.
[4] See R. Sanilevici, Civil Law. Contracts, Junimea Publishing House, Iaşi, 2004, p. 260

In our opinion, we consider that what defines the specificity of this type of civil contract is precisely its regulation both of civil law provisions and of the civil procedure rule. Thus, the premises of this contract are found in the provisions of art. 2267 - 2278 Civil Code and in the Norms of Art. 438 - 441 Civil Procedure Code, to which we will refer in the course of the study, in the following.

Regarding the concept of transaction, we note that art. 2267 par. (1) The Civil Code defines this Convention as "*the contract by which the parties prevent or settle a dispute, including the enforcement phase, by mutual concessions or waivers or the transfer of rights from one to the other*."

In the previous Civil Code (since 1864), the transaction was defined in art. 1704 as "*a contract by which the parties finish a process that has begun or prevents a process that may be born*".

Comparing the two legal definitions of the transaction, we note that in the current regulation the transaction contract enjoys a more complete definition, since:

- First, the legislator states, removing the gap of previous regulation, that the transaction can be concluded even in *the enforcement phase*, in other words, throughout the course and at any stage of the civil process. This puts an end to the possible controversy that could have been generated by the lack of this clarification in the regulation[5].
- Secondly, the definition of the transaction in the current legislation puts the point on it and highlights, with crystal clearness, what constitutes another aspect of the essence of this type of contract. It is the *reciprocal nature* of the rights and obligations of the parties that are born by concluding the transaction. Thus, the legislator's explanation of how the parties of the transaction prevent or settle a dispute, namely adding to the legal definition the phrase "*by concessions or reciprocal waivers of rights*", is capable of highlighting the specific feature of the Convention: the reciprocity of the means by which removes the disputed nature of the law as to its existence and extent. Each part of the transaction enjoys the benefits of concessions or cancellations made by the other party, but at the same time it assumes the "troubles" that come from consensus to limit or waive its right. In the absence of reciprocity of concessions or waivers, the manifestation of the will to end or prevent a dispute does not have the legal nature of the transaction contract. The Doctrine[6] pointed out that, in the absence of reciprocity, the contract whereby litigation is extinguished or prevented cannot be qualified as a transaction, but as

[5] In the same way, see Fl. A. Baias, *Some considerations related to the transaction*, R. R.D. Nr. 9-12/1990, p. 20-21.

[6] See Razvan Dinca, Special Civil Contracts in the New Civil Code. Course Notes, Universul Juridic Publishing House, Bucharest, 2013, p. 295; Titus Prescure, Course of Civil Contracts, Hamangiu Publishing House, Bucharest, 2013, p. 327-328.

acknowledgement, discontinuance, ratification or confirmation either compromise[7].

- Thirdly, in the current legislation the transaction may also represent the exceptional situation when the parties prevent and settle a dispute by *transferring rights* from the patrimony of one to the other, so that it may produce effects only in the future, and the transmitter has the obligation to acquire guarantee of the right transmitted or constituted.
- Fourth, if the rights transmitted or constituted are real estate, the transaction is subject to the authentic form "ad validitatem", and the rights transmitted or constituted are the registration regime in the Land Registry.

2. Characteristics of the transaction contract

Being a special contract, as we have seen, the transaction is characterized by a series of special features that give it its own identity. So:

a) The transaction is terminated in many situations in a stressing environment generated by the pressure placed by the party in an advantageous position, the inconvenience created by the multiplicity of court proceedings before the competent courts, the high costs occasioned by the litigation, not least, and the uncertainty of the ruling that will be pronounced.

[7] Acknowledgement is the unconditional recognition by a party of claims brought to justice by the other party ("when a party recognizes a good claim of truth" - see D. Alexandresco, Theoretical and Practical Explanation of Romanian Civil Law. Tom X, Socec & co. Anonymous Society, 1911, Anastatic Publishing House, Bucharest, Universul Juridic, 2017, p. 189].
Instead, the transaction requires both mutual recognition and mutual waiving of the parallel and antagonistic rights formulated by the parties - see C. Hamangiu, I. Rosetti - Bălănescu, Al. Băicoianu, Romanian Civil Law Treaty, vol. II, All Beck Publishing House, Bucharest, 2002, p. 633.
- Discontinuance is the renunciation of one's own claim. "Thus, by the one who filed a lawsuit withdrew from his application, abandoning his claims, this act, terminates an appeal, but is not a transaction, because while the plaintiff abandons everything, the defendant does not abandon anything "- see Baudry et Wohl, Transaction, 1205 and D. Alexandresco, quoted work, p. 188-189.
- Confirmation or ratification is the operation that is a unilateral act in the absence of an equivalent benefit - see T. Prescure, Civil Law Course, Hamangiu Publishing House, Bucharest, 2012, p. 328. Confirmation or ratification "has as its object only the cancellable obligations and it results only from the will of one of the parties. Then, it does not imply, like the transaction, reciprocal sacrifices and is subject to some conditions ... which the law does not require in terms of transaction "- see D. Alexandresco, quoted work, p. 189. Ratification is a unilateral manifestation of will by which a person confirms a legal act, a retroactive effect - see Stanciu D. Cărpenaru, Liviu Stanciulescu, Vasile Nemeş, Civil and Commercial Contracts, Bucharest, Hamangiu Publishing House, 2009, p. 242.
By compromise, the parties agree that arbitrators, expressing their will to submit to arbitration, and not solving the litigation themselves, as in the case of the transaction - see D. Chirică, Civil law, should settle the dispute between them. Special Contracts, Cordial Publishing House, Cluj-Napoca, 1994, p. 309. "... In the compromise, the parties refer to the decision of some elected judges, through the transaction they end their own disputes" - see D. Alexandresco, quoted work, p. 189.

b) The transaction agreement involves *a degree of sacrifice* on the part of signatories, even in the case of the apparently privileged economic position. This party, which will not question the high cost of a possible trial, will be worried about a "wrinkled" image that could be chosen from the litigation, while the bottom part of the economic power he may think that judging the litigation could cause him material damage. Avoiding these shortcomings has its solution in closing the deal.

c) The transaction *cannot be canceled for the damage* (Article 1224 Civil Code) nor for an error of law related to the matters that are the object of the parties' misunderstanding (Article 2273 paragraph (2) Civil Code). From the analysis of these texts, we understand that the transaction does not seek to establish a balance between the parties to be censored by the judge. On the contrary, the economic equilibrium is precisely the imbalance born through the will of the parties expressed in the content of the transaction. The essence of the transaction is the reciprocity of concessions, without the need for them to wear an equivalent formula. The doctrine [8]showed that *"... reciprocity is not synonymous with equivalence."*

d) By concluding the transaction contract, the parties are deprived of the judicial assessment of the concessions they have made, the court having no role in this regard[9].

e) The transaction contract is based on the principle of procedural availability, a fundamental principle of the civil process[10].

f) Mainly, the transaction, expressed in the adjective of *transigere est alienare*[11], is *declarative* because the work at issue or about to declare it does not come out of the patrimony of a party to be passed on to the other's patrimony. The transaction recognizes only the existence of a right in the property of the other party, the right being preexisting.

g) In some cases, the transaction has a *translative property* (Article 2267 paragraph (2) of the Civil Code) when it may give rise, modify or extinguish legal relationships different from those which are the subject of litigation between the parties. In such a case, the transaction represents the title for the acquisition of ownership. Therefore, the transaction contract can also produce constitutive or translative rights, but which only act for the future (*ex nunc*), as opposed to the declarative rights of the transaction that operates retroactively.

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[8] See Georgeta Bianca Spirchez, Discussions on the possibility of canceling the transaction contract concluded in the context of economic constraint, in Law no. 8/2013, p. 141.

[9] For the opinion that the transaction contract could be canceled because it was concluded under economic constraint, see Georgeta-Bianca Spirchez, in Law no. 8/2013, p. 141.

[10] In this respect, see Ioan Leş, Aspects regarding the court contract on the dispositions of the parties in the civil law in Law no. 3/2016, p. 9.

[11] What is translated as "to be spared from duty" means alienated - see Lazar Cârjan, Legal culture dictionary: adage, definitions, legal dwelling: the chronology of the rise and fall Roemi: the most famous Romanian jurists: the most important Roman laws, University, Bucharest, 2013, p. 194.

h) The transaction, even in the case when it constitutes or translates rights, is not characteristic of the price (as in the case of sale), it is not present and even of character incompatible with this type of contract[12].

i) Mainly, the transaction has an indivisible character in relation to its subject matter and, as such, unless otherwise stipulated, the transaction contract cannot be discontinued in part. Therefore, unless the parties expressly provide for the contrary, the nullity of a contractual clause determines the nullity of the entire contract, and not only part of it. Excludes, as the doctrine notes[13], the terms considered unwritten, in which case the suppressive rule of the transaction's indivisibility is undermined by the partial public order nature of the nullity of these contractual clauses.

Taking into account the evoked characteristics, we believe that it is necessary to reveal two relative ideas of the contract examined.

The first is the fact that this type of contract, to which both substantive civil law rules and civil procedure rules apply, is preferable to a judicial solution in cases where the parties understand it. In fact, the doctrine expressed as much as possible the essence of the transaction contract: "*Better a crooked agreement than a righteous judgment*"[14]. Surely the "crooked agreement" includes in its content disproportionate contractual obligations of the parties, obvious imbalance in terms of material assets, lack of equivalence of obligations, but all these disadvantages are freely and willingly accepted by the parties, without any constraint capable of victory their consent. Moreover, the purpose of the transaction contract is not to balance the interests of the parties, but to prevent a subsequent dispute or to settle a dispute already born. This is also the reason why a transaction cannot be challenged for the lesion (Articles 1224 and 2273 (2) of the Civil Code).

The second point to highlight concerns a proposal for *lege ferenda*. Considering the characteristics of the contract we conclude that it would better fit the term "*leniency contract*" instead of "*transaction contract*" as it is called by *lege data*.

First, the term "transaction" is defined in DEX[15] as being a convention through which rights are transferred or a trade is exchanged or the meaning of agreement, bargain, arrangement. Closer to the nature of the contract examined is the term "indulgence", which means forgiveness, tolerance, mutual benevolence[16], that is, those features that fully characterize this convention.

[12] See Oliviu Puie, Civil contracts treaty, Vol. I, Universul Juridic Publishing House, Bucharest, 2017, p. 291.
[13] See R. Dinca, quoted work, p. 294.
[14] See D. Alexandresco, quoted work, p. 187.
[15] See DEX, Explanatory Dictionary of the Romanian Language, 2nd Edition, Encyclopedic Universe, Bucharest, 1998, p. 1106.
[16] See DEX, Explanatory Dictionary of the Romanian Language, 2nd Edition, Encyclopedic Universe, Bucharest, 1998, p. 530.

Then, the notion of "indulgence" appears to be more Romanian than the term "transaction."

Third, even if the contract is onerous, the term "tolerance" does not include aspects of negotiation procedures designed to conquer a material advantage, as is the case with transaction capital operations. The transaction of financial instruments[17] or securities is a legal document concluded, usually through a specialized intermediary (agent), whose essence is the nature of the contract of sale with respect to certain trading rules specific capital markets[18].

3. The judge's prerogatives to censure the transaction

Even though the principle of the active role of the judge is not expressly stipulated in the Code of Civil Procedure, the doctrine highlights such an exigency[19]. The balance between the powers of the judge and the parties in the process was expressed by a remarkable metaphor by French professor Serge Guinchard[20], who noted that the procedure meant harmony, being "a right of harmony," as did Robert Schumann's symphonies.

In other words, the judge cannot have a passive role in the conduct of the court proceedings that have been completed with an expedited decision in the matter of the transaction. The judge can not only play a role as a spectator who takes note of the parties' transaction, but must cooperate with the parties, and must take all necessary care to solve the leeway.

From the perspective of art. 6 of the *European Convention for the Protection of Human Rights*, the right to an equitable settlement of the trial implies the active involvement of the judge. On the other hand, the rule of the judge's active role have to be correlated with the principle of procedural availability of the parties, which means that the judge's procedural prerogatives have to be exercised with caution and balance, and not with disregard for imperative provisions of the law or to the detriment of third parties' interests.

The judge does not merely acknowledge the agreement of the parties through the conclusion of the transaction, but has the duty to verify that the parties of the transaction do not pursue an unlawful purpose, a purpose that damages the interests of the state or third parties. If the judge finds such a situation, he or she

[17] See Titus Prescure, quoted work, pp. 328-329.

[18] See Law no. 297/2004 on the capital market, as subsequently amended and supplemented, published in the Official Gazette of Romania, Part I, no. 571 of 29 June 2004.

[19] See I. Leş, quoted work, pp. 12-15; V. M. Ciobanu, The New Civil Procedure Code commented and annotated (coordinators: V.M. Ciobanu, M. Nicolae), Vol. I, Universul Juridic Publishing House, Bucharest, 2013, pp. 55-57; I. Delegeanu, Civil Procedure Treaty, revamped, completed and updated edition, Universul Juridic Publishing House, 2-13. P. 213; I. Leş, Treaty of Civil Procedure, Vol. I, Universul Juridic Publishing House, Bucharest, 2014, p. 84-84.

[20] See S. Guinchard, Nouveau Civil Procedure Code, Megecade, Delloz, 1999, pp. 7-8 epud I. In the Reflections on the Judicial Control of Moods in the Civil Process, quoted work, p. 10-11.

will reject the request to take a transaction note and proceed to the trial of the action concerning the litigation with which the court has been assigned.

In addition, the provisions of Art. 12 par. (1) Code of Civil Procedure, according to which the exercise of procedural rights must be done in good faith in accordance with the purpose for which they have been recognized by law and without prejudice to the procedural rights of another party. From this perspective, the active role of the judge is to ensure "*the purpose for which subjective rights in general are recognized*[21]".

The transaction contract within the scope of an expedited decision can be attacked only with an appeal to the higher court for procedural reasons (Article 440 of the Code of Civil Procedure). These reasons are based on procedural irregularities[22], such as the court's lack of competence, the mistakenness of its composition, the failure to indicate the device of the judgment by all members of the panel, etc. At the same time, the appeal cannot be used to invalidate the transaction as a legal act, even in the hypothesis of finding it by judicial decision.

Thus, according to art. 2278 par. (1) Civil Code, the transaction established by a court decision terminating an incipient process can be terminated by any other contract, by action in resolutions, termination, nullity, revocation or declaration of simulation.

Once the transaction is annulled as a substantive legal act, that is to say, through action for nullity, rescission, termination, revocation or declaration of simulation, the judgment will be ineffective (Article 2278 paragraph (2) of the Civil Code).

Therefore, only the transaction contract can be sued and disposed of by the evoked actions, not the settlement decision in whose instrument the transaction is registered. An expedited decision may be censored only for procedural reasons by appealing it.

4. Conclusions

In the context of the present study, some conclusions are briefly presented, with the mention that the subject is undoubtedly open to formulation and other opinions that are likely to convey a wider physiognomy to the transactional contract, especially from the point of view of the fact that this type of contract is at the intersection of substantial civil law and civil procedural law.

A first conclusion could be that the transaction does not provide the equivalence of the parties' benefits. Mutual concessions do not necessarily lead to contractual equality, the purpose of the convention being to extinguish or prevent a litigation.

[21] See I. Leș, *Reflections on the Judicial Control over Moods in the Civil Process*, quoted work, p. 14.
[22] See A. Nicolae in the *New Code of Civil Procedure commented and annotated* (coordinators V.M. Ciobanu, M. Nicolae), quoted work, p. 998.

Secondly, once such a contract has been concluded, neither party may request its dissolution on grounds of economic imbalance, disproportionate obligations of the parties. Each party accepted the contract terms voluntarily and as such agreed to no longer refer the case to the court for a possible injunction of nature to cancel the contract. In this case, the termination of the convention for injury is inadmissible.

Thirdly, the contract under consideration may be terminated only as a substantial substantive legal act by bringing actions for nullity, rescission, termination, revocation or declaration of simulation.

Fourth, although not yet formally written in an article of the Code of Civil Procedure, as it is written the active role of the judge in achieving the foreclosure (Article 627 of the Code of Civil Procedure), the principle of the active role of the judge in the control of the legality of the transaction has to be applied.

In this context, we fully embrace to the proposed *lege ferenda* formulated in the literature by a doctrinal reputation[23], namely to explicitly enshrine in the Code of Civil Procedure the obligation of the judge to exercise control over the legality of the transaction.

[23] See I. Leş, *Reflections on Judicial Control ...,* quoted work, p. 21.

Brief Overview on Pros and Cons of the Opportunity to Use the Emergency Arbitrator Procedure

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Abstract

The issue of interim matters to be settled under the auspices of the national courts is considered a common disadvantage of arbitration as opposed to court litigation. Even not all the time a negative aspect, in recent years, many of the leading arbitral institutions have amended their rules to address the emergency arbitrator provisions.

The paper aims to find the possible advantages of seeking relief from an arbitrator rather than a national court, identifying the types of and if there are a number of limitations on relief that an emergency arbitrator can grant, considering also its enforceability, a sensitive subject.

Keywords: *arbitration, interim measures, emergency arbitrator, urgency, advantages and disadvantages*

1. Introduction

Arbitration, as an alternative to the national courts to resolve disputes, is nowadays worldwide used and has encouraged the harmonization of international law, especially in what regards international trade. Unfortunately, the users are complaining that lately arbitration have become an increasingly complex, prolonged and costly procedure for its status of a queen of resolution of international commercial disputes, as it is already undisputed that arbitration represents one of the preferred forms of settling disputes between traders of different nationalities, due to such aspects as the neutral role of the arbitrator, of the seat of arbitration and the desire to avoid judicial courts with judges that have the same nationality of the parties (Caetano, 2014).

One can perceive an increased use of arbitral interim measures since this arbitral tribunals' possibility to grant such measures has been already recognized for quite some time. Moreover, the 1976 version of the UNCITRAL Arbitration Rules provided that "the arbitral tribunal may take any interim measures it deems necessary." As the parties were slowly familiarized of such arbitral tribunals' power and until the national arbitration legislation recognized and promote it, the most

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requests for interim measures were addressed to local courts instead of arbitral tribunals. This trend started to change in the late 1990s-early 2000s (Grando, 2016). The evolution and development of this emergency arbitrator institution (Mäenpää, 2017) was better revealed in the 2012, 2015 and 2018 editions of the Queen Mary University and White & Case International Arbitration Survey, in which survey participants indicated that in their experience requests for interim measures to arbitral tribunals became more common than to courts.

Even arbitration grew also with the support of both the courts and the state, nevertheless it became more autonomous and has developed its own specific procedural rules. The emergency arbitrator (EA, used also as emergency arbitration) institution appear as a response to the parties necessities to access interim measures before the constitution of the arbitral tribunal (Paraguacuto-Mahe, Lecuyer-Thieffry, 2017), which can be too long for their need of urgency. This new and innovative EA procedure is relatively similar to the procedures used throughout the court systems (Babur, 2015), but adapted to the specificity of a more flexible, rapid and responsive steps necessary to the parties' opportunity to seek interim relief of issues that do not suffer deferment until the arbitral tribunal constitution.

2. Current Status of the EA Rules

A brief overview of the evolution and current state of interim measures and EA rules recurred throughout the doctrine and practice, revealing the existence of a general consensus among the arbitral community about key aspects of these issues in international arbitration.

The need for emergency interim measures often arises before or simultaneously with the dispute, maybe even until the request for arbitration is drafted and transmitted to the arbitral institution in order for the latter being able to start organizing the case, including appointment and the constitution of the arbitral tribunal. This is because in practice it can take weeks or months to appoint a regular arbitral tribunal. If a party needs emergency relief during this period, it can only apply to the local courts for relief, unless the arbitration agreement between the parties incorporates provisions for the appointment of such an EA (Boog, 2010). This is to be realized by institutions' incorporation of EA rules in their arbitral procedure, specifying expressly how such a procedure is to be taken care of.

Therefore, the parties' arbitration agreement mentions specific arbitration rules that include and permit applications for interim measures to be granted by an EA neutrally appointed by an arbitral institution, specifically to deal with an application for urgent interim before a regular tribunal has been formed. The power of an emergency arbitrator is limited to decisions on interim measures and does not extend to any decisions on the merits of the case. Moreover, the decision of an emergency arbitrator does not bind the regular arbitrators and they may modify, suspend or terminate any order or interim award granted by the EA

(CiArb Guidelines: 22). Usually the EA rules constitutes an opt-out regime, i.e. they apply automatically to parties' arbitration agreement unless otherwise agreed by the parties (Hanessian, 2014: 346).

The International Centre for Dispute Resolution (ICDR) was the first to adopt emergency arbitrator provisions in 2006, being followed by the Stockholm Chamber of Commerce (SCC) and the Singapore International Arbitration Centre (SIAC) in 2010, the International Chamber of Commerce (ICC) in 2012, Swiss Rules in 2012, the Hong Kong International Arbitration Centre (HKIAC) in 2013, the London Court of International Arbitration (LCIA) in 2014 (Smith, 2016), followed then in time by several other arbitral institutions, such as Romanian International Court of Arbitration attached to the Chamber of Industry and Commerce of Romania in 2018.

3. EA Features

Despite its increasing popularity, parties should be aware of the limitations of emergency arbitration, particularly when compared with the court-ordered interim measures which are available in support of arbitration in most countries **(**Giaretta, Weatherley, 2014**).**

As a benefit of this procedure, the appointment of EA is done by a concise reasoned decision. This is because the procedure itself has a chance to be completed in a very short time, for instance, the average of the ICC EA cases being 18 days.

Another advantage is that the procedure in arbitration is usually confidential and EA procedure comes also to meet the parties' need to preserve it. This is linked to the parties' general wish to resort to arbitration rather to national courts.

The EA is appointed especially only for the particular procedure of granting interim relief and is not further on part of the arbitral tribunal, so there is no prejudgment issue. Therefore, according to the EA rules, a procedure conducted accordingly cannot be claimed afterwards as unfair in any respect, as the equality of the parties and their reasonable opportunity to present their case is insured also during the EA procedure, as emphasized in most of the rules. The setting aside issue is avoid based on the party autonomy, as they have agreed to comply with the EA procedure, knowing the limitation of the procedure and the fact that the case is not prejudge, as the EA decision is not affecting the final award which cannot be challenged on that ground (Born, 2009). Anyways, the severability between the general arbitration procedure and the particular EA procedure is diminishing the risk of prejudging the case by the arbitral tribunal, as this risk in EA procedure is much lower than in tribunal ordered interim measures.

Usually, in front of the national court a security bail is asked for in order the interim relief to the granted. It seems that in front of the EA this is not the rule, but the exception, as is not provided for especially in the rules, nevertheless being considered at the Respondent's request.

Discussing next on possible disadvantages, unlike the state courts which can grant an interim award without summon, *ex parte* requests for emergency relief are generally not allowed in view of the fact that usually arbitration rules containing provisions for EA explicitly provide that both parties are to be notified of any application for emergency relief and given an opportunity to be heard and make submissions in relation to such an application. The only institution that allows so far this type of *ex parte* requests is the Swiss one. Therefore, the Claimant seeking surprise element by ex-parte relief need to resort to the state Courts.

Due to the consensual nature of arbitration in general, the EA procedure cannot be opposed to the third parties, non-signatories to the arbitration agreement. For example, the EA cannot impose to a third party any interim relief, like to give access for an inspection at its premises, or to bring in front of the arbitral tribunal a witness, as generally arbitral tribunal has authority only between the contracting parties.

Regarding the finality of the EA's decision, the enforcement force is granted only for the final awards, not for the provisional and interim ones, let alone the orders that are not enforceable. The enforceability issue of the EA's decision is one of the most debated and hot issue and so far a uniform solution to it was not offered.

Lastly, EA procedure comes with a cost. It worth mention that the cost of such EA procedure is quite prohibitive, as the up-front payment is to be paid within a certain time limit and the amount is high enough (a few examples: in case of ICC is USD 40,000, SCC EUR 15,000, Swiss Chamber CHF 24,500, SIAC S$30,000, HKIAC HKD 250,000, LCIA £28,000, Romanian Arbitration Court EUR 150 plus Lei 15,000).

4. EA Proceedings

There are fine differences between the emergency arbitration procedures recommended by each institution but several common features outweigh (Cartoni, 2016).

By and large, the rules provide that the institution appoint a sole arbitrator within a matter of one-two days after submission of the request. The schedule is expeditious and the appointed EA typically establishes a calendar within a day or two after appointment. The EA decides the matter usually on written submissions or, if considered necessary, after a short oral hearing and can usually order any interim relief necessary, including injunctions and asset freezing orders (unavailability, seizure) within 5-15 days from the transmission of file. An EA's decision is binding on the parties by virtue of the rules themselves. Parties are thus expected to comply voluntarily with such decisions, and the subsequent arbitral tribunal may draw adverse inferences, or even award damages for breach of contract in a final award. In case of non-compliance, the decision, in form of an order or an award, must be enforced before the national state Courts where relief is sought. Finally, the main

arbitral tribunal to be constituted in the ordinary arbitration procedure is authorized to modify or vacate the emergency arbitration order.

The arbitral institutional rules do not specify the grounds or conditions for granting interim relief, but give the emergency arbitrator broad discretion. The decisions rendered so far in emergency arbitrations now compose a significant body of jurisprudence with regard to that discretion. Most, but not all, emergency arbitrators refer to Article 17 of the UNCITRAL Model Law, the *lex arbitri,* as well as earlier published decisions on interim relief.

A set of reasons have manifested and developed, being now commonly accepted as criteria for granting interim relief. These factors emerged so far are: (1) jurisdiction, (2) chance of success on the merits - reasonable possibility of success, that is, a *prima facie* case on jurisdiction and merits but the request must be clearly justified, carefulness not to prejudge the merits, (3) urgency, (4) irreparable harm (irremediable, actual, imminent or hard to repair damage), and (5) proportionality, i.e., balance of hardships in favor of interim relief, i.e. the requested interim relief not to be disproportioned to the damage caused and the severity of the damage caused are to be considered. These are essentially the principles contained in Article 26(3) of the 2010 UNCITRAL Arbitration Rules, which reflect the practice of international arbitral tribunals.

5. Extent of EA's Competence

Concerning particularities in extension of the EA's competence, arbitration rules normally provide that emergency arbitrators become *functus officio* once a regular tribunal has been appointed, as an EA cannot act as arbitrator in the subsequent arbitral proceedings, unless the parties agree otherwise. If the arbitral tribunal is constituted while the EA proceedings are pending, the EA needs to consider it can still make a decision.

In certain rules, the EA may make its decision even if an arbitral tribunal has been constituted in the meantime, whereas in other rules, the matter should be transferred to the arbitral tribunal because once constituted, all requests, including interim measure, should be addressed to it. After the constitution of the arbitral tribunal, the EA remains without further authority, but this could be interpreted that its power to issue the relief sought is valid even the appointment of the arbitral tribunal took place. For example, the Netherlands Arbitration Institute (NAI) established that interim relief can be granted before the arbitration commence through summary arbitral proceedings (NAI Rules Art. 42, Netherland Civil Procedure Code Art. 1022), which are recognized as arbitral awards. Moreover, according to NAI Rules, the binding effect of the summary decision does not require any subsequent arbitration commencement, such as interim relief can be issued as an enforceable award without requiring subsequent arbitration.

6. EA as a Full-fledge Arbitrator; The Romanian current overview

If emergency arbitrators are recognized as ordinary (full-fledged) arbitrators (Santacroce, 2015), therefore, the provisional measures granted by such arbitrators should receive the same recognition and enforcement as well as the ones granted by the arbitral tribunals (Santens, Kudrna, 2017). The recognition of the EA decisions would reduce the need to go to national state Courts before the formation of the tribunals. The Singapore (2012) and Hong Kong (2013) legislations already provide for such recognition. In this connection, all Member States should recognize emergency arbitrators in their arbitration laws.

Another topic is that national arbitration laws should expressly allow arbitrators to attach pecuniary fines to provisional measures, since such an explicit permission would encourage arbitrators to use these penalties to a greater effect. Providing such fines would increase the compliance with such measures and reduce the need to enforce such measures through national Courts (Savola, 2015).

Regarding the Romanian norms, the Romanian International Court of Arbitration attached to the Chamber of Industry and Commerce of Romania is providing through its new set of rules entered into force starting 1 January 2018, that requests for interim or provisional measures filed prior to the commencement of the arbitration procedure or before the case file to be referred to the arbitral tribunal shall be settled by an EA (Art. 40) and the Annex II is regulating the procedure. Art. 40 para. 3 states that the EA procedure may commenced before the initiation of the arbitration or before the constitution of the arbitral tribunal, thus offering the parties a new and modern mechanism that can release the national state Courts and even the institutional arbitral institutions of keeping too long on the docket their cases. The procedural order issued by an EA has binding effects upon the parties as Art. 9 para. 1 is mentioning expressly and may be revoked or amended at the reasoned request of a party, according to para. 2 of the same article.

Therefore, the current 2018 Romanian Arbitration Court Rules are ensuring a greater opportunity to assist and boost, by their content and nonetheless by their proper interpretation and implementation, the updated modern standards of international practice applied in arbitration, proving the goal of Romanian institution to be aligned with and part of the international arbitration community. The institution of the EA in the new Romanian Rules is a whole institution, a juridical creation, developed and taken over from the leaders on the arbitration market. It is an advanced regulation, which absorbed the aspects of the main international arbitration institutions rules. Its main advantage consists in creating a rapid, stable and efficient arbitration settlement context for all those in need of urgent provisional or conservatory measures which cannot wait for the arbitration tribunal constitution. The Romanian procedure is line with the international approach: the EA orders the same types of measures such as the arbitral tribunal and the procedure provides for short deadlines, ensuring the speed inherent in such an

urgent method. The main shortcoming resides in the one valid for most of the arbitral institution at the global level, the lack of direct enforcement of the EA order. And like other jurisdictions, Romanian national law does not confer an executory character of the EA decision, thus limiting the purpose of the procedure.

Therefore, the EA institution is recommendable to be correctly duplicated by an appropriate regulation of the law (Procedural Civil Code) and practice to support this procedure's enforceability, otherwise its benefits are restrained, even pulled back.

In the opposite line of the above advice, a recent situation we just became aware of is the reasoning of the Civil Decision no. 76 of July 25th, 2019 rendered by the Bucharest Court of Appeals. This Decision, by which the EA order in favor of Claimant, granting the provisional measures, was subsequently set aside by the Bucharest Court of Appeals due to an alleged violation by the Romanian Arbitration Court Rules of public policy and imperative procedural norms.

The state judge concluded that Art. 40 para. 3 and Annex II of the Romanian Arbitration Court Rules providing for the EA procedure infringe upon the imperative provisions of public policy under the Civil Procedure Code, which allegedly were considered to grant national Courts exclusive jurisdiction to hear requests for provisional measures and interim relief prior to the start of an arbitration. The judge rely upon the reasons that Parties are generally free to establish procedural rules for the conducting of an arbitration, as long as they do not conflict or undermine imperative legal provisions or public policy.

But the interpretation given by the judge of Art. 585 of the Romanian Civil Procedure Code was that the national tribunal in whose jurisdiction the arbitral tribunal is seated has the jurisdiction, this being the competent Court to hear requests for provisional measures or interim relief before or during the arbitration procedure (based on Art 585 para.1). As regards the jurisdiction during the arbitration procedure, it was mentioned that such requests can be heard also by the arbitral tribunal (Art 585 para. 4), but EA was not categorized and recognized as such.

The judge astonishing deduction was thus, based on Art. 585 restricted and formal provisions interpretation, it is clear that the will of the legislator was to exclude the competence of the arbitral tribunal to hear requests for provisional measures or interim relief before the start of an arbitration. If the legislator also wanted to provide an arbitral tribunal with the competence to hear such requests, it would have included an express provision in this regard. In this regard, Art. 585 is seen as an imperative provision, which establishes express limits between Courts' and arbitral tribunals' jurisdictions, and as a consequence is held that Art. 40 para. 3 and Annex II of the Rules infringe upon Art. 585 of the Romanian Civil Procedure Code and, as such, are illegal. The judge conclusion was that the EA wrongfully rejected the inadmissibility objection.

Consequently, the national state Court admitted the request for annulment, annulled the EA Order, admitted Respondent's inadmissibility objection and

rejected Claimant's request as inadmissible. The judge was confusing the term of 'arbitral tribunal' meant to have different attributes than an EA. This difference is not making less an EA than a fully fledge arbitrator, but only its mission and function are different, as the Arbitration Rules are expressly specifying. The judge was not aware of the new evolution of arbitration and was not even trying to find out what lies beneath the latest approach, to be able to realize the law is not in line anymore with the current needs and expectations. This is a judge mission, to align these notion to the existent legislation and to interpret them in order to give them effect and not to restrict the innovative and advanced arbitral Romanian institutions efforts to put Romania on the international arbitration map.

In the author view, the most disturbing aspect of this state Decision is the judge lack of recent arbitration knowledge, without even trying to research more the domain and to get out of the traditional shell. Only that was possible such an outdated conclusion, that without the commencement of the arbitration case, the preliminary EA procedure should be considered, from the start, illegal and inapplicable, if at the time of its launch, an arbitration is not pending.

The Court's reasoning is not only incorrect, but also harmful for Romanian arbitration and the development of an efficient private justice system. As such, Art. 585 of the Civil Procedure Code would only be applicable if neither the parties, nor the designated arbitrators agree on the applicable arbitral procedure, or when the parties did not opt for institutionalized arbitration. This rule is explicitly stipulated under Art. 576 of the Civil Procedure Code and the provision has the purpose of enshrining, together with Arts. 541 and 544, the principle of party autonomy that fundamentally governs arbitration (Olaru, Badea, 2019). Thus, the Court's conclusion that Art. 585 is an imperative provision or public policy is incorrect.

The judge understanding of the EA procedure situated in a timeframe *prior* to the arbitration procedure is the reason why the EA procedure would/ should be excluded from the notion of "arbitration procedure", or why an EA would not be an "arbitrator". On the contrary, the EA procedure is, similarly to a regular arbitration procedure, based on the arbitration agreement, followed by the nomination of an arbitrator and its acceptance of the mission. Moreover, the order issued by the EA is binding for the parties. This all fits within the definition of an "arbitral tribunal" under Art. 543 of the Civil Procedure Code. The only argument that could be invoked in order to exclude the EA procedure from the definition under Art. 543 is that the EA's order is not *final*, as the arbitral tribunal vested with the judgment on the merits can revise it. However, this is the special characteristic of the EA procedure and it was so created. It was necessary to give the arbitral tribunal which will be later constituted the power to reconsider the measure based on the development of the case. Even arbitral tribunals can issue interim or partial award that are subsequently revised during the procedure if need be. Anyhow, as second argument, national courts should pursue an interpretation

of these articles in favor of evolution and not be limited by conservative formalism (Olaru, Badea, 2019).

Moreover, there is no reason why parties to an arbitration agreement could have a choice between filing a request for provisional measures with national Courts or with an arbitral tribunal, once the arbitration on the merits is pending, but be precluded from such a choice prior to the filing of a claim on the merits, and therefore have an obligation to go to the national Courts. At the most, the interpretation of Art. 585 should be in the sense that it establishes a concurrent jurisdiction of the Courts and arbitral tribunals, and not an exclusive jurisdiction of the Courts. A correct interpretation of Art. 585 of the Civil Procedure Code must take into account that the EA procedure is developing worldwide and that the most trusted and preferred international arbitration centers provide parties with such a procedure (Olaru, Badea, 2019).

As the legislator envisioned a modern and flexible ADR procedure, it is important to note that emergency arbitration is arbitration, and that party autonomy is recognized in Romania, as is the subsidiarity of the Civil Procedure Code when it comes to arbitration. There is also no valid principle or reason for the Courts to have exclusive jurisdiction to adjudicate requests for interim relief prior to the filing of a request on the merits. (Olaru, Badea, 2019).

The discussion of EA being a fully-fledge arbitrator has been already overpass in the international arbitration landscape, voices raised this questions and the answer was in the sense that it was recognized as such. In this light, the Romanian state Court view could be seen stuck in the old times, without being aligned to the current updates in the field and without considering the understanding and promotion of Romanian arbitration. Without the real support of the national Courts, lawyers, and all the specialists in the arbitration community, the modernization and the step forward of the institutional Romanian arbitration is very difficult to be achieved.

The author opinion is that the EA has to be perceived as a fully-fledge arbitrator and the debate on the EA procedure should from now on be at a higher level of knowledge of this institution. Similar to other rules devoted to EA, the President of the Court (the appointing authority) is nominating an emergency arbitrator. The arbitrators in the Romanian Court of Arbitration, in general, are nominated from a list that contains the persons approved to serve as arbitrators, according to the Regulation of the Court. Therefore, any arbitrator being on the list is considered as a full-fledge arbitrator, EA included, as it will be selected from that list, so an EA should be categorized as an arbitral tribunal. Art. 585 Romanian Civil Procedure Code is stipulating that during the arbitration, interim and provisional measures, as well as the observation of certain factual circumstances, may also be approved by the arbitral tribunal and in case of opposition, the enforcement of these measures is ordered by the Court. The author considers that the interpretation of the wording ‘arbitral tribunal’ is that it contains

any arbitrator that is appointed under the conditions of the Romanian Court of Arbitration Rules and Regulation, at least as long as the nomination of an arbitrator is made through the list system by the appointing authority. This means that every arbitrator, EA included, is considered a full-fledge arbitrator and the recognition of an EA as such is insured by the list selection process.

7. Statistics

According to the statistical report (Tevendale, Ambrose, Naish, 2017), ICC's emergency arbitrator procedure grew, with 25 cases involving parties from 25 countries filed in 2016 – up from 10 cases filed in 2015. A further 12 cases have been recorded in 2017, bringing the total number of filed emergency arbitrator cases to summer 2017 to 61. Six of the applications were granted in full or in part, with the remainder dismissed or withdrawn. As of 1 September 2018, 87 requests for EA had been filled before ICC (ICC Commission Report, Emergency Arbitrator Proceedings, 2018). The average time to complete the emergency proceedings was 18 days.

The SIAC statistics (http://www.siac.org.sg/2014-11-03-13-33-43/facts-figures/statistics) found that from 1 July 2010 to 31 March 2017 the total number of applications received and accepted was 57, from which 24 granted, 4 by consent and 5 in part, in 6 cases no orders were made as the request was withdrawn, 16 cases were rejected and 2 were pending.

Between January 2015 and December 2016, SCC received 14 applications for the appointment of an EA - 4 requests being granted in full, 6 being dismissed, and 3 granted in part. Close to 30 such applications have been received since the EA provisions entered into force in 2010. SCC has thus had ample opportunity to refine its routines for administering emergency applications, resulting in efficient proceedings and timely decisions. In all emergency proceedings that took place in 2015 and 2016, the SCC appointed an EA within 24 hours of the claimant submitting an application. In half of the proceedings, decisions were rendered within the 5-day timeframe stipulated by the SCC Rules; in the remaining half, decisions were rendered within 7 days. In sum, the SCC EA procedure is a reliable procedural tool for parties in need of prompt interim relief (Havedal Ipp, 2017).

8. Conclusion

The EA's authority to grant interim measures is well established and already regulated in most of the institutional rules (Villani, Caccialanza, 2017). Nevertheless, numerous issues arise concerning the nature of the relief arbitrators may grant as well as its form and effectiveness. Also, different laws may govern different aspects of the process for granting interim measures and therefore great care should be taken to consider the appropriate laws (CiArb Guidelines: 22).

Emergency arbitration is a rather new concept in arbitration field but certainly here to stay. However, there has been concerns about the status of an EA

as well as the legal effect of its decisions, especially about their enforceability. Even voluntary compliance precludes the need for formal enforcement mechanisms, it is of special importance that EA proceedings will be eventually properly introduced into a legal framework in order to ensure these proceedings' effectiveness and credence (Fry, 2013: 181).

Even if limits to what interim procedures can reasonably realize exist, the speediness of the EA procedure assure an applicant to secure effective interim relief in less than three weeks or one month from the commencement of the procedure. It appears that the institutions expect that this progressive (but not so new anymore) procedure to contribute to the attractiveness of the arbitration seat by expanding its facilities for the parties resorting to arbitration to resolve their disputes (Bose, Meredith, 2012).

Bibliography

1. Babur, Ezgi, (2015), *Turkey: Enforcement Of Interim And Conservatory Measures Ordered By Arbitrators*, http://www.mondaq.com/turkey/x/430394/Arbitration+Dispute+Resolution/Enforcement+Of+Interim+And+Conservatory+Measures+Ordered+By+Arbitrators.
2. Boog, C., (2010), *Swiss Rules of International Arbitration - Time to Introduce an Emergency Arbitrator Procedure,* ASA Bulletin, 28 (3), 2010, pp 462-477.
3. Born, Gary, (2009), *International Commercial Arbitration*: 2763. Kluwer Law International.
4. Bose, Raja; Meredith, Ian, (2012), "Emergency Arbitration Procedures: A Comparative Analysis", *International Arbitration Law Review* 5: 186-194, http://www.klgates.com/files/Publication/33e561cb-b459-47f5-bab1-856c51d8459b/Presentation/PublicationAttachment/f5e1a648-049e-4f63-afcf-f8d4dc91bae2/Emergency-Arbitration-Procedures_A-Comparative-Analysis.pdf.
5. Caetano, Ana, (2014), "Emergency Arbitrator – Is He or She a True Arbitrator? The Single Row Consent of Parties and Portuguese Overview", *Young Arbitration Review* 12: 41-56. https://www.srslegal.pt/xms/files/PUBLICACOES/YAR_-_Young_Arbitration_Review_-_Edition_12_ANC.pdf.
6. Cartoni, Bernardo, (2016), "A Rising Star: The Emergency Arbitrator", https://ssrn.com/abstract=2710552 or http://dx.doi.org/10.2139/ssrn.2710552.
7. Chartered Institute of Arbitrators, *Applications for Interim Measures,* Institute of Arbitrators (CiArb Guidelines). This Guideline sets out the current best practice in international commercial arbitration in relation to the arbitrators' power to grant interim measures.
8. Fry, Jason, (2013), "The Emergency Arbitrator - Flawed Fashion or Sensible Solution"*, Dispute Resolution International*, 7 (2): 179-198.
9. Giaretta, Ben; Weatherley, Michael, (2014), **"**Singapore – The Emergence Of Emergency Arbitration", http://www.conventuslaw.com/archive/singapore-the-emergence-of-emergency-arbitration/.
10. Grando, Michelle, (2016), "The Coming of Age of Interim Relief in International Arbitration: A Report from the 28th Annual ITA Workshop", http://arbitrationblog.

kluwerarbitration.com/2016/07/20/the-coming-of-age-of-interim-relief-in-international-arbitration-a-report-from-the-28th-annual-ita-workshop/.

11. Hanessian, Grant, (2014), "Emergency Arbitrators", in Lawrence W. Newman and Richard D. Hill (eds), *The Leading Arbitrators' Guide to International Arbitration*, 343-366. 3rd ed, Juris Publishing.
12. Havedal Ipp, Anja, (2017), "SCC PRACTICE NOTE Emergency Arbitrator Decisions Rendered 2015-2016", http://www.sccinstitute.com/media/194250/ea-practice-note-emergency-arbitrator-decisions-rendered-2015-2016.pdf.
13. http://www.siac.org.sg/2013-09-18-01-57-20/2013-09-22-00-27-02/articles/420-the-emergency-arbitrator-and-expedited-procedure-in-siac-a-new-direction-for-arbitration-in-asia
14. ICC Commission on Arbitration and ADR, Task Force on Emergency Arbitrator Proceedings – Final Draft Report, 18 September 2018, Annex 1, para. 1, https://iccwbo.org/publication/emergency-arbitrator-proceedings-icc-arbitration-and-adr-commission-report/.
15. Mäenpää, Anna-Kaisa, (2017), *Emergency Arbitrator Proceedings In International Commercial Law*, Bachelor Thesis, Tallinn University of Technology, School of Business and Governance Department of Law, https://webcache.googleusercontent.com/search?q=cache:-2qk4AKGLjEJ:https://digi.lib.ttu.ee/i/file.php%3FDLID%3D8402%26t%3D1+&cd=1&hl=en&ct=clnk&gl=ro.
16. Olaru, Sorina; Badea, Cristina, (2019), "Emergency Arbitration in Romania - The Perilous Path away from Progress", https://www.lexology.com/library/detail.aspx?g=11fe9916-c43b-4f3e-9eab-8bef9921ad5c&utm_source=lexology+daily+newsfeed&utm_medium=html+email&utm_campaign=lexology+subscriber+daily+feed&utm_content=lexology+daily+newsfeed+2019-10-09&utm_term=.
17. Paraguacuto-Mahe, Diana; Lecuyer-Thieffry, Christine, (2017), "Emergency Arbitrator: A New Player In The Field - The French Perspective", *Fordham International Law Journal*, 40 (3), http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2648&context=ilj.
18. Santacroce, Fabio G., (2015), "The Emergency Arbitrator: A Full-Fledged Arbitrator Rendering An Enforceable Decision?", *Arbitration International* 31 (2): 283-312, https://doi.org/10.1093/arbint/aiv012.
19. Santens, Ank; Kudrna, Jaroslav, (2017), "The State of Play of Enforcement of Emergency Arbitrator Decisions", *Journal of International Arbitration*, 34 (1): 1-15
20. Savola, Mika, (2015), *Interim Measures and Emergency Arbitrator Proceedings,* Presentation at the 23rd Croatian Arbitration Days: Access to Arbitral Justice Part IV: Time Aspects of Access to Arbitral Justice Zagreb, 3-4 December 2015, https://arbitration.fi/wp-content/uploads/sites/22/2016/04/23-cad-savola-interim-measures-and-emergency-arbitrator-proceedings.pdf.
21. Smith, Gordon. (2016), *The Emergence of Emergency Arbitrations*, http://www.gordonsmithlegal.com.au/resources/Emergency%20Arbitrations%20(12082016).pdf.
22. Tevendale, Craig; Ambrose, Hannah; Naish, Vanessa, (2017), *2016 ICC Dispute Resolution Statistics: Record Year for the ICC*, https://hsfnotes.com/ arbitration/ 2017/09/15/2016-icc-dispute-resolution-statistics-record-year-for-the-icc/.
23. Villani, Alessandro; Caccialanza, Manuela. (2017), *Interim Relief through Emergency Arbitration: An Upcoming Goal or Still an Illusion?*, http://arbitrationblog.kluwerarbitration.com/2017/07/14/interim-relief-emergency-arbitration-upcoming-goal-still-illusion/.

E-Government and Public Financial Management

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Abstract

E-government and software services are useful instruments in boosting innovation in public administration in all European Union member states. Implementing modern electronic platforms for reporting and transferring financial or fiscal information is one of the challenges of e-government.

National governments recognized the provisions of e-Government Action Plan for 2016-2020 adopted by the European Union and implemented them in the national legislation. Thus, the Romanian government and fiscal administration adopted new electronic platforms for collecting fiscal information from the citizens and companies in order to create a new data base for a modern and flexible fiscal system. E-Government and software services hold an important role in the development of the modern European economy and also in terms of improving relations between public administration, taxpayers and fiscal controllers.

Keywords: *e-Government, Software services, Public administration, Financial managemen*

JEL Classification: C88, H83, M48

1. Introduction

Among the main challenges for the European Union are the digital transformation of the European economy and the modernization of the public administration in order to prevent terrorism and corruption, to improve the quality of life of all citizens, to create more jobs and to deliver better public services.

In the last decade, the European Commission has adopted a new *e-Government Action Plan for 2016-2020* in order to accelerate the completion of the digital single market because digital public services contribute to competitiveness and make the EU a more attractive place to invest and live in[3].

Using e-Government by public administration will increase the efficiency and effectiveness in the public management and will create an opportunity to

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explore collaboration and synergies with other international institutions and agencies. Software services will improve efficiency in public administration, will deliver services digitally via multiple channels and e-Government's application in the public financial management will increase innovation in central administration. Thus, the role of E-government in curbing corruption in public administration will become more important (Ionescu, L., 2015). Therefore, according to Annual Growth Survey[4], modern and efficient public administrations need to ensure fast and high-quality services for citizens and a business-friendly environment. Modernizing public administration using key digital enablers also determine the public administrations to transform their back offices, to rethink and redesign existing procedures and services, and open their data and services to other administrations, and, as far as possible, to businesses and civil society[5].

The underlying principles of the *e-Government Action Plan for 2016-2020* are presented in the table below:

The Principles of e-Government Action Plan for 2016-2020
1. Digital by Default
2. Once only principle
3. Inclusiveness and accessibility
4. Openness & transparency
5. Cross-border by default
6. Interoperability by default
7. Trustworthiness & Security

Table no. 1. *The Principles of e-Government Action Plan for 2016-2020*
Source: www. ec.europa.eu/digital-single-market/en/european-e-government-action-plan-2016-2020

Using these principles ensures that citizens, companies and administrations supply the accurate information in the European single market, supporting the transition of the European space to a leading knowledge-based economy.

E-Government improves service delivery in public administration by capturing and using best practices around the world. Effectively, citizens participate in democratic processes through on-line interventions and influence final decisions (such as overturning electoral processes in recent years where mobilization of citizens on social networks has decisively influenced the outcome of general elections). Two fundamental concepts of e-Government and e-Governance have crystallized. E-Government is defined as the one-way dissemination of government information, while e-Governance is defined as the two-way dialogue as well as the interaction between governments and the citizens (Manoharan, A, 2015). E-Government enables public online reporting from

[4] https://ec.europa.eu/info/system/files/2015-european-semester-annual-growth-survey-en.pdf.
[5] https:// ec.europa.eu/digital-single-market/en/european-egovernment-action-plan-2016-2020.

government to citizens. Public relations have generated new forms of direct government – citizen communication, covering effective demonstration of the application of democratic control principles on governors' public accountability. The basic forms of e-Government are: G2G (Government to Government), G2B (Government to Business) and G2C (Government to Citizen).

2. Recent Views in Literature on the Basic Problems of E-Government and Software Services

Software services are the high technology used to make smart cities (Muthucumaru, 2018; Przeybilovicz, 2018), as the e-Government infrastructure. Mordecai Lee, (2015) in the e-Government handbook edited by Manoharan, A., highlights the role of e-Government in improving the effectiveness of e-Government reporting in the context of applying the concept of multiple responsibilities. This way e-Government reporting is much better understood and assessed online, through appropriate techniques and technologies, fiscal transparency, in conjunction with increasing participation of the taxpayer in e-government activities.

In the software engineering handbook (Sungdeok Cha and al, 2019), edited by Fraser and Rojas, in software testing, everyone reminds everyone that software programs present bugs because they are made by people who are mistaken, and the software requirements are not always clear, or worse, sometimes are incorrect. Obviously, related computer systems will experience temporary failure. For example, the ANAF application for collecting state taxes has stalled when a large number of taxpayers have accessed it. Another example is the integrated IT system of the Health Insurance House.

Dijkstra's famous observation shows that the testing of the integrated software system can never prove the absence of bugs, but can only show the presence of bugs. The more complex and larger the software system, the more difficult to test. Increasing the complexity of a software system (such as e-Government) leads to an increasing number of random phenomena that cannot be anticipated.

Guth Stephen (2013), in the contract negotiation handbook, advances an important idea, namely that in reality, a software service, presented as a licensed, finished and functional project, may have major operating problems and consequently affect significantly the quality of e-Government.

Software as a Service, (SaaS), means, in fact, a set of scalable and elastic IT capabilities delivered to customers using Internet technologies in a shared use environment. SaaS risks are multiple of the simplest, based on the end user, according to which functionality is acquired, and not a simple license or software license, to the risk of losing large data volumes (Big Data).

Simic, G.P. (2019) believes that e-Government software services depend on a multitude of archived documents, and that the web-based hybrid solution, as a combination of several client-server technologies, improves accessibility for people with disabilities (the mandatory requirement for public services). These technologies include search for text-documents, pattern recognition, speech recognition, metadata exploitation.

Abdel-Basset, M. et al. (2018) lays the foundation of the multicriteria group decision making method (MCGDM) in evaluating e-Government websites using the VIKOR, neutrosophic linguistic method. Neutrosophy signifies the knowledge of neutral thought (Smarandache, Fl, 2014). The multicriteria decision is based on weighting the significance of the criteria and the representation of linguistic variables by triangular neutrosophic numbers. The periodic evaluation of e-Government websites (portals) is based on multidimensional strategies in order to increase the quality of these sites. The VIKOR method ranks the alternatives and selects a decision from a set of alternatives. Neutrosophic logic specifies a percentage of indetermination caused by unexpected parameters, hidden in logic sentences. The neutrosophic set is a generalization of many sets as the classic set, fuzzy set, intuited set, etc. Generally, website evaluation follows a generally valid methodology applied in the assessment of any public or economic organization (Nica, D., Ionescu, L. 2019).

E-Government software services are unexpectedly subjected to intense cyber attacks using sophisticated techniques (eg MITM, Man In The Midle) when the incognito intruder acts between the two correspondents. Consequently, equally sophisticated preventive, protection and IT security techniques are identified and applied. For example, Tekdogan, R and Efe, A (2018) refer to preventive techniques for SSL hacking threats to e-Government software. SSL security protocols ensure secret data transmission and detection of malicious users in the e-Government information systems.

3. E-Government and Public Financial Management

E-Government increases responsibility, fair law enforcement, employee performance, interoperability of component systems, connectivity of all participating actors, reducing the necessary time to solve specific public sector issues. The goal of e-Government implementation is to improve the performance of public administration, the quality and competitiveness of business processes in relation to central and local public administration, the relationship between citizen's wellbeing and the state administration; The goals also concern sustained economic growth and finding the optimum solution, while eliminating excessive bureaucracy, the problems of the entire Romanian society, and the gaps in Romania's development as compared to the Western European Union countries.

A significant role in e-Government is held by its profile ministries and government agencies such as: The Ministry of Communication and Information Society, the Ministry of National Defence, the Ministry of Administration and Interior, the Ministry of Public Finance, the Ministry of Transport, the Ministry of Agriculture and Rural Development, the National Agency for Statistics, the National Agency for Consumer Protection, the National Bank of Romania, etc.

E-Government contributes to the accumulation and capitalization of experience and knowledge in information and to the elimination of the strong cleavages (skirmishes from reality) between the powers in a state (the presidency, the executive, the legislative and the judicial). E-Government is independent from the frequent changes in governmental teams and from the features of the current political and democratic landscape.

Central government agencies run and coordinate e-Government processes, grafted on central and local government structures. The e-Government implementation strategy is strongly interconnected with the other sectoral plans of economic and social development (agriculture, labor market, telecommunications, financial-banking sector, defence and national security, etc.). The National Statistics Agency collects primary data from all sources specific to e-Government entities, focusing on the economic and social indicators imposed by EU standards through Eurostat (GDP, revenues and expenditures at all levels of e-Government, etc.).

The implementation of e-Government and the establishment of a strongly integrated and standardized e-Government environment lead to the elimination of subjective and strongly politicized decisions regarding the allocation of public financial resources for basic infrastructure (for example, highways in Transylvania counties vs. Moldavia counties.) We can observe the vision on the role and place of services provided by e-Government in the figure below.

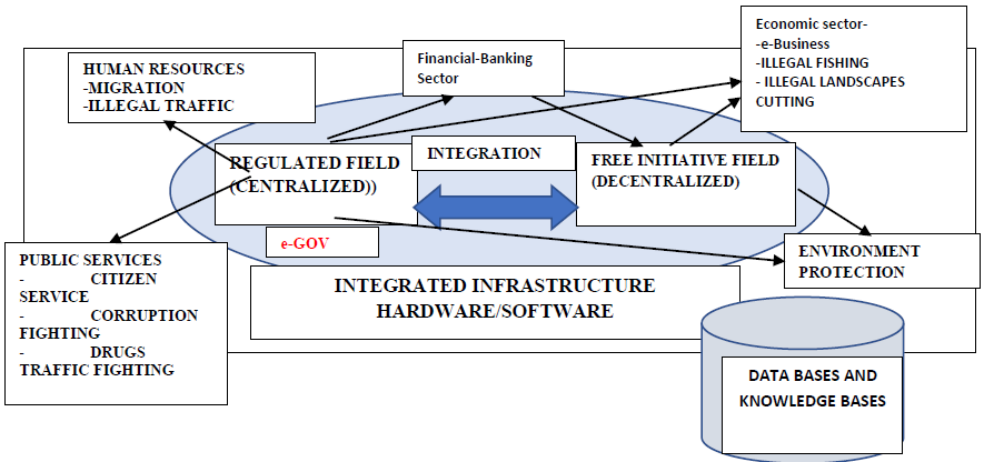

Figure no. 1. Vision on the role and place of services provided by e-Government
Source: Author's own work

Industry labelling that contributes to GDP growth in the automotive and software sectors will no longer be applicable upon the implementation of e-Government because by means of e-Government macroeconomic balances in agriculture, services, transport and other industries as chemicals, textiles, pharmaceuticals, food, etc. will be restored. The implementation of e-Government facilitates the harmonization of the centralized regulated field and the decentralized field of free market economy initiatives, based on medium and long-term strategic decisions on real-time development.

E-Government services are primarily web-focused software services with adaptive security and data protection to address diversified cyber attacks occurring during periods of economic growth or economic crisis. E-Government contributes to the correlation of imports with the planned values for the elimination of illegal imports of poor quality goods bearing no country of origin (for example, fruits and vegetables, medicines, textiles, etc.). Also, e-Government contributes to raising the living conditions of the rural population to the living standards of the urban environment. E-Government determines better income distribution (currently in Romania more than 45,6% of the population does not have access to the Internet and consequently to e-Government services provided through government programs[6]). For example, a recent statistic on a representative sample of academics in the public pre-university environment shows that over 50% of them cannot afford the purchase of a modern laptop and Internet access services, essential in the centered educational process in point of the use of information and communication technologies and in point of e-Learning (which are part of e-Government). The same statistics show that equipping public networked lab schools with networked computers seems outdated and inappropriate in relation to the new educational computer technologies.

In our opinion, software solutions for e-Government services must be sustainable, built in an integrated context, with an at least 10-year vision, based on the concept of knowledge management.

E-Government can be implemented according to the specificity of the Romanian socio-economic, political, cultural and institutional context, as well as to the EU and national standards. For the Romanian administration, e-Government has the following basic features: a) thinking of the landmarks resulting from a decision center; b) the circumvention of the law and the "financial cannons" specific to some of the actors involved in e-business; c) the tendency to favor some of the representatives of the local public administration to the detriment of others (see the lack of highways in Moldavia or the funds allocated from the central public administration, as in the case of local councils/Corabia for the Danube port development); d) lack of transparency in some cases of public

[6] http://www.insse.ro/cms/files/statistici/comunicate/com_anuale/tic/tic_r2014.pdf.

expenditure, including EU-funded projects; e) lack of support of the 'national interest' component from some high-level political decision makers; f) implementing democratic principles in some cases, favoring the specific elements of corruption; g) high population confidence in two key institutions: the Orthodox Church and the Army; h) failure to maintain the optimum proportion between investment and consumption funds (excessive unsustainable social policies); i) foreshadowing an acute shortage of both qualified and unqualified workforce.

The implementation of e-Government in Romania started before 2000. Romania was among the first states to adopt the law on electronic signature, followed by the law on electronic notary, the law on electronic archiving, etc. Among the most important integrated IT systems and e-Government portals in Romania are the electronic public procurement system (SEAP), the computerized educational program (AEL), the electronic tax payment system, the admission and distribution in high schools and vocational schools (ADLIC).

4. Conclusions

In our opinion, e-Government has an important role in economic development and the minimization of bureaucracy through the implementation of software services. Nowadays, all European Union member states have implemented e-Government with positive results on the economic, social and political life, and the relationship between citizens and the central administration has significantly improved.

We consider that all sectors of the public sector administration—different departments, different policies, different staff— will be involved in developing e-Government and that should lead to better fiscal policies.

Bibliography

1. Abdel-Basset, M.; Zhou, Y.; Mohamed, M.; Chang, V., (2018), *A group decision making framework based on neutrosophic VIKOR approach for e-Government website evaluation,* Journal of Intelligent Fuzzy Systems, 34, 4213-4224.
2. Gherasim, Z., (2006), *Particularități ale securității bazelor de date utilizate în afacerile electronice pe Internet*, Analele Universității *Spiru Haret,* Seria Economie, Nr.5.
3. Ghiorghiță E., Gherasim Z., (2010), *Tendințe în dezvoltarea e-Government la nivel macroeconomic,* Volum cu lucrări, A-XVIII-a Sesiune de Comunicări ştiinţifice a cadrelor didactice, Universitatea *Spiru Haret*, Facultatea de Contabilitate şi Finanțe Rm.Vâlcea, 16-17 Aprilie.
4. Guth, Stephen, (2013), *Contract Negociation Handbook: Software as a Service*, 1st Edition, Guth Venture L.I.C., Alexandria, Virginia, USA.
5. Ionescu, L. (2015), *The Role of e-Government in Curbing the Corruption in Public Administration,* Journal Economics, Managements and Financial Markets, Addleton Academic Publishers, New York, 10(1).

6. Manoharan, A., (2015), *E-Government and Websites. A Public Solutions Handbook,* Routledge, Taylor&Francis, New York and London.
7. Muthucumaru, M.; Elarbi, B., (Eds), (2018), *Handbook of Smart Cities: Software Services and Cyber Infrastructure,* 1st Edition, Springer, Switzerland.
8. Nica, D,; Ionescu, L., (2019), *Evaluarea intreprinderii si diagnostic financiar-contabil,* Editura Fundatiei *Romania de Maine*, Bucuresti.
9. Przeybilovicz, E.; Cunha, M.A.; Meirelles, F.S.;(2018), *The use of information and communication technology to characterize municipalities: who they are and what they need to develop e-government and smart cities initiatives,* Brazilian Journal of Public Administration, Rio de Janeiro, July-Aug.
10. Simic, G.P., (2019), *Improving e-Governemnt Services for Advanced Search,* Vojuotechniki Glasnik, vol.67, Issue 2, web.a.ebscohost.com.
11. Sagarik, D.; Chansukree, P.; Cho, W.; Berman, E., (2018), *E-Government 4.0 in Thailand: The role of central agencies,* Information Polity, 23, 343-353, DOI 10.3233/IP- 180006.
12. Smarandache, Fl., (2014), *Neutrosophic Theory and Its Applications,* Collected papers, Vol.I, EuropaNova, Brussels.
13. Stoica, O.,(2015), *E-Government Implementation in Romania. From National Success to International Example,* www.academiaedu.ro..
14. Sungdeok, C.; Richard, T.; Kyochul, K. (Eds), (2019), *Handbook of Software Engineering,* Springer, Switzerland.
15. Tekdogan, R., Efe, A., (2018), *Prevention Techniques for SSL Hacking Threats to e-Government Services,.*International Journal of Information Security Science, vol.7, No.2.
16. www.e-licitatie.ro, www.licitatiiseap.ro; www.anaf.ro; www.cnas.ro; www.ghiseul.ro; www.mcsi.ro; www.academiaromana.ro; www.insse.ro;
17. https://ec.europa.eu/digital-single-market/en/european-egovernment-action-plan-2016-2020;
18. https://ec.europa.eu/info/system/files/2015-european-semester-annual-growth-survey-en.pdf;
19. http://ec.europa.eu/priorities/jobs-growth-and-investment_en.

Global Security in the Context of the Munich Conference (February 15th-17th, 2019)

George GRUIA[1]

Abstract

Between 15 to 17 February 2019 held in Munich, the annual Security Conference, a forum where they discuss the most important issues of security of the world. State and government leaders present their views on which they take the important decisions governing the fate of the countries they lead. It is unanimously acknowledged that 2019 is a year of high political intensity in the world. It is the year in which liberal democracy is confronted with iliberalism, true patriotism with declarative nationalism, populism with liberalism, not only doctrinal divergences, but also as security threats. The conference organizers presented an exciting report reviewing most of the world's issues with the hope that participants would expose their views.

Keywords: *conference, security, threats, political leaders, NATO, EU, globalization, new world order, alliance of multilateralism, Middle East, tensions, Brexit*

Since 1963, each year, in February, the Munich Security Conference (MSC) takes place. This is an independent forum in which participants, decision-makers of the world's policies, exchange views on international security. They explain decisions and attitudes, changes the security paradigm, presents the outlook on global security threats, analyze risk factors are regional or global. The conference was attended by nearly 350 leaders from around 70 countries that have engaged in debates leading to edifying conclusions on security challenges that threaten world peace. Present were: Heads of State, Prime Ministers, Ministers, Members of Parliament, Political Analysts and Journalists. The conference chairman, Wolfgang Friedrich Ischinger, has also held this position since 2008 when he replaced Horst Teltschik. German diplomat, aged 73, former German Ambassador to the USA between 2001 and 2006 and Great Britain, 2006-2008, Ischinger is a career diplomat and also a university professor. In his position as Chairman, he managed to organize the conference and moderate the talks in an open, independent way. Not accidentally The Munich Security Conference is organized shortly after the World Economic Forum in Davos. The Bavarian city is, in a

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natural continuity, the host of the world's leaders, some of whom have participated in the discussions in the Swiss resort, making that natural connection between the economic and security challenges. This year, when Davos discussed Globalization 4.0 and the Fourth Revolution, Munich discussed the security challenges it would bring and the solutions needed to keep the world peace in the new economic and financial conditions. Given the global political situation, with many question marks, the participants did not find answers to all their questions, but they wanted to hear some leaders' views on how they see the future of the world. That is why *a record number of policy-makers from around the world have announced their participation: German Chancellor Angela Merkel, Afghan President Ashraf Ghani, Egyptian President Fattah al-Sisi, Yang Jiechi, Member of the Political Bureau of the Chinese Communist Party, President of Ukraine Piotr Poroshenko, US Vice President Mike Pence, a large delegation of US congressmen headed by Nancy Pelosi, Speaker of the House of Representatives, Russian Foreign Minister Serghei Lavrov as well as other Foreign Ministers, Defense Ministers Great Britain, France, Germany, Canada, Turkey and other countries, leaders of prominent international organizations, and many other personalities.* During 2018, a series of articles written or coordinated by Ischinger Chairman sought to raise current international security issues in order to challenge Security Conference participants to launch their debates and to prepare for possible solutions. As the Convention's good habit was, a few days before the start of the work, a report was released that aims to guide discussions on the main issues of the world. This year the title of the report was: *"The Great Puzzle. Who will pick up the pieces?"* The world has become a world of competitions. Now, the US, China, Russia and a leadership vacuum in the international liberal order are on the ramp. This liberal order has been so badly damaged that it will be difficult for it to be brought into the coordinates in which it worked. If this is not possible, there is a new world order that will not cause major economic and/or political conflicts and restore a stable peace in the world. That is why the title presented above was given. *Who is able to pick up the pieces of this puzzle and rebuild them? Will supporters of the post-World War II international order keep even a few pieces of the puzzle to rebuild a new order?*

The new world order will, according to many analysts, be a world of competition between the great powers. At the same time, it will be a world in which the great authoritarian powers will again face states that will keep their liberal concepts of building a democratic world. Analyzing the threats to US national security, the National Security Strategy and the National Defense Strategy point out that *"we are heading towards a competition of the big states for which the West is not ready"*. US Strategic Documents draw attention to the fact that Russia and China are the most important threats and, as stated in his resignation letter, former US Secretary of Defense James Mattis, on these two

states, they "*want to shape the world according to their authoritarian model, by vetoing their economic, diplomatic and security decisions in promoting their interests over our neighbors, the US and our allies*". That's why the Trump administration has decided to adopt a confrontational, strong position for both China and Russia. The current relations between Russia and the US are under the sway of the situation created by the withdrawal of both states from the Inter-Interventional Action Missile Treaty (INF). The situation can lead to a "missile crisis in Europe" and a new arms race on this continent. Russia is advantaged by the fact that the current divergences between the European states and the USA, to whose instigation they have contributed in full, will be difficult to agree between NATO and the EU for the introduction of these types of rockets in Europe the balance of power with Russia.

Another element of concern for US-Russia relations is the questioning of the extension of the new START Treaty, which expires in 2021. Its failure to bear, in conjunction with the withdrawal of the INF Treaty, will lead to a new ballistic missile race. But one of the less mentioned issues is that apart from the fact that the US invests in the Armed Forces more than any state in the world, they have many allies, and as General Mattis mentioned *"nations with allies are prosperous. US alliances are sustainable, which creates an asymmetric advantage with any competitor in the world.*" On the other hand, the report presented is extremely critical of the Trump administration, accusing the US President's decisions as undermining his credibility in honoring his obligations and promises made to the allies. It is mentioned the argument that Trump would have dismissed precisely those US figures who supported the *transatlantic security concept* most. It is expected at the Conference, the replica and assurances that the US Vice President and other members of the American delegation will make to the representatives of the rest of the world and, above all, the allies whose security depend on their relationship with the US.

It is mentioned as direct as possible that the EU is not prepared for the competition between the great powers of the world. In view of the uncertainties that have been experienced so far about the future involvement of the US in European security, the concept of "*Europe's strategic autonomy*" is under discussion, which takes us to the European army, so much endorsed by some states Western Europe, but which, according to current planning, can not exist before 2040. European policy is no longer confined to whether France and Germany agree on a particular issue, and the whole of Europe will follow. Already Italy, Spain, Poland are states that can support different points of view. Radical nationalism and populism that exist even within the two states do not allow for an alignment of all European states to the same ideas. In order to highlight the need for a common view of countries with different national interests, Heiko Maas, the German Foreign Minister proposes an "*alliance of*

multilateralism", which would allow both the attainment of national interests and the collective interest through multilateralism.

It addresses, in the framework of the report and the process of decoupling Europe from the USA, a dangerous concept for European security and especially for the countries of Eastern Europe with an unfortunate historical experience of this kind of international politics. It would be useful if the US's large and bipartisan delegation supported what the US Congress had already ratified, namely the total support of the North Atlantic Alliance, which would eliminate the ambiguities and confusions generated by some statements by the US President. However, it is unanimously accepted that there is no other option for European security than NATO, or, as the report mentions, "*there is not yet a B option*". Special attention is given to Great Britain and the Brexit phenomenon, which it is in a chaos that it created itself. Although British Prime Minister has said that Europe's security is Britain's security, it remains to be seen how much enthusiasm will be for participating in securing the continent's security that has just ceased any negotiations. It should not be forgotten at the same time that this country with global power has been a lever for the transatlantic partnership, being a European voice appreciated overseas, and the Queen of England, by its position, binds continents.

In its analysis of the East of Europe, the report presented refers only to the Eastern Partnership states, highlighting the high level of insecurity in which they are located and their political, economic and security dependence on Russia.

As it was presented, the report of initiating the Security Conference talks presents, without any hints, a series of essential issues of the current world, from which we mostly ask questions in relation to "What kind of World Do We Want to build"?

The 2007 Munich Security Conference was the first time that Russian President Vladimir Putin signaled a cooling in relations between Russia and the West. Shortly afterwards, Russia invaded Georgia, and in the years that followed Russia annexed the Crimea, launched incursions into eastern Ukraine and led cyber attacks against Western democracies. *Today, the relations between the West and Russia are on a downward trajectory.* The annual Munich Security Conference is for geopolitics what the Davos Economic Forum is for Business. The conference evolved from the Cold War emphasis on military cooperation between Germany and the US, with a wider perspective on global issues. Participants discussed topics ranging from foreign policy and international security to climate change. The 2017 conference with a record participation will probably remain in our memory for a long time. Speeches by US Vice President Mike Pence and Chancellor Angela Merkel were as diverse as style and content. At a meeting whose original purpose was to facilitate German-American cooperation, foreign policy positions of Germany and America were rarely so divergent. Pence delivered a rough message on the "America First" line

and praised Trump's firm reluctance to accept the established rules and international agreements.

He said that Europeans have no other choice but to follow America's example, even if that means giving up the Iranian nuclear agreement of 2015 that European diplomats have endeavored to achieve. Just as on other occasions, Pence refused to answer questions after a cold-hearted speech. Prior to Pence, Merkel made a speech that could be considered one of the best in his career. With energy and aplomb, it built a vigorous defense of multilateral efforts to tackle climate change, Russia's aggressive stance, Africa's development, and the other challenges we have to face. The direction of attacking Merkel's statements was obvious to everybody: an incisive reproach to the unilateralism of the "*America First*" policy. Merkel's speech was welcomed by the ovations, which was rarely met at the Munich Security Conference. She also answered the questions with confidence and a wave of humor, which attracted a new round of ovations.

Just as Putin's aggressive remarks in 2007, Pence's and Merkel's speeches will remain in history for the events that they forewarn. Together, they confirm that Trump's presidency has started a period of growing transatlantic tensions, which do not make any sign of weakening. Just a year ago, Europeans were told to ignore Trump's Twitter messages and to focus on the content of US policies that are supervised by the "adults in the room". But with the departure of Defense Secretary Jim Mattis and others, the adults have disappeared and the distance between policies and Twitter messages is getting smaller. Nowhere is the rupture of the US and European priorities as in the Middle East. When Pence forces the European countries to abandon their efforts to save the 2015 Joint Action Plan - which imposes clear and verifiable restrictions on the Iranian nuclear program - we can ask ourselves what Trump's strategy really is. If and when Iran will restart its nuclear weapons program tensions between the US and Iran will certainly rise to the point of crisis.

The question is whether this was the result Trump and his counselors have followed since the beginning. *Neither trade-related tension is not less acute.* The Trump administration has already cataloged exports of European aluminum and steel as a threat to US national security and is now probably preparing to add European cars to this list. If he does, the transatlantic trade conflict will enter dangerous ground. Trump seems to have a particular aversion to German cars, which account for only 8% of US car sales (but are a much more significant part of the luxury car market). In addition, as Merkel highlighted in his speech, the largest BMW plant is not in Germany, but in South Carolina, and much of its production is exported to China. By imposing significantly higher car tariffs, the Trump administration threatens not only jobs in Europe but also those in the US; both will suffer from the disruption of global supply chains. Over a year, many of these leaders and decision-makers will meet again in Munich. *If the negative*

scenario suggested by this year's meeting were to be carried out, we might be heading for an open war in the Middle East and a devastating trade conflict across the Atlantic. Or maybe this year's conference has pulled the necessary alarm signal so that the evil does not happen. Transatlantic relations are so complicated and no one should risk further deterioration.

Conclusions:

- Russia's efforts to influence the presidential election in 2016 are the latest expression of Moscow's longing for undermining the US-led liberal democratic order.
- Moscow tried to break the US like a billiard. The advantage sought by the Russians is that domestic partisan discord may block US domestic and foreign policy decisions in cases such as Syria and Afghanistan.
- Russia is "a great threat" to peace in Europe and beyond.
- We are referring to the occupation of the Ukrainian province of Crimea by Russia, to the situation in eastern Ukraine, to the poisoning of the former Russian double agent Serghei Skripal in Great Britain, and to the suspension of Russia's participation in the Interim Nuclear Forces (INF) treaty.
- As far as Europe is concerned, the facts speak for themselves.
- Fearing that they will have the same fate as Ukraine, the Baltic countries (Estonia, Latvia and Lithuania) and Poland have gained NATO's "enhanced advanced presence" on the eastern flank, and the deployment of four multinational battalions. A device completed by a "very reactive" force under German command from January 1, 2019, but not enough, according to a new report at the request of the Pentagon.
- Efforts must also be made to disarm, we refer to the INF. "If this agreement is to disappear altogether, Europe should worry about how the situation of the nuclear nuclear power will evolve."
- It is necessary to implement a new global monitoring system, which must include the participation of Russia, the US and China.

Bibliography

1. James Adams, (1988), *The Next – The Last World War*, Bucharest, Antet Publishing House.
2. Gabriel Almond, Sidney Verba, (1996), *Civic Culture*: *Political attitudes and democracy in five nations*, Bucharest, Du Style Publishing House.
3. Gabriel Andreescu, (2004), *Nations and minorities*, Polirom Publishing House, Iaşi.
4. Raymond Aaron, (2003), *Democracy and totalitarianism,* All Publishing House, Bucharest.

5. Ph. Aries, G. Duby, (1997), *History of private life. From the First World War to the present day,* volume IX, Bucharest, Meridiane Publishing House.
6. Zygmunt Bauman, (1996), *Globalization and its social effects*, Bucharest, Antet Publishing House.
7. Livia Bârlogeanu, (2005), *Identity and globalization. The Acts of the International Colloquium "Identity and Globalization"*, Bucharest, Educația 2000+ Publishing House, Humanitas Educațional Publishing House.
8. Cezar Bârzea, (2000), *Education for Citizenship in a Democratic Society: A Perspective of Permanent Education*, Council of Europe, Strasbourg.
9. Ulrich Beck, (2003), *What is globalization? Errors of globalism - responses to globalization,* Bucharest, Trei Publishing House.

Reflections on consent in criminal law

Oana Roxana IFRIM[1]

Abstract

The author analyses the consent of the injured person under several aspects, among which the consent of the injured person as a constituent element of the crime. The author also analyses the difference between the consent of the injured person - justifying cause and self-harm. The consent of the injured person is relevant in a very small sphere of incrimination (but on very numerous acts of social and individual life), either when exercising the function of constitutive element of the crime, or when exercising the function of justifying cause.

Keywords: *consent of the injured person, self-harm, justifying cause*

The consent, as well as the lack there of, must be analysed in criminal law under two aspects: either as a constituent element of a determined criminality or as a justifying cause.

Therefore, we can find it as a constituent element in the content of the incriminations that include in the description of the fact, the existence or lack of the consent of the person who would have the right to have the social value that could be harmed or endangered by the respective act.

According to art. 224 C. p. domestic rape states as a constitutive condition the lack of consent of the person who uses the house, the room, the dependency or the place surrounded by them.

In addition, theft (art. 228) exists only if the consent of the one in the possession or detention of the property is missing. In conclusion, the lack of consent is expressed explicitly by the legislator in certain incrimination rules and appears as a constituent element of the incriminations.

"But referring to the consequences of exercising the function of a constitutive element of the incrimination by the consent of the victim, we could ask ourselves whether these consequences could be extended to the aggravated content of the incrimination (where such contents exist). It seems to us that a general answer would be difficult to give because each content of incrimination raises specific problems. For example, in the case of domestic violence, the

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consent of the resident may extend to the armed person, or to two or more persons, or the deed may be committed during the night. But when the consent was obtained by fraud, that is, using lying qualities we would not be in front of a valid consent".[2]

Concept

The consent of the injured person is a justifying cause in the situation in which the injured person agrees that a person commits to him a fact stipulated by the criminal law regarding the social values that the injured person can legally dispose of. "Whenever the law allows or does not explicitly prohibit the holder of a good or interest from having them implicitly, the right holder may allow any damage to the good or interest without thereby committing an illicit act "*qui suo jure utitur nemini injuriam facit*" or "*volenti et consentienti non fit injuria*. [3]

According to art.22 Cp. "(1) the act provided by the criminal law committed with the consent of the injured person is justified, if it could legally dispose of the social value damaged or endangered.

(2) The consent of the injured person does not produce effects in the case of crimes against life, as well as when the law excludes it's justifying effect".

"In the modern criminal doctrine, the victim's consent, as a justifying cause, was considered by some authors as a private transaction authorized by law (*negozio giuridico*), arguing that it is a manifestation of will aimed at producing legal consequences in criminal law. In this transaction, the one who consents gives a person the right to exercise an action on him (Zitelmann, Grispigni, Carnelutti and Saltelli). Other authors (Antolisei) consider that by consent the one in question abandons their good, their interest, even if this abandonment is not known to the agent. The consent appears as a legal act in a restricted sense, with criminal relevance that excludes the unlawful nature of the act from the lack of any social harm that justifies the implication of the implicit state from the lack of interest of the state to repress such facts. "[4]

In the opinion of the supporters of the law regarded as a legal transaction, the consent would have the character of an agreement in which the perpetrator acquires a right over the injured person, and the exercise of a right cannot lead to something contrary to the right. From another perspective, the right holder within the limits in which the legal order gave him the right to decide whether to maintain legal rights over certain rights considered the consent as an expression of the abandonment of the interest.

[2] George Antoniu, Revista de Drept Penal nr.3 / 2003, p.130.
[3] *Ibidem.*
[4] *Ibidem.*

The consent of the injured person appears as a renunciation of the protection exercised by the criminal law on the fundamental values of man. However, the Romanian legislator has restricted the person's freedom to exercise his consent so the consent of the injured person does not produce effects in the case of crimes against life.

The following conditions have to be met for the incidence of the justifying cause of the victim's consent:

- The existence of an agreement regarding the commission of the act provided by the criminal law, prior to its commission.

The justifying cause can be invoked by both a natural person and a legal person regarding an offense committed with intent or with intent or with guilt.[5]

- The existence of the conditions of validity of the agreement of the injured person;
- The injured person can dispose of the social value harmed by the deed agreed.

As an exception, the law also incriminated the destruction committed with respect to a good that belongs to the offender.

- Consent not to refer to life or other offenses;
- The act authorized by the injured person must be provided by the criminal law.

With regard to theft, the consent must come from the person who has the right to dispose of the respective thing and who will be harmed by stealing the good. A third party could not consent to the property of another good unless it has the power of the owner.

In the same sense, prostitution implies the free consent of the person who carries out this activity. If a person is forced to practice prostitution, the act of coercion will be a crime but not the act of the prostitute.

In addition, the consent of the victim to the recruitment, transport, transfer, accommodation or reception, by deception, for the purpose of exploitation, does not remove the criminal liability of the perpetrator, the case of the crime of human trafficking, according to art.16 of Law no. 678/2001 (see, I.C.C.J., criminal section, decision no. 5847/2004, www.scj.ro).

Law 95/2006 on the reform in the field of health stipulates that the patient, in order to be subjected to methods of prevention, diagnosis and treatment, with potential risk for him, is requested the written consent, after its explanation by the doctor.

[5] Mihail Udroiu, *Drept penal, partea general*, C.H. Beck Pub. House, 2019, p.163.

The consent of the injured person has no effect in the case of a crime against life and as a result of the new regime of mitigating circumstances, the legislator has understood to incriminate himself the fact of murder at the request of the victim[6].

Article 190 C.pen. incriminates the act of murder at the request of the victim, which is an attenuating variant of the crime of murder, as opposed to the type variant in that the murder is committed at the explicit, serious and repeated request of the victim suffering from an incurable disease or a serious infirmity medically attested, causing permanent suffering, hard to bear, so with the consent of the victim, which determines the reduction of the special limits of the punishment.

In conclusion, consent is irrelevant, when it refers to social values over which the injured person does not exercise a right of disposition. In addition, the consent has no criminal relevance if it does not meet the legal conditions of validity or the subject cannot legally consent.

The legal person can invoke the justifying cause and the natural person regarding an offense committed with intent, pretence or guilt. In the latter situation, relevant may be the situation of students who at the time of sports decide to play a football match, and from guilt one of the defenders, trying to clear, striking the ball with a withdrawing attacker, causing a traumatic injury to heal them needed 95 days of medical care.[7]

The victim's consent is not confused with self-harm. The law assumes, as it is known, a *relationio ad alterum,* meaning a conflict between two persons, or in the case of self-harm, the holder of the right is also the author of the injury. As a result, the self-harm does not imply a conflict to resolve the law; on the other hand, the self-slaughterer does not have the status of victim;[8]

The consent of the person of the injured person does not produce, in principle, exonerating or limiting civil liability effects, however, in the specialized literature it has been shown that exceptionally, in special cases provided by law. From the sphere of the unlawful civilian are excluded some facts that may not cause such harm, facts which have been explicitly or implicitly committed, such as surgery, blood donation, organ removal, some violence that occurs unintentionally during activities or sports competitions. Also, the clauses of irresponsibility regarding the facts that are directed against the life of the person who gave their consent to their action are forbidden, as well as in the case of other facts explicitly prohibited by the imperative law, such as trafficking in persons, slavery, pimping.

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[6] Constatin Duvac, Norel Neagu, Niculae Gamenț, Vasile Băiculescu, *Drept Penal-partea generală*, Universul Juridic Pub. House, 2019, p.367, Constantin Mitrache, Cristian Mitrache, *Drept penal, partea generală*, Universul Juridic Pub. House, 2016, p. 192.

[7] Mihail Udroiu, *op.cit.*, p. 163.

[8] George Antoniu, *op.cit.* p. 145.

Bibliography

1. Codul Penal.
2. Codul Civil.
3. George Antoniu, Revista de Drept Penal nr.3 / 2003.
4. Mhail Udroiu, *Drept penal, partea generală*, Editura C.H. Beck, 2019.
5. Constatin Duvac, Norel Neagu, Niculae Gamenţ, Vasile Băiculescu, *Drept Penal-partea generală*, Editura Universul Juridic, 2019.
6. Constantin Mitrache, Cristian Mitrache, *Drept penal, partea generală*, Editura Universul Juridic, 2016.

Deontic-actional constraint as correlativ of e-justice

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Abstract

The idea of e-justice in the EU is only the background that the purpose of this research is built on. Specifically, the aim is to determine what does that the disjunction between obligation and forbidance is a constraint mean. Deontic constraint is defined as a disjunction between obligation and forbiddance. The paper passes through a chain of implications having as a first antecedent the deontic constraint and as a first consequent the sanction. The last one splits into two other action theory concepts: preventing and forcing. The two ones come together in actional constraint, understood in two ways: modal that is logical impossibility, and actional that is a lack of actional ability. Finally, the answer to the initial question is that obligation and prohibition are deontic constraint in the sense that they involve the logical impossibility, or alternative, the lack of ability to act. The final part contains an opening to an other interpretation of the lack of ability to act: gradually event.

Keywords: *actional constraint, deontic constraint, forcing, preventing, act, refrain, ability, logical impossibility gradually event*

1. Motivation and purpose

E-governace and şi e-justice are two of the key coordinates in building European Union. Both are built on the backdrop characterized by freedom, security and justice.

The overall aim of the current article concerns two of this background characteristic: freedom and justice. But, both are associated to constraint. Distinguish between deontic and the actional meaning of the constraint. The same applies to freedom.

We admit that the disjunction between obligation ($O\alpha(y, e)$) and prohibition to action on the event e ($F\alpha(y, e)$) is exactly the deontic constraint to action on the event e ($C\alpha(y, e)$). Also understand that $\alpha = \{d, f\}$; α stands for *to act; d* (do) stands for *to do*; *f* for *to forbear*; *e* is for some event. The expression α = {d, f} shows that *action* α se clivates in *acts* and *forbearances*[2].

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[2] von Wright, Georg, Henrik, *Logica Deontică şi Teoria Generală a Acţiunii*, vol *Norme, Valori, Acţiune*, Politică Pub House, Bucharest, 1979, p. 140-141.

1. $C\alpha(y, e) \equiv O\alpha(y, e) \vee F\alpha(y, e)$[3]

x is constraint to act on event e iff x is obliged to act on the event e or is forbiden to act on that event.

In this article we are focusing on the *deontic constraint*. And the assumend question is:

What does that disjunction between obligation and forbidance is constraint means?

Referring to the logic of questions we can say that the question assumed means that certain preliminary issues were clarified[4]. Suppose the question was asked about that prohibition and obligation are constraints. And the answer was yes. Or just it must be pointed out first: that the two are indeed constraints. Only then will show what this constraint means.

In a further research we self-propose adding the concept of freedom on the same background and same distinction.

2. Constraint and deontic freedom

A subject of deontic authority is constraint to act[5] on the event e iff it is obliged or he is forbidden this[6]. Deontic operators define each other[7]. Therefore disjunction that define the constraint can be expressed in three variants[8], in addition to the one shown below (1).

Trough several rules of calculation obtain as a result that both obligation and prohibition involves coercion.We consider that *$C\alpha(y, e)$* deontic constraint to act is equivalent to a disjunction (1). That is like each of them would involve its disjunction with somethingelse.

Both the obligation and prohibition are deontic operators. Each of them envolves coercion. In terms of form, both are related to the **provision** of legal norms[9].

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[3] Popa, Cornel, *Teoria acțiunii şi Logică Formală*, Ştiințifică şi Enciclopedică Pub House, Bucharest, 1984, p. 434.

[4] Bieltz, Petre, Gheorghiu, Dumitru, *Logică Juridică*, Pro Transilvania Pub. House, Bucharest, 1998, p. 178.

[5] von Wright, Georg, Henrik, *Normă şi Acțiune*, Ştiințifică şi Enciclopedică Pub House, Bucharest, 1982, p. 89.

[6] Popa, Cornel, *op.cit.*, p. 434.

[7] von Wright, Georg, Henrik, *Logica Discursului Practic*, vol. *Norme, Valori, Acțiune*, Politica Pub House, Bucharest, 1979, p. 27.

[8] Popa, C. *ibidem,* p. 300, p. 315.

[9] Nilă, Stratone, Mirela, Cristiana, *Sociologie Juridică, Elemente de bază*, Hamangiu Pub House, Bucharest 2013, p. 90.

One first aspect of the legal norm is missing here: *hypothesis*[10]. Dyadic deontic logic introduces this item[11]. Whay makes them qualifiable as *constraints* is that they associate one third element, *sanction*[12].

Now, in 1 apply first α/d and obtain 2 and then α/f and obtain 3.

2. $Cd(y, e) \equiv Od(y, e) \vee Fd(y, e)$[13]
3. $Cf(y, e) \equiv Of(y, e) \vee Ff(y, e)$[14]

2 means that y is constraint to do e iff y is obliged or forbiden to do that. Significance of 3 is obtained like this: in natural significance of 2 replace *to do* with *to forbear*. Reuse 2. Use rules: $(A \equiv B) \equiv (A \supset B) \,\&\, (B \supset A)$[15], E&[16], $(A \vee B) \supset C \equiv (A \supset C) \,\&\, (B \supset C)$[17]:

4. $(Od(y, e) \vee Fd(y, e)) \supset Cd(y, e)$
5. $Od(y, e) \supset Cd(y, e)$
6. $Fd(y, e) \supset Cd(y, e)$,
7. $Cf(y, e) \equiv Of(y, e) \vee Ff(y, e)$[18]
8. $(Of(y, e) \vee Ff(y, e)) \supset Cf(y, e)$
9. $Of(y, e) \supset Cf(y, e)$
10. $Ff(y, e) \supset Cf(y, e)$

2.1. Obligation, forbidance and sanction

Now the obligation and the forbidance will be connected with the *sanction*.

Obligation-sanction. Have the suggestion[19] that deontic logic can be reduced to aletic modal logic[20]. What means to include: modal operator necessary,

[10] Nilă, Stratone, *op.cit.,* pp. 89-90.
[11] von Wright, G.H., *op.cit.,* p. 166.
[12] Nilă, Stratone, *ibidem.,* p. 90.
[13] Popa Cornel, *ibidem,* p. 434.
[14] Popa Cornel, *idem.*
[15] Popa, Cornel, *Logică şi Metalogică,* vol. I, Fundația România de Mâine Pub House, Bucharest, 2000, p. 117.
[16] Popa, Cornel, *Logică şi Metalogică,* vol. II, Fundația România de Mâine Pub House, Bucharest, 2002, p. 44.
[17] Popa, Cornel, *Logică şi Metalogică,* vol. I, Fundația România de Mâine Pub House, Bucharest, 2000, p. 57, pp. 76-77.
[18] Popa, Cornel, *Teoria acțiunii şi Logică Formală*, Ştiințifică şi Enciclopedică Pub House, Bucharest, 1984, p. 434.
[19] Føllesdal, Dagfinn şi Hilpinen, Risto, *Introducere în Logica Deontică*, vol *Norme, Valori, Acțiune*, Politică Pub House, Bucharest 1979, pp. 97 - 98.
[20] *Idem*.

N[21] or □; the atom *san(y, d(y, e))*, meaning *y is sanctioned with a reference to the fact that he made happen e*. Considered important to specify also the ground of the sanction. Thus can differentiate between different sanctions for different reasons.

Forbidance-sanction. Forbidance can be characterized based on suggestion of von Wright: the prohibition to act is equivalent to obligation not to act. Symbolically, $F\alpha(x, e) \equiv O{\sim}\alpha(x, e)$[22]. The obligation is characterized by expressions meaning action and sanction[23]. Follows that also forbidance can be connected with the idea of sanction. I used the next rules in this order:

E&, $\Box(p \supset q) \supset (\Box p \supset \Box q)$[24] $\Box p \supset p$[25], $((p \supset q) \& (q \supset r)) \supset (p \supset r)$, $p \supset (q \supset r) \equiv (p \& q) \supset r)$[26], $p \supset q \equiv {\sim}p \vee q$[27], ${\sim}(p \supset q) \equiv p \& {\sim}q$[28], $(p \& q) \vee r \equiv (p \vee r) \& (q \vee r)$[29]

11. $Od(y, e) \equiv \Box(f(y, e) \supset san(y, f(y, e))$[30]
12. *$Od(y, e) \supset \Box(f(y, e) \supset san(y, f(y, e))$, 6, E&*
13. $\Box(f(y, e) \supset san(y, f(y, e)) \supset (\Box f(y, e) \supset \Box san(y, f(y, e))$, 7, $\Box(p \supset q) \supset (\Box p \supset \Box q)$[31]
14. $\Box(f(y, e) \supset san(y, f(y, e)) \supset (f(y, e) \supset san(y, f(y, e))$, 7, $\Box p \supset p$[32]
15. $Od(y, e) \supset (\Box f(y, e) \supset \Box san(y, f(y, e))$, 6, 8, $((p \supset q) \& (q \supset r)) \supset (p \supset r)$
16. $Od(y, e) \supset (f(y, e) \supset san(y, f(y, e)))$, 6, 9, $((p \supset q) \& (q \supset r)) \supset (p \supset r)$
17. $(Od(y, e) \& f(y, e)) \supset san(y, f(y, e))$, 12, $p \supset (q \supset r) \equiv (p \& q) \supset r)$[33]

Add directly the obligation to forbear: *Of(y, e)*. This is achieved by the same calculation steps 11 – 17. Then, apply the same calculus for *Fd(y, e)*. Continue directly to step 18, *including $p \supset (q \supset r) \equiv (p \& q) \supset r)$*[34]

18. $(Of(y, e) \& d(y, e)) \supset san(y, d(y, e))$

[21] *Idem*.
[22] von Wright, *ibidem.,* p. 27.
[23] Føllesdal, Hilpinen, *idem*.
[24] Popa, Cornel, *Logică şi Metalogică*, vol II, Fundația România de Mâine Pub House, Bucharest, 2002, p. 245.
[25] Popa Cornel, *ibidem.,* p. 250.
[26] Popa Cornel, *idem.,* p. 45.
[27] Popa, Cornel, *Logică şi Metalogică*, vol I, Fundația România de Mâine Pub House, Bucharest, p. 117.
[28] Popa Cornel, *ibidem.,* p. 57, p. 59.
[29] Popa Cornel, *ibidem.,* p. 117.
[30] Føllesdal, Hilpinen, *idem.,* p. 97.
[31] Popa Cornel, *ibidem.,* p. 245.
[32] Popa Cornel, *ibidem.,* p.250.
[33] Popa Cornel, *ibidem.,* p. 45.
[34] *Idem*.

19. Fd(y, e) ≡ □(d(y, e) ⊃ san(y, d(y, e))
20. *Fd(y, e) ⊃ □(d(y, e) ⊃ san(y, d(y, e))*, 19, E&
21. □(d(y, e) ⊃ san(y,d(y, e)) ⊃ (□d(y, e) ⊃ □san(y, f(y, e)), □(p ⊃ q) ⊃ (□p ⊃ □q)
22. □(d(y, e) ⊃ san(y, d(y, e)) ⊃ (d(y, e) ⊃ san(y, d(y, e)), □p ⊃ p
23. Fd(y, e) ⊃ (□d(y, e) ⊃ □san(y, d(y, e)), 20, 21, ((p ⊃ q) & (q ⊃ r)) ⊃ (p ⊃ r)
24. Fd(y, e) ⊃ (d(y, e) ⊃ san(y, d(y, e))), 20, 22
25. (Fd(y, e) & d(y, e)) ⊃ san(y, d(y, e)), 24

Add a formula coresponding to forbid the forbearance. By the same steps as the ones from 18 – 25 obtain:

26. (Ff(y, e) & f(y, e)) ⊃ san(y, f(y, e)), (24)

Follows to introduce the concept of actional coercion. The immediate goal is to connect the idea of sanction to the coercion one. The result is that the one who violates legal provisions is applyed coercion. Broader aim is to verify if Deontic constraint is also an actional one. That is to connect the idea of sanction to actional coercion.

For this is necesary to introduce previously the concepts: *forcing, preventing constraint*. The latter is a particular case of making it happen a disapearance. And what disappears here is *the oportunity* or *ability* to act. In the next steps of calculation widely use tranzitivity *((p ⊃ q) & (q ⊃ r)) ⊃ (p ⊃ r)*.

3. Actional constraint

3.1. Forcing, preventing, constraint

The purpose of this section is to link the concepts of sanction (*san(y,..)*) and actional constraint(*const(y, ..)*). We use two intermediate concepts. Associate them convention of notation: forcing[35] (*force(x, d (y, e))*) and prevention[36] (*prev (x, d (y, e))*). Both are interdefinible and reducible to constraint[37]. Below we show that the first two concepts are reabsorbed into constraint. And this is a special case of *to do*. Therefore, both concepts means acts[38]. Theory of action prepares this two concepts for deontic logic[39].

[35] von Wright, Georg, Henrik, *Normă şi Acţiune*, Ştiinţifică şi Enciclopedică Pub House, Bucharest 1982, p. 72.
[36] *idem*.
[37] *idem*.
[38] *idem.*
[39] *idem.*

Forcing an agent to do an event e is the same *preventing* to forbear from doing that event.

To prevent an agent to do an event means to force him to forbear from doing. In case of preventing, the result is the agent *cannot do something*[40].

And forcing is a form of constraint[41]. But the two are interdefinible[42]. Therefore also *the prevention* is a constraint. Such that the two ones unify in the concept of de *constraint*.

The sanction has different consequences depending on violating a law prescription. Violating trough *forbearance* involves being forced to do (27). While violating through *doing* involves *prevention from doing* (28). Forcing to forbear equivalates *to prevent doing* (29). Conversly, forcing to do equivalates *to prevent forbearance* (30). Both applications of preventing (31, 32) and of forcing (33, 34) involve appropriate constraints.

Finally, the sanctions involve constraints that are appropiate to the infrigement.

The sanction for forbearance involves constraint to do. While the sanction for doing involves constraint to forbear. Where we detach the following expressions:

27. $san(y, f(y, e)) \supset forc(x, d(y, e))$
28. $san(y, d(y, e)) \supset prev(x, d(y, e))$

29. $forc(x, f(y, e)) = prev(x, d(y, e))$[43]
30. $forc(x, d(y, e)) = prev(x, f(y, e))$[44]

31. $prev(x, d(y, e)) \supset constr(x, f(y, e))$
32. $prev(x, f(y, e)) \supset constr(x, d(y, e))$
33. $forc(x, f(y, e)) \supset constr(x, f(y, e))$,
34. $forc(x,d(y, e)) \supset constr(x, d(y, e))$

35. $san(y, f(y, e)) \supset constr(x, d(y, e))$, 27, 30, 32
36. $san(y, d(y, e)) \supset constr(x, f(y, e))$, 28, 29, 33

Consequents of the formulas 17, 18, 25, 26 end with the idea of sanction because of forbearance and for act as violation of the provisions. Finally the sanction involves: constraint to do in the case of forbearance; constraint to forbear, in the case of act (42, 43). By transitivity, the provosions and their violations will envolve the two types of constraint (26 - 29).

37. $(Od(y, e) \& f(y, e)) \supset constr(x, d(y, e))$, 17, 35

[40] von Wright, G.H., *ibidem.,* p. 63.
[41] von Wright, G.H., *bidem.,* p. 72.
[42] *idem*.
[43] *idem*.
[44] *idem*.

38. (Of(y, e) & d(y, e)) ⊃ constr(x, f(y, e)), 18, 36
39. (Fd(y, e) & d(y, e)) ⊃ constr(x, f(y, e)), 25, 36
40. (Ff(y, e) & f(y, e)) ⊃ constr(x, d(y, e)), 26, 35

Both kind of sanctions lead to the idea of constraint. In natural language, this, on its turn, envolves the idea of doing *to become impossible the action/ forbearance*[45].

We may interpret the constraint in two versions: a *modal* and the other, an *actional* one.

3.2. Two interpretations of the impossibility

Both interpretations, mentioned above, are suggested by von Wright. Their counterpart in natural language or something very close is the phrase "could not do" and "could not forbear."

3.2.1. Modal interpretation

According to modal interpretation, "Impossible" is the negation of the "possible" modal operator: $\sim\Diamond$. To prevent means: to do something *to become impossible*[46] that is to do impossible[47] that y should do[48]. The term "impossible" sends quite directly to the non-possible, $\sim\Diamond$. That is a modal expression. As a result we can successively introduce: y does an event e, *d(y, e)*; it is possible y do e, $\Diamond d(y, e)$; it is impossible y do e, $\sim\Diamond d(y, e)$. The idea *to become impossible for y to do e* is explained like: is possible y do e first and then it is impossible y do e, $\Diamond d(y, e)T\sim\Diamond d(y, e)$. That is an event of disapearance of the possibility. Finally, we can add the act through x does to become impossible y do e: $d(x, \Diamond d(y, e)\ T \sim\Diamond d(y, e))$. And the constraint involves something like this:

41. constr(x, f(y, e)) ⊃ d(x, ◊d(y, e)T~◊d(y, e))
42. constr(x, d(y, e)) ⊃ d(x, ◊f(y, e)T~◊f(y, e))

This logic can be unified with the modal one.[49]. Such that it is very legitimate that the idea of impossibility shuld be modaly interpreted:

43. (Od(y, e) & f(y, e)) ⊃ d(x, ◊f(y, e)T~◊f(y, e)), 37, 42

[45] *idem*.
[46] *idem*.
[47] *idem*.
[48] Nota noastră, IG.
[49] von Wright Georg, Henrik, *Logica Deontică şi Teoria Generală a Acţiunii*, vol *Norme, Valori, Acţiune*, Politică Pub House, Bucharest 1979, pp. 152-153.

44. (Of(y, e) & d(y, e)) ⊃ d(x, ◊d(y, e)T~◊d(y, e)), 38, 41
45. (Fd(y, e) & d(y, e)) ⊃ d(x, ◊d(y, e)T~◊d(y, e)), 39, 41
46. (Ff(y, e) & f(y, e)) ⊃ d(x, ◊f(y, e)T~◊f(y, e)), 40, 42

Breach both the *obligation to do* and the *forbidance to forbear* involve a constraint modal understood: one first agent does such that for a second one to become impossible to forbear from doing to happen an event (42, 45).

3.2.1.1. Results of the modal interpretation

The conditionals in the previous section end with the expressions: ~◊f(y, e), the impossibility to forbear, and ~◊d(y, e), respectively to do. Our goal is clarifying by calculation what the impossibility to forbear/do means. Then the two modal impossibilities will replace the expressions*~◊d(y, e)* şi *~◊f(y, e)* in the previous section.

3.2.1.1.1. Result of the impossibility to forbear

This means *necessary non-forbearance*. We use the axiom of system T: □p ⊃ p and p/~f(x, e). Obtain non-forbearance. Its equivalents are: *the agent does or he is not able to do happen an event*; *if the agent is able then he does*.

47. ~◊f(x, e)
48. □~f(x, e), ~◊p ≡ □~p, 47
49. □~f(x, e) ⊃ ~f(x, e), □p ⊃ p, p/~f(x, e)
50. ~f(x, e), MP, 48, 49
51. ~f(x, e) ≡ ~(~d(x, e) & able(d(x, e)))[50]
52. ~f(x, e) ≡ d(x, e) v ~able(d(x, e)), (p & q) ≡ ~p v ~q, 51
53. ~f(x, e) ≡ able(d(x, e)) ⊃ d(x, e), p ⊃ q ≡ ~p v q, 52

Suppose as known something about this actional operator. To forbear from do happen e, *f(x, e)* is the contrary[51], not contradictory[52] of *do*. Forbearing is not equivalent with not-doing[53]. Forbearing has several degrees.[54]. Operate with the the weakest of them. This contains the conjunction: *~d(x, e) & able(d(x, e)* [55]. The sign "≡" is interpreted by iff.

[50] von Wright, Georg, Henrik, *Normă şi Acţiune*, Ştiinţifică şi Enciclopedică Pub House, Bucharest 1982, pp. 62-63.
[51] Gheorghiu, Dumitru, *Intuiţionism, paraconsistenţă, contrarietate şi subcontrarietate*, vol. *Existenţă, contradicţie, adevăr*, Trei Pub House, Bucharest, 2005, pp. 129-130.
[52] Gheorghiu, D, *op.cit.*, p.110.
[53]von Wright *idem.*
[54] von Wright, *ibidem.,* p. 63.
[55] von Wright, *ibidem*., p. 62.

Joined the concept of non-forbear, *~f(x, e)*. We applied the same two rules as for the operator *to do* and negation „~", bilaterally. We will replace *the impossibility to forbear* with one the last results.

3.2.1.1.2. Results of the impossibility to do

Similarly, we want to determin by modal calculus what *the impossibility to do* means. On the very same way conclude that: an agent does not the event e to happen. Here, the negation spreads on the conjunction of the three conditions (57).

54. $\sim\Diamond d(x, e)$
55. $\Box\sim d(x, e), \sim\Diamond p \equiv \Box\sim p$, 54
56. $\Box\sim d(x, e) \supset \sim d(x, e), \Box p \supset p$, p/f(x, e)
57. $\sim d(x, e)$, MP, 55, 56
58. $\sim d(x, e) \equiv (\sim s_{in_e} \vee e \vee \sim d(x, e) \& \sim\{e* | e \neq e*, s_{fin_{e*}} \equiv \sim s_{fin_e}\})$

The last step shows that *not doing to happen* means a *disjunction* with three elements: $\sim s_{in_e}$, initial state of e does not happen; *e*, that is *e* happens by itself; *~d(x, e)*, x does not *e* to happen and $\sim\{e* | e \neq e*, s_{fin_{e*}} \equiv \sim s_{fin_e}\}$, that it is false that: happens e∗ such that e∗ is different from e and the final state if e∗ is the same with contradictory of the final state of e. The three elements are separated by ";" that is "v". Let be *e = pTp, preserving the precence* state of facts p.

a) the initial state or the oportuninty of the event, does not happen[56] or

b) preserving the presence happens by itself or

c) e∗ is the disappearance, *pT~p*. Or, however the agent does not preserve p, it neither dissapears.

Let the condition a) be. In initial state, conservations of presence containes the presence of the fact that is conserved. According to condition a), the conservating act is impossibile. It is impossibile that someone to conserve a situation, while this is absent. The impossible is of an actional kind. However it is all that can be aproached of the logical impossibile. The imposibile as an actional sens aproximates the modal one here. The condition a) is in disjunction with b) and c).

3.2.1.1.3. Replacements

Now replace in final states of the event in formula 43-46 both the impossibility of *to do*, and the impossibility to forbear with the equivalents or their results in formulas 49-58:

59. $(Od(y, e) \& f(y, e)) \supset d(x, \Diamond f(y, e)$ T able$(d(x, e)) \supset d(x, e))$, 43, 53

[56] von Wright, G.H., *ibidem.,* p. 54.

60. $(Of(y, e) \& d(y, e)) \supset d(x, \Diamond d(y, e)\ T\ \sim s_{in_e}\ v\ e\ v\ \sim d(x, e) \& \{\sim e_* | e_* \neq e, s_{fin_{e*}} \equiv \sim s_{fin_e}\})$, 44, 58
61. $(Fd(y, e) \& d(y, e)) \supset d(x, \Diamond d(y, e)\ T\ \sim s_{in_e}\ v\ e\ v\ \sim d(x, e) \& \{\sim e_* | e_* \neq e, s_{fin_{e*}} \equiv \sim s_{fin_e}\})$, 45, 58
62. $(Ff(y, e) \& f(y, e)) \supset d(x, \Diamond f(y, e)\ T\ able(d(x, e)) \supset d(x, e))$, 46, 53

3.2.2. Actional interpretation

According to the second interpretation, „impossible" is the negation of the actional operator "able to do": *~able(d(x, e))*. *Ability* is the same with the idea of being *able to do*[57]. As well, it is possible to talk about being *able to forbear*. "impossible" is therefor equivalent to *not being able*. We introduce events describing disappearance of ability.

63. $(Od(y, e) \& f(y, e)) \supset d(x, able(f(x, e))\ T \sim able(f(x, e)))$,
64. $(Of(y, e) \& d(y, e)) \supset d(x, able(d(x, e))\ T \sim able(d(x, e)))$
65. $(Fd(y, e) \& d(y, e)) \supset d(x, able(d(x, e))\ T \sim able(d(x, e)))$
66. $(Ff(y, e) \& f(y, e)) \supset d(x, able(f(x, e))\ T \sim able(f(x, e)))$

In other words, if the provision of a law is violated then the constraint causes *ability* disappearance. Disappears the ability to forbear (63, 66) or to do (64, 65). What may mean that someone is constraint, that is desabled to do/forbear?

3.2.2.1. Desabling to do/to forbear

Appearently, the previous idea means that the agent totaly loses its ability.

In fact, *to be able* means[58] the possibility to do *general acts*. For example, for Brutus, *to kill is a general act.* That is an unlimited repetitions of the individual act. But *not to be able* refers to an *individual act*. *Brutus kills Iulius Cezar* is an *individual act*[59].

Within the propozitional logic is difficult to operate the shown distinction. That is why use predicate logic. Consider as known its symbolism[60]. Introduce: monadic atomic statement, here *V(b)*, meaning *Iulius Cezar is alive*; the eveniment e_2, disappearance. This contains *V(b)* in the initial state. Note this event: *V(b) T ~V(b)*. In previous articles[61] we proposed abbreviated notations such

[57] von Wright, G.H., *ibidem.,* pp. 66-67.
[58] von Wright, G.H., *ibidem.,* p. 53.
[59] *idem.*
[60] Bieltz, Petre şi Gheorghiu, Dumitru, *op.cit.,* pp. 487-488.
[61] Iliescu, Gabriel, *Evenimențializarea atomilor deontici, în contextul aderării României la Uniunea Europeană*, in *Legal Administrative Studies, Proceedings of Conference Legal, Political, and Administrative Consequences of Romania's Accession to the European Union, Bucureşti 11th-12th May, 2017*, Pro Universitaria Pub. House, Bucharest, 2017, p. 182.

as: $e_{2[V(b)]}$. Thus, we have an *individual event*. This is included in the expression of an *act*. Brutus (*a*) is the author of the individual act: *d(a, V(b) T ~V(b))* sau *d(a, $e_{2[V(b)]}$)*. In the below table, the events and the individual acts are on the left, the generical ones are on the right.

Tabel no 1: atomic statement, events, acts

Instantiated predicate atom, event and individual act	*Uninstantiated predicate atom, event and generic act*
b is alive first and then *b* is not alive. V(b) T ~V(b) *a* does such that: *b* is alive first and then is not live. d(a, V(b) T ~V(b))	y is alive first and then y is not alive. V(y) T ~V(y) *a* does such that: *y* is alive first and then y is not live. d(a, V(y) T ~V(y))

The individual act contains an event. Its state of things are described by *instantiated atoms*. *General act* contains an event who's states are among atoms containing *variables*. And y may be unlimited succesively instantiated. That means an unlimited number of individual acts.

Above, *t* is the only term in the arity[62] of the predicate P. So we form the atom *P(t)* that means: *the object designated by the term t has property P.* We have an event *e* containing the atom *P(t):* $e_{[P(t)]}$. Thus, we have an act by which actional agent t_0 does $e_{[P(t)]}$ to happen: $d(t_0, e_{[P(t)]})$.

$t_1, \ldots, t_n$ are terms in the arity[63] of R. So we form the *n*-place atom: $R(t_1, \ldots, t_n)$. This means: *ordered n-tuple of objects, designated by the ordered n-tuple of terms* have the *relation R*. We build the event *e* containing $R(t_1, \ldots, t_n)$: $e_{[R(t1, \ldots, tn)]}$. And the act is: t_0 does such that $e_{[R(t1, \ldots, tn)]}$ happens: $d(t_0, e_{[R(t1, \ldots, tn)]})$.

Table no2: predicative atoms, events, acts, abilities

monadic atom:	$P(t)$	*n-places atom :*	$R(t_1, \ldots, t_n)$
Event:	$e_{[P(t)]}$	*Event:*	$e_{[R(t1, \ldots, tn)]}$
Act:	$d(t_0, e_{[P(t)]})$	*Act:*	$d(t_0, e_{[R(t_1, \ldots, t_n)]})$
non-able for individual act:	$\sim able(d(t_0, e_{[P(c)]}))$	*non-able ptr individual act:*	$\sim able(d(t_0, e_{[R(c_1, \ldots, c_n)]}))$
able for generical act:	$able(d(t_0, e_{[P(t)]}))$	*able for generical act:*	$able(d(t_0, e_{[R(t_1, \ldots, t_n)]}))$

Ability/non-ability is analyzed, in the first place conected with the couple of concepts: generical act - individual act[64]. Here we use as analyze tool „all

[62] Popa Cornel, *ibidem.,* pp. 79-80.
[63] *idem*.
[64] von Wright, G.H., *ibidem.,* p. 73.

except"[65] kind of sentece. Which introduces an exception-tolerant kind of generalization[66]. To say that *y is non-able for an individual act but not for the generical one* could mean that *y is not able to do happen an event that contains a predicate with some individual constant c*. But for any other constant, different from *c*, of the same predicate, y is able to do happen that event e. By generalization, we have a quantifier for unique object[67]. By the same model, we can extend the non-ability to two, but then to *n* individual acts: y is non-able to do happen the event for *n* of the instantiations of the variable z.

67. $\sim able(d(y, e_{[P(\mathbf{c})]})) \& \forall z(z \neq c \supset able(d(y, e_{[P(\mathbf{z})]}))$
68. $\sim able(f(y, e_{[P(\mathbf{c})]})) \& \forall z(z \neq c \supset able(f(y, e_{[P(\mathbf{z})]}))$
69. $\sim able(d(y, e_{[P(c_1)]})) \&...\& \sim able(d(y, e_{[P(c_n)]})) \&$
$\forall z((z \neq c_1 \&...\& z \neq c_n) \supset able(d(y, e_{[P(\mathbf{z})]}))$

We understand that those *n* individual acts that y is non-able to do should be less than the others he is able to do. That is a plurativ logic[68]. Between 1 and *n* instantiation for individual acts we have different degrees of ability. The four formulas in the previous section have acts in their consequents. These in turn, contain the negation of the ability to forbear/to do in final state. Replace the absence of the ability and add that this refers to individual acts.

70. $(Od(y, e_{[P(\mathbf{z})]}) \& f(y, e_{[P(\mathbf{c})]})) \supset d(x, able(f(x, e_{[P(\mathbf{z})]})) T \sim able(f(y, e_{[P(\mathbf{c})]}))$ $\& \forall z(z \neq c \supset able(f(y, e_{[P(\mathbf{z})]})))$,
71. $(Of(y, e_{[P(\mathbf{z})]}) \& d(y, e_{[P(\mathbf{c})]})) \supset d(x, able(d(x, e_{[P(\mathbf{z})]})) T \sim able(d(y, e_{[P(\mathbf{c})]})) \& \forall z(z \neq c \supset able(d(y, e_{[P(\mathbf{z})]})))$
72. $(Fd(y, e_{[P(\mathbf{z})]}) \& d(y, e_{[P(\mathbf{c})]})) \supset d(x, able(d(x, e_{[P(\mathbf{z})]})) T \sim able(d(y, e_{[P(\mathbf{c})]})) \& \forall z(z \neq c \supset able(d(y, e_{[P(\mathbf{z})]})))$
73. $(Ff(y, e_{[P(\mathbf{z})]}) \& f(y, e_{[P(\mathbf{c})]})) \supset d(x, able(f(x, e_{[P(\mathbf{z})]})) T \sim able(f(y, e_{[P(\mathbf{c})]}))$ $\& \forall z(z \neq c \supset able(f(y, e_{[P(\mathbf{z})]})))$

[65] Hurley, Patrick, *A concise introduction to logic*, Thomson and Wadsworth Pub House, 2006, pp. 232-233, 483.
[66] Rescher Nicholas, *Plurality Quantification revisited*, in *Philosophical Inquiry*, vol XXVI, No 1-2, Winter – Spring, 2004, p. 2.
[67] Enescu. Gheorghe, *Câteva probleme ale Logicii Moderne*, vol *Paradoxuri, Sofisme, Aporii*, Tehnică Pub.House, Bucharest, 2003, pp. 404-405.
[68] Gheorghiu, Dumitru, *Logică generală*, vol. I, Fundația România de Mâine, Bucharest Pub House, 2001, pp. 174-176.

Both obligations and forbiddances are applied to generical acts/forbearances. The same to the abilities. That is why atomic expressions in initial states of the events contain variables. While the infringements are individual acts and forbearances. That is why they contain individual constants. The same the absence of the abilities in final states of the events.

4. Conclusions and openings

The aim was to show that obligations and forbidances are closely related with the idea of constraint. First, it was shown that both obligation and forbiddance involve the sanction. This was splitted in *forcing* and şi *preventing*. The last two were reunited in *constraint*.

Thus we have an answer to the initial question. Distinguish two interpretations of the constraint: a modal and an actional one. Finally develop the second one. I connected the two deontic operators with the two interpretations of the constraint. For this I used tranzitivity. For the second interpretation, the results, synthetically expressed, are as follows.

If the obligation to do or the forbiddance to forbear are violated by an individual forbearance, then is the act that causes the dissapearance of the ability fot individual; forbearance. This is accompanied by preserving the ability for *other individual forbearances*.

If the obligation to forbear or the forbiddance to do are violated by an individual act then is the act that causes the disappearance of the ability for an individual act. This is accompanied by preserving of the ability for *other individual acts*.

Opening toward degree interpretation. In a next step intend to return to non-ability related to an *individual act*[69]. The aim is to propose an interpretation we name *gradual*. According to this, *y is not able* means: *the degree of abilty of y is equal to 0*. More specifically:

$$\sim able(d(y, e_{[P(\mathbf{c})]})) \equiv deg\_able(d(y, e_{[P(\mathbf{c})]})) = 0$$
$$\sim able(f(y, e_{[P(\mathbf{c})]})) \equiv deg\_able(f(y, e_{[P(\mathbf{c})]})) = 0$$

And 0 is a particular case, of minimal value for the *degree of ability*. Provizionally, by level of ability we understand the number of instances of the predicate that is part of an event. The present case is only a monadic predicate. Or, there are also other kinds of predicate atoms. What we don't propose to clarify here.

[69] von Wright, G.H., *ibidem.,* p. 53, p. 73.

For now we self-limit to sketch the mode of composing the *gradual event* (low right). What we already pointed out in a previous article[70]. We put in corespondence two types events.

Table no3: Two types of events

able(d(x, e)) T ~able(d(x, e))	deg_able(d(y, e, t_0)) > deg_able(d(y, e, t_1))

Generally, the right side says: x from t_0 is bigger than x from t_1, $x_{t0} > x_{t1}$. And the order relation can expressed as an event like this. First put in corespondence: x_{t0} with s_{in}; x_{t1} with s_{fin}. Then, depends on the event, introduce order relation between: x from s_{in} and some number *n*; x from s_{fin} with the same *n*. Both inital state and the final one are order relations between x and n. The approach can be extended to expressions for gradual acts /forbearances.

Openings to new rescherian symbollism. Clasically rescherian, non-ability for an individual act and the ability for the generical one could be written as follows:

$$\{y|\sim able(d(t_0, e_{[P(y)]}))\} < \{y|able(d(t_0, e_{[P(y)]}))\}$$

Those y for whom t_0 is non-able to do happen $e_{[P(y)]}$ are less than those y for whom t_0 is non-able to do happen $e_{[P(y)]}$[71].

Intuitively said, t_0 is able to do happen $e_{[P(y)]}$ for the most of y. The opening, here is to a new symbolism. Is introduced the plurativ quantifier: most of[72] y have the characteristic F. Simbolic, *My F(y)*[73]. The above expresion can renderd like this:

$$My\ able(d(t_0, e_{[P(y)]}))$$[74]

For most individuals in the domain of y, t_0 is able to do happen the event $e_{[P(y)]}$.

A simple consequence is:

$$\exists y\ able(d(t_0, e_{[P(y)]}))$$[75]

There is y such that t_0 is able to to happen the event $e_{[P(y)]}$.

[70] Iliescu, G., *ibidem.,* p. 191.
[71] Gheorghiu, D., *op.cit.,* pp. 175-176.
[72] Rescher, N. , *ibidem.,* p. 1.
[73] Rescher, N., *ibidem.,* pp. 3-4.
[74] *idem*.
[75] *idem.*

What seems a special of classic existential generalization:

My able(d(t_0, $e_{[P(y)]}$)) ⊃ ∃y able(d(t_0, $e_{[P(y)]}$))[76]

Openings to the theories of punishment. We have two main theories: ultilitarism and deontologism. The first of them highlights the advantages[77], so consequences of punishment[78]. The second one sais that punishment is good in itself[79].

Openings to a possible and simple design of an actional concept. One last opening is to deontic freedom and to the actional one. Denying the expression of deontic constraint, obtain the deontic freedom one[80]. We self-ask if by the same way, can obtain the expression of actional freedom, starting from the one of actional constraint.

Bibliography

1. Bieltz, Petre şi Gheorghiu, Dumitru, (1998), *Logică Juridică*, Pro Transilvania Pub House, Bucharest.
2. Dupre, Ben, (2017), *50 de idei pe care trebuie să le cuonşti, Filosofie*, Litera Pub House, Bucharest.
3. Enescu. Gheorghe, (2003), *Câteva probleme ale Logicii Moderne*, vol *Paradoxuri, Sofisme, Aporii*, Tehnică Pub.House, Bucharest.
4. Føllesdal, Dagfinn şi Hilpinen, Risto, (1979), *Introducere în Logica Deontică*, vol *Norme, Valori, Acțiune*, Politică Pub House, Bucharest.
5. Gabriel, Iliescu, (2017), *Evenimențializarea atomilor deontici, în contextul aderării României la Uniunea Europeană*, in *Legal Administrative Studies, Proceedings of Conference Legal, Political, and Administrative Consequences of Romania's Accession to the European Union, Bucureşti 11th-12th May, 2017*, Pro Universitaria Pub. House, Bucharest.
6. Gheorghiu, Dumitru, (2005), *Intuiționism, paraconsistență, contrarietate şi subcontrarietate*, vol *Existență, contradicție, adevăr*, Trei Pub House, Bucharest.
7. Gheorghiu, Dumitru, (2001), *Logică generală*, vol I, Fundația România de Mâine, Bucharest Pub House.
8. Hurley, Patrick, (2006), *A concise introduction to logic*, Thomson and Wadsworth Pub House.

[76] *idem.*
[77] Dupre, Ben, *50 de idei pe care trebuie să le cuonşti, Filosofie*, Litera Pub House, Bucharest, 2017, p. 192.
[78] Dupre, B., *op.cit*., p. 65.
[79] Dupre, B., *ibidem.,* p. 67, 193.
[80] Popa, Cornel, *Teoria acțiunii şi Logică Formală*, Ştiințifică şi Enciclopedică Pub House, Bucharest, 1984, p. 300, 434.

9. Nilă, Stratone, Mirela, Cristiana, (2013), *Sociologie Juridică, Elemente de bază*, Hamangiu Pub House, Bucharest.
10. Popa, Cornel, (2000), *Logică şi Metalogică,* vol I, Fundația România de Mâine Pub House, Bucharest.
11. Popa, Cornel, (2002), *Logică şi Metalogică,* vol II, Fundația România de Mâine Pub House, Bucharest.
12. Popa, Cornel, (1984), *Teoria acțiunii şi Logică Formală*, Ştiințifică şi Enciclopedică Pub House, Bucharest.
13. Rescher Nicholas, (2004), *Plurality Quantification revisited*, in *Philosophical Inquiry*, vol XXVI, No 1-2, Winter – Spring.
14. von Wright Georg, Henrik, (1979), *Logica Deontică şi Teoria Generală a Acțiunii*, vol *Norme, Valori, Acțiune*, Politică Pub House, Bucharest.
15. von Wright Georg, Henrik, (1982), *Normă şi Acțiune*, Ştiințifică şi Enciclopedică Pub House, Bucharest.
16. von Wright, Georg, Henrik, (1979), *Logica Deontică şi Teoria Generală a Acțiunii*, vol *Norme, Valori, Acțiune*, Politică Pub House, Bucharest.

The Role of E-government in the Public Sector Accounting

Luminița IONESCU[1]

Abstract

Over the last decades, transparency and accountability have become important in the public administration, and all the European governments have implemented portals as http://gov.ro/en or https://www.mae.ro/en that allow the public to be informed about the new procedures and policies in local or European services.

The role of e-government in public sector accounting has become crucial in terms of speeding up the database transfer process and financial reporting in public sector agencies, but also in point of simplifying the citizens' everyday activities and tasks.

Keywords: *E-government, accounting, public administration*

JEL Classification: M48, H0, H83

1. Introduction

It is public knowledge that E-Government is one of the major targets of the European Union. E-government is the use of electronic communication devices, such as computers and the Internet to provide public services to citizens and other persons in a country or region. Also, e-government provides a better connection between governments and other government agencies, between government and citizens, between government and employees, and between government and investors[2].

The importance of e-government can be demonstrated by the speed of communication between the public administration and the citizens. Using the e-government portals, the public accounting system could transfer meaningful information to the government agencies and ministries. Digital public services reduce administrative burden on businesses and citizens by making their interactions with public administrations faster and efficient, more convenient and transparent, and less costly[3].

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[2] https://en.wikipedia.org/wiki/ - E-government

[3] https://ec.europa.eu/digital-single-market/en/european-egovernment-action-plan-2016-2020

The role of e-government can be observed in the table below:

The Role of E-government
1. Presenting information in an attractive way
2. Informing the citizen
3. Representing the citizen
4. Encouraging the citizen to vote
5. Consulting the citizen
6. Involving the citizen
7. Implementing modern strategies

Table no. 1. The Role of E-government in Public Administration
Source: www. ec.europa.eu/digital-single-market/en/european-egovernment-action-plan-2016-2020

2. E-GOVERNMENT POLICY PRIORITIES

In order to modernize the public administration, the EU adopted in 2016 the *EU E-government action plan 2016-2020* to be implemented in all EU member states. The action plan is developed on political instruments to advance the modernisation of public administrations across the European Union.

According to United Nations E-Government Survey (2010), governments are deploying new information and communications technology in response to the global financial crisis. Thus, the current most critical issue is how to rebuild trust in a system of financial weaknesses and governmental responses that has proved so highly untrustworthy to date. E-government has a great deal to offer in the reform of the financial regulatory system. Implementing e-government policy should promote the transparency, integrity and efficiency of the financial sector and sectors that are linked to it[4].

In view of these policy priorities, this Action Plan sets out concrete actions to accelerate the implementation of existing legislation and the related take up of online public services. Sustained efforts from all national administrations are needed to accelerate the take up of electronic identification and trust services for electronic transactions in the internal market.

The priorities of the EU in implementing *the e-Government Action Plan 2016-2020* are as follows:

1. Modernise public administration with ICT, using key digital enablers;
2. Enabling cross-border mobility with interoperable digital public services;
3. Facilitating digital interaction between administrations and citizens/businesses for high-quality public services.

The increasing number of connecting participants who had not been previously connected to the e-government portals, and the complexity of

[4] United Nations E-Government Survey (2010) – Chapter 2. 2.1. E-government risks and benefits, p. 26.

transactions in the public sector determine the modernization of the web-net Internet applications.

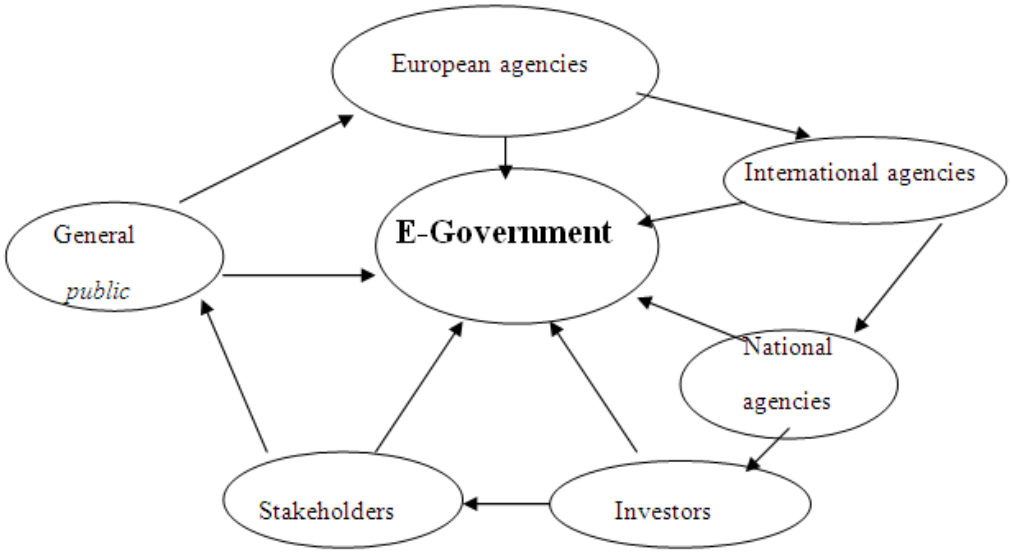

Figure no. 1. The users of financial information in public administration
Source: Author's own work

Developments in the e-government arena bear a stark and worrying resemblance to those experienced by e-commerce during its boom at the turn of the century. Implementing electronic systems and portals shows that public sector interest in e-government was massively stimulated by e-commerce developments between 1995 and 2001 (Cordella A., 2007). The e-government policies are related to the modernization of the public administration. Thus, the transformation of the public sector envisioned in these e-government projects has been widely coupled to the intellectual and virtually dominant set of managerial and governance ideas of NPM ideology (Homburg, V., 2004).

3. E-government and public sector accounting

The modernization of public sector accounting was facilitated by the e-Government portals and applications. In the process for more transparency, regarded as essential to foster accountability, the role of information technologies is crucial (Lourenço L.P. et al, 2013). The increasing need of information from the public authorities encouraged the electronic transfer of accounting and financial information. Thus, there is a need for models specifically targeted towards assessing online information disclosure with the potential of the Internet to provide timely, accurate and easy-to-use information to citizens and public officials (Lourenço L.P. et al, 2013, p. 281).

The ultimate goal of e-government is to be able to offer the citizens an increased portfolio of public services in an efficient and cost-effective manner, but also to provide open and accurate financial information disclosed relatively easy to be accessed and analysed by 'ordinary' citizens.

According to the *EU E-government action plan 2016-2020,* "the digital transformation of government is a key element to the success of the Single Market; helping to remove existing digital barriers, reduce administrative burdens and improve the quality of interactions with government".

In order to follow the provisions of the *EU E-government action plan 2016-2020,* Romanian fiscal administration has undergone modernisation and opened useful portals for citizens, such as https://www.anaf.ro/anaf/internet/ANAF-EN. This portal is useful for international citizens all over the world, helping them to read, send and receive financial information. The taxpayer assistance portal has been created and contains important information about individuals and companies, as well. The main sections cover: useful programs, fiscal forms and guide for filling out the forms, taxpayer's charter, tax calendar, questions and answers database – ANAF.

By means of the new electronic portals, a new section for tax returns or fiscal forms ordered by number is created in order to help the international citizens to fill out the income statements and to pay the taxes. The fiscal forms can be easily downloaded from the site and filled out by hand or electronically. The ANAF portal demonstrates substantial progress in the development of ICT in the fiscal administration sector and of e-government in Romania. Thus, the most important statements for the international citizens are presented in the table below:

Taxpayer registration/amendments/deregistration form for nonresident taxpayers with no permanent establishment in Romania (OPANAF 3698/2015).
Taxpayer registration/amendments form for natural persons without a personal identification number (OPANAF 3698/2015, as amended by OPANAF 371/2016).
Return on taxes due to the state budget (OPANAF 587/2016, as amended and added)
Corporate income tax return (OPANAF 1950/2012, as amended and added)
Personal income tax return (OPANAF 52/2012, as amended and added)

Table no. 2. The Fiscal Forms in Fiscal Administration
Source: https://www.anaf.ro/anaf/internet_en

Citizens may tend to find e-transactions and portals more reliable than traditional transactions. The best way towards positive results in Internet business is the setting up of trusted transaction procedures, for trust tends to have a key function in online transactions (Ionescu, L., 2015).

4. Conclusions

The role of E-Government is to facilitate the transfer of financial information all over the world, to reduce bureaucracy and to help the citizens to better understand the accounting regulations and financial reporting systems. The diffusion of electronic business (e-business) and electronic commerce (e-commerce) technologies in the private sector has made governments worldwide profoundly interested in the information and communication process.

EU is encouraging its member states to acquire digital solutions in order to reduce the administrative burden and to facilitate exchange in the internal market. E-Government in public sector accounting makes digital public services 'needs-based' and user-friendly or reuses data and services between public administrations, because EU market cannot function effectively without cross-border digital public services.

Bibliography

1. Cordella, A., (2007), *E-government: towards the e-bureaucratic form?,* Journal of Information Technology 22, p. 265–274.
2. Homburg, V., (2004), *E-Government and NPM: A perfect marriage?,* In M. Janssen, H.G. Sol and R.W. Wagenaar (eds). The 6th International Conference on Electronic Commerce, Delft, The Netherland: ACM Press.
3. Ionescu, L., (2015), *The Role of E-Government in Curbing the Corruption in Public Administration,* Journal Economics, Managements and Financial Markets, Addleton Academic Publishers, New York, 10(1), pp. 48–53.
4. Lourenço L.P. et al, (2013), *Online Transparency for Accountability: One Assessing Model and two Applications,* Electronic Journal of e-Government Volume 11 Issue 2, p. 280-292.
5. https://ec.europa.eu/digital-single-market/en/european-egovernment-action-plan-2016-2020
6. http://data.europa.e/europeandataportal
7. www.anaf.ro/anaf/internet_en

European Union Policies in the Field of Justice and Home Affairs for Freedom Area, Security and Justice

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Abstract

The European Union's policies justice and home affairs (JHA) in the context of the" area of freedom, security and justice" (AFSJ), represents one of the most important direction in the process of the European integration of the states structures.

Occurrence of new challenges in the field of asylum, immigration and transnational organized crime, as a result of the permeability of the borders in Europe, and of disintegration of internal security systems in some eastern states had led the EC Member States to create a basis for cooperation for JHA under Treaty of Maastricht, signed in 1991 and entered into force in 1993.

Freedom and Security imply existence of a common judicial area where European citizens can address justice in one Member States as in their own country. At the same time the risk the offenders to speculate the differences between legal systems of the states should be eliminated. Therefore it is imperative that the judgment be recognized and enforced abroad without the formalities provided by the classical conventions regarding international judicial assistance.

The Treaty of Lisbon, signed on 13 December 2007 and entered into force on 1 December 2009, grants a greater importance to create an area of freedom, security and justice, guarantees the freedom and principles signed up in the Charter of Fundamental Rights of the European Union and entitle on its provisions legally binding force. This Treaty classifies drug trafficking in the category of "the areas of criminality of particular gravity with a cross-border dimension" that makes necessary adopting of directives to establish minimum rules regarding definition of criminal offense and sanctions in the field of organized crime.

Keywords: *EU policies, Justice and Home Affairs (JHA), Treaty of Maastricht, Treaty of Lisbon, transnational organized crime, drug trafficking*

The EU's Justice and Home Affairs (JHA) policies in the context of "area of freedom, security and justice" (AFSJ) represent one of the most important directions in the process of European integration of the states structures.

At the base of the European construction has been the will of states to cooperate in the context of common interests. In some area, performance can only

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be achieved through a joint effort at European level. Common policies respond to the fundamental principle of solidarity and cohesion. *'' The existence of common policies confers uniqueness to the European Union because it recognize the acceptance of the transferee of part of the sovereignty of the Member States to the European Union institutions.''*[3]

The EU's policies in the field of justice and home affairs imply essential functions and prerogatives of the modern national state, supply of internal security to citizens, the control of external borders and the administration of justice. Conventions on important issues in the field of justice and home affairs within the European Council have been negotiated and signed (European Extradition Convention, concluded on 13 December 1957, and its Additional Protocols, signed in Strasbourg on 15 October 1975 and on 17 March1978, The European Convention on Mutual Assistance in Criminal Matters, adopted in Strasbourg on 20 April 1959 supplemented by the Additional Protocol dated 17 March 1978 and the second Additional Protocol dated 8 November 2001, etc).[4]

These legal instruments have been the starting point for the cooperation policy the EC Member States have developed later on in the context of the European Union, and now a number of EC's normative acts are considered as part of the EU's acquis communautaire.

Cooperation in the field of justice and home affairs between the Member States of the European Union was generated by the need to implement legal framework to establish common rules on immigration, asylum right, police cooperation and of the judiciary system. If at the beginning free movement concerned only the free movement of persons, especially immigrants looking for a job abroad, this cooperation extended at the level of the Member States to other important areas: combating cross-border organized crime networks, drug trafficking, illegal immigration and terrorism.

Because some Member States have expressed their restrain towards the freedom of movement of all persons, appeared the idea of progressively strengthening of external borders control and establishing common policies in the field of asylum and immigration, mechanism to accompany the gradual liberalizing movement of persons.

In this respect, five Member States (France, Germany and Benelux countries) in 1985 decided to sign the Schengen Agreement, which agreed to abolish internal border control and strengthen the control of external border, as well as harmonize visa regulations, asylum right, judicial and police cooperation. So far, 30 countries have joined the *Schengen Agreement*, of which 27

[3] Profiroiu Marius, Popescu Irina, *European Policies,* Economic Publishing House, Bucharest, 2003, p. 80.
[4] http://old.just.ro/Portals/0/CooperareJudiciara/JustInfo/ghid_Ro2.doc.

implemented it. The Agreement and Convention concluded between the signature states, together with the declarations and decisions adopted by the Shengen Executive Committee, form the so called *Shengen acquis.* During the drafting of the Treaty of Amsterdam the decision to incorporate this acquis into the European Union was taken, since it concerns one of the main objectives of the domestic market, namely the free movement of the persons.[5]

In this context it was necessary to establish a Shengen Information System (SIS) in order to compensate the loose of traditional controls on the movement of persons across domestic borders.

A factor for developing the States' cooperation within the European Union was the *internal market program.* By removing free movement barriers of the goods, capitals and services, the internal market program compelled all Member States, not only those participating in Shengen, to strengthen cooperation in certain areas of JHA, preventing in this way the new flow of goods and capital, across domestic borders to create new threatens to domestic security. Intergovernmental cooperation groups have been set up, that prepared the decision to create a European Police Office -*Europol.* Europol based in The Hague *(The Netherlands)* supports national law enforcement authorities in combating serious forms of international crime and terrorism.[6] The Agency does not have executive competence, and its personnel do not have the right to arrest or act without prior approval of the competent authorities of the Member States.

Member States are engaged in a wide range of forms of intergovernmental cooperation in the field of justice and home affairs. The emergence of new challenges in the field of asylum, immigration, and transnational organized crime, following new border permeability in Europe and the disintegration of internal security system in some eastern countries, has determine European Commission Member States to create a base for cooperation in the field of JHA through the Treaty of Maastricht, signed in 1991 and entered into force in 1993.

By establishing the European Union, the Maastricht Treaty governs asylum, immigration, judicial cooperation in criminal and civilian matters, as well as in combating serious forms of transnational crimes. This granted to the European Union institutions for the first time a series of classified competence in three major groups.

The “first pillar” consisted of the European Communities, in which the powers that have been subject of a transfer of sovereignty to the Member States in the area covered by the Treaty were exercised by the community institutions.

The “second pillar” consisted of the Common Foreign and Security Policy (CFSP) that has been later nuanced and reinforced by the Treaties of Amsterdam

[5] http//*www euroavocatura dictionary/529/Schengen.*
[6] htpp//www.europol/europa /eu.

and Nice, and a Common Security and Defense Policy (CSDP). The pronounced intergovernmental nature of the CFSP makes this policy a result of the national policies of the Member States, ensuring solidarity and unity of position and action in the main folders on the international agenda.

The "third" pillar comprises nine areas of common interest:

- asylum policy;
- crossing external borders;
- Immigration;
- combating trafficking and drugs use;
- combating international fraud;
- Judicial cooperation in the field of civil law;
- Judicial cooperation in the field of crime;
- custom cooperation;
- cooperation in the field of police.[7]

Three new instruments have been created to substantiate cooperation in the field of justice and home affairs: *common positions, joint actions and conventions*.

The task of the Union was to develop joint actions in these areas, according to an intergovernmental type method, in order to achieve the objective of providing citizens a high level of protection in an area of freedom, security and justice.

The joint action covers the following areas:

- Rules of crossing the Community's external borders and strengthening of the controls.
- fight against terrorism, major crimes, drug trafficking and fraud at international level;
- judicial cooperation in criminal and civil matters;
- establishing the European Police Office (Europol),with a system of exchange of information between the national polices;
- combating illegal immigration;
- A common asylum policy.

Institutional cooperation in the field of justice and home affairs (the third pillar) has been made difficult by certain obstacles:

- The limits imposed on the Court of Justice for legal control, only where the law expressly provides for this right;
- The Treaty lack of precise objectives or appropriate legal instruments;
- the right of initiative of the Commission is restricted to only six of nine areas of common interest;
- Demanded unanimity of Member States for all decisions, which often paralyze the resolute capacity.

[7] ier.gov.ro/wp-publication/Justice and affairs.pdf.

Although some progress have been made under the Maastricht "third pillar", such as the definitive establishment of Europol and some measures against organized crime, it is necessary its strengthen in order to allow effective action by the European Union.[8]

The Treaty of Amsterdam, entered into force on 1 May 1999, amended the Treat of Maastricht, without replacing it. Its original aim was to ensure the European Union's capacity for action after enlargement to the east.

The main purpose of the Treaty of Amsterdam was to endorse free movement of the European Union and Non-European Union citizens and in the same time to guarantee public security by combating all forms of organized crimes (human beings trafficking, arms and drugs trafficking, exploitation of children, fraud and corruption etc.)

The Treaty of Amsterdam removed from the European treaties all provisions that were obsolete or outdated in time, avoiding at the same time that the legal effects that arose from them would be affected by the abolition.

Freedom implies the existence of a common judicial area where European citizens can address justice in one Member States as in their own country. At the same time it is necessary to eliminate the possibility that offenders exploit the differences between the legal system of the states, so it is necessary that judgments be recognized and enforced abroad without the formalities provided by the classical conventions on international judicial assistance.[9]

The Treaty of Amsterdam representated a major development for JAH cooperation within the European Union, marked by the adoption of over 100 texts annually by the Council, of which significant numbers have legally binding nature.

The Treaty of Nice, signed on 16 February 2001 at the Nice European Council entered into force on 1 February 2003, revised some provisions on judicial cooperation and home affairs. For example decided that decisions are taken by meeting a qualified majority (renouncing *unanimity*) thereby abolishing the veto right of any member. Also at that time The Charter of Fundamental Rights of European Union was adopted.[10]

In 1999 the European Council has defined at *Tampere*, the principle of mutual recognition in the field of criminal justice cooperation, significant progress being made on this basis.The Council adopted a Framework Decision on money laundry, identification, tracing, freezing, seizure and confiscation of the instrumentalities and the proceeds of crime.[11] (Framework Decision 2001/500/JAH), that provides

[8] Mihai Mariana-Didina, *EU policies in the field of justice and home affairs*, NATIONAL DEFENSE UNIVERSITY "CAROL I" COLOCVIU STRATEGIC Nr. 14, 2009.
[9] htpp://old.just.ro /portals 0/judicial cooperation /guide ro.2.doc.
[10] ier.gov.ro/wp-content/uploads/publication/ Justice and affairs.pdf.
[11] Framework Decision dated 26 June 2001 on money laundry, identification, tracing, freezing, seizure and confiscation of the instrumentalities and the proceeds of crime. 2001/500/JAI, JO L

applying of the confiscation orders issued in other member States, as well as facilitating the execution of request to identify,trace,seizure or confiscation of the property from criminal activities.

The most important element of progress in the field of mutual recognition was achieved by the Framework Decision dated 13 June 2002, regarding *European Arrest Warrant, that entered into force on 1 January 2004*[12] *(Framework Decision 2002/584/JAH).*

This makes it possible to arrest and transfer suspects between Member States without formal extradition procedures, eliminating in particular any political intervention in proceedings. The European Arrest Warrant offers a substantial exemption from the principle of double criminality for a total of 32 offenses, including terrorism, homicide, fraud, trafficking in human beings and racism.

Despite of the difficulties in harmonize substantial criminal law, progress has been made on the very serious forms of cross-border crimes. The Council adopted more than 20 texts providing for minimum harmonize in the definition of certain types of offenses and the level of sanctions such as the protection of the EURO, money laundering, environmental crime, trafficking in human beings, drug trafficking and terrorism.

In the field of criminal justice, European Union has made progress towards increasing institutionalizing of cross-border cooperation. The Council established The European Judicial Network (EJN) in criminal matters to facilitate judicial cooperation through national contact points and regular meetings.

The goal of the European Judicial Network (EJN) is to improve judicial cooperation between the Member States at a legal and practical level in order to combat serious crimes, in particular, organized crimes, corruption, trafficking of drugs and terrorism.

The underlying principle of the European Judicial Network is to identify the relevant persons from each Member States, who play a key role in the field of judicial cooperation in criminal matters, in order to set up a network of experts to ensure the proper execution of request for mutual legal assistance. The European Judicial Network is of particular importance in the context of applying the principle of direct contact between competent judicial authorities.

The Council created *Eurojust* in 2002 to support and strengthen coordination and cooperation between national authorities in the fight against serious cross-border forms of crime affecting the European Union. Eurojust has a number of powers and key roles, which are conferred to it by the Eurojust Decision. For example it responds to request for assistance from the competent

182/1 din 5.7.2001(Framework Decision 2001/500/JAH).

[12] Framework Decision dated 13 June 2002, regarding *European Arrest Warrant, and taken over4 procedures between the Member States.* 2002/584/JAH, JO L 190/1 din 18.7.2002).

national authorities of the Member States. Eurojust may require Member States to carry out investigations or prosecution of certain facts. Eurojust contributes to the settlement of conflicts of jurisdiction where, for particular case, there are several national authorities capable of conducting investigations or prosecutions. Eurojust facilitates the enforcement of international judicial instrument such as the European Arrest Warrant. It also provides funding for the creation of joint investigation teams and their operational needs.[13]

Consisting of one magistrate nominated by each Member States, plus support staff, Eurojust has been given the task of facilitating judicial cooperation between prosecutors and magistrates in the Member States, through cooperation of competent authorities, and facilitating the implementation of international requests for mutual legal assistance and extradition.

An important moment for the institutionalizing and facilitation of cross-border police cooperation was the establishing of the *European Police Office Europol,*based on the convention dated 1995 (Europol Convention,JO C 316/1 dated 27 November 1995). Europol, based in The Hague, became fully operational in 1997 and up to now it has over 400 employees. Its primary role is to support cross-border police cooperation and national investigations into cross-border crimes by compiling, transmitting and computerized data analyses provided by national police force (through Europol national contact points). Member States keep permanent European liaison officers (ELO) at Europol, which play an important role in facilitating the establishment of direct contacts between police force in different States and in providing of relevant information. Europol's mandate extends to a range of serious form of cross-border crimes, including terrorism, organized crime, trafficking in human beings and drugs and EURO counterfeit.[14]

A structure established for the police cooperation is the Police *Chiefs Task Force* (PCTF). It was set up in 2000 to provide in cooperation with Europol, the exchange of experience and useful information in the field of combating organized crime. Unlike Europol, Police Chiefs Task Force has no legal power.

Another structure to be mentioned in the field of police cooperation is the European Police College. Set up by a Council Decision in December 2000, the College has the mission to provide training for senior officers, in various areas, related to the fight against cross-border crime, including terrorism.

All these structures were not set up to create supranational police structures. Their functioning observes the principle of territoriality and national control over law enforcement.

Illicit drug trafficking and drug abuse are major threaten for the health and safety of the people in European Union and in whole Europe. In addition to the

[13] http://eurojust.europa.eu/.
[14] https://www.europol.europa.eu.

implication for society and health of drug abuse, the illicit drug market is a major element of criminal activity across entire European society and even worldwide. [15]

The illicit drug market is constantly evolving. The drug trafficking is one of the biggest cross-border challenges in the field of law enforcement in the European Union.[16] The costs of human and social dependencies of drug addiction are very high. Eurojust has faced with more cases of drug trafficking than any other form of crime.

In December 2012, the Council adopted the European Union Drug Strategy for the period 2013-2020. The Strategy aims to contribute reducing drug demand and offer and reducing risks and harmful effects on society and health caused by this substances, through a strategic approach that supports and complements national policies with mechanism that provide a broad framework for coordinated actions and which form the basis and political framework for external cooperation in this area.

The Strategy is structured on two directions: drug demand and offer reduction and of three intersecting topics: coordination, international cooperation and information, research, monitoring and evaluation.

Member States can not stop drug trafficking without cooperating effectively. If a Member State forbids the new psychoactive substances, traders open outlets in countries where legislation is more permissive. Uncoordinated countermeasures may cause drug dealers to move drug production units to other countries or change traffic routs, but these measures can not annihilate drug trafficking in a sustainable way. [17]

The Treaty of Lisbon, signed on 13 December 2007 and entered into force on 1st December 2009, classifies drug dealer as " *serious crime having cross-border dimensions*" which make it necessary to adopt minimum rules on the definition of the offenses and penalties in the field of organized crimes.

The Treaty of Lisbon has a great influence on the current rules governing freedom, security and justice at community level, facilitates the European Union

[15] https://eur-lex.europa.eu/legal-content/RO/TXT/PDF.

[16] EU Drug Markets Report 2016, Europol and EMCDDA.

[17] Article 83(1) from the Treaty of Functioning of the European Union- The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.C326/80. Official European Union Journal dated 26.10.12 RO.These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime. On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament".

to undertake complex actions, guarantee the freedoms and principles spelled out in the Charter of Fundamental Rights of the European Union and conferees binding legal on its provisions. In this respect the Court of Justice enjoy enhanced powers to ensure the correct implementing of the Charter.

The two main European Union legislative instruments on drug policy, one on drug trafficking and the other[18] one on the emergence of new drugs (the new psychoactive drugs),[19] respectively Framework Decision 2004/757/JAH, which provides an European definition of the drug trafficking offenses and minimum norms of sanction rules is an important first step towards ensuring an European approach, but it has weakness and the Directive (EU) 2017/2103 of the *European Parliament and Council dated 15 November 2017*.

The Commission's assessment of the implementation of the Framework Decision (COM (2009) 669 and SEC (2009) 1661) has shown that this instrument has rarely results in the alignment of national measures in the fight against drug trafficking. It did not contribute enough to facilitate judicial cooperation in cases of drug trafficking.[20]

In most European Member States the trafficking of chemical precursors falls directly within the scope of criminal law in that state. Therefore the judicial system may face some impediments in prosecuting these crimes effectively. The European Commission fears that the lack of an autonomous crime in precursor trafficking constitutes an obstacle to an effective understanding of this type of trafficking, particularly as regards attempting, instigation and complicity.

The provisions on aggravate circumstances (which justify sever criminal sentences) set out in the Framework Decision are insufficient: not all aggravate circumstances are included.

For example on victimizing or use of minors (infants) as set out in Article 3.5. (F) United Nation Convention dated 1988 against Illicit Traffic in Narcotic Drugs and Psychotropic substance adopted by Romania through Law no.118 dated 15 December 1992 for the accession of Romania to the 1971 Convention on Psychotropic substances of 1988 and the Council Resolution of 20 December 1996 on Criminal Offenses for Illicit Trafficking in Narcotic Drugs.[21]

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[18] *Council Framework Decision 2004/757/JAH dated 25 October 2004* -Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, JO L 335, 11.11.2004, pp 8-11.

[19] *Directive (EU) 2017/2103* of the *European Parliament and Council dated 15 November 2017* amended Council Framework Decision *2004/757/JAH* on the inclusion of new psychoactive substances in the definition of "drugs" and repealing Council Decision 2005/387/JAH of the Council.

[20] Report from the Commission on the implementation of Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking [SEC(2009)1661] /* COM/2009/0669 final

[21] Council resolution dated 20 December 1996 on sentencing for serious offenses of illicit drug trafficking, JO C 10, 11.1.1997, p. 3-4.

Council Decision 2005/387/JAH dated 10 May 2005 on the exchange of information, risk assessment and control of the new psychoactive substances establishes a European system for management of new narcotic drugs and psychotropic substances entering the European market. This system implies the exchange of information between Member States on these substances (rapid alert system), assessment of their risk, and if necessary, inclusion in the scope of control measures and criminal sanctions throughout European Union.[22]

Decision 2005/387/JAH has been an useful tool in combating new substances at European Union level because it permits exchange of information between the Member States (rapid alert system).The Decision has three major deficiency in term of subjecting these substances to control measures across Europe:

• It is not able to manage massive increase in the number of new psychoactive substances on the market, while analyzing substances one by one, through a long process;

• it has a reactive character, substances subject to control measures being rapidly replaced by new ones, with similar effect, often by small changes of their chemical composition;

• does not provide options regarding control measures. (COM (2011) 430)[23]

For this reason, the provisions of this Decision have been replaced by European Parliament and Council Directive *2017/2103 dated 15 November 2017* amended Council Framework Decision *2004/757/JAH* on the inclusion of new psychoactive substances in the definition of "drugs" and repealing Council Decision 2005/387/JAH of the Council together with Regulation of the Council *(UE) 2017/2101*, is designed to replace the mechanism established by Decision 2005/387/JAH.

The objective of this Directive, to extend the scope of the Union criminal law provisions applicable to illicit drug trafficking to new psychoactive substances presenting serious risks to public health, can not sufficiently achieved by the Member States. This objective can be better achieved at the Union level; measures can be adopted, in accordance with the principle of subsidiary as set out in Article 5 of the Treaty of European Union (TUE).

[22] Member States should take necessary measures in accordance with United Nation obligations dated 1971 regarding psychotropic substances and on the single UN Convention regarding drugs 1961 -ART 9. These obligations are provided in Article 3- of United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances dated 1988 "Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally". The production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance.)

[23] Commission Report regarding applying of the *Council Decision 2005/387/JAH* dated 10 May 2005 on the exchange of information, risk assessment and control of the new psychoactive substances SEC(2011) 912 FINAL.

Regulation (UE) *2017/2101* of the European Parliament and Council dated 15 November 2017 amending Regulation (CE) no. 1920/2006 as regard the exchange of information, early warning system and risk assessment procedure for the new psychoactive substances[24] are instruments elaborated as the new psychoactive substance can represent threaten to health, especially because of the high number and the diversity of these substances and their speed of appearance. To tackle these threats it is necessary to strengthen surveillance and early warning system as well as asses the health and social risks associated with the new psychoactive substances.

The European Union Drug Strategy is based on fundamental principles of law and promotes the funding values of the Union: respect for human dignity, freedom, democracy, equality, solidarity, the rule of law and human right.The European Union's policies on justice and home affairs (JAH) are also related to United Nation Conventions that constitute the international legal framework for combating illicit drugs use.

Bibliography

1. Profiroiu Marius, Popescu Irina, (2003), *European Policies,* Economic Publishing House, Bucharest.
2. Mihai Mariana-Didina, (2009), EU policies in the field of justice and home affairs, NATIONAL DEFENSE UNIVERSITY "CAROL I" COLOCVIU STRATEGIC Nr. 14.
3. ***Convention on psychotropic substances dated 21.02. 1971.
4. ***The single convention on Narcotic drugs dated 30.03. 1961.
5. ***Convention on Illicit traffic in narcotic drugs of psychotropic substances dated 20.12.1988.
6. ***Council Framework Decision dated 26 June 2001 on money laundering, the identification, tracing, freezing and confiscation of instrumentalities and proceeds of crime no. 2001/500/JHA, JO L 182/1 dated 5.7.2001.
7. ***Council Framework dated 13 June 2002 on the European Arrest Warrant and the surrender procedures between the Member States no.2002/584/JHA, JO L 190/1 dated 18.7.2002.
8. ***Council Framework 2004/757/JHA dated 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, JO L 335, dated 11.11.2004.
9. ***European Parliament Directive (EU) dated 2017/2103 and of the European Council dated 15 November 2017 amending Council Framework Decision 2004/757/JJHA to include new psychotropic substances in the definition of "drug" and repealing Council Decision 2005/387/JHA.
10. ***Report from the Commission on the implementation of Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking [SEC(2009)1661] /* COM/2009/0669 final */.

[24] EU Regulation 2017/2101-21.11.2017-ROEuropean Union Journal Ll305/l.

11. ***Report from the Commission on the evaluation of the implementation of Council Decision 2005/387/JHA on the information exchange, risk assessment and control of new psychotropic substances. (SEC (2011) 912 final.
12. ***EU Drug Markets Report 2016, Europol and EMCDDA.
13. ***Regulation (EU) dated 2017/2101 - 21.11.2017 RO Official Journal of European Union L 305/1.
14. ***Council resolution dated 20 December 1996 on sentencing for serious offenses of illicit drug trafficking, JO C 10, 11.1.1997.
15. ***treaty on the Functioning of the European Union.
16. ier.gov.ro/wp-publicatii ©2005, European Institute in Romania - justice and home affairs.
17. ier.gov.ro/wp-content/uploads/publicatii/Justitie_si_afaceri.pdf.
18. http://old.just.ro/Portals/0/CooperareJudiciara/JustInfo/ghid_Ro2.doc.
19. http://www.euroavocatura.ro/dictionar/529/Schengen.
20. http://eurojust.europa.eu/.
21. https://eur-lex.europa.eu/legal-content/RO/TXT/PDF.
22. https://www.europol.europa.eu/.

International labour force migration and its effects

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Abstract

International labour force migration is a phenomenon that has far-reaching implications in today's society. Several theories have been issued regarding the reasons for migration and its effects on the territory and economy of the affected states.

Migration affects the size and composition of population both in the country of origin, by decreasing the number of the population and in the destination, the latter acquiring a pronounced multiethnic character. Immigration contributes significantly to increasing the number of working population, thus alleviating aging problems in EU member countries.

Keywords: *force migration, the population, International labour*

Labour force migration has become an increasingly important component of contemporary society, a factor of stimulating globalization of markets, a tool for regulating imbalances in regional/local labour markets. Labour migration is an integral part of the population migration process. Migration can be considered a faithful indicator of the health status of the social organism and the result of cumulative phenomena, the most important of which is the continuous poverty of the population.

International labour force migration can be defined as the voluntary movement, in space, of people from one country to another, from one social system to another, with the intention of an economically motivated stay for over a year. The International Organization for Migration.defines international labour migration as the movement of persons from the country of origin to another state, with a view to employment, without any reference to the length of stay.[2]

Labour force migration is a socio-economic phenomenon that has affected almost all the states of the world, as a state of origin, transition or destination, which is characterized by geographical mobility of the population and free movement of people, so an analysis is required of the differences between the geographical mobility of the population and the free movement of workers.[3]

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[2] Harzig, Christiane, Hoerder, Dirk, *What is Migration History*, John Wiley & Sons, 2013, p. 67.

[3] Manning, Patrick, *Migration in World History*, Routledge, 2013, p. 102.

The geographical mobility of the population has been recognised with the adoption of the Universal Declaration of Human Rights. According to the definition given here, we understand that geographical mobility refers strictly to the spatial dimension, the displacement of the individual to take up a new job in another city, region, country or in different countries and continents. The geographical mobility of the workforce is a spatial process of adapting the workforce to the demand of the productive system, realised either in the form of the change of domicile and its proximity to the workplace, or by keeping the domicile and travelling to work, it is also defined as a reaction of adaptation of the labour supply to changes in the territorial location of the request. This component of migration allows to reduce the imbalances between supply and demand in the labour market and influences economic development, being a very powerful tool for ensuring economic growth. Often the mobility of the workforce implies, besides the geographical mobility of the workers, an occupational mobility, so the workers outside the change of domicile will change their occupation or profession.[4]

The right to free movement of workers has been stipulated since the founding of the European Community. The Treaty of Rome of 1957, art.39, establishes the following rights for European workers: the right of residence in the state in which a paid activity is performed, the right of establishment in the state in which a paid activity is performed, the right to seek a place of employment work in another EU Member state of origin, the right to work in another EU Member state of origin, the right to equal treatment in terms of access to a job, working conditions and all other advantages that can facilitate the integration of the worker in the EU's guard state. According to the same article, these rights apply to workers, citizens of a member state of the European Union, who leave their country of origin to work in another member state, as well as those who return to their country of origin, after exercising their right to free movement.[5]

EU migration legislation contains space and time limitations. Space constraints are due to the fact that EU member states grant the right of free movement only to workers from other member states. These regulations involve a dose of discrimination in relation to the population from other regions or states. While the temporal limitations are given to establish a probationary term necessary to verify the immigrant's knowledge and capabilities or to adapt it to the new living conditions, they are also encountered in the case of seasonal employment contracts.

In trying to define the migration of labour force, the notions of emigrant, immigrant, migration flows, country of origin, country of reception are encountered. Emigrant is the person who leaves a certain territory, region or state.

[4] Harzig, Christiane, Hoerder, Dirk, *What is Migration History*, John Wiley & Sons, 2013, p. 90.
[5] Manning, Patrick, *Migration in World History*, Routledge, 2013, p. 110.

Immigrant is the person who arrives at a certain destination. It should be noted that a territory, region or state can be both an area of emigration and an area of immigration. The migration flows are given by the total number of emigrants and immigrants from a certain territory. They have a major impact on the distribution of the population in the EU and around the globe, influencing, through their quantitative structure, but especially qualitative, the demographic, social and economic security of the states.

The country of origin, or the country of emigration, is characterised by the following elements: a lower degree of economic development; the youth and the working population represent a high share of the total population; the absence of the possibilities for national use of the available labour force; the absence of investments in some economic sectors. While the receiving country, or the country of immigration, is characterized by the following elements: higher relative degree of economic development, including wages; higher demand for labour force, compared to national availability; low share of youth and working population in the total population.

International labour force migration is a phenomenon that has far-reaching implications in today's society. Over time, several theories have been issued regarding the reasons for migration and its effects on the territory and economy of the affected states (country of emigration, country of transit, country of immigration).

Over time, numerous attempts have been made to define the concept of migration, to quantify it and to place it in one area or another of the labour market, to link migration more or less with social and economic conditions in those countries. In the following we will briefly present the most important explanatory theories of the phenomenon of international labour migration.

Mercantilism appeared in the 17th century, having as main followers B. Colber and T. Men, encouraged the attraction of foreign workers, especially the skilled ones, emphasising the prohibitions of the emigration of their own citizens.[6]

Marxist theory has tried to explain the phenomenon of migration at a macroeconomic level. The capitalist market stimulated the exploitation of the labour force - the main reasons for the migration being the remuneration and the different working conditions - the disproportionality of the economic development, the close connection between the labour mobility and the level of development of the production factors.[7]

The classical theory, by Solow and Swan, explains the phenomenon of migration at both macroeconomic and microeconomic levels. The first component refers to the problem of regionally allocating the production factors and their

[6] Manning, Patrick, *Migration in World History*, Routledge, 2013, p. 122.
[7] Spencer, Sarah, *The Migration Debate*, Policy Press, 2011, p. 111.

migration, based on the analytical framework offered by the classic unisectorial and bisectorial model. The second component considers the relationship between production factors and technological changes. Overall, the classic models are based on the assumptions of perfect competition, the full use of production factors and their perfect mobility. At a macroeconomic level, the international migration of the labour force appears as a result of different levels of pay, the population leaves from the low-wage states to the high-level states, the movement of capital has the opposite direction. At a microeconomic level, the explanation of the reasons that determine the migration is tried. Proponents of this theory have shown that migration has positive effects on both states, in the case of economic growth or on the migrant donor state, when the economic situation does not worsen.

The disadvantages of this theory are: balancing the labour market through migration is not only based on the level of remuneration, so the individual in making his/her decision to migrate will take into account not the actual current salary but the level of salary that can be obtained throughout his/her entire active life; the decision will be made considering all the salaries of the family members, not just the main salary; migrants are not a homogeneous mass of individuals, their behaviour varying from person to person; the classic model does not recognize other reasons than the pecuniary ones, so we can add, satisfaction related to the climate and why not and the services offered by the state, such as the medical system; the hypothesis of the perfect flexibility of wages and the ability of the labour market to adjust automatically in the situation of imbalance is unrealistic.[8]

The theory of the extensive development of economy, promulgated by A. Lewis, assumes that economic growth is based on unlimited labour force, in order to be profitable and it counts on attracting cheap labour from abroad, thus maintaining the low level of labour wages. One can say that this theory was applied in the post-war period of Western Europe.

Keynesian and neo-Keynesian theory explain the imperfect and uncontrollable nature of labour migration, with unemployment being not considered as one of the main reasons for migration. In response to the classical theory, the neo-Keynesians asserted that regarding the donor states of migrants, the economic situation is getting worse in the case of skilled labour migration. They proposed introducing charges for the intelligence exodus.

The theory of the global system, with supporters such as Porter, Sassen or Valershtern, shows that labour migration is a direct consequence of globalisation. By introducing new technologies in developing countries it also has the effect of making available a part of the labour force, this labour force can give rise to potential migrants who will be oriented towards the developed states in need of cheap labour. This theory demonstrates the close link between globalisation of markets and increasing migration intensity.

[8] Manning, Patrick, *Migration in World History*, Routledge, 2013, p. 134.

The theory of migration networks emphasizes interpersonal relationships, so each immigrant creates, unintentionally, a network between himself and his relatives in the country of origin. This network is used for transferring money to those who remain in the country, helping others who want to migrate, or accommodating in the new country and finding a job.[9]

Depending on the territory in which it takes place we have: community citizens, are those persons born or with citizenship acquired within one EU state and migrating to another EU state; non-EU citizens, including both European citizens whose states are not part of the EU and citizens from other continents.[10]

Depending on the affiliation with the state in which we migrate we have: the state's own citizens who in their turn may be former emigrants who return home or the state's own citizens who were born abroad and who migrate for the first time; foreign nationals who do not have the nationality of the country of destination.

Depending on the will of the migrant: voluntary migration; forced migration, their departure outside the country of origin is caused by wars, violations of rights, genocide, natural cataclysms or ecological catastrophes.

Depending on the observance of the laws of the country of immigration, we have: legal migration, when it is done on the basis of a contract of work, studies or for the reunification of the family; illegal migration, it is the people who enter the receiving states without a legal status, they increase illegal work in the first years of their arrival.

Depending on the duration of migration we have: definitive or permanent, with total or partial change of residence; temporary, not accompanied by the change of the migrant's stable domicile. Temporary migration in turn can be: seasonal, especially in agriculture and tourism; professional, it expresses the ability of the man to simultaneously or alternatively exercise as wide an area of concrete work in conditions of high economic efficiency; pendular, it is especially encountered in cross-border localities.[11]

The most important effects of labour migration on migrant donor and recipient states are those of demographic and economic nature.

Migration affects the size and composition of population both in the country of origin, by decreasing the number of the population and in the destination, the latter acquiring a pronounced multiethnic character. At present, immigration contributes significantly to increasing the number of working population, thus alleviating aging problems in EU member countries. Eurostat estimates that the working age population in the EU, between 15-64, will peak in 2020 before it

[9] Spencer, Sarah, *The Migration Debate*, Policy Press, 2011, p. 167.
[10] OECD, „International Migration and the Economic Crisis: Understanding the Links and Shaping Policy in Responses" in *International Migration Outlook*, 2009, p. 100.
[11] Spencer, Sarah, *The Migration Debate*, Policy Press, 2011, p. 188.

begins to decline. The aging effect will exceed the increase in participation rates in the active life, which will cause a slight but continuous decrease of the total workforce in the EU. A UN statistic shows that in order to keep the ratio of 3 active persons to a pensioner and to fill the vacancies, the European Union will have to import annually between 2016 and 2040 circa 6.1 million people. About 40% of the European population will be made up in 2050 of first generation immigrants and their descendants.

Population movement has important effects on demographic variables such as: number, population structure, density, demographic pressure, etc. These can be quantified by the migration balance. In fact we have two situations: in developed countries, immigration exceeds emigration, thus resulting in a positive migratory balance; in countries with a lower level of economic development, emigration usually exceeds immigration, resulting in a negative migratory balance.

As an outcome of the results of the migratory balance and with great impact on the economic development we can present another demographic indicator, the change of the demographic pressure, with direct effect on the country of emigration: the increase of the demographic pressure for the emigration states, by diminishing the economically active population in favor of the other two categories of non-involved age in economic activities: children and pensioners; the decrease of fertility rate, as a result of the emigration of youth, can lead to gender imbalances by feminizing or masculinizing the population. In the years 2000-2010, the migratory balance provided 56% of the demographic growth of the developed states and about 90% of the demographic growth of the EU states, being naturally the concern of these states regarding the danger on the demographic security of the forecast, in the conditions of the decrease of birth rate, the rate fertility and natural growth of the incumbent population. Immigrants already constitute considerable weights in some states making up 5-12% of the total population and 0-25% of the economically active population.[12]

The effect on the psychic of the immigrant and his family is not to be neglected either, his determination to immigrate will affect his family and interpersonal relations, putting him in the hope of a better future for his family and friends. But let us not forget that the years in which these relationships are deprived bring with them the loss of loved ones or friends, I do not think that these losses can be quantified, leaving a deep wound in the migrant's soul.

The economic effects of migration can be expressed mainly through the effects on the balance of payments and on the consolidated budget. The flows of international migration determine important capital transfers, both from the countries of emigration brought by migrants for the installation or acquisition of

[12] OECD, „International Migration and the Economic Crisis: Understanding the Links and Shaping Policy in Responses" in *International Migration Outlook*, 2009, p. 107.

citizenship, but in particular, through the transfers made by immigrants in the country of origin. The flows of international migration directly influence labour markets in both the countries of origin and the countries of immigration.

Migration can help to reduce unemployment in the states with surplus labour force, and in the recipient countries it can reduce the supply of the labour market.

Immigration can contribute to entrepreneurship, diversity and innovation. Immigration completes jobs in unsolicited sectors by local workers, despite a high unemployment rate, Europeans in the EU do not want to perform unskilled or low-skilled jobs and are therefore poorly paid. Migration ensures the redistribution of labour force in line with current requirements. As a result of immigration, the efficiency of the labour market can also increase, with immigrants having greater mobility in search of a job than the natives, at least in the first years.

Regarding the impact on employment opportunities, there is no evidence that immigration leads to higher unemployment. Impact on wages: Entrepreneurs from immigrant countries earn from the work of immigrants coming from countries with a lower wage level, they will accept wages lower than the remuneration standards in these countries and thus keep employers from increasing the wages of local workers. In the long run, part of the profit from the cheaper labour force will be invested in more efficient technologies.

Bibliography

1. Harzig, Christiane, Hoerder, Dirk, (2013),*What is Migration History*, John Wiley & Sons.
2. Manning, Patrick, (2013), *Migration in World History*, Routledge.
3. Spencer, Sarah, (2011),*The Migration Debate*, Policy Press.
4. OECD, (2009), „International Migration and the Economic Crisis: Understanding the Links and Shaping Policy in Responses" in *International Migration Outlook*.
5. Directive 2018/115/EC on the return of illegally staying third-country nationals.

Rule of law and e-governance. Short comments.

Florin MACIU[1]

Abstract

E-governance has been implementing in Romania and it regards the relationship between state and its citizens, and merchants, and its own employees, but, also, among the state and its own authorities. It appears that future belongs to computer and internet. The benefit to promote this course of action is much bigger than the disadvantage. E-governance is useful only when the principles of rule of law are followed and respected. That's why, to me, it is, basically, very important that the state, represented by authorities and employees, has to demonstrate, always, competence, expertise, responsibility and respect to the rights of the citizens. The rule of law is, yet, undermined by multiple causes: among them, we identified the lack of expertise, carelessness and the personal fear to not be exposed to any risk. These problems are related to individuals, but, also, to deficiencies belonging to the system, which were showed by us, earlier, in other articles.

Keywords: *e-governance, internet, authorities, fundamental rights, rule of law*

The contemporary Romanian state makes timid steps to increase the efficiency of communication with its own citizens, with its employees, with the business world or to ease the dialog and procedures among its own authorities. All is based on modern technology related to communications and information field.

Many of the elected mayors or the appointed ministers, as well as others directors or chiefs etc. are eager to prove the fact that they deserve their positions by taking proper measures to make the information related to the provided services closer to the population, and to solve people's claims in a manner characterized by transparency, agreement and efficiency.

Obviously, this process is not the result of some ideas born in our country. For some decades, we have been accustomed that, for each claim to the state, we must have patience, we have to humiliate ourselves, following absurd and useful rules, being treated like persons with a mental disability, and that we have to waste our forces, running from a place to the next one, as the employees dictated.

Now, the state is obliged to head to modern procedures, more pragmatic and at hand, when we talk about the relationship with citizens, employees, merchants and its own authorities. Many times, we are forced to do that because of international

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treaties. Sometimes, Romanian citizens, who saw how easy you can solve a claim in another country placed above us, when we speak about the level of civilization, demand reasonably, that such a thing can happen easily, even in our country. Also, we have to take into account the criticism provided by foreign citizens who, in a position or another, were disturbed by the Romanian twisted bureaucracy.

From the international point of view, there are institutions that get informed, analyze, and spread, in the entire world, the way Romania succeeds in administrating the mentioned relations. Thus, on one hand, they make hierarchies that, sometimes, are shameful for Romania and scare potential foreign investors, tourists, as well as Romanian citizens who would like to return to their native country. On the other hand, these hierarchies give another push to Romanians, who still live in Romania, to leave their country, to gain a better tomorrow.

Things happen even in our country in order to fight this phenomenon. Therefore, now we can be witnesses of some mutations in our country, which we couldn't dream before. To obtain your passport, it is enough to turn on your computer, to access the adequate site, that needs to type two or three keywords or to ask somebody you know and can rely on, and to read what kind of documents you are to present to authorities. You find out where you have to present yourself and you can establish when (including the hour and minute) this happens. As well, you find out the forms you have to complete. You go to the established place, at the proper time, and, amazingly, you can notice that in ten minutes you can leave. After some days, when you can afford, you have to turn back to take your passport. You look at those people approaching the office, and you see them sad, grumpy, untrusting. When they leave, they involuntary smile, like they remebered a good joke.

Do you want to submit a claim to the mayor? You can rely, again, on your precious computer and internet and you find out what are the documents you have to copy to bring them in, what are the forms you have to fill in, where you have to go and what is the schedule of the office. If you, still, want to know more, you are let to know some phone numbers, and if you dial them, somebody will respond trying to give you explanation. You arrive at the office and receive from an electronic device a ticket with your line number. Digital displays indicate to you who is next in the line and where to go. You can sit in an armchair, waiting. After a little while, you discuss with the clerk sitting at table at the same level. You notice that the state clerk is polite and assure you that your petition will be solved in conformity with the law. And this happens, really. Everything is transparent, efficient, convenient. I am speaking about the mayor I belong to, but I am sure that the example will be, soon, reproduced in many other places.

Not every time in our analysis, we can find only good examples. As I said before, we are at the beginnings. Anyway, in some situations, we escaped from the unknown, from the obligation to stand in the line, with no temporal limits,

from the tiny windows, where you have to hunch your shoulders, from the sour and cold treatment of the state clerks, from wasting all our physical and mental resources in order to follow the law. Even if you want to pay your due taxes to the state, this state not only that it does not help you, but, also, it creates difficulties to reach your noble aim.

Personally, I consider the start in inserting e-governance is a good one. In the near future the implementation will increase exponentially. E-governance cannot be a bad thing, even if some citizens, nowadays, do not have the possibility to profit from its advantages, because of the lack of appropriate electronic means or of the abilities to handle them. Yet, I think of the fact that the majority of these persons have relatives, colleagues, friends who can give them a hand, when they are in need. After a short while, the work with the computer will become more popular than the writing on a paper with a pencil. No. I do not exaggerate, at all.

At the same time, I can't help myself from thinking of rule of law and its requirements. There is a lot of substantial theory on this ground, but, unfortunately, in this field, there are not international treaties to provide us with clear principles. In spite of that, the main principles are unanimously accepted. As we indicated many times before, it seems to me and many others, that we cannot abdicate from the principle of state respect to the rights of the citizens, guaranteed by law. In my humble opinion, if we give up this principle, we are not living, anymore, in a state characterized by the rule of law. **E-governance is useful only when the principles of rule of law are followed, implemented, respected**. Therefore, despite my profound esteem for e-governance, a more important thing to me is the rule of law functioning, with respectful, competent and responsible clerks regarding citizens' rights. It is useless and pointless to have a very well-developed e-governance, if the rights provided by law to the citizens are scorned, and the decisions made by authorities are twisted and unfounded.

This injustice happened many times in Romania, during the last two decades, to thousands of citizens.[2] Without exaggeration, we estimated that hundreds of thousands of persons have been suffering from this treatment. The state, instead of defending the rights of the citizens or their legal or legitimate interests, invite the people to sue the authorities in justice courts. Why such a bizarre behavior? I explained before and I answered, but I can come with more reasons: they promise, by law, things that exceed the power or the desire of the executive, the authorities of the state do not speak the same language, because

[2] See "Rule of law, after 100 years of unified Romania – guarantor of individual rights and liberties!??" Florin Maciu, Legal and administrative studies, Bucuresti, 17-18 mai 2018, PRO UNIVERSITARIA; "Puterile statului într-o înverşunată încăierare juridică – când fiecare are dreptatea lui", Florin Maciu, revista LEX, nr.1 (30)/2017; "Răbdarea şi tutunul, dusul cu preşul şi purtătul cu vorbă", Florin Maciu, revista LEX, nr.1 (31)/2018; "Acordarea ajutoarelor militarilor pensionați. O speță încă neelucidată", Florin Maciu, revista LEX, nr.2 (32)/2018.

they have different interests due to specific orientations, the decisions of juridical courts are unpredictable, because they are under pressure, and many times they are tired or scared to oppose it.

Also, we can discuss about carelessness, neglection or/and lack of expertise and vision from the clerks of the Government. Below we will give some eloquent examples. Again, I urge each one who thinks different from me to criticize me, openly, using evidence and logic. The urge is for the examples I present, not for another ones by which somebody could demonstrate that, in Romania, great things happen. Being grateful that these great things happen, I state that I want more. Yes, more is possible. Everything can be solved easily. Let us see some examples when the clerks, really, scorn and defy the rule of law.

Let us begin. By *Law 288/29 November 2018 for completion and modification of some normative acts* the state guarantees to the active military, under some conditions, the benefit of a monthly sum of money from the state in order to cover a part of the monthly payment, after buying a house by credit. This amount of money will substitute, in fact, the sum which military received to rent a house *before Law 288/2018* entered in force. Basically, the military have to opt between renting a house and purchasing a house. The conditions and the amount of money remain the same. So, the law does not have financial influences, the compensation for rent being destined to pay the credit that somebody made to buy a house. The state does not have anything more to pay, in comparison to the initial situation when we speak about renting. Despite this law, this right cannot be exploited, even after more than half a year. Decision factors invoke the need of some subsidiary regulations, although the law does not mention that. Anyway, the military have been waiting for these supplementary regulations, but the entering in force of them is postponed.

In my opinion, we are the witnesses, again, of another defy of rule of law. First of all, provisions regarding a right, entered into force more than half a year ago, cannot be applied. Thus, the military are impeded to benefit from a right warranted by law. More, the law does not require more money to be applied. Secondly, the law does not mention secondary regulation need. These regulations have already existed and refer to rent compensation.

Who or what, nevertheless, generates this delay meant to defy the rule of law? The are many who have been waiting to obtain this right. A part of people from the first ones, trusting in legality as being a main principle of the rule of law, already, have signed contracts to buy, on credit, a house.

Probably, the persons with decision-make powers have already solved for themselves, long time ago, the problem of decent house to live in. Maybe, some of them own two houses, I dare to say. “Nowadays, young military ask for this right, trying to gain everything with no sweat. It is true that the law permits them, but it is necessary to analyze more and deeper”- the chiefs think. “Why to make a good

and correct thing? The Romanians know that any good thing done, will not remain unpunished. We will wait until the military gain their rights in courts. With a sentence at hand, individuals will receive, after a substantial time, their right. This way, nobody cannot be accountable. Had we been more cautious when we were asked to say our opinion about this project of law? Better later than never"- the same chiefs think.

We are looking for another revolting example of a normative act implementation, which recently happen. Without a real effort of thinking, we discover the original way in which, in the armed forces, last year, the right to the vacation vouchers was applied. We are speaking about some rights established for public employees by law, whose implementation needs some more provisions established by Government decision. We present only the essence, avoiding technical and boring details. First you were not given vouchers, but you have the promise that the money spent you will receive, after a while, if you have receipts. No receipts, no reimbursement. From these receipts had to result that you were accommodated during your vacation, only. Not in week-end, a day off, or another opportunity. You received only the sum written on the receit. A lot of rules invented to put you in the position to not obtain the amount of money established by law. This was what the majority of the employees understood. Specialists in law did not succeeded in finding out what happened in this case and what was at the basement of this original way to apply a law. All they understood was that, deliberately, the real right was not presented properly to the employees.

Rhetorically, we question ourselves, which way is good: to not apply a right at all, like in the case of the compensation given for buying a house, or to apply it at random, discriminating people, changing a right destined to all the people, in a lottery game, like in the case of vacation vouchers. Obviously, what was presented before cannot happen in a rule of law state, but, maybe, in a state that heads to rule of law, stumbling at each step. We know that they can find excuses and explanations for everything, but they are not valid justification according to rule of law. We, also, know that well intentioned chefs still exist, but, once again, taking into account the things presented before, we do not live in a rule of law state, yet.

According to the Latin dictum *finis coronat opus*[3], we end this analysis, with a situation involving the trespass of a fundamental right, the right to petition, stipulated at article 51, in the fundamental law: "***Right of petition***:

(1) Citizens have the right to address the public authorities by petitions formulated only in the name of the signatories.

[3] Literally "the end crowns the work". Traditionally attributed to Ovid. (the true value of an undertaking or a work of art cannot be fully discerned until it is finished); *https://en.wiktionary.org/wiki/finis_coronat_opus*.

(2) Legally established organizations have the right to forward petitions, exclusively on behalf of the collective body they represent.

(3) The exercise of the right of petition shall be exempt from tax.

(4) The public authorities are bound to answer to petitions within the time limits and under the conditions established by law."[4]

With stupefaction, I found out, very late, that I have believed in a kind of utopia. I was convinced that an employee can claim, by a petition, anything, anywhere, anytime. I fought for this, because, to me, it was common sense. Many times, the petitioners had right, sometimes they were just pushing their luck. It was one of their fundamental rights: to have the possibility to ask. Based on the provisions of the law, you, the employee, were responding to the claimers, telling them if they are right or not.

To forbid to people from the registration to receive claims which were not, previously, approved by the chiefs, looks, in my opinion, like a colossal abuse. Too late I learnt that this bad habit it is, still, very popular among armed forces units. This was a shattering hit for me. Have we spent our efforts for nothing for such a long time? And all this time, I did not stop believing that being replaced by younger colleagues, the things would evolve better and better!

In conclusion:

E-governance has been implementing in Romania and it regards the relationship between state and its citizens, and merchants, and its own employees, but, also, among the state and its own institutions authorities. It appears that future belongs to computer and internet, rather than to write with a pencil on a paper. The benefit to promote this course of action is much bigger than the disadvantage.

E-governance is useful only when the principles of rule of law are followed, implemented, respected. Therefore, despite my profound esteem for e-governance, a much more important thing to me is the rule of law functioning, with respectful, competent and responsible clerks regarding citizens' rights. It is useless and pointless to have a very well-developed e-governance, if the rights provided by law to the citizens are scorned, and the decisions made by authorities are twisted and unfounded.

The rule of law is, still, undermined by multiple causes: among them, this time, we underlined the incompetence, carelessness and personal fear to not be exposed to any risk. These problems depend on physical persons, but, also, deficiencies of the system, ones shown earlier.

[4] *https://www.presidency.ro/en/the-constitution-of-romania*.

Culture and Communication in the Digital Age

Viorel MIULESCU[1]

Abstract

The world of the internet is regarded as a reality parallel to the common, everyday world, in fact, as a better copy of it. Even if it is widely agreed that this goal is still somewhere in the distant future, the already existing seed of the new world is fascinating in a way which cannot be ignored. The internet is a reality in which all boundaries are transcended, a dimension without any spatial or temporal frontiers. The new tools of cultural expansion make possible a new facet of our personality which can be extended by adding what we would like to be to what we already are. In fact, our projectivity is a quality which is forged and materialized through this new means of communication. We live in a world of information and instantaneous communication, the internet being the axis of global information, and therefore, the foundation of the phenomenon of globalization.

Keywords: *internet, globalization, social media, communication, culture*

Public Relations and Socializing on the Internet

The first means of socializing the human being has used ever since ancient times is communication. The attempt to define communication can be based upon the etymological explanation of the word which, in the Romanian language, provides a new interpretive perspective, laden with subtle and deep significance. Thus, the word is derived from the Latin term comunico, -are, which, in its turn, is supposed to have originated from the adjective munis, -e, denoting somebody who does their duty, forthcoming, obliging; the word suggests the idea of openness, interest and good will towards the others[2].

Chiriac and Mareş[3] point out the following aspects, founded upon Mihai Dinu's 2001 work entitled *Communication*:

The word first entered Romanian as cuminecare, which is an ecclesiastical, cultural acceptation, meaning to share, to turn something into a common benefit by sharing knowledge, to partake of something, to unite. Later on, Romanian also took over the lay sense of the word derived from the neologism communication,

[1] Lecturer, PhD., Spiru Haret University.

[2] Ruxandra Rascanu, *Psihologie şi comunicare (Psychology and Communication)*, Bucharest University Press, 2001, p. 1.

[3] Monica, Chiriac, Mădălina, Mareş, The International Symposium – *Challenges and Opportunities of the New Information and Communication Technologies for Education*, Bucureşti, 2012, p. 32.

an etymological pair which defines, in addition to many other interpretations, the foundation of the social organization determined by the way of establishing the interhuman relationships.

Communication is the sharing and conveyance of a number of things. Any medium which enables this sharing process is a means of communication, medium here meaning such things as: the air, the way, the phone, the internet, the language.

The central importance of communication as a process of human development has been long acknowledged by both the common, general knowledge and the social sciences. While analyzing the impact of communciation, Chitoşcă[4] observes: A large number of perspectives upon socializing have emerged in the field of research over the past two centuries, to which such sciences as biology, psychology, social psychology, sociology, socio-biology have contributed extensively.

Communication does not end once the information content is taken over. Information can actually influence the opinions, the ideas or the behavior of those who receive it. This process is termed the communication process. On this level, communication resembles the stimulus-reaction process. In order for this process to be part of communication it has to be international in nature. In order for the transfer to become a communication process, the part generating the message must have the intention of triggering a certain reaction on the part of the receiver.

The human communication act is regarded as a process materialized in a set of elements among which there are relations of interdependence, the objective of which consisting in the conveyance of information. If we base our analysis upon the model of the general scheme of the communication processes, as it was conceived by Shannon and Weaver, the proponents of the communication theory, we can notice that the system structure consists of the following elements:[5]

a) The source of communication/The sender;
b) The device and the conveyance channel/The transmitter;
c) The conveyed signal/The message;
d) The receiving device/The receiver.

The preference for the activity of communicating by means of the social soft products (email, Instant Messenger, mIRC, chat rooms) and for the teenage culture information (movies, TV programs, musical groups, music and movie stars, fashion), in addition to other complementary activities (relaxation, music downloading, collecting information on the topic of hobbies and events), confirm

[4] Marius, Ionuţ, Chitoşcă, *Internetul ca agent de socializare al „generaţiei m"(The Internet as a Socializing Agent for the M Generation),* The Publishing House of *Calistrat Hogaş* Theoretical High School, Piatra-Neamţ, 2004, p. 2.

[5] E. Shannon and W. Weaver – *The Mathematical Theory of Communication*, University of Illinos Press, Illinos, 1949, p. 188.

the general hypothesis of online communication development as the central support of contemporary communication.

As concerns the connection between the online communication and online friendship, a difference is to be noted: teenagers have a marked preference for the telephone communication with their close friends (central connections), while the online communication is mainly used in the case of geographically remote friendship relations or less intimate friends (significant connections).

Generally speaking, a social network is a network of people connected by common purposes, such as a network of students, politicians or even thieves, in contrast to the technical networks such as the telephone network or methane gas network. The web/internet socializing networks are termed social networks. Lately, a social network has frequently come to mean the same thing as an informational network of internet users, based upon certain web-sites where the users can create an account in order to interact with other already existing users.

Thus, the members of a social network are informally connected to one another, without incurring any obligations, but usually they actively contribute to collecting and disseminating information all over the world by means of the world wide web. Such an informational network of users could be regarded as the equivalent of an internetic network of users.

In addition to their multiple advantages, such as facilitating the mutual assistance of their members, the creation of new connections, be they acquaintances or friends, the rapid dissemination of news and rumours, these networks also contain hidden dangers, as the source of information is not usually explicitly revealed, nor is the identity of the provider of services made known, nor is their intention to use the information made clear.

In any social system, the act of communication stands out as a means of asserting an individual and a group; although it is possible for a group, if need be, to renounce the exchange of material goods, however, if there were no exchange of information, ideas or emotions among its members, the social connection itself would disappear, there would be no connection at all among the members of the respective group, consequently, the community itself would disappear.[6]

Nowadays, people have a large number of rapid means of communication at their disposal, so that our messages can be conveyed to any place on the Globe in a few seconds, and the modern laptops and tablets do instantaneous calculations and provide information at a speed of thousands of words per minute.

However, although all these mechanisms are widey available to us, we are permanently faced with erroneous interpretations, hostility, the lack of understanding, not to mention the absence of direct interaction between people.

[6] Daniel Şerbănică, *Relaţii publice (Public Relations)*, The Academy of Economic Studies Press, Bucureşti, 2003, p. 120.

Crises and conflicts occur in our lives due to the lack of appropriate communication. Undoubtedly, what the world needs is not more information, but people able to communicate and to explain in a responsible manner the targets and methods used within an organization, among individuals or governments.

Communication and the Adjustment to Change

A large number of people regard the world of the internet as a reality parallel to the common, everyday world, in fact, as a better copy of it. Even if it is widely agreed that this goal is still somewhere in the distant future, the already existing seed of the new world is fascinating in a way which cannot be ignored. The number of the citizens of this world is increasing at a dizzying pace despite the fact that it will be a long time before the cyberspatial illusion manages to compete against the original.

Many voices have raised the alarm upon noticing the pitfalls of the new technology: the augmentation of the social conflicts followed by the ever more intense transformation of the individual into a loner, the temptation offered to the maladjusted to take refuge in a parallel world where everything seems possible.

One can notice that the clear guiding criteria are gradually lost simultaneously with the reversal of the already existing hierarchy of values. Moreover, the decorporealization of the human being, alongside the erasure of the borders between dream and reality, between the possible and the permissible are currently taking place.

The human being undergoes a process of metamorphosis by surfing the web owing to the fact that they interact with a piece of technical equipment – the computer - which generates extensive changes in a human being.

Stephen L. Talbot[7], the author of the book *The Future Does Not Compute*, has been mentioned by Jeremy S. Gluck[8] alongside other sources regarding the techno-spiritualism: There is no answer beyond the human being. The hidden future of the machine will ideally be our own future...The computer has no feature whatsoever that could make it look beneficial from a certain perspective and harmful from another.

The point is that the technical means used in order to communicate is as important as the conveyed content. The underlying cause of this fact is that the means used in communication has an influence upon perceptions and the balance of the senses.

The process of communication unfolds in four successive stages which can be easily identified:

- the source encodes the message;

[7] Stephen L. Talbot, *The Future Does Not Compute*, Sebastopol Publishing House, CA, 1995, p. 76.
[8] Jeremy S. Gluck, n.1958.

- the source sends the message to the receiver;
- the receiver takes over the message;
- the receiver decodes the message.

According to I. Ursu[9], the final result of communication is marked by the question mark. It is the question which both the source and the receiver ask – the source wants to know if they have made themselves understood, while the receiver wants to know if they have understood what they have been told correctly.

Besides the process-related and behavior-related aspects of communication, the role played by interpretation must be taken into account. What is meant by interpretation is what is commonly referred to as the understanding of the message, of what is transmitted.

Ion Ovidiu Pânişoară underlines that: The message presupposes a mosaic of objective items of information, value judgements which regard the information and value judgements and personal emotions outside these items of information.[10]

The act of interpretation is the intermediary step between the transmission of a message and the behavioral reaction triggered by the respective message. It entails the processing and the contextualization of what is to be communicated. For this purpose, the context of the respective act of communication has to be taken into account, as well as the norms and the values involved (whether they are internal and personal, or external and social).

The actual importance of public relations consists in the attempt to construct a stable, reliable image in the minds of the people a certain community is comprised of and to generate capabilities meant to satisfy the demands of the clients and customers, which is not difficult to achieve by means of virtual communication, provided the persons responsible for the accomplishment of this process have a well-defined strategy.

As concerns the opportunity to set up discussion forums and to enable a correct dialog between various groups, enterprises, companies and public persons, virtual communication provides a perfect medium which ensures that this function of the public relations should be fulfilled successfully.

The Computer-Mediated Public Relations

The computer genuinely enables the individualization of the personality of the user. It is not only a means of transmitting information, a means of putting

[9] I. Ursu, E. Năstaşel, *Argumentul sau despre cuvântul bine gândit (The Argument or On the Well-Thought Word)*, The Scientific and Encyclopedic Publishing House, Bucureşti, 1980, p. 25.
[10] I.O. Pânişoară, *Comunicarea eficientă* (*The Effective Communication*), Polirom Publishing House, Iaşi, 2004, p. 48.

into effect the public relations, but also a way of establishing a connection with the surrounding world, an effective channel through which you can assert your opinions and you can get acquainted with the problems of the group you belong to, a way of getting in touch with people who share your thoughts and views, of becoming integrated into certain groups with different orientations.

The explosive development of the internet in the '90s gave rise to an entirely new form of mass communication.[11]

More and more people are renouncing the unmediated means of communication (if they are inside the same institution, but in different departments) and the telephone communication in favor of the use of the internet, which represents a way of mediated communication. This aspect is to be taken into account by the corporate public relations specialists.

Some of the advantages of the internet communication depend upon the chosen pattern of behavior: the fact that you can have a more relaxed attitude (if you are not acquainted with the person you are communicating with at some point and you have a tendency to feel nervous under such circumstances), you have the chance to get some insight into a person's thinking, outlook and spiritual values which is much more important than the impression you may form during a formal encounter.

Furthermore, through the medium of the internet, you can discuss with another person openly, you feel uninhibited, therefore you are able to say things which you would not share in a conversation face to face, therefore, you can find out new and interesting things both about yourself and about the person you are communicating with. Above all else, you can ask some questions you would refrain from asking in the context of a one-on-one encounter or of a meeting. You can reveal your thoughts, you have a chance to learn what other people think about the same topic, and this is done exclusively by communication.

The internet is a world in which all boundaries are transcended – since you can have friends from every corner of the world, you can collect data and gather information from any field, from any place or epoch without any restrictions whatsoever. The internet is a dimension without any spatial or temporal frontiers, a region without any rules which enables you to express yourself freely, and to let you be guided by your own ideas, interests, preferences and feelings.

Surfing the internet, and therefore, the interaction with the computer entails making extensive use of the eye, the human visual organ: the human being needs to rely on what they can see while sitting in front of a computer screen. In fact, this is what really happens – the human being primarily interacts with the interface provided by the computer screen. It can be noticed from the very beginning that the

[11] Dennis L. Wilcox, Glen T.Cameron, Phillip H.Ault, Warren K.Agee, *Relații Publice - Strategii şi Tactici (Public Relations – Strategies and Policies),* Pearson Education, 2003.

internet is taking over the advantage television has, namely that of transmitting information by means of sight. Some fervent supporters of the internet estimate that soon there will be interfaces for every human sense and organ.

The achievements in this domain are genuinely outstanding but in the current context what takes precedence is the interaction on a visual level with the computer by means of its monitor.

Behavior Analysis in a Social Media Network

Technology influences its users and we need to perform a mental and spiritual exercise in order to distance ourselves from a certain device so that we may analyze its influence upon us. This is due to the fact that technology is an integral part of our environment, technology is to the human being what water is to a fish and that is the reason why the technologized present-day human being is expected to reach the shore which can free them from the influence of technology in order to enable them to appraise its effects from a distance.

When a person analyzes what happens to them the moment they seat themselves in front of a computer screen and start typing, they realize they have to begin by sitting down. Nowadays the champions of the internet are dreaming of a time when the human being can immerse themselves into the virtual world by using electronic interfaces such as headphones, gloves and even costumes which enable them to feel the realities of this world to the full; and yet, in order to surf the internet, you need to sit on a chair in front of a computer screen first.

The internet has become so common, it is something so familiar that it often eludes our analysis.

The excessive use of social media can have a negative impact upon a person's mind, developing shallowness and aggressivity.

The children and adolescents who use Facebook or similar sites and are equipped with the necessary devices to be permanently connected, tend to overuse them, thus becoming prone to anxiety, depression and other types of psychological disorders.

The academic performance is often decreased because of the inability to focus during lectures.[12]

Although the internet has become one of the most important information sources, its pathological, unrestrained, addictive use can have a negative impact upon a person's learning abilities, their family relationships and their emotional state in general, generating a type of behavior similar to any other addiction.

The mass media act as guiding forces in relation to the people's conscience and behavior. However, the mass media can simultaneously mislead and degrade, owing to the existence of a marked tendency within certain circles – which control

[12] Ruxandra Rascanu, *IbIdem,* pp. 32-34.

the methods of disseminating the information collectively – to convey the news in a fragmentary, biased way. Thus, there occurs an almost imperceptible phenomenon – the messages are altered by means of the way in which the news is conceived and transmitted.

The Community and the Virtual Identity

The criticism levelled at the virtual space is based upon the presupposition that it creates the premises for a dissolution of personality, a disintegration of the self, an impoverishment of the real person in relation to the limitations imposed by the technical framework which reflect it. In other words, the real identity is eclipsed by the virtual identity.

The person who manifests themselves on a blog or on Facebook, for instance, is not identical with the person behind the respective virtual person, their essence can not be identified in this transposition; there can be a huge gap between the physical and digital identity, between what really is and what seems to be.

Without resorting to definitions, we are going to state that from a psychological point-of-view identity represents a construct, a process of becoming assumed by a certain person. Beyond some pre-established facts (be they social, biographical or temperamental in nature) or some cultural framework, a person is at the same time a projection, a self-molding, an axiological self-propelling towards a purpose unfolding along some specific lines, within a certain context.

Then, why should we exclude a facet of our personality, made possible by the new tools of cultural expansion, which can be extended by adding what we would like to be to what we already are?

In fact, our projectivity is a quality which is forged and materialized through this new means of communication to an even greater extent since it enables us to maintain all of our relationships, both on the professional and personal level.

In relation to the real identity, the virtual identity is a complementary one, aspiring, expansive, understood as a projection – which can be fulfilled or not. It can also be a new identity, imparted by the ability to handle a kind of high-level technology, by the adroitness to make good use of the new valences which have been lying dormant up to this point or have assumed different expressions through various traditional forms (on an artistic, emotional or communicational level).

It is equally true that it can be a fake reality, meant to become either a tool for manipulating the others - some sort of a deceptive interface - or a lever for self-delusion and escapism towards a chimera-like, ethereal, inaccessible area of our existence.

It is a known fact that cyberspace generates the risk of the massification, depersonalization and dissolution of the self. The response to anonymity induced by the current communicational environment may also consist in an enhancement

of the individual profile through the preferential, attitudinal, communicational marking.

Even if the language of technology is conducive to homogenization (by means of the procedures or the protocols which should be observed by every user), each one can make their own voice heard by creating various contents in various pre-formed structures. It is equally true that the forms themselves are able to activate and to bring to the surface certain deposits of the self, to access some regions of our existence we have been oblivious to or forgetful of up to that point, so that the virtual identity can turn into the direction of the real self, it can shape, mold and propel it.

Globalization within Virtual Reality

It is self-evident that the world is heading towards globalization at an ever faster pace, towards a world which is looked upon as a fusion of identities on a planetary scale which is bound to function according to a set of shared norms and standards. The specific elements brought by each participant will contribute to reaching a state of international balance, especially a socio-economic one, on a macrostructural level, depending on their respective resources and the capacity to make use of them displayed by each human community as an equal, self-reliant and independent actor.

Within this framework, the phenomenon of globalization should not be regarded in opposition to the idea of nation or national state, since they form an integral part of this process. If things are put in this perspecive, then globalization no longer emerges as something destructive, as a threat to the particular.

Globalization does not seem to pose any identity threat; it rather emerges as a phenomenon which preserves, asserts and enhances the national identities. The two apparently conflicting forces – globalization, on the one hand, and the preservation of identity on the other hand, can be regarded as complementary.

Therefore, the world community tends to become an identity in itself, thanks to globalization. What lies at the foundation of this identity? In fact, only the future can provide an answer to this question.

We live in a world of information and instantaneous communication. The satellite television, available all over the world, representing the primary source of information, alongside the internet - the axis of global information - exert influences upon the national identity and even operate the replacement of vast national audiences with planetary ones. The ethnic, cultural and religious disputes unfolding on different continents, as well as the ideological controversies are the object of some debates and decisions occurring almost simultaneously.

That is why the future journalist, diplomat, manager and politician needs to be trained in global reading. The creation and maintenance of the positive image

of a nation – consequently, of an identity – is a daunting task in the context of global communication.

According to chaos theory, a butterfly flapping its wings in one corner of the world can trigger a tornado in another corner of the world. The butterfly effect can be extrapolated with regard to the phenomenon of globalization. An event occurring in one corner of the world can have global effects.

This is what appears to be the underlying theory of the process of globalization by means of the internet. But the tangible, perceivable result is a different one, namely, the effects of globalization visible in economy, culture, society and politics. The flapping of the wings of a website has far-reaching effects, touching sensitive areas and generating intellectual debates.

Bibliography:

1. Apostu, Dragoş Cătălin, (2011), *Social Media pentru Învățământul Superior (Social Media for Higher Education)*, Online edition.
2. Chiriac, Monica, Mareş Mădălina, (2012), The International Symposium – *Challenges and Opportunities of the New Information and Communication Technologies for Education*, Bucureşti.
3. Chitoşcă, Marius, Ionuț, (2004), *Internetul ca agent de socializare al „generației m”,* (*The Internet as a Socializing Agent for the M Generation),* The Publishing House of *Calistrat Hogaş* Theoretical High School, Piatra-Neamț.
4. Coman, Cristina, (2006), *Relațiile publice – Principii şi Strategii (The Public Relations – Principles and Strategies)*, Polirom Publishing House, Bucureşti.
5. Cucoş, Constantin, *A New Framework and Adult Learning Environment - the Virtual Community*.
6. Gluck, Jeremy S., n. 1958.
7. Hristache, Diana Andreia, (2004), *Comunicare corporativă (Corporate Communication)*, The Academy of Economic Studies Press.
8. Maxim, Cornelia, (2012), *Comunicarea online – provocări şi oportunități (The Online Communication – Challenges and Opportunities)*, comunicare.ro Publishing House.
9. Miegé, Bernard, (2000), *Societatea cucerită de comunicare (The Society Conquered by Communication*) Polirom Publishing House, Iaşi.
10. Miulescu, Viorel, (2014), *Relații publice (Public Relations),* the Publishing House of *Tomorrow's Romania Foundation,* Bucureşti.
11. Pânişoară, I.O., (2004), *Comunicarea eficientă (The Effective Communication)*, Polirom Publishing House, Iaşi.
12. Rascanu, Ruxandra, (2001), *Psihologie şi comunicare*, Bucharest University Press.
13. Rotaru, Nicolae, (2010), *Comunication – Art-Comunicare*, the Publishing House of "Mihai Viteazul" National Intelligence Academy, Bucureşti.
14. Shannon E. şi W. Weaver, (1949), *The Mathematical Theory of Communication*, University of Illinos Press, Illinos.
15. Şerbănică, Daniel, (2003), *Relații publice (Public Relations)*, The Academy of Economic Studies Press, Bucureşti.

16. Talbot, Stephen L., (1995), *The Future Does Not Compute*, Sebastopol Publishing House CA.
17. Ursu I., Năstaşel, E., (1980), *Argumentul sau despre cuvântul bine gândit (The Argument or On the Well-Thought Word)*, The Scientific and Encyclopedic Publishing House, Bucureşti.
18. Wilcox, Dennis L., Glen T.Cameron, Phillip H.Ault, Warren K.Agee, (2003), *Relaţii publice – Strategii şi Tactici (Public Relations – Strategies and Policies,* Pearson Education.

Disciplinary Liability of the notary public for failure to pay tax. Prescription

Gheorghe MOROIANU[1]

Abstract

The disciplinary liability of the notary public intervenes for the deviations expressly provided by the law, the deed imputed as an offense must be framed in one of the 21 situations provided by art. 74 of the law no. 36/1995 republished. The application of the disciplinary sanction can not intervene if the term of 3 years has elapsed since the date of the offense or 6 months from the date of notification of the person entitled to initiate the disciplinary action. The failure to pay the value added tax(VAT)is not stated distinctly, with this title, between the material elements of the deviation stipulated by art. 74, letter o) of the Law no. 36/1995, republished, which led to the acceptance that it does not fit in this deviation, thus imposing, as a consequence, that the legislator expressly stipulates it in the law, as it did also to the modification that resulted from the listing of 4 premise situations at 21, and then at 23.

Keywords: *notary public, disciplinary liability, disciplinary offense, disciplinary action, discipline council, prescription, prior investigation*

In the current international context, globalization and international co-operation policies are incontestable realities, starting with the strategies being addressed by the state irrespective of the field, whether it concerns the employee from the labor law, the civil servant or the professional exercising a liberal profession. Romania, in its capacity as a member of the European Union, has accepted the European model of depoliticization of the worker, regardless of whether he works in the public administration, or in those activities which the state, expressly (by law) entrusted them with certain professional bodies, in turn, also established by law. This did not mean that the adopted harmonization also did not take into account the national specificity.

But what must be taken into account is that, in its policy of legislating, it has fought for a depoliticized, career-stable professional, dedicated to serving the public interest, to the proper and timely fulfillment of the public service entrusted by society, so that when it is necessary to attract its legal responsibility for not complying with obligations in the exercise of the profession, it intervenes on clear rules and leaves as little as possible interpretations.

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In this context, we undertook the analysis of the situation of a liberal professional - notary public - for whom the disciplinary action was initiated on the circumstance of committing a deviation stipulated by art. 74 of the law no. 36/1995 republished, not before, in the synthesis, as in the case of public notaries, the disciplinary action is exercised by the Minister of Justice, by the President of the Union or by the Board of the Chamber.

Disciplinary action shall be judged by the Disciplinary Board within the Union and shall be exercised only after prior investigation has been carried out by inspectors of the Ministry of Justice or, as the case may be, within the Union or by the Board of the Chamber.

In the preliminary investigation, the citation of the person concerned is mandatory, and he is entitled to know the content of the disciplinary inquiry file and to formulate his defense. The failure or reluctance of the investigated party to make defense does not prevent the completion of the investigation.

The Disciplinary Board[2] acts as a national commission on the basis of a regulation approved by the Council of the Union. The Disciplinary Board is composed of one representative of each Chamber elected by the General Assembly of the Chamber. The mandate of the members of the Disciplinary Board is 4 years and begins on January 1 of the calendar year following their validation by Congress. The members of the Disciplinary Board may be only public notaries with a minimum of 10 years seniority in a specialized legal position, but not less than 5 years in the position of notary public.

The Minister of Justice or, as the case may be, the President of the Union or the Board of the Chamber, on the basis of the outcome of the prior investigation, shall formulate the disciplinary action which it submits to the Disciplinary Board within 60 days of receiving the result of the prior investigation.

The Disciplinary Board shall quote the parties and, if it finds that additional verification is required, may request the Minister of Justice or, as the case may be, the President of the Union or the Board of the Chamber to complete the disciplinary inquiry. Completion of the preliminary investigation is done within 60 days of receiving of the request for completion.

The disciplinary action shall be solved by a motivated decision, which shall be communicated to the parties and to the Chamber in whose circumscription the investigated activity takes place, within 10 days from the pronouncement.

Against the judgment, the notary public, respectively the holders of the disciplinary action, may appeal within 15 days from the communication to the Council of the Union.

The appeal is solved by the Council of the Union by decision. If the disciplinary action was exercised by the President of the Union or by the Board of Directors of the Chamber, the President of the Union or, as the case may be, the representatives of the respective Chamber in the Council of the Union shall not participate in the settlement

of the appeal. The decision to resolve the contestation may be appealed by appeal to the Bucharest Court of Appeal. The appeal may be declared by the public notary, respectively by the holders of the disciplinary action provided by the law, within 15 days from the communication, the decision pronounced by the Bucharest Court of Appeal is final. The decision by which the notary public has been disciplined, remaining final, shall be communicated immediately by the Union or, as the case may be, by the court of the specialized department of the Ministry of Justice and the Chamber in whose district the notary works.

The disciplinary action may be taken within 6 months from the date of acknowledgment of the offense, but no later than 3 years from the date of the offense.

The expiry of the limitation period for the promotion of disciplinary action shall be suspended, if a criminal complaint has been filed against the notary public with the object of committing the same act, until the criminal proceedings have been resolved. If, after the introduction of the disciplinary action, a criminal complaint has been filed for the same offense, the disciplinary action shall be suspended until the criminal proceedings have been resolved.

Therefore, according to art. 74 of the Law no. 36/1995 of the public notaries, republished, the disciplinary liability of the notary public intervenes for the **following deviations**:

a) violation of general, material and territorial jurisdiction established by law;
b) non-compliance with the provisions, decisions and decisions of the Union's and Chambers' governing bodies,
c) non-compliance with the rules and instructions on working methodology with notarial national registers administered by NCANNR;
d) the repeated fulfillment of the notarial acts and procedures, in breach of the legal provisions stipulated for the validity of the act or the notarial procedure in question, or the fulfillment thereof with the violation of the provisions of art. 9;
e) unjustified or negligent delay in performing the work;
f) repeated unjustified absence from the office;
g) behavior and inappropriate attitude in the exercise of professional activities;
h) any manifestation of the nature of prejudice to the prestige of the profession performed in the exercise of the function or in connection therewith or outside the exercise of the function;
i) non-payment of full and professional contributions as well as civil liability contribution under the Civil Liability Contract;[3]
j) evading or refusing to be subject to administrative professional control;
k) violation of legal obligations to keep professional secrecy;
l) the use or acceptance in any way, directly or indirectly, of unfair means of attracting clients as defined in the Code of Ethics of Notaries Public;

m) carrying out activities incompatible with the quality of notary, according to the law;
n) the unjustified or negligent refusal to perform and communicate the operations provided by the law for the functioning of the computerized system of the Chamber and of the Union;
o) non-observance of the legal provisions regarding the establishment, collection and, as the case may be, the transfer of taxes, tariffs and fees;
p) non-fulfillment of the statistical situation and other data requested by the Chamber or the Union;
q) the unjustified refusal to draw up a notarial act outside the seat of the notary office, and in duly justified cases outside the normal working hours;
r) non-fulfillment of the obligation to participate in the continuous vocational training courses organized by NRI, at the time intervals stipulated by the regulation;
s) non-fulfillment of the obligation to participate in the forms of professional training, disposed according to art. 77;
t) non-compliance with the provisions of the deontological code of public notaries;
u) unjustified absences from General Assemblies and actions organized by the Board of the Chamber or the Union's governing bodies;
v) non-compliance with the provisions of art. 42 par. (3) and/or the continuation of the activity after the application of the sanction of the suspension from the exercise of the position;
w) the unjustified refusal to comply with the documents and procedures assigned by the President of the Chamber to which he belongs.

From the wording of the text, which shows the deviations that may lead to the disciplinary responsibility of the notary public, as it has been shown in the literature, these are limitative stipulated by the law. Neither the Implementing Regulation of Law no. 36/1995 permits another interpretation[4].

In the analyzed case, the notary was charged with disciplinary deviance of the non-observance of the legal provisions regarding the transfer of taxes and tariffs, the deed constituting the constitutive elements of the deviation stipulated by art. 74 letter o) of the Law no. 36/1995 republished. It was shown in the motivation of the disciplinary action that the disciplinary researcher figured on June 2, 2016, with debts to the consolidated budget, VAT, interest on VAT, independent tax adjustments and regular contributions to health insurance.

Also in the introductory action it is specified that for the recovery of these amounts, the financial administration requested on 24.10.2013 the opening of the

insolvency procedure to the investigated party, but this application was finally rejected by a court decision.

Judging from this disciplinary action, the Discipline Board (the assembly in question), on **the non-payment of VAT**, concluded that it "*is an indirect tax, defined as such by Article 265 of the Fiscal Code falling within the scope of Article 74 o) of Law No. 36/1995, republished, because the law does not distinguish between direct and indirect taxes. The assembly considers that the act of a notary public not to transfer taxes and taxes collected from taxpayers within the time limits provided by the law can be qualified as disciplinary offense and on the grounds provided by art. 74 letter h) of Law no. 36/1995, to use taxpayers' money in the personal interest constituting a manifestation of the nature of harming the prestige of the profession performed in the exercise of the function... the non-value added tax was deliberately created by him only with respect to this obligation to pay (not the tax on income from the transfer of real estate or the NCREAA tariff) based on a belief in an opinion from a brief doctrine on disciplinary liability that this deed does not fall within the jurisdiction of the Disciplinary Board and not will be sacrificed in no way* ".

Regarding the prescription invoked by the investigated party, "*the assembly notes that in the matter of disciplinary liability, the act of the public notary not fulfilling the obligations stipulated by the law is the decisive element in the qualification of the act as disciplinary deviation and not the flow itself, was relevant, on a voluntary basis, only as regards the individualization of the sanction. Or, It is an unquestionable fact that the investigated party has not fulfilled his payment obligations more than 3 years ago or within the prescription period of disciplinary liability...*

Regarding the fact that the investigated party did not fully pay the tax on income from independent activities, the social insurance contributions and their accessories, the assembly considers that these do not fall within the scope of art. 74 letter o) of the Law no. 36/1995, republished, taking into account the following reasons:

The disciplinary liability of members of a liberal professional organization has its source in labor law, its purpose being to sanction their misconduct. Disciplinary liability can only occur when rules governing the public notary's professional obligations are breached and the obligation to pay personal income taxes, health insurance contributions and their accessories within the time limits prescribed by law is not a professional obligation, but the personal liability of any taxpayer, whether or not he has the status of a notary, the non-payment of which involves specific pecuniary sanctions, regulated by the Fiscal Code and the Fiscal Procedure Code."

From the above solution it results that, under the duty of the public notary investigated in this case, the deed referred to in art.74 let. o) of the Law no. 36/1995 republished, only regarding the non-payment of VAT.

Against this judgment an appeal was lodged with the Union of the Union, the notary invoking the same issues as before the Disciplinary Board, in essence, prescribing the liability and the circumstance that the non-payment of VAT is not circumscribed in the text of art. 74 letter o) of Law no. 36/1995 republished.

This appeal was rejected as unreasonable, neither the prescription relied on nor the claim that the non-payment of VAT is not circumscribed to the provisions of Art. 74 lit. o) of Law no. 36/1995, republished.

Regarding the prescription, it was reasoned that the 6-month term from the date of notification of the Board of Directors was not exceeded, and regarding the non-payment of VAT, this is an indirect tax and therefore falls within the provisions of art.74 letter o) of Law no. 36/1995, republished.

Currently, this solution is in the trial stage of appeal provided by Article 75 paragraph 11 of Law no. 36/1995, republished, at the Bucharest Court of Appeal.

From our point of view, to the extent that disciplinary deviations in the case of public notaries are **expressly** provided by law, any extension thereof is contrary to the law and is unaccounted for, even more so as in the doctrine was mentioned and specified the correction of this situation.

Nothing prevents the future, as it has happened for other situations, that the law be completed, modified by the legislature, so that there is no doubt. From the defenses formulated by the investigated public notary it was stated that by failing to pay VAT at the time he knew he would pay penalties, so the deed was not an unsanctioned.

Far from concluding that VAT should not be paid, but to the extent that it has not been paid for various reasons, it is imperative that the legislator provides for clear solutions, regardless of their severity, as legislated in other matters, gives rise to interpretations, as we have shown, including through specialized works for this subject.

With regard to the prescription, the solution chosen by both the Disciplinary Board and the Council of the Union does not cover the requirements of the law, since only the date when the VAT payment is due is relevant.

The law text, in order to apply the sanction, does not only require verification by the board of directors of the requirement to notify the Board of Disciplines within 6 months of the NAFA notification, but also to verify that the deviation (non-payment of VAT) is not older than 3 years from the date of the due date.

On this point, the Council of the Union, in its decision, did not respond, but only to analyze the first requirement, which, in our opinion, is wrong.

Unlike the Council of the Union, the Disciplinary Board reasoned that only the notary's act of failing to fulfill the obligations stipulated by law is the decisive

factor, but not with reference to the date when the act was committed, interpreting that, since it did not paid the claim, the deed would still exist. Or, at present, the public notary in question, for the activities carried out, including VAT, has paid all its obligations.

It was not accidental that, within the court, there was talk on the litigation by which NAFA was asked for the notarial office's insolvency. This was an essential circumstance to be checked in the prescription analysis, and it was not given any meaning.

The deliberation, that it was consciously chosen by the notary not to pay the VAT due for the activities carried out, although far from the truth, in no way clarifies the judgment of the exception of the prescription, the analysis of the two requirements(both the 6-month period and the 3-year term) being imposed with necessity.

Bibliography

1. Gheorghe Moroianu, *Organization of Legal Professions*, Romania de Maine Publishing House, Bucharest, 2019
2. Gheorghe Moroianu, The Status of Liberal Professions, The Legal Universe Publishing House, Bucharest, 2007
3. Ioan Les, Manual of Notarial Law, C.H. Beck Publishing House, Bucharest, 2008

Legislation:

1. Law no. 36/1995 of the public notaries, and subsequent republishings
2. Regulation No. 13 on the application of Law no. 36/1995

Jurisprudence:

1. File no. 10/2016 of the Disciplinary Board of the National Union of Notary Public in Romania
2. File no. 7/2017 of the Council of the National Union of Notaries Public in Romania

Ways of Increasing Efficiency and Effectiveness through Communication in an Organisation

Irina NICOLAU[1]

Abstract

The impact that the economic environment has on the management policies of the organization, forced to survive in the conditions of a dynamic international market, is a very strong one. The interconnection of markets makes any financial, economic and social pressure to become even more important, as well as any decision made by a company, will certainly have echoes in the activity of its partners. Also, the impact of such decisions can be found in the attitude of all companies, whether they have been directly or indirectly affected.

But, leaving aside the economic environment, and beyond other strategic considerations, organizational communication is one of the most important points to which any entity should always refer, regardless of its object of activity. A communication strategy built on a real basis, with realistic objectives and which aims not only at increasing the economic efficiency but also at developing those involved in the activity, can be an irreplaceable competitive advantage.

Keywords: *organizational communication, internal communication, efficiency, effectiveness*

I.Introduction

The role of communication in an organization is to support the exchange of information, ideas and perspectives, both with those within it and with external partners. Organizational communication is not specific only to large companies or those with activity on this level, but to all those who, in one form or another, carry out activities that are closely related to the economic or social sphere. At the same time, the communication strategy of any entity should not only consider increasing the efficiency of the employees, for, but of the whole organization, internally and externally.

A successful organization must be open, adaptive, dynamic, proactive, with a well-established communication structure and strategy. Companies need to be careful about all the information communicated because they can be used with maximum efficiency when the company culture contributes to creating the attitudes that lead to the intentions, and they turn into real behaviours.

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Acceptance of information and its use is influenced by the beliefs and attitudes widely shared within the company. The attitudes regarding the use, the intentions of use and the frequency of use are representative variables to determine the degree of acceptance of the information coming from different sources, which will be used later, as they can add value in the company (Popescu, 2011).

As a concept, the organizational culture began to take shape in the 1970s, when some specialists noticed certain differences between the same type of organization that could not be explained either from the point of view of the organizational system, the way of implementing the strategies nor from that of the human resource. Only in 1981, Pascale and Athos, following the studies undertaken by Geert Hofstede, who analysed the difficulties in implementing the strategies, within some American, European and Japanese companies, introduced the concept of organizational culture, as the one that contributes significantly to the functioning of the organization, and differentiates it from the competition (Nicolau, 2014).

According to the definitions given to the concept of organizational communication and universally accepted, this term implies:

- A process by which activities of a society are collected and coordinated to reach the goals of both individuals and the collective group. It is a subfield of general communications studies and is often a component of effective management in a workplace environment (www.businessdictionary.com).
- Corporate communications can be seen as a management function; a perspective favoured and aspired to by communications practitioners, and a view central to much corporate communications theory and research (Cornelissen, 2004).
- Communication involves the transmission of information, impressions, ideas of a person or entity, to train, shape or convince, based on the existence of common meanings and being conditioned by the context of the relations between those who communicate and dependent on the social context. (Popescu, 2011)

These definitions take into account several perspectives, depending on the areas concerned. There is a sociological, economic, managerial, philosophical or cultural perspective. What all these definitions have in common, however, is the underlining of the vital role and importance of communication in carrying out any type of activity.

Over time, the organizational culture, as a concept, has received several interpretations, which can be grouped in the form of five paradigms (see Table no. 1): the first two look at culture as a variable and the others as a metaphor, for the proper functioning of the organization (Desphande & Webster, 1989).

Culture, from the perspective of comparative management, is an exogenous variable that influences the development and consolidation of beliefs and values

within the organization. From the point of view of situational management, culture is an endogenous variable, which is based on beliefs and values developed by and within the organization.

Characteristic features of the paradigms of organizational culture

Table no. 1

Paradigm	Feature	Culture
Compared Management	It is based on the theory of classical management and the functionalist current	Exogenous, independent variable
Situational Management	It has the basis in situational theory (contingency theory)	Endogenous variable, independent
Cognitive paradigm	The basis of the cognitive theory of organization	Metaphor for the organization's value systems
Symbolic paradigm	It is based on symbolic anthropology	Metaphor for sharing symbols and beliefs
Structural paradigm	It is based on structuralist theory	Metaphor for the organization as a human personality

Source: adaptation after Desphande and Webster (1989), citing Smircich (1983)

From the perspective of culture as a metaphor, the three paradigms - cognitive, symbolic and structural - refer to the fact that the organization should not only be understood and analysed from an economic or material point of view, but also symbolic, expressive or ideological.

From a cognitive perspective, culture is used to understand the rules that influence behaviour within the organization, what are the systems of values and beliefs, and how the members of the organization perceive and organize their tasks.

The symbolic paradigm emphasizes that the organization is built like a society, within which the meanings and symbols are shared with others. From a structural point of view, the organization is seen as having " human " characteristics, rather than as a system without personality.

II. Communication and organizational culture

Organizational communication is closely related to the culture existing within the respective organization. The connection between these two concepts is underlined by the fact that both are usually characterized by the context in which they occur. In this sense, there are three levels at which it manifests (Popescu, 2011):

- Formal - the formal level, characterized by the assimilation of concepts based on perception and persuasion, using a series of conceptual and/or behavioural patterns;
- Informal - the informal level that uses creative behavioural models;
- The technical level, transmitted in specific, explicit terms.

When discussing culture within organizations, both ideas, beliefs, traditions and their assimilated values are taken into account, and are most often found in the dominant managerial style, in the way employees are motivated, in the image of the company etc. All these differ depending on the atmosphere, the procedure, the energy level, the personal professional horizon, and are influenced, in turn, by history and traditions, by the current situation, by technology etc. (Nicolau, 2014).

From the organizational culture approach, there are numerous definitions given to this concept, each of them highlighting certain component elements of it. It can be stated, therefore, that the notion of organizational culture means:

- The values and behaviours that contribute to the creation of a unique social and psychological environment of the organization (Business Dictionary);
- symbols, ceremonies and myths that express the values and beliefs specific to the members of the organization;
- model of beliefs and expectations shared by the members of an organization that produce a series of norms that describe the behaviour of the members of the organization (Schwartz & Davis, 1981).

Knowing the organizational culture is necessary and useful, as it is probably the only and most useful long-term anticipatory element of an organization. It can be difficult for someone either from the inside or the outside of the company to penetrate the culture of the organization, which is often considered as an universe of beliefs, values and conceptions offered, which is rarely stated or questioned, especially by those who have limited experience with other organizations or cultures.

However, such an understanding of collective behaviour is essential, in situations where the organization needs to adapt to changing conditions, including the aspirations and expectations of its members (Serban, 2012). Organizational culture is an aspect that cannot be neglected, it "sets the tone" for the actions, behaviours, perceptions of individuals.

By encouraging an action, a way of solving a situation in a certain sense, that way will be strengthened, like Pavlov's conditioned reflex. Individuals cannot "fold" perfectly on the culture of an organization. Each has its own cultural features; it is all "overall" the culture of the individual is compatible with that of the organization.

The basic elements of organizational culture are values, presumptions and paradigms. The value leads the individual towards a certain behaviour, which, if it will be a solution for the problems he faces, will transform the value into a presumption. Cultural paradigms are made up of several presumptions that form a coherent model.

In cultures anchored in the preservation of traditions (like many of the European ones), which do not accept change, managers can fall into the so-called "strategic myopia". They are convinced that the best thing is to act according to

the old procedures. The renewal is admitted quite difficult and this situation can have some of the most dramatic consequences for the respective organization.

Another issue that should concern the organization is to ensure the compatibility of the individual culture of the employees with the organizational culture. From the moment of recruitment, the candidates for the positions of the organization must be informed and familiarized with this aspect, because otherwise, in the long term, they will lose both the individual (who will be dissatisfied) and the organization (which will achieve a low efficiency). from an individual in which he invested).

In order to be competitive on the market, organizations are required to develop, in addition to the economic side, an organizational culture that comes to the aid of the activities undertaken, of the employees and, not least, of the customers.

A successful organizational culture does not have a specific recipe. It can be created by the founder of the organization, as in the case of Walt Disney, it can be born from the challenges offered by the environment, as happened in the case of Coca-Cola or it can be developed by the management, to make the activity more efficient, as in the case of Google.

The role of organizational culture is to reduce the degree of insecurity among employees, to create order, continuity and a common identity (Trice & Beyer, 1993).

Organizational culture is an aspect that is not neglected, it "sets the tone" for the actions, behaviours, perceptions of individuals. By encouraging an action, a way of solving a situation in a certain sense, that mode will be strengthened, like Pavlov's conditioned reflex. It goes without saying that individuals cannot "fold" perfectly on the culture of an organization. Each has its own individual cultural features; it is all "overall" the culture of the individual is compatible with that of the organization.

III. Ways of increasing efficiency and effectiveness through communication

Every organization should have management-level strategies who are designed to increase both efficiency and effectiveness. From a conceptual point of view, effectiveness takes into account the impact that the observance of the working procedures for obtaining the desired or expected results, has on the success of the respective organization. At the same time, it is equally important to keep track of how well employees perform their tasks without wasting time, effort or resources, which is efficiency. Business effectiveness means making sure your company is pursuing the right goals and objectives (www.smallbusiness.com).

Efficacity represents the process by which information is shared within a company, in both directions, and which implies the existence of a party that sends

a message easily understood by the receiving party. Managers need to communicate effectively, as this facilitates the exchange of information between the different hierarchical levels of the company and contributes substantially to business success (www.businessdictionary.com).

Poor communication has a direct impact on efficiency, as well as overall quality of work. If the instructions are not clearly addressed, there will be mistakes. On the other hand, clear instructions eliminate the need to clarify and correct any problems.

Business effectiveness involves pursuing the right objectives, and organizational efficiency is based on time, effort and, moreover, it is measurable. The main difference between organizational effectiveness and organizational efficiency is that efficiency can be used to evaluate almost every process of the organization's activity. However, efficiency always refers to financial costs and results. Efficiency is especially important when it comes to measuring the return on investments, which usually means marketing and sales.

The central element, however, when we discuss any of the two concepts, are the employees. Those are the ones that need to be motivated and addressed to a large part of the communication strategies within the organization. Employees should be encouraged to interact more often with each other and feel comfortable at work. Problems arise when the information does not follow the desired course. Effective communication facilitates the free flow of information between employees and reduces misunderstandings and confusion, ensuring a common denominator for everyone.

Among the most effective motivational methods that can be used by management, which, implicitly, increase the efficiency and effectiveness of an organization, are:

- The existence of a well-established communication system so that each member of the team knows what to do and understands what is required;
- Delegating responsibilities has the effect of increasing the confidence of the employees and their involvement on several decision levels;
- Transparency of processes and how tasks are delegated. Those employees who have more information about specific tasks and know how to complete them are more motivated to do them efficiently and quickly.
- The existence of a healthy organizational culture, which can only be achieved if the employees and managers of the company have good working relationships with each other. Open communication is what leads to the creation of an organizational culture based on healthy principles.
- Increased responsibility - effective communication in the workplace involves providing clear instructions, and employees know exactly what is expected of each of them. This helps improve accountability, which in turn increases productivity.

- Clear direction - good communication between managers and employees, means a clear direction regarding where the company is, where it should be in the future and what steps are needed to get there. Transparency and clarity lead to increased productivity and decreased uncertainty.

Therefore, managers are the ones who need to provide clear information and support for employees to perform at the best level. At the same time, employees need to understand what their superiors are expecting. Employees should have the freedom to express their opinions and ideas, be encouraged to come up with unique solutions that ultimately lead to increased efficiency.

IV. Conclusions

Effective communication plays a vital role in motivating employees. Managers need to interact with their team members regularly for them to develop a sense of loyalty to the organization. Equally important, managers should interact with their subordinates to understand their level of expertise and interest. Delegating work is one of the most crucial responsibilities of a team manager.

Effective communication also reduces stress levels and thus motivates employees to optimize their work. Equally important is that employees have the freedom to talk freely with management, not only through emails and messages but also verbally.

In a competitive market such as today's, business communication skills become essential, with candidates being able to easily convey information, negotiate and confidently deal with customers. To listen carefully, to speak clearly and to meet the wishes of others, are highly sought-after attributes, specific to a leader, which substantially improve the efficiency in the workplace.

Self-awareness, self-management, social awareness and relationship management are the abilities which lead to an effective management style that can overcome every challenge. The lack of clarity and cohesion can have as a result poor decisions and confusion.

Companies often fail to achieve differentiation and innovation in their surrounding networks, through dealing with efficiency and neglecting effectiveness (Mouzas, 2006). In a world full of dynamism, speed and dramatic and unusual changes in the evolution of the market, the vast majority of companies are forced not only to grow at a faster pace, but to keep that pace as long as possible. In this context, organizational communication most often plays a decisive role. Although many companies have understood this, and have even invested many resources in this direction, the lack of adequate communication - which would support the company's long-term development - brings with it a number of risks. Therefore, visionary management with special skills, a distribution of resources based on realistic and rational principles, can be the safest way to strengthen the company's position in the market.

Bibliography

1. Desphande, R., & Webster, F., (1989), Organizational culture and marketing: Defining the research agenda. *Journal of Marketing, v. 53*, 3-15.
2. Cornelissen, J., (2004), *Corporate communication: Theory and practice*. London: Sage Publication.
3. Mouzas, S., (2006), *Efficiency versus effectiveness in business networks*. Journal of business research, 1124-1132.
4. Nicolau, I., (2014), *Marketing comparat*. Bucureşti: Editura Pro Universitaria.
5. Popescu, M., (2011), *Comunicare şi negociere în afaceri*. Bucureşti: Editura Pro Universitaria.
6. Schwartz, H., & Davis, S. M., (1981), Matching corporate culture and business strategy. *Organizational Dynamics*, 30-48.
7. Şerban, D., (2012), *Creating a business ethics program.* Preluat de pe Munich Personal RePEc Archive: http://mpra.ub.uni-muenchen.de/39694/5/MPRA_paper_39694.pdf.
8. Trice, H., & Beyer, J., (1993), *The cultures of work organizations*. New Jersey: Prentice Hall.
9. www.businessdictionary.com
10. www.smallbusiness.com

Ensuring a fair justice - Comparative law elements in the matter of the magistrate's institution

Roxana-Daniela PĂUN[1]

Abstract

The legal system is a benchmark in the implementation of fair justice in any democratic society. The statute of magistrates, whether in the body of judges or in the body of prosecutors, is constitutionally unreasonable in relation to the general principles of law. The fairness of each judicial decision is reflected in the essence of strengthening democracy.

Keywords: *Judicial system, justice, judge, magistrate, democracy*

1. General considerations on the legal system

The legal system is a benchmark in the judiciary, knowing that, for the achievement of a fair justice, the professional and moral probity of those who practice justice are priority criteria for the performance of any magistrate's conduct. It is known that the Roman-German system, originated in Roman law, exists in states that formerly belonged to the Roman Empire, such as France, Germany, Italy, Spain, etc. and the common-law system, originating in the UK, existing in the former British colonies; The United States of America, Canada, Australia, etc.) are two systems that operate with different notions and institutions, making differences between them.

Thus, for a better understanding, we exemplify: the judicial precedent that component of English law which consists in the application by judges of consecrated habits to concrete cases, deduced from judgment[2]. The sense in which the judge follows the example or precedent existing in each case.

It is known that judgments given by a court become mandatory not only for the parties but also for other tribunals. [3]

As far as the Roman-German legal system is concerned, it is distinguished by the written character of the rule of law. Thus, the text of the law is the work of

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[2] Ioan Leş, *Organization of the Judiciary in Comparative Law*, All Beck Publishing House, Bucharest, 2003, p. 9.

[3] V.D. Zlateşcu, *Contemporary Legal Geography*, Scientific and Enciclopedic Publishing House, Bucharest, 1981, p. 127-129.

those bodies of the state with specific attributions to the legislative component, and the judge applies the legal provisions preconstituted to the concrete situation deducted from the judgment. It is known that in the present case the judge can not use the judicial precedent as a source of law but can interpret the rule of law.

The specialized literature, in this case the Romanian-German legal system, is established through two different approaches to judicial organization and legislative competence according to the national or federal character of that state. Thus, in France, Italy, Romania, the legislative attributions belong to those institutions that have a general competence, recognized at national level.

As far as the situation of the federal states of Germany or Switzerland, the implementation of justice is considered a matter that falls within the competence of the cantons or the Länder. It is known that in Switzerland only civil and criminal law is in the competence of the Confederation, while the rules of procedure are set by the legislator of each canton and these are very different.[4]

(Thus, in some cantons there are constitutional courts, but also commercial courts, labor tribunals and peace judges, and at federal level there is the Federal Court and the Federal Insurance Tribunal.)

2. Comparative Law Elements in the Status of Judges

The specialized literature is based on the view that the magistrate is the "key character in a democratic and lawful state" and that "the issue of responsibility is not only important but also complex."[5]

Due to the fact that ensuring the impartiality and independence of judges in all democratic states takes precedence in the field of justice, we advocate supporting a fair, just and strictly lawful act of justice.

It is well known that judges are recruited in Europe either by competition (in Austria, Bulgaria, the Czech Republic, Italy, Lithuania, Portugal, Spain) or by professional experience (in England, Ireland, Cyprus, Slovakia) a combination of the two above-mentioned modes, Belgium, Denmark, France, Germany, the Netherlands, Poland.[6]

As far as the Romanian-German law system is concerned, the conditions for the recruitment of judges differ from one state to another.

In Switzerland, for example, the law does not impose special conditions for access to magistracy, and the graduation of a faculty of law is not a requirement for designating a person as a judge. Cantonal judges are elected by the local

[4] Ioan Leş, *Organization of the Judiciary in Comparative Law*, All Beck Publishing House, Bucharest, 2003, p. 26.

[5] Ioan Leş, *Organization of the Judiciary in Comparative Law*, AII Beck Publishing House, Bucharest, 2005, p. 211.

[6] Mircea Munteanu, *Comparative Data Relevant to the Functioning of the Judiciary in the Member States of the European Union*, in the journal "Current Justice", no.2-3/2009, p. 89.

parliament, whether by the people, for periods ranging from 4 to 6 years, and federal judges to the Federal Parliament for a period of 6 years. But there is also the situation of those judges who work only partially in court, while they also occupy other positions, such as university professors or lawyers.[7]

In France, there are two categories of judges because of the two systems of jurisdiction: common law jurisdiction and administrative jurisdiction. In the case of judges working in common law courts, recruitment is usually conducted through a competition, and they will undergo a training course within the National School of Magistracy for 31 months. But there is also an exception when it comes to the direct recruitment of persons to judicial functions, in accordance with the provisions of the law on judicial organization.

In Germany, however, an essential requirement must be met, namely the graduation of a faculty of law, and in order to take up the position of judge, the graduate of a law faculty must undergo a three-year training course and promote the graduation exam good.[8]

In Spain, access to the magistracy is also carried out on the basis of a competition, to which only graduates of a faculty of law can participate. But there is also a category of peace judges, but who are not obliged to be licensed in law, their mandate is limited to 4 years, and during this period, the peace judge enjoys immunity.[9] But in Europe there are other situations; for example Hungary where law graduates can apply directly to courts or Finland and Sweden, where judges are appointed after a training period at the courts[10]. As regards the common law system, judges may, during their first nomination, continue to work as lawyers. In which sense, the English judge can exercise both the role of the arbitrator, without being paid, as well as the consultant.

3. Comparative law elements on the status of prosecutors

In accordance with Recommendation 200 (19), the prosecutor is "the authority responsible for overseeing the application of criminal law on behalf of society and the general interest, taking into account individual rights and, on the other hand, the need to streamline the criminal justice system"[11]

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[7] Ioan Leş, *Organization of the Judiciary in Comparative Law*, All Beck Publishing House, Bucharest, 2005, p. 30.

[8] Ion Popa, *Treaty on the Magistrates' Profession in Romania*, Publishing House Universul Juridic, Bucharest, 2007, p. 546.

[9] Ioan Leş, *Organization of the Judiciary in Comparative Law*, All Beck Publishing House, Bucharest, 2005, p. 153.

[10] Mircea Munteanu, *Date Comparative relevante pentru funcţionarea sistemului judiciar în statele membre ale Uniunii Europene*, în revista „Justiția în actualitate", nr. 2-3/2009, p. 90.

[11] Recommendation 2000 (19) on the role of the prosecutor in the criminal justice system adopted by the Committee of Ministers of the Council of Europe is available at www.coe.int/t/dghl/cooperation/.../Rec(2000)19Romania.pdf.

Thus, in Italy, Greece, Poland, Bulgaria, Sweden, Spain, Portugal, the principle of prosecutors' independence is imposed on the executive power in general and the Ministry of Justice in particular. As regards: France, Germany, Denmark, the Netherlands, the Czech Republic, prosecutors are subordinated to the Minister of Justice.[12]

In Italy the prosecutor's offices are part of the judiciary system, the prosecutors are supervised in the activity carried out by the Ministry of Justice. In Italy, prosecutors are appointed for life, they are irremovable and independent. The career of prosecutors and judges is similar; the two categories of magistrates differ only in the function, and the remuneration is not related to the appointment or the position in the hierarchy, but only by age.[13]

As regards Greece, the Constitution establishes the independence of judges and prosecutors. Prosecutors can not look at instructions from political authorities or from the Chief Prosecutor of the Court of Cassation. [14]

In Spain, prosecutors are part of the judiciary and have an obligation to contribute to guaranteeing the independence of the judiciary.[15]

In Finland, although the Constitution of the country governs the fact that the Prosecutor General operates and directs the Prosecutor's Office independent of the Government and the Ministry of Justice, the prosecutors' statute states that the General Prosecutor's Office is subordinated to the Minister of Justice and that prosecutors are appointed by the Government, at the proposal of the Prosecutor General.[16]

According to German law, prosecutors are civil servants, not magistrates, and are subordinated to the Minister of Justice in absolute terms.

The General Prosecutor's Office does not manage the activity of the regional prosecutor's offices, which operate under the authority of the Ministries of Justice at the level of the region. Prosecutors in each region are appointed by the Minister of Justice of that region.[17]

As regards the French legislation on the status of magistrates, it expressly states that both prosecutors and judges are part of the body of magistrates and are subject to common rules on their careers.[18]

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[12] Ion Popa, *Treaty on the Magistrates' Profession in Romania*, Publishing House Universul Juridic, Bucharest, 2007, p. 590-610.

[13] Constantin Sima, *Statute of Prosecutor in Europe - Italy*, in the "Pro lege" magazine, no. 1/2005, p. 130.

[14] Ion Popa, Treaty on the Magistrates' Profession in Romania, Publishing House Universul Juridic, Bucharest, 2007, p.596.

[15] Gilles Charbonnier, *Panorama of Judicial Systems in the European Union*, Ed.Bryland, 2008, p. 413.

[16] Ion Popa, *Treaty on the Magistrates' Profession in Romania*, Publishing House Universul Juridic, Bucharest, 2007, p. 596.

[17] Constantin Sima, *Public Ministry in Germany*, in the "Pro lege" magazine, no. 1/2005, p. 246.

[18] Ion Popa, *Treaty on the Magistrates' Profession in Romania*, Publishing House Universul Juridic, Bucharest, 2007, p. 599.

In the Czech Republic, prosecutors are part of the executive power, and prosecutors may even be members of the parliament.[19]

In the Netherlands, the prosecutor's office is also subordinated to the Minister of Justice, who can give prosecutors instructions on the exercise of their duties, including on individual cases.[20]

As regards Belgian law, prosecutors are at the same time representatives of the executive power and members of the judiciary, the minister of justice can address general instructions to the prosecutor general.[21]

In the common-law system, we find a different case, in the sense that the equivalent of the Public Ministry is called the Crown Prosecutors Service, an independent organization of courts and police, which has a structure composed of 42 territorial units each headed by a prosecutor head.

The independence of Crown Prosecutors is of constitutional importance, and the decisions taken by prosecutors with fairness, impartiality and integrity help to achieve the act of justice.[22]

However, UK prosecutors are civil servants and are not part of the judiciary.[23]

In order not to raise suspicions about professional decisions, the international papers recommend that the prosecutor not exercise another profession.

4. Statute of the magistrate in national law

The Romanian judiciary is one of the three authorities that ensure the consolidation of the Romanian rule of law by observing the rule of law and its application with independence, impartiality, responsibility and efficiency in all phases of the procedure.[24]

Admission to judges and prosecutors in magistracy is done through competition, based on professional competence, aptitude and good repute.[25]

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[19] Ion Popa, *Treaty on the Magistrates' Profession in Romania*, Publishing House Universul Juridic, Bucharest, 2007, p. 601.

[20] Sima Constantin, *Statute of the Public Prosecutor in the European Union*, in the journal "Pro lege", no.4/2006, p. 184.

[21] Ion Popa, *Treaty on the Magistrates' Profession in Romania*, Publishing House Universul Juridic, Bucharest, 2007, p. 600.

[22] Diana Minca, *Relevant Aspects of the British Legal System*, Magazine Justice in the News, No. 4/2009, p. 110.

[23] Gilles Charbonnier, *Panorama of Judicial Sistems în the european union*, Ed. Brylant, Paris, 2008, p. 449.

[24] Interprofessional Charter of Judges, Prosecutors and Romanian Lawyers dated September 23, 2015, developed by the Superior Council of Magistracy, the CCJE and the National Union of Romanian Bar Associations.

[25] Article 12 of Law no. 303/2004, on the status of judges and prosecutors, republished, as subsequently amended and supplemented.

The admission to the magistracy and the initial professional training for the office of judge and prosecutor is performed through the National Institute of Magistracy.[26]

The judges, appointed by the President of Romania, are independent, any person, organization, authority or institution being obliged to respect their independence.

Independence and impartiality of judges are fundamental constitutional principles of the functioning of Justice.[27]

Thus, we can point out that judges are subject only to the law and are obliged to be impartial in their work in performing the act of justice under optimum conditions.

In carrying out judicial proceedings, it is necessary for judges to ensure the observance of the principle of equality of arms in criminal trials, but also in the civil processes of impartial interprofessional dialogue with prosecutors and lawyers, observing their specific attributions, by establishing calendars regarding the conduct judicial activities necessary for criminal and civil cases, in order to ensure the fulfillment of procedural guarantees of the legal persons.[28]

Prosecutors appointment is made by the President of Romania. They enjoy stability, being independent, under the law.

In the Romanian rule of law, prosecutors enjoy independence but also stability in ensuring their specific attributions, these principles representing guarantees for impartial and effective justice, which ensures the protection of the public and private interests of those concerned.[29]

The training of Romanian judges, prosecutors and lawyers presupposes not only the acquisition and development of professional skills necessary for access to the professions, but also permanent training throughout their careers.[30]

Organizing and conducting joint training for Romanian judges, prosecutors and lawyers on issues of common interest contributes to the achievement of the highest quality justice.[31]

Romanian judges and prosecutors ensure the protection and observance of the fundamental rights and freedoms of citizens, enshrined not only by national

[26] Article 13 of Law no. 303/2004, on the status of judges and prosecutors, republished, as subsequently amended and supplemented.
[27] Interprofessional Charter of Judges, Prosecutors and Romanian Lawyers dated September 23, 2015, developed by the Superior Council of Magistracy, the CCJE and the National Union of Romanian Bar Associations.
[28] Interprofessional Charter of Judges, Prosecutors and Romanian Lawyers dated September 23, 2015, developed by the Superior Council of Magistracy, the CCJE and the National Union of Romanian Bar Associations.
[29] *Idem,* 27.
[30] *Idem,* 27.
[31] *Idem,* 27.

laws but also by the European Convention for the Protection of Human Rights and Fundamental Freedoms or Community Treaties.

That is why the action and conduct of the Romanian judge, prosecutor and lawyer must ensure, undoubtedly, the confidence of the person in charge of the objectivity of the act of justice.

Judges, prosecutors are independent in the work they each exercise, so that in the eyes of the justices and the society there should be no suspicion of any interference between them or any confusion between the two professions.

In our country, the status of judges, prosecutors is guaranteed by law, which creates similar requirements and guarantees in terms of recruitment, training and career development conditions.

Obligations of judges and prosecutors are, not only to ensure the rule of law, but also to respect the rights and freedoms of individuals. Through their entire activity, they must also ensure equality before the law through non-discriminatory legal treatment during court proceedings.

Due to the independence enshrined in the status of judges and enjoyed by them, the leadership of the court can not intervene in their work, imposing a term other than the legal one that is to undertake the work.

Also, the president of the court can not determine the content of the works, thus, in relation to the particularities of the relation between the management and the judge, the judge's legal employment relationship is different from that of the employees, or the service report underlying the activity of civil servants.

The full independence of the judge in the work he carries out at personal, individual level must be emphasized.

The existing national legal provisions ensure the independence of judges, excluding any action for damages against them for their acts or omissions in the performance of their duties. However, there are also some limits, which refer to disciplinary, criminal actions against the judge or claims for damages against the state.

Thus, Resolution no. 1989/60, in the content of art. 16, regarding the independence of the magistrates, is fully respected by the magistrates in Romania in the execution of the act of justice.

Bibliography

1. Ioan Leş, (2005), *Organization of the Judiciary in Comparative Law*, All Beck Publishing House, Bucharest, 2003.
2. Ion Popa, (2007), *Treaty on the Magistrates' Profession in Romania*, Publishing House Universul Juridic, Bucharest.
3. V.D. Zlateşcu, (1981), *Contemporary Legal Geography*, Scientific and Enciclopedic Publishing House, Bucharest.

4. Mircea Munteanu, (2009), *Comparative Data Relevant to the Functioning of the Judiciary in the Member States of the European Union*, in the journal "Current Justice", no.2-3.
5. Recommendation 2000 (19) on the role of the prosecutor in the criminal justice system adopted by the Committee of Ministers of the Council of Europe is available on: www.coe.int/t/dghl/cooperation/.../Rec(2000)19Romania.pdf.
6. Constantin Sima, (2005), *Statute of Prosecutor in Europe - Italy*, in the "Pro lege" magazine, no. 1.
7. Constantin Sima, (2006), *Prosecutor's Statute in the European Union*, in the "Pro lege" magazine, no.4 .
8. Gilles Charbonnier, (2008), *Panorama of Judicial Systems in the European Union*, Ed. Bryland, Paris.
9. Diana Minca, (2009), *Relevant Aspects of the British Legal System*, Justice in the News Magazine, no.4.
10. Law no. 303/2004 on the status of judges and prosecutors, republished, as subsequently amended and supplemented.
11. Interprofessional Charter of Judges, Prosecutors and Romanian Lawyers dated September 23, 2015, elaborated by the Superior Council of Magistracy, CCJE and the National Union of Romanian Bar Associations.

Grounds for the Revocation of a Donation Due to Ingratitude

Andreea POPESCU

Abstract

In practice, due to its tax benefits, the donation contract has gained more and more supporters, especially in the area of transferring the ownership of a good between relatives or close persons, between whom it might exist a high degree of trust or at least a close connection. In the current regulation, the legislator of the Civil Code chose in the express definition of the donation contract in the art. 985[1].

Keywords: Civil Code, tax, revocation, donation, ingratitude

One of the grantee's obligations to the donor for the patrimonial sacrifice made is a moral one, which comes from the proverb "do not bite the hand of the one who feeds us", respectively that of gratitude. The obligation to refrain from committing an irreverent deed towards the donor, not being a positive duty, which can be redeemed by an enforcement action, was constructed as a sanction for the opposite of the donor's gratitude[2]. However, not every breach of this obligation can lead to the sanction provided, since we are talking about facts that have a certain severity and in everyday life, any person could experience a sense of injustice or bitterness caused by different temperaments and at the same time, different expectations, from human to human. Therefore their appreciation is likely to be exaggerated and that this is why it is necessary both that the revocation to be possible only through court, not operating by law, but also limiting the scope, being provided it express the facts that attract such a sanction and it is necessary not to extend their application.

Although the donation contract is governed by the principle of irrevocability of donation[3], it is not an absolute one and, as such, the law regulates certain situations in which the contract can be revoked, one of the situations being represented by the donor's ingratitude towards the donor.

[1] Art. 985 states: "The donation is the contract whereby, with the intention of gratifying, a party, called a donor, irrevocably disposes of a good in favour of the other party, called a grantee".
[2] See M.M.Oprescu, The donation contract, Hamangiu Publishing House, 2010, p. 237
[3] Art. 985 Civil Code.

REVOCATION DUE TO INGRATITUDE

The right to revoke a donation belonged, in Roman law, only to the parents who gratified their children. Subsequently, the social reality imposed the extension in favour of all the ascendants, becoming regulated during the time of Emperor Justinian to be in favour of all the donors, being limited however to be exercised during the life of the donor and could not be against the heirs after the donor's death.

In the following, we will focus our attention on the cases that may attract the revocation of the donation because of the donor's ungrateful attitude and we will try to corroborate the provisions of the Civil Code with those of the Criminal Code in order to determine as concretely as possible in which situations such action can be admitted.

Attempt on the life of the donor or a person close to him

The first case provided by art. 1023 letter C. Civ. it is "the donor has attempted to the life of the donor, or of a person close to him or, knowing that others intend to pay attention, has not notified him" and requires numerous debates to understand the notion of "paying attention to a person's life"

We observe, on one hand, the extension of the area concerning the life of the donor, including the attack of the life of a person close to him, who can be both a family member (spouse, other relative), as well as a his friend. Therefore, the appreciation of the matter is one of a subjective nature, a matter of fact, the primary role in qualification being in court.

Regarding the act of indictment, I draw attention to the fact that a criminal conviction is not necessary in order to be able to admit an action in the revocation of the donation, as opposed to the case of succession indemnity provided in art.958 Civil Code[4], which expressly requests it. Thus, we consider that it is sufficient for the donor to be able to prove the facts in the civil process.[5]

The idea of suppressing someone's life assumes trying to end that person's life with intend and whether the scope was achieved or not is not as relevant as the thoughts of the grantee in that moment. An example of inaction which can be qualified as attempted murder is the case when the donor, sitting next to the grantee suffering of a disease that he knows about and needing medical assistance as soon as possible in order to save his life, overlooks their knowledge and the

[4] "It is legally unworthy to inherit: a) the person convicted criminally for committing an offense with the intention of killing the person leaving the inheritance. b) the person convicted criminally for committing, before opening the inheritance, an offense with the intention to kill another successor who, if the inheritance had been opened at the time of the act, would have removed or restricted the vocation to the heir of the perpetrator ".

[5] D. Chirica, *Treaty of civil law. Inheritance and Liberality*, C.H. Beck, Publishing House, Bucharest, 2014, p. 225.

actual aid granted. On the other side, an example of action is the deed that the grantee, trying to end the donor's life, after the contract ended, has put poison in his food, but, before the effect occurs, another person manages to intervene and introduce an antidote. For the last case, we will be discussing as well the situation where the crime has been started, but soon after, the grantee set aside and stopped the result, in respective the donor's death. In specialized literature was discussed the problem of the influence of the two cases of unpunishment provided in the Penal Code - desist and prevent the production of the result on the donor's life threatening life, considering the revocation of the donation for ingratitude.

On one hand[6], it has been said that the attempting on donor's life from civil point of view has no intention if the deed was manifested trough exterior acts as a start of execution, but, afterwards the grantee desisted, by his own will and could not admit the revocation in such case. On the other hand, the specialized literature[7] retains as well the opinion which shows the initial intend of the grantee, to emphasizing on what the grantee was thinking at the moment, all the more if it was manifested by an act of execution.

I myself rally on the last opinion for the gravity of murder offense, including the simple fact of existing in the guarantee 's mind, even if he stopped the crime activity he began. We are talking about an activity started, which had supposedly involved a weighing of for the pros and cons, an inner forum, which, in our case, had been exceeded. If the activity would remained a thought, an inner analysis, including the preparation of acts like finding poison, procuring a knife, but unfollowed by an actual deed, it would not represent an actual cause for the revocation of the donation. Even more, the Civil Code didn't requested in the art. 1023 not even the consumed form of the murder offense, the simple attempt being enough, as soon as it is not followed by consequences on life, on endangerment. Practically, in this case, if I try to poison someone, even if I apply the antidote afterwards, his life jeopardized the respective someone may have a higher sensitivity to the substance introduced and the death to occur before the antidote is applied.

An offense that requires a small analysis in order to determine the possibility of being included in art. 1023 lit. A in Civil Code it is the one of killing at the request of the victim, respectively the act by which the grantee, at the request, "explicit, serious, conscious and repeated of the donor, who suffered from an incurable disease or has a serious infirmity, medically attested, causing permanent and difficult suffering" suppresses his life. In an incipient analysis, being a crime committed with intent, from the criminal point of view it is possible to order the revocation of the donation, regardless of the special circumstances in which the crime is committed. If we analyse also from the civil side point of view,

[6] I. Dogaru, *Civil law. General theory of free title documents*, All Beck Publishing House, Bucharest, 2005, p. 277.
[7] M.M. Oprescu, *op.cit*., p. 239.

even if life is priceless, the act of crime might represent a materialization of the victim's will from the perspective of planning the crime. Therefore, we can consider that such an incident only occurred in the last instance, after the elimination of the others possibilities of healing the victim, which is why we have two interpretations at opposite poles.

At the practical level, it is difficult to admit or reject such an action, but, if the grantee, in any case, responded criminally for his deed, I think that the sanction would be sufficient. In civil plan, it exceeds the reasons that were the base of regulating the possibility of revoking the donation for ingratitude and because, in a subjective plan, the donor, did not pursue his inner forum to end the life, but to save the donor from the suffering caused by a disease that was, in any case, lethal.

Criminal acts, cruelty or serious insult of the donor to the donor

The second case of art.1023 C. Civ. to which the revocation of the donation for ingratitude can be ordered stipulates: "the grantee is guilty of criminal acts, cruelty or serious insults towards the donor".

Even if the old Civil Code the idea of crime was used and the current one has modified it into criminal acts, the essential remains the same. It refers to criminal acts provided either in the Criminal Code or in special laws, both against the donor (such as crimes against the person, but by excluding those of murder that fall in letter A of art.1023, committed with intent, of course, such as bodily harm, illegally deprived of liberty, rape) as well as against his property (such as theft and robbery offenses, those from disregard for trust, destruction).

Through the notion of cruelty, the Romanian legislator wanted to highlight the acts of aggression against the donor, both physical and moral, committed both by commissive and omissive acts, without being required a criminal conviction[8]. Through moral distress, we can have abandonment in a difficult situation, such as in case of accident or illness, either it does not give help to the injured donor or abandons him in a desert area. In the situation in which the grantee submits to witnessing the brutality committed against a person close to the donor, including through a condition can be facts that have the valence to attract the admission of the action to revoke the donation.

The last aspect that needs to be clarified in art.1023 lit. B Civil Code is about the notion of serious insults that consist in “the attainment of the honour or reputation of the donor by words, gestures or offensive acts”[9], and the sovereign power in appreciating the gravity, but also the incidence of the facts belongs to the competent judge to solve the cause. In determining the serious nature of the insults, it will take into account aspects such as the previous relations between the

[8] M.M. Oprescu, *op.cit*, p. 242.

[9] R.R.P., Course notes taught at the Master of Private Law within the Law Faculty of the University of Bucharest in the 2016-2017 academic year.

parties, the environment from which they originate and the language used[10] by them in order to determine the level at which the conversations usually took place between the parties, but also the context in that the facts were committed.

This category may include serious insults against the donor, such as written or verbal offenses, intentional violations of moral integrity, feelings, honour and reputation. However, these facts must be of a certain severity, as they are threats trivial or simple quarrels, including reduced physical violence, against the backdrop of a tense family climate[11] may not be conducive to revoking the donation for ingratitude.

Nowadays, the concubine relationships are experiencing a significant development and some details need to be highlighted. In the conception of the old Civil Code it was stated that the grantee, as a concubine, was not bound by the obligation of fidelity and that the maintenance of loving relations with a person other than the donor would not be likely to bring serious insults against him. Even less, in an age of cohabitation and free will, it was not possible to regulate a certain sanction of a donor for the simple reason that it does not limit his loving relationships to those maintained with the person of the donor. Misunderstandings or possible conflicts arising on aspects of this order relate to the private and family life of the people and such interference cannot be considered favourable.

On the background of conflicting relations between the donor and the grantee ended with the action in justice against the former, the problem of qualifying the operation from the perspective of our case arises. The simple fact of promoting a legal action does not have a slanderous character, which would give the court the right to sanction the donor by revoking the donation by considering his attitude towards the donor as insulting.

The regime of action in revoking the donation for ingratitude

Revocation of the donation for the grantee's improbable attitude is possible only through the mediation of the court and, implicitly, its necessity has been analysed, on a case-by-case basis, the facts that have happened and their possibility to find themselves in one of the strict and limiting situations provided by art.1023 Civil Code. This happens precisely because of the gravity of the sanction, respectively the annihilation of one of the principles underlying the construction of this type of contract, respectively its irrevocability, the definitive character of the act of transferring the property, without consideration.

In the relevant doctrine and jurisprudence related to the old Civil Code, but also applicable to the current code, the subsidiary character of the grantee's obligation to provide the necessary food for the living of the donor in need was

[10] *Ibidem.*
[11] D. Chirica, *op.cit*., p. 226.

developed. This applies only if he had no relatives or other persons obliged to do so, specifying that this situation is different from the revocation of the donation for the non-execution of the task, which will be the object of the analysis in the following.

In addition, as a comparison between the sanction related to the donation contract and the maintenance contract, it would be useful, however, to specify also that the donor does not have a legal action to be able to request maintenance from the donor[12], and only his sanction for refusing to grant by only if the refusal proves to be reprehensible. However, if the donor procures the necessary food for his living and subsequently the lack of necessity proves, neither does the donor have any action in the equivalent return of the benefits provided by the will.[13]

In a first analysis, the active procedural quality of bringing the action has, in principle, only the donor, as the most right to assess whether it is interested in the property to return to its heritage, respectively if it decides to forgive the donor for the deeds committed. As any rule presents an exception as well, the social reality is given by situations in which the donor cannot introduce the action. This happens either because he died or did not become aware of the act, such as the situation in which he is killed by the donor, or because although he died knowing the deed, he did not mobilize in his sanction, but he did not forgive him. Either for instance, the donor is beaten and recovered fully or partially just enough to be aware of what happened and subsequently learns that behind these incidents is the grantee himself. Because of the disturbance, he is interested in the possibilities of sanctioning the grantee, by returning the good to his patrimony, but, until the action started, for various reasons, he dies and no longer seizes it.

From all the above there are two exceptional situations in which the current Civil Code provided for the possibility of initiating the action and by the heirs of the donor, regulated by art. 1024 paragraph (3) Civil Code, Respectively the possibility of introducing the action of them in the situation in which the donor dies without knowing the cause of revocation and the situation in which the donor dies within 1 year from the date on which he learned about the deed and he did not forgive the donor.

Until the next analysis, the donor's creditors, although they are interested in revoking the donation, do not recognize active procedural quality through the oblique action due to the same personal character of the donation.

Regarding the passive procedural quality, also with exceptional title, art. 1024 NCC regulates provisions with a bearing on the procedural law in a matter with a substantial preponderance, limiting to the person of the donor the scope of the persons against whom the action can be brought in the revocation of the donation, thus trying not to affect his heirs for his facts.

[12] M.M. Oprescu, *op.cit*, p. 246.
[13] *Ibidem.*

The rule established by art.1024 Civil Code provides for an exception, namely the one in which the donor dies after the introduction of the action. In This case, naturally, the action will continue against the heirs because, by death, his estate will be transmitted to the universal successors and with universal title, respectively of the main advances - cause, which will be kept in compliance with the acts concluded or the acts committed in civil plan by their author, the grantee. The Civil Code resolved, in this way, a doctrinal dispute, considering that many authors[14] did not think in accordance with the idea of continuing the action against the heirs of the donor, thus considering that revocation is a punishment that applies only to the ungrateful person, and by the death the right to sanction through its heirs is lost.[15]

In the first part of art.1024 Civil Code, the Romanian legislator has chosen a term of 1 year in which the action for revocation for ingratitude can start because the passage of time could alleviate the resentment of the donor, and the passivity after his passing will be considered as a presumption of forgiveness.

In the doctrine of the old Civil Code, the term, existing even then, was unanimously considered a decaying one and, therefore, it was not subject to suspension, interruption or institution of the repayment in deadline. Civil Code did not take up the developed doctrinal opinion and considered it, expressly, as having the legal nature of a limitation period.

Being a deadline, it will be necessary to clarify the term from which it begins to run, and the law establishes two relevant moments: either from the date of the deed, if the donor knew it from this moment or from the one in which he became aware of her work. The same fact of knowledge or ignorance also applies to the heirs[16] for determining the beginning date of the calculation of the moment from which the right to request the revocation of the donation for ingratitude is prescribed. The Romanian legislator chose to consider silence or inaction as a relative presumption of forgiveness. In the event that the donor has successively committed several acts against the donor, the 1-year term will run from the day on which the donor or heirs found out about the latter fact, in those situations where they are entitled to bring the action.

The effects of the action in revocation

Because of the admission of the action in the revocation of the donation, the main obligation of the grantee is born, that of returning the good received from the donor, according to art.1025 paragraph (1) Civil Code, respectively the general rule of restitution in kind of the good.

[14] M.M. Oprescu, *op.cit*, p. 249.
[15] *Ibidem.*
[16] D. Chirică, *op.cit,* p. 228.

To the extent that the asset can no longer be returned in kind, the donor will be obliged to return by equivalent, subsidiary to the one in kind. The donor will be obliged to pay the value of the good from the date the case is settled.

If the property has been returned in kind, but had been culpably degraded by the donor, for the partial restitution of the good, it is required that it be supplemented with damages until the value of the good is settled from the date the case was settled.

Along with the return of the good, following the admission of the action in the revocation of the donation, it will be necessary the discussion regarding fruits, regarding which, however, art.1025 paragraph (2) Civil Code[17]. There is no room for *specialia generalibus derogant*, but the rules regarding the refund will apply. In this case, the grantee is in the situation of the debtor to whom the refund is attributable, being of bad faith for the deed committed against the donor. He will be obliged to return not only all the fruits received, but also those that he could acquire, even if in fact he did not acquire them for various reasons, regardless of his fault in their acquisition. In addition, the obligation to compensate the donor and for the use that the good could procure to the donor and which has the value of a uselessness with regard to the donor added. Of course, until the return of the value of these fruits, the value of the expenses made by the grantee with fruit production will be established, such as investments made by sowing various plantations in the case of arable land or those that allow the fruit trees to grow. The donor has the right to be reimbursed by the donor with that value and will be reduced from the amount established for the donor's compensation. Therefore, they will be compensated.[18]

If, between the parties, the effects of revocation of the donation for ingratitude occur *ex tunc*, from the date of the conclusion of the donation contract, vis-à-vis third parties, by derogation from the common law, motivated by the character of civil punishment and by their lack of guilt regarding the acts committed by the donor, the effects occur from the moment of the admission of the action, respectively for the future.

Thesis I art. 1026 Civil Code places the good or the bad faith, respectively the onerous character or with the free title of the transmission as pillars in determining the effects that occur to third parties: “Revocation for ingratitude has no effect on the real rights over of the donated good acquired from the donor, on

[17] Article 1025 paragraph (2) Civil Code states: "Following the revocation of the donation for ingratitude, the donor will be obliged to return the fruits he has received from the date of the application for revocation of the donation."

[18] Art. 1645 Civil Codes states that for the return of the fruits actually acquired, as well as those which he could obtain, but he omitted this, regulating: “when the person obliged to return was in bad faith or when the cause of the return is imputed to him, he is required, after the compensation of the expenses incurred with their production, to return the fruit that it acquired or could acquire and to compensate the creditor for the use that the good could procure”.

an onerous basis, by the third parties of good faith and not on the guarantees made in their favour". The *per a contrario* interpretation of this article draws attention to the fact that the admission of the action in the revocation of the donation will have its effects against the third-party acquirers of good faith from the donor as well. If the acquisition was free, the deed of transmission could be cancelled in this situation, but especially against the third parties acquiring bad faith; in this case, the cancellation of the subsequent act may operate regardless of the onerous or free character of the transmission.

In addition, in the case of goods subjected to advertising formalities, it is necessary to register the rights of third parties in the related registries in order to be able to operate the regulated "immunity" in their favour.[19] Therefore, the real rights of the good-faith third parties acquired for consideration they will benefit from protection if they enter in the related registers if the goods that are the object of the donation are subject to these advertising formalities.[20] In the same vein, third parties may invoke the rules of land book or the acquisition of the right of ownership over the property in question through usurpation or possession of good faith.[21]

Bibliography

1. M.M. Oprescu, *The donation contract*, Hamangiu Publishing House, 2010.
2. R.R.P., Course notes taught at the Master of Private Law within the Law Faculty of the University of Bucharest in the 2016-2017 academic year.
3. D. Chirică, *Treaty of civil law. Inheritance and Liberality*, C.H. Beck Publishing House, 2014.
4. Fl.A. Baias, E. Chelaru, R. Constantinovici, I. Macovei (coordinators), *New Civil Code. Comments on articles*, 2nd edition, edit. C.H. Beck Publishing House, Bucharest, 2014.
5. V. Third, *New Civil Code. Annotated with Doctrine and Jurisprudence*, Vol. 1, The Legal Universe Publishing House, Bucharest, 2011.
6. C-tin Mitrache, *Romanian criminal law. The general part*, The Legal Universe, Publishing House, Bucharest, 2014.
7. I. Dogaru, *Civil law. General theory of free title documents*, All Beck, Publishing House, Bucharest.
8. www.scj.ro.

The donation agreement, as a remission of debt, which involves an act free of charge of the giver (in Romanian, donatorul), requires an ethical obligation of the grantee (in Romanian, donatarul) and it is materialized into the grantee's obligation to withhold any irreverent act towards the giver. The purpose of this article is to emphasize the regime of the action for repealing the donation for ungratefulness (in Romanian, acțiunea în revocarea donației pentru ingratitudine) and to detail the crimes entailed to trigger legal sanctions for the reprehensible act of the grantee.

[19] Art. 1026 thesis II Civil Code.
[20] Fl.A. Baias, E. Chelaru, R. Constantinovici, I. Macovei (coordinators), *op.cit.*, p. 1138.
[21] *Idem,* p.1139.

The Employees Rights when at the Right Ceasing of the Individual Work Contract

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Abstract
The present paper approaches mainly the legal provisions regarding the right ceasing of the individual work contract from the point of view of the systematic corroboration of the legislation requirements concerning the retirement and/or unemployment right, offering the law practitioners considerations and arguments with a view of guiding them to some correct legal behavior, a rightful application of the norms in the field.

Keywords: *individual work contract, the right ceasing of the legal relationship/individual work contract, employer, employee, court*

In order to make the analysis we suggest, it is necessary to identify the legal applicable framework. With this aim in view we point out that the right ceasing of the individual work contract is regulated by the provisions of art. 56-57 in the Law no. 52/2003 – The Labour Code[1], with further changes and completions. These legal provisions are to be analysed, in a systematic approach, in connection/corroboration with the provisions of other legal acts in the field, such as Law no.263/2010 concerning the unitary system of public pensions[2], Law no. 76/2002 concerning the system for the unemployment rights and the stimulation of the work force[3] and others, as the case may be.

The first situation of the right ceasing of the individual work contract is stipulated in art. 56 par.(1) letter a) in the Labour Code, - *at the date of the employee's our employer's death – natural person, as well as in case of the employer's dissolution – legal person, from the date when the employer stopped his/her activity according to the law*.

Regarding these legal provisions, a first aspect we approach is the situation of the death of the employer natural person, in case of the employees who work as "*household staff*", - housemaid, baby-sitter, driver, etc. In these cases, even if, for example, the husband who had signed the individual work contract as an

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employer, died, the going on of the activity with the permission of the surviving husband justifies the non-application of the provisions in art. 56, par.(1) letter a) in the Labour Code. We have in view the decision of the Highest Court of Cassation and Justice no.37/2016[4], according to which "*supposing the parties did not observe the necessity to sign the individual work contract in written form, the natural person who has worked for and under the authority of the other party has the way open for the action to ascertain the work relationship and its effects(...)*". However, for a clear/non-equivocal legal situation we suggest the right ceasing of the first contract and signing of a new contract with the surviving husband.

Another aspect which we consider of interest is that the ceasing of the existence of the employer legal person should be made "according to the law requirements" that is mainly, according to the provisions in art. 251 Civil Code (Law no.287/2009)[5] according to which the legal persons submitted to registration, cease at the date of the erasure from the registers where they have been enrolled. The other legal persons cease at the date of the document by which the ceasing was disposed. In conclusion, if these legal requirements are not met, it cannot *be invoked a right ceasing of the individual work contract on basis of art.56 par.(1) letter(a) in the Labour Code.*

The above-mentioned considerations are also valid in case of the right ceasing of the individual work contract on the basis of art. 56 par.(1) letter b) in the Labour Code.

Concerning the provisions in art. 56 par(1) letter c) in the Labour Code, they stipulate the right ceasing of the individual work contract "*at the date of cumulatively meeting the requirements for the standard age and the minimum due stage for retirement or, exceptionally, for the employee who opts, in writing, to continue the individual work contract, within 60 calendar days, before meeting the standard age requirements and the minimum due stage for retirement, at the age of 65; at the date of notifying the retirement decision in case of grade III handicap pension, the partial anticipated pension, anticipated pension, the person for the age limit with the reduction of the pension standard age, at the date of announcing the medical decision about the work capacity in case of grade I or II handicap."*

According to the provisions in art. 53 Law no. 263/2010 the retirement standard age is of 65 – for men and of 63 – for women, and the minimum due stage is of 15 years, both for men and for women. A first remark is that there is an evident contradiction between the provisions in art. 56 par.(1) letter c) in the Labour Code and those in art. 53 in Law no. 263/2010, in the sense that the retirement standard age for women has remained of 63, and according to the Labour code the women employees are allowed to opt to continue to work until they are 65. The exception provided in art. 56 par.(1) letter c). – The Labour Code was established by the Decision of Constitutional Court no. 387/2018 (July 5, 2018)[6]. Where, on the one hand it is stated that the provisions in art. 53 in Law no. 263/2010 are constitutional

because *"a possible solution to standardize the retirement age between women and men can be done only to the extent to which it is justified by the social realities and gradually…"* and on the other hand the Court has appreciated "*that it is necessary to outline the distinction between the problems concerning the retirement conditions and that referring to the right ceasing of the individual work contract*". With this aim in view, the Court has appreciated that "*the stipulations in art. 56 par.(1) letter c) the first thesis in Law no. 53/2003 are constitutional only to the extent to which, when reaching the legal retirement age, they give the woman the right to opt either for the opening of the right to retirement and the ceasing of the current individual work contract, or for the continuing of this contract, until she reaches the legal retirement age stipulated for men, at that date. In the first case, when she opts to open the right to retirement and the current individual work contract rightly ceases, and the right to work will be possible only after signing a new contract, if the employer agrees to this. On the contrary, in case the woman employee opts to continue the work relationship un she reaches the pension age stipulated by the law for men, the right to work is not conditioned by the signing of a new contract and by the employer/s willingness, but the right to pension will not be able to be required simultaneously*."

As the result of the facts borne in mind by the Consitutional Court, the art. 56 par.(1) letter c) in the Labour Code was changed in the form which we have presented, the same article being also completed with par.(3) which stipulated that the employer cannot "*restrict or limit the right of the woman employee to continue the activity under the conditions provided in par.(1) letter c).*"

Another situation for the right ceasing of the individual work contract, on which we will stop for short comments, is that in art. 56 par(1) letter e) – "*as a result of the approval of the request of a person illegally fired or for unfounded reasons to be reinstated in the position held by an employee, from the date the legal decision of reinstatement remains final*."

We think it must be outlined that we deal with an imperative stipulation, which does not allow for example, the reinstatement of the person fired unfoundedly in a similar position to that held, in the idea of keeping, according to professional criteria, of the employee who held the respective position.

Referring to the situation of the right ceasing of the individual work contract, regulated in art. 56 par.(1) letter f) – "*as a result of sentencing to a punishment depriving of freedom, from the date the court's decision is final" as compared to that from letter h)* – " as a result of prohibiting to have a job or a position, as a safety measure or as an additional punishment, from the date the court's decision by which the prohibition was decided, is final; we point out the following:

In case of art. 56 par(1) letter f) the right ceasing of the individual work contract is not conditioned by the nature of the fact for which the employee was

sentenced, in the sense that the fact may not have any connection with the professional activity of the employee, *being enough the sentence to a punishment depriving of freedom, with execution*;

- In case of art. 56 par.(1) letter h), does not have a significance for the application of these legal provisions, if the employee was sentenced to a main punishment depriving of freedom, with suspension, *what is enough to come under the incidence of these legal provisions is the prohibition to have a job or a position*, as a safety measure or additional punishment, by a final juridical decision.

A final situation of the right ceasing of the individual work contract, on which we shall stop, is that regulated in art. 56 par.(1) letter j) – "*the withdrawal of the parties' agreement or of the legal representatives, in case of the employees aged 15-16*". What we consider useful to be mentioned is that, on the one hand – the withdrawal should be unequivocal (not a simple criticism or a negative comment). In this sense, it is advisable that the agreement withdrawal should be "*ad probationem*", made in writing. On the other hand – it is necessary to point out that the law does not provide the motivation for the withdrawal of this agreement.

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At the end of this paper we mention that according to the provisions in art. 17 in the Law no.76/2002, with the further changes and completions, the granting of the unemployment allowance is conditioned by the ceasing of the work relationships by the beneficiaries "*from reasons not chargeable to them*." By comparing the provisions in art. 56 the Labour Code with the provisions in art.17 Law no.76/2002, we consider that the situations of the right ceasing of the work contracts, are not chargeable to the employees in cause, therefore giving them the right to be granted the unemployment allowance are those regulated by the Labour Code art.56 par.(1) letters d), e), g), i), and j). We take into consideration that in these situations cannot be mentioned the employees' guilt and under the conditions of meeting the other requirements stipulated in law no.76/2002, they are entitled to the benefit from the unemployment allowance and from the other social protection measures provided by this normative act.

Bibliography

I. *Legislation*

1. Law no.53/2003 Concerning the Labour Code, with further changes and completions.
2. Law no.263/2010 concerning the unitary system of public pensions, with further changes and completions.
3. Law no.76/2002 concerning the system for the unemployment allowances and the stimulation of the work force to have jobs, with further changes and completions.
4. Law no.287/2009 concerning the Civil Code, with further changes and completions.
5. Directive no.76/207/EEC/09.02.201976.

6. Directive no.79/7/EEC/19.12.2978.

II. *Jurisprudence*

1. The Decision of the Constitutional Court no.1237/2010.
2. The Decision of the Constitutional Court no.387/2018.
3. The Decision of the Highest Court of Cassation and Justice no.37/2016.

Qualifying the Medical Act from the Perspective of the Civil Legal Act Theory - Effects, Conditions

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Motto: "*The medical act is nothing other than a meeting between trust and conscience.*"
Gheorghe Scripcaru

Abstract

The present referral aims to analyze the degree to which the particularities of the medical act are covered under the requirements of the civil legal act. The mandatory conditions required by the structure of the civil legal act, with direct references to capacity and consent, contain a series of particular aspects that are tied to the way it is constituted, while making a distinction between the conventional medical act and the one that appears in emergency situations. By looking at the cause of the medical act, we arrived at the conclusion that we must talk about different types of medical acts with one final goal, namely the state of good health of the patient, in consideration of the fact that the active subject of the obligation can change during the different stages of the medical act. The qualification of the medical act in the domains of diagnosis, therapy and post-therapy care can change the nature of obligation in a way that allows a better understanding of them when we address the medical act as being unitary.

Keywords: *informed consent, medical act of diagnosis, written consent of the patient*

I.Introductory Aspects

Human society as a whole attempts, in a relatively short historical span of time as compared to the general evolution of technology and information, to absorb an entire range of novel aspects regarding the individual's legal capacity, with those qualified as being fundamental naturally drawing the attention of international bodies and, in most cases, undergoing implementation in domestic law. The right to health is a fundamental right that gives rise to preoccupation, its mere definition attempting to encompass the full complexity of human beings in relation to society.

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The World Health Organization defines health as being 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmery'.

II. Defining the Medical Act

In light of this, our aim is to analyze the manner in which the medical act manifests in relation to the requirements of a civil legal act in our system of law, it being previously defined in accordance with the norms of the Code of Medical Deontology by Art. 3 as representing 'the doctor's obligation … in defending man's physical and mental health, easing his suffering, respecting human life and dignity, without discriminations related to age, sex, race, ethnical affiliation, religion, nationality, social rank, political ideology or any other reason, in time of peace as well as in time of war (I have chosen to preserve the previous form because it is also maintained in the new Code of Medical Deontology, while being expanded upon across multiple articles).

The complexity of defining the medical act arises from the particular aspects that concern the external intervention on the person's intimacy, their fundamental values, distinguishing the stages of diagnostic exploration (complex due to its physical and mental effects), the medical investigation, the formulation of a stage diagnosis, the analysis of therapeutic options in accordance with the patient's biological and medical status, the formulation of a prognosis, the assessment of their own competence in relation to the diagnosed pathology, and the attempt to reach the state of good health. The mere enumeration of these general steps allows a clear picture to be drawn of the complexity of the interaction between the doctor and the patient under the parties' agreement that will regulate and condition the legal relationship established.

The essence of the medical act lies in the necessity of obtaining or preserving the person's state of health, under which the legal relationship may arise conventionally, in so far as the person addresses the doctor, or through the effect of the law in emergency situations.

III. The Medical Act As A Civil Legal Act

'The civil legal act represents a manifestation of the will of individuals subject to civil law, expressing the intent to produce civil legal effects, in the sense of giving rise to, modifying or extinguishing a concrete civil legal relationship.'[3]

The keystone of our juridical life, the civil legal act recognises the need for the existence of elements without which it cannot be valid, the medical act having important particularities regarding the way it appears, manifests and produces

[3] Claudiu Ramon D. Butculescu, *Drept Civil - Partea Generală,* Bucharest, Editura Fundației România de Mâine, 2013, p. 75.

effects. Considering that the maintenance, improvement or achievement of the state of good health is regulated by the legislator in an imperative manner within constitutional and special norms, Law 95/2006 has the effect of interpreting the medical act as a contract arising under various forms, which we shall subsequently analyse in terms of its formation, effects and conditions. Thus, the regulations of Art. 1179, para. (1), Civil Code, become incidental, outlining the essential conditions for a contract to be valid – the capacity to enter into a contract, the parties' consent, the determined and lawful object, and the lawful and moral cause, aspects which are particular to the context of the medical act.

Thus, we may distinguish the medical act as a bilateral civil legal act, onerous due to its compulsory medical insurance component, which most often takes a consensual form (an exception being the emergency medical act), constitutive by its legal effect, acting in the pursuit of preserving rights, non-patrimonial in terms of its content, affected by conditions, simultaneously being a principally inter-vivos act with successive execution.

'The legislator links the valid conclusion of civil legal acts with a conscious will and a level of judgement necessary to become aware of their significance and consequences.' [4]

The capacity to conclude the civil legal act regarding the access to medical services takes into account the provisions of the general norm referring to the capacity to act, viewing as incidental the provisions of Art. 38 Civil Code, and, due to the particular situations in which the legal relationship is created, as well as its effects, Art. 661, para. (a) and (b) of Law 95/2006 regulates, by way of derogation from the provisions of the general norm, the situations in which the medical act may arise in the absence of consent from the parents or the legal representative of a minor, with reference to medical emergencies - 'in emergency situations, where the parents or the legal guardian cannot be contacted and the minor has the necessary level of judgement about the medical situation they find themselves in, they are deemed to have the capacity to act'.

We must note that the exceptional regulation about obtaining consent in this situation raises, on the one hand, the issue of how doctors appreciate the minors' legal capacity to act, provided that the doctor is also the debtor of the obligation, and, on the other hand, this regulation is contrary to Art. 6, para. 2 of the Convention on Human Rights and Biomedicine, which stipulates that: "Where, according to law, a minor does not have the capacity to consent to an intervention, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law". Here we may recognize that that the legislator understood the consent of a minor over 16 years of age to a medical act as a situation regulated by Art. 43, para. (3) Civil

[4] Diana Anca Artene, *Drept Civil - Persoanele* (Craiova, Editura Sitech), p. 42.

Code, with respect to acts intended to preserve rights concluded by a minor who does not have the capacity to act.

In addition, the special norm also concerns situations relating to the diagnosis and/or the treatment of sexual and reproductive problems, the medical act being able to intervene at the express request of the minor over 16 years of age. As in the case of unassisted minors, we are in the presence of a derogatory norm at odds with the regulations of the Oviedo Convention, a norm that does not distinguish exceptional situations where the medical act aimed at the minor can occur without the consent of the legal representative or the family court, or of a representative appointed by it.

The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, 04.04.1997, Oviedo, treaty ratified by Romania through Law 17/22.02.2011, under Art. 6 of Ch. II, provides that:

1. Subject to Articles 17 and 20 below, an intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit.

2. Where, according to law, a minor does not have the capacity to consent to an intervention, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law. The opinion of the minor shall be taken into consideration as an increasingly determining factor in proportion to his or her age and degree of maturity.

3. Where, according to law, an adult does not have the capacity to consent to an intervention because of a mental disability, a disease or for similar reasons, the intervention may only be carried out with the authorisation of his or her representative or an authority or a person or body provided for by law. The individual concerned shall as far as possible take part in the authorisation procedure.

4. The representative, the authority, the person or the body mentioned in paragraphs 2 and 3 above shall be given, under the same conditions, the information referred to in Article 5.

5. The authorisation referred to in paragraphs 2 and 3 above may be withdrawn at any time in the best interests of the person concerned.

The consent of the parties to the medical act is presented as two aspects, taking the form of a general consent regarding the cause of the medical act and an informed consent referring to the subject matter of the civil legal act, defined in this situation as the Informed Patient Agreement by Law 95/2006 Art. 660.

- In order to be subjected to methods of prevention, diagnosis and treatment, with potential for patient risk, after explanations from the doctor, dentist,

nurse/midwife, according to the provisions of paragraphs (2) and (3), the patient is required to provide their written consent.

- In obtaining the patient's written consent, the physician, dentist, nurse/midwife is required to provide the patient with information at a scientific level reasonable for their understanding.
- The information should include: the diagnosis, the nature and purpose of the treatment, the risks and consequences of the proposed treatment, viable alternatives to the treatment, their risks and consequences, and the prognosis of the disease without the treatment.

As regards the general consent, it will be present and necessary where the legal relationship is formed conventionally by the person presenting themselves before the doctor, and tacitly expressed where the doctor's intervention is urgent, at which point, in the absence of a previously communicated explicit stipulation to refuse medical intervention, the doctor has the legal obligation to intervene.

First, we may observe the phrase 'with potential for patient risk', which, in the context of the medical act, is an extremely general one, considering that, by their very nature, medical interventions are maneuvers operating under the 'risk-benefit' report analysis, as well as the biological status of the patient. Paragraphs (2) and (3) further detail the doctor's obligation as to the content of the information to be presented to the patient in reasonable scientific terms, the patient or their representative having to give an informed consent about medical aspects most often correlated with a specialist doctor's level of expertise. Thus, in interpreting Art. 660, the patient or their representative must take a decision regarding this therapeutic attitude, which, due to its complexity, may be done in accordance with the legal norm of professional practice by a specialist doctor in the medical field which the respective pathology addresses, this aspect being incidental to situations where the information is presented to the patient at a reasonable scientific level for their understanding.

In relation to the above, we can, in most cases, speak of a vitiated consent, in so far as one of the parties does not have the professional capacity to make an informed decision about the consequences arising from the subject matter of the medical act.

WHO 1411/2016, amending WHO 482/2007, regulates the form and content of the patient's informed consent, stipulating as a rule the requirement to obtain the consent in the form provided in Annex 2, according to which:

'Art. 8. -

(1) The written consent of the patient, required by art. 660 of Law no. 95/ 2006, republished, as subsequently amended and supplemented, must contain at least the following elements:

(a) the name, surname and domicile or, where appropriate, the residence of the patient;

b) the medical act to be submitted to it;

c) brief description of the information provided by the doctor, dentist, nurse/midwife;

d) the agreement expressed unequivocally for the medical act;

e) signature and date of expression of the agreement.

(2) The written agreement is an annex to the primary evidence documentation.

(3) In the case of a minor patient, the written consent shall be obtained from the parent or from the legal representative or, failing that, from the nearest relative. The closest relative within the meaning of this paragraph means the major relatives accompanying the minor patient up to the fourth degree inclusive.

(4) In the case of a major patient with dissonance (according to the decision of the committee of psycho-legal forensic expertise), the written agreement will be obtained from the legally appointed representative.

(5) In the case of a major patient with whom the physician, dentist, nurse/midwife can not effectively communicate due to the patient's medical condition at the time when the consent is required, the written consent can be obtained from the spouse or the closest major relative of the patient. By the closest relative is understood, in order, the parent, the descendant, the relatives in the collateral line up to the fourth degree inclusive.

(6) A patient who can not sign for infirmity shall be required to express verbal expression of consent for the medical act, the physician, the dentist, the nurse/midwife to make a statement to that effect on the informed consent form. The patient who does not know the card or does not see the text of the agreement out loud, will be asked if it is his/her will, and the doctor/nurse will make a statement on the informed consent form.

(7) The informed patient's agreement shall be expressed in writing, by filling in the form provided in Annex no. 1, which is an integral part of these methodological norms.'

The subject matter of the legal act - a medical act represented by the conduct of the parties - helps us to understand the medical act as a 'complex of legal acts', with the ultimate goal of reaching the state of good health. As mentioned in the preamble to this paper, the medical act makes a factual distinction between multiple stages, each having both an independent and an underlying purpose that responds to the need to obtain a state of good health for the person. We can thus discuss the diagnosis of the pathology as a distinct legal act, because it is intended to obtain diagnostic certainty, the treatment of the pathology not always being the attribute of the diagnostic obligation's active subject. In fact, it is common for the treatment to be carried out by a doctor other than the one that generated the diagnostic result.

The question that generates most discussions is related to the nature of the obligation stemming from the medical act as a civil legal act. It is generally

appreciated that the doctor's obligation towards the patient is one of dilligence with regard to the medical act as a whole, the understanding of its particularities making possible a potential re-qualification of the obligation to achieve a specific result in certain situations, considering that the doctor is professionally qualified and certified to obtain the result, this being correlated only with the respective degree of training and experience.

The commencement of the treatment by the specialist physician constitutes a legal relationship different from that of the diagnosis in the view expressed above, but, unlike the situation where the doctor carried out the diagnosis, herein we may appreciate the existence of a due dilligence obligation resulting from objective aspects relating to the patient's biological status, their comorbidities, compliance with the treatment and the medical stage of the respective pathology.

The therapeutic results obtained are communicated in order to be taken into consideration by the family doctor, a component of the medical act, being the third and final legal relationship that concerns the monitoring of the person's health, a legal act which is also distinct. In this latter situation, we are in the presence of an obligation to achieve a specific result, in the sense that the doctor is called upon to observe any modifications as regards the health of the person under their supervision.

Understanding the medical act as a civil legal act will continue to give rise to a constant concern with the aim of understanding the subtle mechanisms that arise in the doctor-patient relationship and their legal regulation in order to provide the necessary framework for an effective civil legal act.

Bibliography

1. Artene D.A., *Drept civil. Persoanele,* Editura Sibtech, Craiova.
2. Butculescu C.R.D., (2013), *Drept Civil – Partea Generala,* Editura Fundației România de Mâine, Bucharest.

Contractual Liability

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Abstract

Any obligation entitles the creditor to claim the debtor to fulfil accordingly the performance he is bound to. An improper or delayed performance or the failure to perform by one party causes the other a prejudice, therefore entitling the latter to claim the former damages equivalent to the prejudice suffered.

Keywords: *contractual liability, damages, prejudice, wrongful act, default, assessment*

I. Concept and Regulation

Contractual liability involves the debtor's obligation to compensate the creditor for the damage caused following the failure to perform or the improper or delayed performance of his contractual obligations.

In the Civil Code, tort liability is addressed separately, while contractual liability is stipulated in the obligation effects section along with the damages. Therefore, according to doctrine, damages are a possible aspect of the performance of the obligation, by equivalent, when the performance in kind is not possible.

There are two types of damages:

1) *compensatory damages* – the equivalent of the prejudice suffered by the creditor following the debtor failing to perform or partially performing his obligations;

2) *moratory damages* – the equivalent of the prejudice suffered by the creditor following the debtor performing his obligations with delay. This type of compensation can be cumulated with the performance in kind, while the compensatory damages are meant to replace the performance in kind.

According to the provisions of the Civil Code, the following conditions must be met in order to have contractual liability:

- the wrongful act resulting in the debtor failing to perform his contractual obligations;
- the prejudice;
- the causal relation between the wrongful act and the prejudice;
- the debtor's default.

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At European level, the contractual obligations are governed by the provisions of the Convention of Rome of 1980 on the enforceable act for contractual obligations as well as of Regulation (EC) no. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the enforceable act for contractual obligations (Rome I).

II. Conditions for Awarding Damages

The prejudice means the harmful patrimonial or non-patrimonial consequences deriving from the infringement by the debtor of the creditor's right to claim damages, through the failure to perform his obligation/obligations.

This condition is stipulated in article 1530 of the Civil Code, according to which the debtor shall be bound to pay damages "if appropriate".

In the absence of the prejudice, the creditor's action for damages shall be dismissed.

The prejudice is the result of the debtor's wrongful act consisting in the failure to perform or the improper performance of his obligation.

The burden of proof in terms of the prejudice lies with the creditor, except for the cases in which the extent of the prejudice is established by law (for example, in case of pecuniary obligations when the law sets the legal interest as compensation).

The wrongful act, a consequence of the violation of the obligation, is specific to the contractual liability.

Unlike tort liability, which operates as a result of the failure to perform an obligation not deriving from a valid contract, the contractual liability operates in case of the failure to perform a contract-based obligation.

The wrongful act may take various shapes, such as:

- the improper performance of the obligation;
- delay in the performance of the obligation;
- the partial performance of the obligation;
- the failure to perform the obligation.

THE CAUSAL RELATION BETWEEN THE WRONGFUL ACT AND THE PREJUDICE

Pursuant the Civil Code, the damages shall only cover the direct and necessary consequence of the failure to perform.

The debtor's default is an element of the subjective side of the offence, translating in the fact that the debtor is responsible for the failure to perform his obligations or for the improper or delayed performance.

As a rule, until proven otherwise, the debtor is presumed to have failed to perform his obligations.

In this respect, we have three situations, as follows:

- in case of negative obligations ("to omit"), the creditor shall be bound to prove the act committed by the debtor;

- in case of positive obligations ("to do" and "to give"), the creditor must prove the existence of the claim; if he succeeds in doing that, the debtor is presumably responsible for the failure to perform his obligation, until he proves the contrary.

The debtor shall be cleared only if he proves that the failure to perform is a result of a fortuitous event, force majeure or the creditor's default.

THE EXTENSION OF THE TERM BY WHICH THE DEBTOR CAN PERFORM HIS OBLIGATIONS

The creditor claims the debtor to perform his obligations.

According to article 1522, paragraph 1 of the Civil Code, in case of positive obligations, the debtor shall be notified by the Court of Law located in the territorial area in which he resides that the term by which he can perform his obligations has been extended. This must take one of the following shapes:

- *notification by an enforcer*;
- *writ of summons*.

The term by which the debtor can perform his obligations is extended de jure in the following cases:

- when the law expressly stipulates that; in case of pecuniary obligations, the law sets the legal interest as compensation;
- when the parties have expressly agreed that the debtor cannot perform his obligations upon maturity, the term is extended by will of the parties;
- when the obligation, by its nature, could only be performed within a determined interval and the debtor has failed to perform it within the respective period of time;
- in case of continuing obligations, such as the obligation to provide power or water;
- in case of failure to perform the negative obligations.

The extension of the term by which the debtor can perform his obligations has the following legal effects:

- from the date he is notified on the extension of the term, the debtor is bound to moratory damages;
- from that date, the creditor is entitled to compensatory damages;
- when the obligation consists in giving an individually-determined asset, the risk is incurred by the debtor, as a result of the extension of the term.

III. The Conventions Amending the Contractual Liability

The parties may include in the contract derogatory rules in terms of liability or may sign an additional deed in this respect.

The clauses may cover:

- exemption from liability;
- restriction of liability;
- aggravation of liability.

IV. Damage Assessment

Judicial assessment

The assessment of damages by the Court is stipulated in articles 1530-1533 of the Civil Code, as follows:

- upon setting the damages, the Court will consider both the actual prejudice suffered by the creditor and the profit he could not achieve;
- as a rule, the debtor shall be bound to recover only the foreseeable damages upon concluding the contract;
- the debtor shall be bound to recover only the direct damages resulting from the failure to perform.

Conventional assessment

The damages can also be assessed by will of the parties. They include a clause in the contract, called ***penalty clause***.

The penalty clause is *the ancillary agreement by which the parties predetermine the equivalent of the prejudice suffered by the creditor following the debtor failing to perform, improperly performing or performing with delay his obligations.*

The penalty clause has the following legal features:

- it is an ancillary agreement;
- it has a practical value, for it predetermines the value of the damages;
- it is legally binding;
- it operates solely when all the terms for damages award are met.

Due to its conventional nature, the penalty clause is meant to predetermine the amount of the damages to be suffered by the creditor, therefore the Court shall only ascertain whether or not the performance has been fulfilled under the terms of the contract. This means that the Court cannot claim the creditor referring to the penalty clause to prove the prejudice suffered.

In practice, the Courts have in view that “the penalties stipulated by the parties in the loan agreement operate as a penalty clause set for the delayed reimbursement of the amount borrowed.

Bibliography

1. Ioan Albu, (1994), *Civil Law. The Contract and Civil Liability.* Cluj-Napoca: Dacia, p. 235.
2. Florin Ciutacu, Cristian Jora, (2003), *Civil Law. The General Theory of Obligations*, Buchares,Themis Cart, p. 385-386.
3. Adriana Corhan, (1999), *Compensation by Cash Equivalent.* Bucharest, Lumina Lex, p. 73-80.
4. Mihail Eliescu, (1972), *Tort Liability.* Bucharest, The Romanian Academy, p. 7.
5. Liviu Pop, (2006), *Treaty of Civil Law. The Obligations*, 1st. vol., "The General Legal Regime". Bucharest, CH Beck, p. 339.
6. Toma, Mircea, (2000), *Civil Law. The General Theory of Obligations.* Bucharest, Argument, p. 347.
7. Ion Dogaru, Pompil Drăghici, (2002), *Civil Law. The General Theory of Obligations.* Bucharest, All Beck, p. 455.
8. Constantin Stătescu, Corneliu Bîrsan, (2002), *Civil Law. The General Theory of Obligations.* Buchares, All Beck, p. 349.
9. Civil Code, 2009.
10. The Supreme Court, Civil Section, Decision no. 625/ 14.03.1984", in Ioan Mihuț. *Repertory of Practice in Civil Matters of the Supreme Court and other Courts for the Years 1980-1985,* Bucharest: Scientific and Encyclopedic Publ.,1986, p. 82.
11. The Court of Appeal of Bucharest, the 4th.Civil Section, Civil Decision no. 3154/ 1999." Collection of Legal Practice (1999), p. 43.

The role of the main EU institutions in the Area of Freedom, Security and Justice

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Abstract

The aim of the present paper is to give an analysis of institutional decision-making in the Area of Freedom, Security and Justice (AFSJ). Particular attention will be given to how AFSJ-active organizations of the European Union (EU) engage with fundamental rights and by what instruments. By their actual definition, AFSJ policies raise concerns about fundamental rights. The purpose of the study is to demonstrate the connection of such issues to institutional and instrumental characteristics.

The focus on the institutional landscape consists of the main legislative actors, agencies and Member States of the EU, as well as democratic and legal monitoring and supervision mechanisms. In the form of committees, working groups and networks, the variety of actors also involves external actors as well as sub-actors.

This research seeks to lay the basis for establishing a link between the AFSJ's institutional characteristics, the available legal and policy tools and the fundamental/human rights issues that may be of concern when acting in the AFSJ. Therefore, the study will provide not only an overview of the AFSJ policy-making landscape, but also an insight into recognized fundamental/human rights issues that occur across the different policies.

Keywords: *European Union; Area of Freedom, Security and Justice; fundamental rights; European Council; European Commission; European Parliament*

1. Introduction

The various actors within the AFSJ may be divided into groups depending on whether they are mainly involved in: a) participating in the enforcement of EU legislation or policies (Council, European Commission, European Parliament); b) participating in the adoption of EU legislation or policies (the agencies, Member States); or c) overseeing compliance with EU legislation or policies, including fundamental rights (CJEU, European Union Agency for Fundamental Rights - FRA). Although, this distinction cannot be always maintained categorically. The European Parliament, for instance, is involved in supervising fundamental rights and FRA can indirectly play a part in the legislative process. However, these bodies' primary reason provides them with distinct identities in the AFSJ's policy making and legislative measures. This also means that as regards the protection of fundamental rights, they are subject to different expectations.

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The entry into force of the Lisbon Treaty, marking the recent revision of the AFSJ, brought with it a promise to remedy many of the historical complexities that have plagued the

AFSJ[2]. If there is one feature that has been identified in AFSJ's decision-making institutional landscape, it would be the "Kafkaesque complexity" of the area[3]. The Lisbon Treaty has brought some changes to the situation, at least in terms of decision-making. As mentioned above, the eradication of the pillar system was one of the most significant improvementss brought about by the Lisbon Treaty. As a result of that change, matters relating to the AFSJ became subject to the EU's ordinary decision-making procedure known as the co-decision procedure[4]. Since Lisbon, EU decisions in the AFSJ have taken the form of regulations, directives, decisions (binding), and recommendations and opinions (non-binding)[5].

Since all main EU bodies are engaged in the AFSJ, institutional issues of concern in the AFSJ area are primarily related to the general tasks of the main bodies and how fundamental rights are guaranteed in their performance. The general principles governing the AFSJ are set out in Articles 67-76 TFEU. Yet, the specific scope of EU measures is described separately for different policy fields in Title V of the TFEU.

2. The role of the main EU bodies in the AFSJ

a. European Council

According to the Treaty on European Union (TEU), the European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof.[6] The European Council consists of the Heads of State or Government of the Member States, together with its President and the President of the Commission.[7] The High Representative of the Union for Foreign Affairs and Security Policy also takes part in its work.[8] The European Council generally meets four times a year.[9] To enhance the effectiveness

[2] For an overview of the historical development of the AFSJ, see e.g., Steve Peers, *EU Justice and Home Affairs Law* (3rd edn, Oxford University Press 2011), pp. 4-41.
[3] Douglas-Scott. Sionaidh Douglas-Scott, 'The EU´s Area of Freedom, Security and Justice: A Lack of Fundamental Rights, Mutual Trust and Democracy?' [2008-2009] *The Cambridge Yearbook of European Legal Studies,* Volume 11, 53, 84.
[4] Described in Article 294 TFEU. Notably the provisions in Title V of the TFEU on the Area of Freedom, Security and Justice also contain a number of exceptions to the applicability of the co-decision procedure.
[5] Article 288 TFEU.
[6] Article 15(1) TEU.
[7] Article 15(2) TEU.
[8] Article 15(2) TEU.
[9] Article 15(3) TEU.

of its work the European Council has defined policy priorities up to 2014, including the area of Freedom, Security and Justice of the Union.[10]

Article 68 TFEU (Treaty on the Functioning of the European Union) confers on the European Council the main responsibility for defining the "strategic guidelines for legislative and operational planning within the area of freedom, security and justice". Therefore, it is important to recognise that the European Council's function is to set policies, and not to legislate, within the AFSJ.[11] The guidelines have so far been the Tampere, Hague and Stockholm policy programmes. The last of these multiannual programmes runs from 2009-2014.[12] In June 2014, the European Council adopted new strategic guidelines for legislative and operational planning for 2015-2020.[13] In addition, the European Council regularly debates JHA topics, such as the question of migration flows.[14]

b. Council of the European Union ('Council')

The Council is the major decision-making body of the Union. The Council is made up of government representatives of the Member States and its composition varies depending on the Council meeting in question. The Council meets in the Council of Justice and Home Affairs configuration ('JHA Council') when acting as co-legislator in the AFSJ. This implies that justice and home affairs ministers from the Member States are attending the meetings. The JHA Council has jurisdiction over the entire AFSJ field to implement laws. The work of the Council in the field of JHA is driven, among other things, by the Council's 18 month programmes. A number of working parties and commissions known as preparatory bodies of the Council facilitate the Council's decision-making.[15]

The Council is primarily responsible for inter-level coherence (between national and EU-levels actors). This responsibility rests with the Council presidency. The Committee of Permanent Representatives was the body given general responsibility for ensuring intra-institutional coherence in internal security and external relations structures within the Council (COREPER).[16] COREPER carries out its coordinating role both in the preparatory phase and by monitoring the work of expert groups.

[10] European Council: European Council priorities up to 2014, Document for the attention of Heads of State or Government, received from Herman Van Rompuy at the European Council on 28 and 29 June 2012.
[11] Article 15(1) TEU.
[12] European Council: The Stockholm Programme - An Open and Secure Europe Serving and Protecting Citizens [2010] OJ C115/1.
[13] European Council: European Council 26/27 June 2014 Conclusions.
[14] European Council: European Council 19/20 December 2013 Conclusions.
[15] See further Council of the European Union, 'About the Council of the EU' <http://www.consilium.europa.eu/council?lang=en> accessed on 1 April 2014.
[16] Council of the European Union: A Strategy for the External Action of JHA: Global Freedom, Security and Justice [2005] 15446/05, 6 December 2005, para. 14, and Florian Trauner, 'The

COREPER prepares all the work of the Council and is supported by different working parties and committees. These bodies are examining legislative proposals and conducting research and other preparatory work preparing the ground for Council decisions. It is possible to set up Council committees and working groups by treaty, Council act or by COREPER. COREPER has set up countless Council committees and working groups in the JHA field.[17]

As far as the Council and fundamental rights are concerned, a distinction can be made between (a) various mechanisms aimed at ensuring that the decision-making of the institution is in line with fundamental rights; and (b) the institution's more general human rights action and supervision. First of all, with regard to the former, the Council has adopted conclusions on how fundamental rights can be integrated into its work.[18] In addition, the Council may ask FRA to issue opinions and conduct research on fundamental rights issues. For example, in the AFSJ field, the Council requested opinions on the proposal for a Council Framework decision on the use of Passenger Name Record (PNR),[19] and the Framework Decision on Racism and Xenophobia (2008/913/JHA),[20] as well as a survey on gender-based violence against women. FRA's data collection and study results may also feed into debates of the Council preparatory bodies, especially the Fundamental Rights, Citizens' Rights and Free Movement of Persons (FREMP)[21] Working Party, to which FRA introduces its annual fundamental rights report.

The Foreign Affairs Council (FAC) – consisting of the foreign affairs ministers of the Member States and sometimes defence/development/trade ministers – is responsible for the Union's external action. As far as external action and fundamental rights are concerned, the Human Rights Working Group (COHOM) – made up of Commission and Member States human rights experts – is responsible for preparing and implementing Council action. The Human Rights

Internal-External Security Nexus: More Coherence under Lisbon?' [2011] European Union Institute for Security Studies Occasional Paper, No. 89, pp. 22-24.

[17] Council of the European Union: List of Council Preparatory Bodies [2014] 5312/14, 14 January 2014.

[18] JHA Council: Council conclusions on the role of the Council of the European Union in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union [2011] 6387/11, 25 February 2011. See also JHA Council: Council conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights' protection and promotion in the European Union [2014] 5 and 6 June 2014.

[19] FRA, 'Opinion of the European Union Agency for Fundamental Rights on the Proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) data for law enforcement purposes' [2008].

[20] See further FRA, 'Council of the European Union', <http://fra.europa.eu/en/cooperation/eu-partners/councilof-the-european-union> accessed 1 April 2014.

[21] On FREMP, see further Wolfgang Benedek, 'EU Action on Human and Fundamental Rights in 2013' [2014] European Yearbook on Human Rights 85, 93 and 101.

Action Plan stipulates that FREMP and COHOM should cooperate more closely together to attain coherence and consistency between the EU's external and internal human rights policy.[22] The JHA Council lately stressed the need to reinforce this cooperation.[23] The JAI-RELEX working group is also working to guarantee policy coherence between JHA and external relations policies.

It can be observed that reports on fundamental rights issues are frequently adopted by the Council.[24] With regard to external action, the Council has adopted eleven rules on how to promote human rights in relations to external actors for Member States and institutions.[25] The Council also creates an annual report on the world's human rights and democracy, which also includes selected parts of the AFSJ.[26]

c. European Commission ('Commission')

The Commission's main tasks in the EU's institutional system are to propose new legislation and guarantee that Member States correctly apply EU law. The Commission is made up of autonomous Commissioners and the organization as a whole will represent the EU's interests. The Commission works in departments known as Directorates-General (DGs), but usually these units do not have the authority to make decisions. Rather, as a collective body, the Commission makes its decisions.

The Lisbon Treaty improved the Commission's role as the initiator of AFSJ legislation.[27] The Commission has been keen to take advantage of its right of initiative and set policy and legislative priorities. The implementation of the Stockholm Action Plan was one example of this.[28] The Commission may also

[22] Human Rights Action Plan [2012].

[23] JHA Council: Council conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights' protection and promotion in the European Union [2014] 5 and 6 June 2014, para. 21.

[24] E.g., JHA Council: Council conclusions on fundamental rights and rule of law and on the Commission 2012 Report on the Application of the Charter of Fundamental Rights of the European Union [2013] 6 and 7 June 2013.

[25] E.g., available at European External Action Service (EEAS), 'Human Rights Guidelines' <http://eeas.europa.eu/human_rights/guidelines/index_en.htm> accessed 2 April 2014.

[26] In the 2012 report, it was shortly considered how "human rights underpin the external dimension of work in the area of freedom, security and justice." EU Annual Report on Human Rights and Democracy in the World in 2012, 13 May 2013, 9431/13, 67. In the 2011 report, consideration was given to, e.g., migration, trafficking in human beings and racism. Human Rights and Democracy in the World: Report in EU Action in 2011.

[27] Article 74 TFEU. In respect of police cooperation and criminal justice, Article 76 TFEU also provides a possibility to a quarter of member states to propose initiatives.

[28] Sergio Carrera and Elspeth Guild, 'Does the Stockholm Programme Matter? The Struggle over Ownership of AFSJ Multiannual Programming' [2012] CEPS Paper in Liberty and Security in Europe, No. 51, p. 4.

adopt delegated legislative implementing measures (the comitology procedure) since the Lisbon Treaty. In each legislative act, specific regulations lay down the procedure to be used in the exercise of this authority.

In 2010 the former DG for Justice, Freedom and Security was divided into a DG for Home Affairs and a DG for Justice.The Home Affairs DG focuses on immigration, asylum, border control, internal security, organised crime, human trafficking, terrorism and police cooperation policies, while the Justice DG deals with justice, fundamental rights and citizenship policies.[29] A number of AFSJ policy documents were issued by both DGs.[30]

As regards the Commission and external action, the Vice-President of the Commission has overall responsibility for the coherence of EU external action as the Union's High Representative for Foreign Affairs and Security Policy. The high representative also externally represents the EU, establishes the European External Action Service (EEAS) (EU's diplomatic corps supporting the High Representative in Common Foreign and Security Policy (CFSP) matters, with the obligation to "ensure consistency between the different areas of the Union's external action and between those areas and its other policies"), is chairman of the FAC and coordinates the portfolios of external relations of the Commission.[31] In the Human Rights Action Plan, the responsibility for carrying out the actions listed "resides with the High Representative assisted by the EEAS, and with the Commission, the Council and Member States, within their respective fields of competence".[32] It could be specially mentioned that the Stockholm Programme explicitly requires the Commission to "ensure better coherence between traditional external policy instruments and internal policy instruments with significant external dimensions, such as freedom, security and justice"[33].

As regards the monitoring of fundamental rights, an annual report on the application of the Charter has been released by the Commission since 2010. From the perspective of AFSJ, it may be noted that, for example, the 2012 Report

[29] The organisatorial charts of the DGs can be found at European Commission, Home Affairs, 'Organigram' <http://ec.europa.eu/dgs/home-affairs/who-we-are/dg-home-affairs-chart/index_ en.htm> and European Commission, Justice <http://ec.europa.eu/justice/about/files/ organisation_chart_en.pdf> accessed 10 April 2014.

[30] See examples e.g., in Sergio Carrera and Elspeth Guild, 'Does the Stockholm Programme Matter? The Struggle over Ownership of AFSJ Multiannual Programming' [2012] CEPS Paper in Liberty and Security in Europe, No. 51, p. 6.

[31] Council Decision 2010/427/EU of 26 July 2010 establishing the Organisation and functioning of the European External Action Service [2010] OJ L 201/30, Article 3. The EEAS is functionally autonomous from other EU institutions.

[32] Human Rights Action Plan [2012].

[33] European Council: The Stockholm Programme - An Open and Secure Europe Serving and Protecting Citizens [2010] OJ C115/1, p. 34.

considers the extent to which the right to data protection has been upheld.[34] The Commission may also suggest assessing Member States' execution of JHA and other policies. The Commission may also initiate infringement proceedings against Member States for not fulfilling their obligations under EU law.[35] For instance, in relation to fundamental rights, the proceedings against Malta in relation to the Free Movement Directive of the EU may be mentioned.[36] However, it should be observed that an infringement proceeding can only be launched if a specific provision of EU law is infringed. In regard to the rule of law, the Commission has observed that: "There are situations of concern which fall outside the scope of EU law and therefore cannot be considered as a breach of obligations under the Treaties but still pose a systemic threat to the rule of law."[37] In order to resolve these issues, the Commission has launched a three stage process of structured exchange with a Member State where there is a clear indication of a systemic threat to the Member State's rule of law.[38]

d. European Parliament ('Parliament')

The Parliament is the EU institution representing the Union's citizens and is the Union's only directly-elected body. EU legislation is currently being adopted either through: (a) the ordinary legislative procedure; or (b) through special legislative procedures. Parliament and the Council act as co-legislators in the ordinary legislative procedure.

The European Union Agency for Fundamental Rights (FRA) and the Committee on Civil Liberties, Justice and Home Affairs (LIBE) cooperate closely on the connection between FRA and the Parliament. FRA participates in committee meetings, hearings and public seminars where it offers information on fundamental rights to support continuing policy and legislative debates. It replies to questions and provides Parliament's appropriate intergroups with the results of its research. FRA has adopted a number of opinions acting on the Parliament's demands. One of the most recent concerns the creation of the EPPO.[39] Parliament

[34] European Commission, Report: 2012 Report on the Application of the EU Charter of Fundamental Rights [2013] COM (2013) 271 final.
[35] Article 258 TFEU.
[36] European Commission, Justice, 'Annual Report' http://ec.europa.eu/justice/fundamental-rights/charter/application/index_en.htm accessed 13 March 2014.
[37] European Commission, Commission Communication: A New EU Framework to Strengthen the Rule of Law [2014] COM (2014) 158 final, p. 5.
[38] "The process is composed, as a rule, of three stages: a Commission assessment, a Commission recommendation and a follow-up to the recommendation." European Commission, Commission Communication: A New EU Framework to Strengthen the Rule of Law [2014] COM(2014) 158 final, p. 7.
[39] FRA, 'Opinion of the European Union Agency for Fundamental Rights on a proposal to establish a European Public Prosecutor's Office' [2014].

has also involved FRA, for instance, in making requests to the Commission to consult with FRA in revising its suggestion on the use of body scanners in airports.[40]

As far as the Parliament and external relations are concerned, the TFEU requires the Council to obtain the Parliament's consent to conclude international agreements. In the external action of the Union, in relation to the Parliament and human rights, it has been argued that: "The European Parliament's democratic mandate gives it particular authority and expertise in the field of human rights."[41] For instance, by adopting resolutions and reports and by sending missions to third countries to familiarise themselves with the human rights situation in the country, Parliament has actively involved in protecting human rights abroad.[42]

It is the Subcommittee on Human Rights (DROI) within the Parliament that mainly adopts/prepares these resolutions and reports and also prepares the annual report of the Parliament on Human Rights[43].

3. Conclusions

The analysis of the institutional processes and instruments that guarantee fundamental rights reveals a double picture: on the one hand the AFSJ has changed dramatically, especially since the implementation of the Lisbon Treaty. The AFSJ has been introduced into EU decision-making's general constitutional system. As part of the general constitutional scheme, former issues of the third pillar have become part of a constitutional control system (including fundamental rights). With the implementation of the Stockholm Programme, this development achieved its peak with its outspoken emphasis on individual rights. More generally, it can also be argued that over the years, the EU has become more aware of human rights, reflected in the implementation of different instruments and the development of institutional procedures and mechanisms.

However, on the other hand, the AFSJ remains a policy area characterized by institutional traits and novel or experimental governance types. These features give rise to matters of general governance, but may also lead to concerns about fundamental rights. The institutional improvements brought with it by the AFSJ's Lisbon communitarisation are therefore counterbalanced by the difficulties resulting

[40] European Commission, Commission Communication: On the Use of Security Scanners at EU airports [2010] COM (2010) 311 final. Regional Office for Europe of the UN High Commissioner for Human Rights, 'The European Union and International Human Rights Law' [2011], pp. 18-19.
[41] Human Rights Action Plan [2012].
[42] Human rights resolutions adopted by the Parliament can be found at European Parliament: Publications, <http://www.europarl.europa.eu/committees/en/droi/publications.html#menuzone> accessed 18 June 2014.
[43] European Parliament: 'Committees: DROI: Human Rights', http://www.europarl.europa.eu/committees/en/droi/home.html> accessed 18 June 2014.

from these special characteristics. While the AFSJ's ' Lisbonisation ' has improved the scrutiny of fundamental rights of AFSJ acts and legislation, the agency phenomenon and the difficulties it brings with it in realising political accountability counteract development. Moreover, while bringing AFSJ acts within the jurisdiction of the CJEU can be seen as a huge step forward in achieving the rule of law in the AFSJ, the obstacles faced by people in bringing cases before the Court seriously undermine the utility of the CJEU as guardian of individual rights.

While this analysis of how fundamental rights issues are present in the institutions and tools of the AFSJ has identified several concerns, the nature of the cooperation in the area is forced to give rise to new fundamental rights questions on a continous basis. Therefore, it is unlikely that the problems facing ensuring fundamental rights in the AFSJ will diminish in the near future. Indeed, one may claim that the trend is the opposite. Regardless of the nature and type of AFSJ relations in the years to come, it is easy to agree with FRA that respect for fundamental rights will require a "shared and regularly renewed commitment by all those concerned, at all levels of governance".[44]

Bibliography

1. Benedek, Wolfgang, (2014), *'EU Action on Human and Fundamental Rights in 2013'* European Yearbook on Human Rights 85.
2. Carrera, Sergio and Guild, Elspeth, (2012), *'Does the Stockholm Programme Matter? The Struggle over Ownership of AFSJ Multiannual Programming'*, CEPS Paper in Liberty and Security in Europe, No. 51.
3. Douglas-Scott, Sionaidh, (2009), *'The EU's Area of Freedom, Security and Justice: A Lack of Fundamental Rights, Mutual Trust and Democracy?'*[2008-2009] The Cambridge Yearbook of European Legal Studies, Volume 11, 53.
4. Peers, Steve, (2011), *EU Justice and Home Affairs Law*, 3rd edn, Oxford University Press 2011.
5. European Council: European Council priorities up to 2014, Document for the attention of Heads of State or Government, received from Herman Van Rompuy at the European Council on 28 and 29 June 2012.
6. European Council: The Stockholm Programme - An Open and Secure Europe Serving and Protecting Citizens [2010] OJ C115/1.
7. European Council: European Council 19/20 December 2013 Conclusions.
8. Council of the European Union, 'About the Council of the EU' <http://www.consilium.europa.eu/council?lang=en> accessed on 1 April 2014.
9. Council of the European Union: A Strategy for the External Action of JHA: Global Freedom, Security and Justice [2005] 15446/05, 6 December 2005.
10. Council of the European Union: List of Council Preparatory Bodies [2014] 5312/14, 14 January 2014.

[44] FRA, Annual Report, 'Fundamental Rights: Challenges and achievements in 2013' [2014], p. 7.

11. JHA Council: Council conclusions on the role of the Council of the European Union in ensuring the effective implementation of the Charter of Fundamental Rights of the European Union [2011] 6387/11, 25 February 2011.
12. FRA, 'Opinion of the European Union Agency for Fundamental Rights on the Proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) data for law enforcement purposes' [2008].
13. European Commission, Commission Communication: On the Use of Security Scanners at EU airports [2010] COM (2010) 311 final.
14. European Commission, Report: 2012 Report on the Application of the EU Charter of Fundamental Rights [2013] COM (2013) 271 final.
15. European Commission, Commission Communication: A New EU Framework to Strengthen the Rule of Law [2014] COM (2014) 158 final.
16. European Parliament: 'Committees: DROI: Human Rights', <http://www.europarl.europa.eu/committees/en/droi/home.html> accessed 18 June 2014.

Assumptions concerning the jure non-dignity and judicial non-dignity in the case of the crime provided by art. 190 Criminal Code

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Abstract

I proposed myself to analyze, in the paper with the title: "Assumptions concerning the de jure non-dignity and judicial non-dignity in the case of the crime provided by art. 190 Criminal Code" the involvements of civil type concerning the inheritance right, in the case of crime regarding the assassination upon the victim's request, provided and sanctioned by art. 190 Criminal Code.

I researched for this study the incidence of the de jure non-dignity and the judicial non-dignity, in the case of a crime against life, in terms of the result of crime, of active subject and passive subject, of their qualification, as well as of the coexistence of the two inheritance forms, in the hypothesis in which, de cujus, he/she has not decided by will on the goods which represent his/her entire patrimony.

Aspects of civil right, as: classification of the right to live, patrimony and its functions as well as the limitation of the individual right to have the rights and freedoms concerning the personal life, have been taken into consideration.

It was performed a comparative analysis between the two types of non-dignity in the regard of the use object, of committed actions, of operating method, of processual quality of parties, of de jure basis and statute of limitation.

Keywords: *legal devolution, willed devolution, de jure non-dignity, judicial non-dignity, assassination upon the victim's request*

1. Introduction

The right to live is a non-patrimonial right, regulated by art. 61 Civil Code, it is guaranteed to all the individuals, whether of their age, education level, health condition, social and family status, or other criteria provided in art. 30 Civil Code.

Therefore, the right to live is a civil subjective, non-patrimonial and absolute right, opposable erga omnes, "which the law recognizes to the active subject, individual based on which he can (…) have a certain conduct and ask

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from the passive subject to have a corresponding conduct - to give, to do or not to do something - or to ask the competition of coercive force of the state, in case it is needed".[3]

In other words, the right to live is regulated and protected by the provisions of the Civil Code and by the provisions of the Criminal Code.

Art. 61 of the Civil Code with the marginal denomination "guarantee of the inherent right of the human being", provides that: "life, health and physical and mental integrity of any person are guaranteed and protected equally by the law; and the interest and good of the human being must prevail over the unique interest of the society or of the science".[4]

Also, the Romanian Criminal Code, defends and protects the right to life, by the incrimination of crimes against life, provided and sanctioned in art. 188 - 192 Criminal code, these having as legal object the life of an individual and the social relationships afferent to the right to live, and as material object the body of the alive person.

2. Crime of assassination upon the victim's request - criminal law aspects

The crime of assassination upon the victim's request is regulated by art. 190 criminal code and provides that: the assassination committed upon the explicit, serious, conscious and repeated request of the victim who suffered of an incurable disease or a severe disability certified medically, which caused permanent sufferings being difficult to support, is punished with prison from 1 to 5 years".[5]

The material element of the crime provided by art. 190 criminal code consists of the violent or not action, or illegal inaction of the active subject where there is a legal or conventional obligation of taking an action. The immediate consequence of the action specific to the material element is represented by the victim's death. The causality relationships between the action or inaction of the active subject and the victim's death must exist and be proven.

Under the aspect of the subjective side, we acknowledge that this crime can be committed only with direct intention, and the criminal participation is possible under all the forms regulated by art. 46-48 criminal code, the active subject being able to be any individual with criminal capacity.

The passive subject or the crime's victim can be any alive, responsible individual, who suffers of an incurable disease or of a severe disability certified medically, which caused permanent sufferings or ones which were difficult to support, known to the perpetrator.

[3] C.R. Butculescu, *Civil Law General Part – university course*, Bibliotheca Publishing House, Târgoviște, 2017.
[4] Law 287/2009 republished, *concerning the Civil Code*, M. Of. No. 505 of 15th July 2011.
[5] Law 286/2009, *concerning the Criminal Code,* M. Of. No. 510 of 24th July 2011.

From terminological point of view, by incurable disease, it is understood a disease for which, on the date of committing the fact, has not been known a curative medical treatment (for example cancer). By severe disability we understand the existence of a morphological, morpho-functional or functional modification which has a high level of severity (for example: paralysis).

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We acknowledge that specific to this crime is that the fact is committed as consequence of the explicit, serious, conscious and repeated request of the victim addressed to the perpetrator. Even though the right to live is a fundamental right, regulated by art. 22 align. 1 of the Romanian Constitution, "making a difference between the rights and freedoms, the right to live does not involve the right to death; life is a right and not a freedom which allows the victim, to decide freely, if she/he exercises it or not, in comparison with the protected interest" granted by the legal provisions mentioned above.

Interesting for the chosen theme is the quality of the active subject in relation with the capacity of inheriting the victim. In this crime, the active subject can have the quality of legal or willed heir, in which case the provisions of art. 963 and subsequent Civil Code become incident. In another hypothesis, the legal inheritance can coexist with the one from the will, to the extent in which "by the legate instituted by will, de cujus he/she would have disposed only one part of

[6] D. Dinuica, *Criminal law special part - Crimes against person*, Editura Fundatiei Romania de Maine, Bucharest, 2019.

his/her property (…), the rules of legal devolution applying to that part of the patrimony of which the deceased has not disposed".[7]

3. Legal and willed devolution - aspects of succession law

By legal devolution, in the regard of the provisions of art. 963 - 964 Civil code, we understand the legal operation by which it is decided the persons with concrete succession vocation (who inherit effectively the succession patrimony) and the acquired quota from the succession mass. The succession patrimony is assigned by universal assignment or by assignment with universal title, being a function of the patrimony. "The universal assignment occurs when it is transferred an entire patrimony, undivided, from a person to another"[8]; this is the case of the unique legal heir or of the heir who gains the entire inheritance.

The transfer with universal title consists of the divided transfer of the entire patrimony of a person, to one or more persons, being specific, to legal heirs or heirs who obtain a share of the inheritance.

The general principles of the legal devolution are: principle of summoning to inheritance of the relatives in the order of heirs categories, principle of proximity of kinship degree between the heirs from the same category and principle of equality between the relatives from the same category summoned to inheritance.

The willed devolution is met in the case and to the extent in which the transfer of the successor mass takes place based on the will of the one who leaves the inheritance, manifested by will. The persons appointed by the testator to collect the inheritance, fully or partially, are called devisee. The devisee can be: *universal,* with personal representative of the said deceased for the entire patrimony left by the deceases; *with universal title* having personal representative of the said deceased only to a fraction of the succession mass; or *with particular title*, meaning, with personal representative of the said deceased only to singular goods, already decided.

4. Successional non-dignity

The successional non-dignity is defined as the termination of the heir (legal or devisee) of the right to collect a determined inheritance (including reserve), where he/she is guilty of a committing a severe action.

The committed action which attracts the civil sanction of successional non-dignity can be represented by one or more of the following cases: **a)** committing the fact against the one who leaves the inheritance, case provided by art. 958 align. 1 let.

[7] D. Artene, *Civil law – Successions,* Editura Sintech, Craiova, 2018.
[8] M. Rudareanu, I. Iordache, L. Lazar, S.M. Pagarin, *Civil Law – Real Rights,* Ed. Fundatiei Romania de Maine, Bucharest, 2016.

a) Civil Code or art. 959 align. 1 let. a) Civil Code; **b)** against the freedom of the deceased to decide by will, case provided by art. 959 align. 1 let. b) and c) Civil Code; **c)** against another heir, case provided by art. 958 align. 1 let. b) Civil Code.

The successional non-dignity can be classified in two categories, respectively the de jure non-dignity and the judicial non-dignity, the classification in these two categories being done taking into account the following criteria: protected social value, guilty form, decision which represents the object of non-dignity, quality of the person who submits the application, statute of limitation or not subject to statute of limitations feature of the application.

4.1. De jure non-dignity

The persons who: were convicted criminally for committing an offence wittingly, directly or indirectly, of murdering the de cuius (even if the offence was only an attempt (as it is provided by art. 958 align. 1 let. a) Civil Code, as well as the person convicted criminally for committing, before opening the inheritance, of an offence (including the form of attempt), with direct intention of killing another heir, who, if the inheritance was open on the date of committing the offence, would have removed the expectancy of the perpetrator, or it would have restraint the expectancy to inheritance, are not worthy of inheritance.

By this civil sanction, the law intended to remove from the successional mass a person who by fraudulent means wanted to create an expectancy to inheritance by committing an offence provided by the criminal law or to increase the successional quota by committing an offence.

So, the first condition operate the de jure successional non-dignity is that of existing a permanent conviction decision in criminal matter, by which the unworthy one is convicted for offences against life, committed wittingly, against the de cuius or against his heirs.

From procedural point of view, this sanction operates de jure, it is invoked based on the decision which ascertains the non-dignity, upon the request of any interested person, of the prosecutor, including ex officio by the court or by the notary public, based on the decision from which it results the non-dignity. The right of the interested persons to invoke the de jure non-dignity is not subject to statute of limitations.

In the case of the crime provided by art. 190 Criminal code, being about a crime against life, the de jure successional non-dignity operates "when there is a permanent civil decision for the ascertainment of the fact, in the hypothesis in which the criminal conviction is prevented by the death of the author of the fact, prior conviction amnesty, limitation of criminal liability or other such causes, provided by art. 958 align. 2 Civil Code."[9]

[9] G. Boroi, M. Pivniceru, C. Anghelescu, B. Nazat, I. Nicolae, *Civil right sheets*, Editura Hamangiu, Bucharest, 2018.

The de jure successional non-dignity is maintained when the heir convicted for crimes against life is subsequently amnestied (prior to conviction), pardoned, rehabilitated or if the execution of the criminal sentence has been limited and it will not cause legal effects if the heir has been cleared.

4.2. Judicial non-dignity

Three categories of actions and legal actions can be classified in this category, which incur the sanction of judicial non-dignity, following to be listed in the order provided by art. 959 align. 1 Civil Code, as follows: **a)** person convicted criminally, for committing wittingly, against de cuius, some actions of physical or moral violence, or some actions which have had as consequence the victim's death; **b)** person who, in bad faith, hide, modify or falsify the deceased will; **c)** person who by deceit or violence prevented the de cuius to draft, modify or cancel the will.

The existence of the judicial non-dignity is determined by the fulfilment of the condition concerning the existence of a permanent decision, one of conviction in criminal matter or of ascertainment of fact in civil matter.

Procedural, the judicial non-dignity operates upon request, being under the discretion of the court to analyze the circumstances of committing the action. This type of non-dignity can be declared upon the request of any heir or upon the request of the prosecutor, within maximum one year, under the sanction of termination of rights. The term of one year provided by art. 959 Civil Code, usually, falls criminal, or the date on which the heir founds the reason of non-dignity, if it is subsequent to the opening of inheritance.

The judicial non-dignity in the case of assassination upon the victim's request cannot be acknowledged by reporting to the provisions of art. 959 align. 1 let. a) Civil Code, because these are targeting for example facts against the body integrity or health and not facts having as legal object the offences against life.

5. Conclusions

In the case of assassination upon the victim's request, the unworthy one is removed from the legal inheritance and from the willed one, and by the power of law (art. 960 civil code), the tile of heir of the unworthy one is annulled retroactively, being removed since the moment of opening the succession. Thus, it is considered that the unworthy one never had the right to the inheritance of the deceased, being terminated the right of inherit.

Also, the non-dignity causes effects only concerning the successional rights, not other rights of the unworthy one, which are obtained in other way than by inheritance, as for example, the rights occurred by condominium (the right of the surviving spouse on the shares of the goods obtained during the marriage with the deceased one, of whom life he/she suppressed and from whom inheritance he/she

is excluded); also, the rights of the surviving spouse on the personal gods are not affected by non-dignity.

Bibliography

1. Artene D., (2018), *Civil Law – Successions,* Editura Sintech, Craiova.
2. Butculescu C.R., (2017), *Civil Law General Part – university course*, Editura Bibliotheca, Targoviste.
3. Dinuică D., (2019), *Criminal law special part - Crimes against person*, Editura Fundatiei Romania de Maine, Bucharest.
4. Boroi G., Pivniceru M., Anghelescu C., Nazat N., Nicolae N., (2018), *Civil law sheets*, Editura Hamangiu, Bucharest.
5. Law 287/2009 republished, *concerning Civil Code*, M. Of. Nr. 505 of 15th July 2011.
6. Law 286/2009, *concerning Criminal Code,* M. Of. Nr. 510 of 24th July 2011.
7. Rudareanu R., Iordache I., Lazar L., Pagarin S.M., (2016), *Civil law – Real rights,* Editura Fundației România de Mâine, Bucharest, 2016.

Objections to Confirmation and Challenges of Arbitrators under the VIAC Rules

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Preface

The possibility for the parties to nominate the arbitrators constitutes one of the main advantages of arbitration. This party autonomy is limited, however, to the extent that the impartiality and independence of the arbitrators must be ensured. The national legal systems therefore grant the parties to arbitral proceedings the right to challenge arbitrators if there are doubts as to their impartiality or independence. The fact that the right to nominate an arbitrator of one's choosing and the right to a fair trial, in which the arbitrators are independent and impartial, are to some extent in conflict with each other, often makes such challenge decisions difficult.

The Vienna International Arbitral Centre ("VIAC") does not usually publish statistics on the challenges of arbitrators and the respective proceedings. Although the Board of the VIAC always gives (more or less extensive) reasons for its decisions to the parties of the case, the decisions themselves and the reasons on which they are based do not get published on a regular basis.

In 2014, the former Secretary General of VIAC, Dr. Manfred Heider, published an article in German language on challenge proceedings at VIAC,[3] *providing the relevant legal framework as well as anonymized summaries of challenge decisions. The present article describes the cornerstones of the current legal framework, as provided by the Austrian arbitration law and the VIAC Rules of Arbitration 2018 ("Vienna Rules" or "VR"). VIAC is currently analyzing in detail all cases involving objections to confirmation or challenges of arbitrators under the VIAC Rules as of 1 January 2014.*[4]

Framework under Austrian Arbitration Law

Pursuant to Art. 25 para. 1 VR, the parties are free to agree on the place of arbitration, but – absent party agreement – the place of arbitration shall be Vienna. Experience has shown that it is extremely rare that parties choose a different place of arbitration and consequently a different *lex arbitri*, which is why this paper focuses on the legal framework in Austria.

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[2] Mag., MA, Legal Counsel, VIAC.

[3] Heider M. (2014) 'Die Ablehnung von Schiedsrichtern in Verfahren vor dem Internationalen Schiedsgericht der Wirtschaftskammer Österreich – VIAC' in *Festschrift für Rolf. A. Schütze*. München: Verlag C.H. Beck. pp. 181-194. As far as the law and practice have remained the same since then, this article is partly based on the explanations by Manfred Heider.

[4] For the purpose of simplicity and anonymization, only the male form was used for references to arbitrators in this article (see also Art. 6 para. 2 VR).

Under Austrian arbitration law, the grounds for a challenge are contained in Sec. 588 Austrian Code of Civil Procedure ("ACCP"), and the challenge procedure is stipulated in Sec. 589 ACCP.

Section 588 para. 1 ACCP enshrines the obligation of arbitrators to disclose, at any stage of the proceedings, any circumstances likely to give rise to doubts as to their impartiality or independence, or that are in conflict with the agreement of the parties. A person intending to accept a mandate as an arbitrator has to disclose such circumstances. However, there is no express obligation to decline the proposed office of arbitrator if such circumstances exist, even though it can be regarded as a (pre-)contractual accessory obligation to the arbitrator's contract (Hausmaninger, 2016, § 588 ZPO mn. 41). Considering that it is not unusual that arbitrators do not voluntarily withdraw their mandate or do not disclose relevant circumstances in the first place, it is important that Sec. 588 para. 2 ACCP in conjunction with Sec. 589 ACCP provides the possibility to challenge arbitrators.

According to Austrian law, an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not fulfil the conditions agreed to by the parties. A party may challenge an arbitrator nominated by itself only for reasons of which it becomes aware after (its participation in) the appointment (Sec. 588 para. 2 ACCP).

Challenges shall be filed by the parties to the arbitration. Reasons for exclusion to be exercised *ex officio* are generally not provided for due to the principle of party disposition dominating the arbitral proceedings (Hausmaninger, 2016, § 588 ZPO mn. 2).

Section 589 ACCP states that the parties may freely agree on a procedure for challenging an arbitrator. By agreeing on the administration under the Vienna Rules 2018, for instance, the parties accept the application of their provisions regarding the challenge of arbitrators. If there is no such agreement, the challenging party shall, within four weeks, submit the challenge to the arbitral tribunal. Following Art. 13 of the UNCITRAL Model Law on International Commercial Arbitration, Sec. 589 ACCP provides for the possibility of the challenged arbitrator to voluntarily withdraw from office or the possibility of the other party to agree to the challenge. Otherwise, the arbitral tribunal, including the challenged arbitrator, shall decide on the challenge. In institutional arbitration, by contrast, usually a neutral body is competent, such as the Board in case of VIAC.

Ultimately, Sec. 589 para. 3 ACCP provides for the possibility to request a decision on the challenge by the state court within four weeks from receiving the decision rejecting the challenge under a procedure agreed upon by the parties or under the procedure set forth under the ACCP. According to Sec. 615 ACCP, the Austrian Supreme Court shall have immediate jurisdiction and its decision shall not be subject to any appeal. If this period elapses without the party making use of it or if the arbitrator does not get rejected by the state court, it is predominantly

argued that the party forfeits its right to object to the nomination of that particular arbitrator and cannot raise this as a challenge ground in annulment proceedings or enforcement proceedings pursuant to the New York Convention (Riegler and Petsche, 2012, mn. 5/227).

Whereas Sec. 589 para. 3 ACCP allows the arbitral tribunal, including the challenged arbitrator, to continue the arbitral proceedings and even to render an award while such request is pending (with the court), Art. 20 para. 4 VR also allows the continuation of the arbitration while the challenge is pending, but the arbitral tribunal may not issue an award until after the Board has ruled on the challenge. The participation of a successfully challenged arbitrator in the rendering of an award constitutes a ground for an application for setting aside pursuant to Sec. 611 para. 2 clause 4 ACCP. Besides that, the successful challenge of an arbitrator does not have retroactive effect. All actions prior to the arbitrator's challenge remain in principle effective (Riegler and Petsche, 2012, mn. 5/235).

Vienna Rules 2018

The Vienna Rules 2018 differentiate between the non-confirmation of an arbitrator according to Art. 19 para. 2 and the challenge of arbitrators according to Art. 20. This differentiation was already introduced by the Vienna Rules 2013. Whereas Art. 19 para. 2 VR provides the possibility for the Secretary General or Board not to confirm a party-nominated arbitrator in the first place, Art. 20 states that an arbitrator may be challenged after his appointment. To be precise, Art. 20 is applicable (only) once the Secretary General or Board has confirmed the nomination of the respective arbitrator or after the formal appointment in case the arbitrator was appointed by the VIAC Board. This was clarified by the 2018 Rules, which now explicitly provide that an arbitrator can only be challenged *after his appointment*. Under the 2013 Rules, such a clear time reference was missing, but in practice it was handled the same way (Horvath and Trittmann, 2014, Art. 20 mn. 22).

Article 16 – declaration of impartiality and independence

The parties shall be free to designate the persons they wish to nominate as arbitrators. If a person intends to accept an appointment as an arbitrator, he shall submit a declaration confirming his impartiality and independence, availability, qualification, acceptance of office and submission to the Vienna Rules (Art. 16 para. 3 VR). This not only applies to nominated arbitrators, but also to arbitrators appointed by the Board.

Pursuant to Art. 16 para. 4 VR an arbitrator shall, at any stage of the proceedings, disclose in writing all circumstances that could give rise to doubts as to his impartiality, independence or availability or that conflict with the agreement of the parties.

The parties are bound by their nomination of an arbitrator once the nominated arbitrator has been confirmed (Art. 17 para. 6 and Art. 19 VR). The

possibility to revoke the nomination of its own arbitrator is limited to the extent that cases of abuse in which the nomination of a different arbitrator merely serves to delay the proceedings are to be avoided. This is not to be assumed, as long as the change of the nomination of the arbitrator takes place within the time limit fixed to do so. If the other party so agrees, a replacement is permitted in any stage of the proceedings (Riegler and Boras, 2019, Art 17 mn 23 et seq).

Article 19 – confirmation of the nomination

Article 19 was introduced by the Vienna Rules 2013 to prevent tedious challenge proceedings at the very outset thereby ensuring smoother and faster proceedings (Riegler and Petsche, 2019, Art. 19 mn. 1).

Once the Secretary General has obtained the completed and signed declarations of the nominated arbitrators under Art. 16 para. 3 VR, she forwards them to the parties, granting the parties a time limit for comments on these declarations.

If no doubts exist as to the impartiality and independence of the respective arbitrator and his ability to carry out his mandate, the Secretary General shall, according to Art. 19 para. 1 VR, confirm the nominated arbitrator. If deemed necessary by the Secretary General, this decision shall be referred to the Board (Art. 19 para. 2 VR). The decisions by the Secretary General/Board are taken on a case-by-case basis. The Vienna Rules do not generally foresee the necessity to request and obtain comments from the parties or arbitrators at this stage.

The Secretary General/Board uses the (generally non-binding) IBA Guidelines on Conflicts of Interest in International Arbitration ("IBA Guidelines") with their Green, Orange and Red Lists as a reference for their decisions in this context. In short: The Green List shows situations which should, under an objective test, never lead to the disqualification of arbitrators; consequently, such situations do not even need to be disclosed. The Orange List contains non-exhaustive examples of such situations that have to be disclosed because they could give rise to justifiable doubts. The Red List (waivable and non-waivable) includes circumstances where from the point of view of a reasonable third person an objective conflict of interest exists, and which therefore always have to be disclosed.

If an arbitrator discloses circumstances that cannot be classified under the Green List of the IBA Guidelines, the Secretary General will tend to refer the decision to the Board. If an arbitrator discloses circumstances belonging to the Red List of the IBA Guidelines, the Secretary General/Board will tend to deny confirmation without requesting any further comments. If an arbitrator discloses circumstances belonging to the Orange List of the IBA Guidelines, and in particular if one party has consequently filed an objection, the Secretary General/Board will tend to conduct a more extensive examination, taking into account any comments from all parties and the respective arbitrator already at the stage of confirmation, similar to a challenge procedure where this is explicitly foreseen in the rules.

Whereas Art. 19 VR speaks of "doubts", Art. 20 VR requires "justifiable doubts". This distinction might seem a minor issue, a linguistic technicality, but in fact, it can make a difference in the decision making-process as the thresholds are slightly different. The Secretary General/Board will, however, in any case consider also under Art. 19 VR, whether the raised objections are substantiated enough to refuse the confirmation of a nominated arbitrator (Riegler and Petsche, 2019, Art. 19 mn. 17). Mere allegations are thus not sufficient to trigger a denial of confirmation.

Before taking a formal decision on the confirmation of the nomination, the respective arbitrator always has the possibility to resign voluntarily.

Article 20 – challenge of arbitrators

According to Art. 20 para. 1 VR, after his formal appointment, an arbitrator may be challenged only if circumstances exist that give rise to *justifiable* doubts as to his impartiality or independence, or if he does not fulfil the qualifications agreed by the parties. In contrast to Art. 19 ("doubts"), as already mentioned before, Art. 20 explicitly states that *justifiable* doubts are required to successfully challenge an arbitrator.

Neither the ACCP nor the Vienna Rules provide definitions of the respective terms. Impartiality is generally considered to mean neutrality vis-à-vis the parties to the arbitration, their representatives and the subject-matter of the dispute (Hausmaninger, 2016, § 588 ZPO mn. 92). Impartiality is a state of mind (subjective criteria), or in other words a psychological concept determined by the inner workings of an arbitrator, i.e. the absence of bias (Schifferl, 2016, Section 588 mn. 7).

An arbitrator is deemed to be independent if he is personally and economically independent of the parties to the arbitration, exercises his office free from directives and has no economic interest in the outcome of the proceedings (Hausmaninger, 2016, § 588 ZPO mn. 93). A lack of independence is signified by an arbitrator's (financial or other) relationship to a party, its representative or even to another arbitrator, which exceeds a certain threshold; a lack of independence does not necessarily lead to a biased arbitral award, whereas a lack of impartiality certainly does (Schifferl, 2016, Section 588, mn. 7 et seq.). When the Board has to decide on the independence of an arbitrator under Art. 20 para. 3 VR, it usually considers the type and frequency of contacts between the arbitrator and either one of the parties, parties' representatives or the other arbitrators. However, since it is not always easy to draw a clear line here, other factors are also taken into account, including whether there is only a small group of experts on the subject who have the necessary knowledge for a specific case (Horvath and Fischer, 2019, Art. 20 mn. 4). The idea behind the concept of independence is that no one must act as judge in its own cause (objective criteria). Impartiality is needed to ensure that justice is done; independence is further needed to ensure that justice is also seen to be done.

In general, the IBA Guidelines including their Green, Orange and Red Lists serve as an important reference for the Board (see in detail above regarding Art. 19 VR), taking into account that these guidelines set out internationally recognized standards but are not binding for the arbitrators or the Board when deciding on a challenge, unless the parties agree otherwise (Horvath and Fischer, 2019, Art. 20 mn. 7).

The Board also takes guidance from the case-law of the European Court of Human Rights on Art. 6 para. 1 European Convention on Human Rights. The Board has interpreted the phrase "*circumstances that give rise to justifiable doubt as to impartiality or independence*" in the past in a way that the mere appearance of bias is sufficient to dismiss an arbitrator.

The review is carried out according to objective criteria, i.e., the decisive test is whether a "reasonable" third party would deem the independence and/or impartiality of the arbitrator impaired (Horvath and Fischer, 2019, Art. 20 mn. 7-9).

The VIAC Board shares the prevailing opinion that a non-disclosure by an arbitrator in breach of his duty is not necessarily a conclusive proof, but, indeed might be an indication of his lack of impartiality or independence (Horvath and Fischer, 2019, Art. 20 fn. 4). In this context, the Austrian Supreme Court (docket-nr. 18ONc1/14p) held as a general rule: the more serious the charge of non-disclosure, the more legitimate doubts about the arbitrator's impartiality or independence, especially if the suspicion arises that the arbitrator deliberately concealed certain circumstances in order to avoid a possible challenge.

Apart from the justifiable doubts as to the independence and impartiality of an arbitrator, the non-fulfilment of the qualifications agreed by the parties may also constitute a ground for a challenge, which underlines the primacy of party-autonomy in arbitration. Other criteria cannot be grounds for a challenge. Frequently required qualifications are for example language skills and special legal or technical expertise (Horvath and Fischer, 2019, Art. 20 mn. 10 et seq.). Therefore, the VIAC-Board always endeavors to identify someone who responds to the parties' wishes, when it appoints an arbitrator.

According to Art. 20 para. 2 VR, a party's challenge of an appointed arbitrator shall be submitted to the Secretariat within 15 days from the date the party making the challenge became aware of the grounds for the challenge. The same applies to the day when the party should have reasonably become aware of the ground for the challenge. Consequently, the day on which the ground actually arose does not necessarily trigger the time limit. However, the burden of proof that the challenge was submitted within the time limit lies with the challenging party (Horvath and Fischer, 2019, Art. 20 mn. 18).

Article 20 para. 1 VR states that a party may challenge the arbitrator whom it nominated, or in whose nomination it has participated, only for reasons of which the party became aware after the nomination or its participation in the

nomination. Such challenge is only possible from the moment the arbitrator has been confirmed by the Secretary General or the Board. Prior to this confirmation, the parties are in principle not bound by their nomination of arbitrator and can revoke such nomination (Art. 17 para. 6 VR by *argumentum e contrario*, see in detail above regarding Art. 16 VR) (Horvath and Fischer, 2019, Art. 20 mn. 12).

The challenge shall specify the grounds for the challenge and include corroborating materials to substantiate the challenge (Art. 20 para. 2 VR). If the challenged arbitrator does not resign voluntarily, the Board shall rule on the challenge (Art. 20 para. 3 VR). Before the Board makes a decision, the Secretary General shall request comments from the challenged arbitrator and the other party/parties (Art. 20 para. 3 VR) and, if deemed necessary, from the non-challenged arbitrators or other persons with allegedly relevant information (Art. 20 para. 3 VR). In order to ensure a transparent challenging process, all comments shall be communicated to the parties and the arbitrators (Art. 20 para. 3 VR). The content of the written challenge motion as well as the respective comments are very significant because the Board does not establish the facts and circumstances on its own initiative, but relies on the comments and material received (Horvath and Fischer, 2019, Art. 20 mn. 20). The challenge procedure under the VIAC Rules is a summary proceeding where the effected persons may voice their stand-point but no replies or rejoinders to these submissions are foreseen.

When rendering a challenge decision, the Board has always stated its reasons (Horvath and Fischer, 2019, Art. 20 mn. 21) although the VIAC Rules do not require this (Art. 7 of Annex 2 VR "Internal Rules of the Board" provides that the Board is not obliged to state the reasons on which its decisions are based.). The Secretary General communicates the reasons to the parties and the arbitrators to facilitate a judicial review when necessary.

As already mentioned before, the arbitral tribunal, including the challenged arbitrator, may continue the arbitration while the challenge is pending but it may not issue an award until after the Board has ruled on the challenge (Art. 20 para. 4 VR). Whether the proceedings are continued or suspended in the event of a challenge is a discretionary decision of the arbitral tribunal. Important factors, which will have to be considered are, *inter alia*, whether it is an obvious attempt to delay the proceedings and the stage of the proceedings *per se*. As this decision as to whether the proceedings shall be continued or not can result in considerable delays in the proceedings and additional costs, the Board normally decides on the challenge within one to three weeks.

Practice under Article 17 Vienna Rules – appointment of an arbitrator by the Board

When an arbitrator is not nominated by a party but appointed by the Board, the Secretary General also requests declarations according to Art. 16 para. 3 VR

from such arbitrator whom the Board intends to appoint (before giving note of the intended appointment to the parties). In this case, Art. 19 VR on the (non-)confirmation of the nomination does not apply (Riegler and Petsche, 2019, Art. 19 mn. 5). In past practice, where such an arbitrator discloses circumstances, which could raise doubts as to his impartiality or independence, the Board has reconsidered its decision and in some cases either refrained from such appointment by its own discretion or forwarded the disclosure to the parties, taking any comments into account when deciding whether to maintain the appointment. If no such doubts exist, the appointment of the arbitrator will become effective and (if not already done) the name and declaration acc. to Art. 16 VR are communicated to the parties.

Article 21 – premature termination of the arbitrator's mandate

Besides the successful challenge of arbitrators, their voluntary resignation, death or an agreement of the parties leading to the premature termination of the arbitrator's mandate, Art. 21 para. 1 VR stipulates that arbitrators can also be removed from office by the Board under certain circumstances. Paragraph 2 specifies that either party may request that an arbitrator be removed from office if the arbitrator is prevented from performing his duties more than temporarily or otherwise fails to perform his duties, including also the duty to proceed without any undue delay. In case of such a unilateral request, the Board has to grant the other parties as well as the affected arbitrator the opportunity to comment pursuant to Art. 21 para. 2 VR. This provision also entitles the Board to remove an arbitrator from office without a party's request, if it is apparent to the Board that any incapacity is not merely temporary, or that the arbitrator is not performing his duties.

Statistics as to Articles 19 and 20 Vienna Rules

Since the last publication of the statistics by Manfred Heider in the year 2014,[5] VIAC recorded all together 16 challenges of arbitrators under Art. 20 VR, of which 12, i.e. the vast majority, were dismissed by the Board of VIAC. Three challenge motions were followed by the voluntary resignation of the arbitrators. Consequently, among the decisions of the VIAC Board, only one challenge was successful. These numbers are obviously linked to the fact that, since the introduction of the 2013 version of the Vienna Rules, it has been possible to raise objections to the confirmation of the nomination of arbitrators, which – if

[5] According to the statistics provided by Manfred Heider, from 1 January 2004 until the publication of the paper in 2014, the Board of VIAC had decided on challenges of 20 arbitrators in 15 arbitration proceedings. Of these, 9 were successful and 11 challenges were dismissed as unfounded. These statistics did not include those cases in which challenged arbitrators resigned voluntarily and the Board therefore did not have to decide on the challenge.

successful – no longer made it necessary to submit challenge motions. Altogether, there have been 11 objections to the confirmation under Art. 19 VR, of which 5 were successful in the sense that either the arbitrator's nomination was not confirmed by the Board, the respective arbitrator resigned voluntarily or the party nominating the arbitrator withdrew the nomination itself. The unsuccessful objections were mostly, i.e. in 4 out of 6 cases, followed by a challenge of the arbitrator(s). In our statistics, we counted such cases as both, an objection to confirmation, and a challenge. These statistics include all requests as of 1 January 2014, including in such arbitration cases that are still pending with VIAC.

Overview of individual cases under Articles 19 and 20 Vienna Rules

This chapter provides a short overview of all the cases, where parties filed a challenge of an arbitrator as of 1 January 2014 (Art. 20 VR). In line with the 2013 revision of the Vienna Rules and therefore in addition to the 2014 article, objections to confirmations of arbitrators are included in this overview (Art. 19 VR). For the sake of anonymization, this summary includes all requests as of 1 January 2014, however excluding such arbitration cases that are still pending with VIAC. Depending on the applicable rules, the cases contained in this overview are thus still subject to the Vienna Rules 2006 or 2013. The relevant cases can be grouped and sub-grouped according to the major arguments for the challenges and/or objections, as follows:

- Relationship between arbitrator/arbitrator's law firm and the law firm of one party/party's group:
  - partner at arbitrator's law firm is married to respondent's counsel;
  - academic and legislative cooperation between arbitrator and one party's counsel/previously expressed legal opinions;
  - arbitrator was former partner in law firm representing respondent;
  - subletting relationship between arbitrator's law firm and the law firm representing respondent.
- Attorney relationship between arbitrator/arbitrator's law firm and one party/party's group:
  - arbitrator represented respondent's group multiple times in the past/arbitrator's former law firm still represents respondent's group;
  - arbitrator's law firm advised one party's group in the past;
  - arbitrator acts as counsel against one party's group in state court case/arbitrator's law firm represents one party's group in state court case.
- Corporate relationship between arbitrator/arbitrator's relatives and one party's group;
- Arbitrator nominated by same party in preceding arbitration case:
  - similar factual and legal basis;

- same parties and contracts.

- Relationship of the arbitrator/arbitrator's law firm to the dispute:
  - attorney relationship between arbitrator's law firm and entities related to the dispute;
  - appointment as arbitrator in preceding arbitration case related to the dispute.
- Arbitrators' conduct of the arbitration:
  - content of a procedural order, arbitrator's comments on a challenge.
- Missing qualifications of arbitrator.

Decision on a Challenge by the Austrian Supreme Court

As outlined above in the section on the Austrian arbitration law, when the Board of VIAC decides to reject a challenge of an arbitrator, the challenging party may then resort to the Austrian Supreme Court and file an application acc. to Sec. 589 para. 3 ACCP.

In the observed period, there was only one VIAC case, where a party applied to the Austrian Supreme Court after its challenge motion was dismissed by the Board of VIAC, which then led to a decision by the Austrian Supreme Court (docket-nr. 18ONc1/17t). The holdings of the Austrian Supreme Court in this decision can be summarized as follows: The Court dismissed the request by claimant to hold an oral hearing for the setting-aside proceedings. It further considered some of the asserted grounds for the challenge to be time-barred. It held that the claimant was not entitled to rely on such challenge grounds that had not been subject matter of the underlying challenge proceedings before the arbitral tribunal/institution. The Court therefore only dealt with one ground for challenge, that is the alleged violation of the principle of equal treatment by means of two procedural orders. It held that, even if the granting of unequal time limits, as alleged by the applicant, may have contradicted the formal equal treatment of the parties, there was still no violation of the principle of fair treatment. Therefore, it found that there were no justified doubts as to the impartiality or independence of the arbitrators and dismissed the challenge.

Conclusion

The overview of Austrian Arbitration Law and the Vienna Rules 2018, as well as the description of VIAC's practice shows that there are several safeguards in place in order to ensure that arbitrations be conducted and decided by independent and impartial arbitrators. At the same time, these legal bases grant parties the right to nominate an arbitrator of their choosing. In their decisions, the Secretary General and Board of VIAC very carefully balance these interests.

The mechanisms offered in VIAC proceedings, that is in particular the possibility of parties to object to confirmations or challenge arbitrators, seem to

entail good and effective results. Such applications usually lead to decisions at an early stage of the proceedings, only in few cases the Board sees itself forced to dismiss an arbitrator, moreover there was only one decision by the Austrian Supreme Court in the relevant time period, and this one actually confirmed the VIAC Board‘s decision.

The legal framework as well as the analysis of individual cases show that VIAC renders its decisions on a case-by-case basis. The Secretary General and Board of VIAC are guided in their decision-making by the IBA Guidelines and Austrian as well as European case law. The overview of individual cases, including its groups and sub-groups, provides a first idea which sets of facts have been at issue in VIAC proceedings; VIAC is currently analyzing in detail all such requests and decisions of the past years.

Bibliography

1. Hausmaninger C., (2016), ‘§ 588ZPO’ in Fasching H. and Konecny A. (ed.) *Zivilprozessgesetze.* IV/2[3] Wien: Manz’sche Verlags- und Universitätsbuchhandlung, pp. 338-380.
2. Heider M., (2014), ‘Die Ablehnung von Schiedsrichtern in Verfahren vor dem Internationalen Schiedsgericht der Wirtschaftskammer Österreich – VIAC’ in *Festschrift für Rolf. A. Schütze*. München: Verlag C. H. Beck. pp. 181-194.
3. Horvath G. and Fischer E., (2019), ‘Article 20’ in *Handbook Vienna Rules.* Vienna: WKÖ-Service GmbH, pp. 155-161.
4. Horvath G. and Trittmann R., (2014), ‘Article 20’ in *Handbook Vienna Rules.* Vienna: WKÖ-Service GmbH, pp. 117-121.
5. International Bar Association, (2014), *IBA Guidelines on Conflicts of Interest in International Arbitration. Explanation to General Standard.* London: International Bar Association.
6. Riegler S. and Boras F., (2019), ‘Article 17’ in *Handbook Vienna Rules.* Vienna: WKÖ-Service GmbH, pp. 128-136.
7. Riegler S. and Petsche A., (2019), ‘Article 19’ in *Handbook Vienna Rules.* Vienna: WKÖ-Service GmbH, pp. 142-147.
8. Riegler S. and Petsche A., (2012), ‘Die Bildung des Schiedsgerichts’ in Liebscher C., Oberhammer P., Rechberger W. *Schiedsverfahrensrecht*. I. Wien: Springer-Verlag, pp. 401-495.
9. Riegler S., Petsche A., Fremuth-Wolf A., Platte M. and Liebscher C., (2007), *Arbitration Law of Austria: Practice and Procedure.* New York: Juris Publ.
10. Schifferl M., (2016), ‘Section 588’ in Zeiler G. *Austrian Arbitration Law.* Neuer Wissenschaftlicher Verlag: Vienna, Graz, pp.72-79.

Legal Reconsideries in the E-Justice Space on Material Liability

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Abstract

Specific legislation on material liability has more than 20 years of application, while primary and secondary legislation, court case law and the practice of the institutions concerned have forced reconsideration of doctrinal views formulated immediately after the adoption of Government Ordinance no. 121/1998 on the material liability of the military.

As a result, trying to keep the logic of the basic normative act in the matter, we have dealt with synthetic provisions which today have another interpretation.

The study highlights the way the scope of the special provisions in the field has been amended, the new theoretical and practical nuances, in establishing the conditions of material liability, summarizes the unitary jurisprudence with reference to some aspects regarding the administrative-judicial procedure, the competence and the procedure in before the courts.

Keywords: *material liability, military, civil servants, civilian employees, civilian personnel, professional soldiers and graduates, administrative-jurisdictional procedure, jurisdiction of the courts*

1. According to the Civil Code, the unlawful act of damages triggers civil liability for tort, the content of which is the civil liability to compensate for the damage caused.

Current legislation regulates the following forms of civil liability, all of which have as their basis the reparation of the patrimonial damage caused by the illicit act and culpability: material liability, tort liability, contractual liability and patrimonial liability[2].

Material Liability, as provided by Government Ordinance no. 121/1998[3], is a form of legal liability which consists in the obligation of the employers, including military personnel, to repair under the conditions and limits of the law, the damage caused to the unit by their fault and in connection with their work.

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[2] *M.N. Costin, M.C. Costin, Dictionary of Civil Law,* 2nd Edition, Hamangiu Publishing House, Bucharest, 2007, p. 815.

[3] Government Ordinance no. 121/1998 regarding the material liability of the military pesonnel, published in the Official Gazette of Romania, Part I, no. 328 of August 29, 1998, was approved without amendment by Law 25/1999.

Material liability is a contractual one, based on fault, has a reparative character, and the one obliged to repair the damage is the employee, specifically the military.

The specific nature of material liability, as evidenced by jurisprudence, is characterized by the following characteristics:

a) Material liability is a limited liability - concerns only the actual damages and not the unfulfilled benefits;
b) the settlement and recovery of the damage is done unilaterally by the injured employer]n accordance with a special procedure, which implies the an imputation decision or a payment order, as the case may be, which is an enforceable title;
c) the personnel who responds materially has a specific quality of military or civilian employees of the units of the defense, public order and national security system [4].

2. The material liability of personnel who has caused damage to third parties, whether natural or legal, by virtue of his fault and in connection with the performance of the service, shall be determined in cases where the institution to which he belongs has been obliged to repair the prejudice[5], otherwise liability may be claimed by civil law, governed by common law.

Recovery of damages from the guilty personnel shall be effecteve only after the payment of the indemnities, when the actual damage is recorded in the institution's accounts and thus the conditions of the liability are met.

The limitation and prescription periods, stipulated by the Government Ordinance no. 121/1998 on the material liability of the military personnel, shall start to run from the date of payment of compensation to the third parties.

In practice, the issue of the legal act that entails the obligation of the public institution to pay damages and which also substantiates the material liability of the guilty employee has been raised.

The Ministry of Internal Affairs restricts the engagement of material liability to its own staff only for the damages paid to third parties to which it has been bound by final court decisions, thus excluding[6], other legal acts: memoranda of understanding, mediation, arbitration, conciliation, etc.

We appreciate that the same approach is restrictive and damaging to the Ministry of Internal Affairs being in contradiction with the legal provisions allowing/imposing non-contentious claims settlement procedures. We recall in

[4] The High Court of Cassation and Justice, the Contentious, Administrative and Tax Section, Decision no. 477/2009, in the "Bulletin of the Casației" no. 2/2009, pp. 5-6. For details see Şerban Belgrădeanu, General Exam on O.G. no. 1211998, in the "Law" no. 12/1998, pp. 3-8; Ion Traian Ştefănescu, The Material Liability of the Military, in "Working Relationships" no. 11/1998, pp. 44-47.

[5] See the provisions of art. 5 of O.Gr. 121/1998 regarding the material liability of the military.

[6] Article 12 of Instructions no. 114/2013 regarding the material liability of the staff for the damages produced by M.A.I., published in the Official Gazette of Romania no. 469 of July 29, 2013.

this respect, the provisions of art. VIII of the Agreement between the States Parties to the North Atlantic Treaty on the Status of their Forces, signed in London on 19 June 1951[7], in which proceedings for the settlement of claims/damages may exclude a court of law. Cases in this area are increasingly diversified and expanded and the practice tends towards an amicable settlement of disputes, for which purpose being responsable, within the defense ministries of the NATO member states, offices of solving damages.

3. Material liability can only be established if the following conditions are met cumulatively:

a) there is caused an injury which has the following character:

- material - has an economic content, that can be expressed and repaired cash or in kind, as the case may be;
- actual - does not include the unrealized benefits;
- direct - was caused to the unit directly by the staff who produced it or indirect - in cases where the material liability is established in the alternative;
- real - when calculating it, the actual degree of wear of the good is taken into account;
- cert - has a precise stretch determined in value expression;
- its existence is undoubtedly noticed and the prescription of the right to action for its recovery has not intervened;

b) there is an offense committed by the personnel of the institutions of the defense, public order and national security system stipulated in art. 2 of the G.O. no. 121/1998, in violation of the legal provisions in force or by the non-fulfillment of the service obligations of the statutes, regulations or, as the case may be, the job description, consisting of:

- action (committing action) - where staff perform acts which, according to law or service obligations, were not allowed to carry them out; or
- inaction (omission) - when staff do not commit those acts that they were obliged to perform; or

c) violation of legal provisions or non-performance of service obligations occurred with guilt, ie:

- intentionally - when the staff pursued or accepted the production of the unlawful deed that caused the damage; or
- by fault - when the act was committed by negligence or imprudence;

d) there is a causal relationship between the act of unlawfulness and the material damage produced, that is, the damage occurred directly (directly) as a result of the illicit deed;

[7] Ratified by Romania through Law no. 362/2004, published in the Official Gazette of Romania no. 845 of 15 September 2004.

e) the guilty person has work/service relations with the institutions stipulated in art. 2 of O.G.121/1998 or with the structures within its/its subordination/coordination, at the moment when the damage occurred;

f) the act by which the damage occurred did not constitute an offense. For the damage caused by an act constituting an offense, the liability is determined by the courts, according to the criminal law[8].

4. According to the provisions of art. 6 of OG 121/1998, the material liability is not committed in the following situations:

a) for the inherent losses incurred in the execution of the missions or during the preparation for the military operations, in the production and administrative activities, falling within the limits provided by the legal provisions in force;
b) for damages caused by causes that could not be foreseen and removed;
c) for damages caused by the normal risk of service or force majeure;
d) for the damages incurred in executing the order of the commander or the head of the unit, in which case the material responsibility remain his.

These provisions have generated a non-unitary practice, which required the detailing and explaining of each case in secondary legislation on the basis of jurisprudence in the matter.

a) It is considered inherent losses in the execution of the missions or during the preparation for combat, in the production and administration activities, which fall within the limits stipulated by the legal provisions in force, but are not limited to the following enumeration:

- perishables, drops, tolerances for perishable goods, loose etc.;
- normal losses in handling, processing, transformation, storage, transport and the like;
- ammunition tubes lost in firing in mountains, on water, on rough ground, on snow, at night, etc.;
- the firing of a pipe from a weapon although all the technical conditions of its operation and maintenance have been respected;
- damage to a motor vehicle on rough terrain when the mission required this area to be traversed;
- windscreen breaks in the case of hail, when housing was not possible, in case of trepidation or other unreasonable causes. There are inherent losses to the training for combat and other service activities losses for which no limitations have been established or could not be established by normative acts are considered. In such cases, the investigated personnel must prove the circumstances in

[8] Article 7 of Instructions no. 114/2013 regarding the material liability of the personnel for damages produced to the Ministry of Internal Affairs, published in the Official Gazette, Part I no. 469 of July 29, 2013 and art. 11 from O.G. 121/1998.

which they have occurred, and the unit has the obligation to provide or request the competent body, as appropriate, the presentation of samples, laboratory analyzes, expertise etc.

b) Damages caused by causes that could not be foreseen and removed from those caused by an unpredictable event, independent of the will of the person who produced it, may be considered as follows:

- the loss of perishable goods by exceeding the term of effectiveness if it is found that there are objective circumstances that have prevented their use or change within the term of effectiveness;
- damage to, or destruction of fighting equipment or equipment used experimentally, as their properties are unknown, and when preventive and avoidance of the cause of the damage can not be taken.

c) If the damage was caused by the normal risk of the service, in order not to incur material liability, the following conditions must be fulfilled:

- the service obligation was provided by the legal provisions in force;
- the loss was not due to willful misconduct, negligence or inappropriate manner of performing that service obligation.

Damage caused by force majeure is considered to be caused by a natural phenomenon or an external event, unpredictable and unavoidable. Example for this category:

- floods, although all possible measures have been taken, snowfalls, earthquakes, storms and field trips;
- fires caused by electrical discharges, although all possible protection measures have been taken;
- electrical interruptions;
- the thefts of which the authors have remained undiscovered, although legal guardianship and security measures have been taken;
- epidemics, epizootics and pests, if all measures to prevent and combat them are ensured.

The conditions required to claim for the state of necessity are as follows:

- the danger must be real, current and unavoidable;
- the damage caused to be equal or of a lesser value than that avoided;
- The danger is not due to the culpable action of the person concerned.

Damage caused as a result of a state of necessity may be considered to be caused to save from imminent and unavoidable danger people life, body integrity or health or an important asset of a greater or equal value than to the value of the damage produced. It falls within this category, without being limited to the following enumeration, the following:

- destruction of goods to prevent flood water from entering the repository;
- the destruction or deterioration of goods that would facilitate fire propagation;
- throwing goods from a ship to save it from the shipwreck;
- the slaughter of animals in the control of epizootic diseases;
- voluntary failure of a ship left without energy to save people and goods on board, etc.

d) In order for the staff to be relieved of their responsibility when executing the orders given by the commanders/heads and for the latter to be able to establish the material responsibility under Art. 6 par. (1) lit. d) of the Ordinance, the following conditions must be fulfilled cumulatively:

- the order was given by the competent commander/chief, in compliance with the provisions of the normative acts relating to the issuing of orders, and there is evidence to this effect. They meet these requirements, for example:
  - written, registered/unregistered order, but always bearing the handwritten signature of the competent commander/chief;
  - the possibility of supporting evidence with existing witnesses on the spot when the person received the order from the competent commander/chief;
  - the possibility of storing audio-visual recordings in videoconferencing, intranet, etc.
- the damage is the direct consequence of the execution of the given order;
- Staff who carry out the order received or execute the order have not been able to prevent, even partial, their damaging consequences.

Personnel who perform the order received or execute the order with damaging consequences respond materially, in common with the commanders/chiefs who gave them, only if, having the possibility:

- did not report to the commander/chief who gave the order, before execution, about its damaging consequences;
- has not taken steps to remove all or part of the damage.

The above reporting is done in writing, a registrated at the unit's secretariat. When this is not possible, the report shall be registrated within 24 hours of the execution or return from the mission, mentioning in the report that it has been verbally reported on the detrimental consequences of the execution, to the person who gave the order/disposition[9].

[9] Art. 14-18 of Instructions no. 114/2013 on material liability of personnel for damages produced to the Ministry of Internal Affairs.

5. By applying the provisions of art. 2 and 9 of Government Ordinance no. 121/1998, material liability is incurred for damages in connection with the formation, administration and management of financial and material resources caused by:

a) military personnel;

b) civilian employees from the structures of the Ministry of National Defense, the Ministry of Internal Affairs, the Romanian Intelligence Service, the Protection and Guard Service, the Foreign Intelligence Service, the Special Telecommunications Service and the Ministry of Justice.

a) It falls within the scope of O.G.nr.121/1998 on material liability, the soldiers operating in the country as well as those on missions outside the country under the conditions of Law no. 121/2011 on the participation of the armed forces in missions and operations outside the territory of the Romanian state.

By military personnel term, in the sense of O.G. no. 121/1998 should understand: conscripts, short-term conscripts, concentrated or mobilized reservists, scholars and students of military educational institutions, military contracted and military staff.

We state that, according to current legislation, the category of contracted military personnel no longer exists, being replaced by that of soldiers and professional graduates who, according to the provisions of art. 7 par. (1) of the Law no. 384/2006, "shall be liable in criminal, contraventional, material and disciplinary terms, as the case may be, under the same conditions as provided by the law for military personnel in service,

The soldiers respond materially regardless of whether or not after the damage they have the status of soldiers (Article 3 of OG 121/1998)

b) The notion of "civilian employees" requires some clarification, as different interpretations arise from one institution to another.

• Ministry of Internal Affairs, through Instructions no. 114/2013, considers that, in the matter of material liability, the category "civilian employees" provided by O.G. no. 121/1998 includes policemen and contract staff.

Indeed, by applying art. 63 paragraph (1) of the Law no. 360/2002 on the status of policeman, in relation to those of art. 9 of O.G. no. 121/1998, police officers are responsible for damages caused to the ministry's patrimony[10].

The term "contract staff" used by Instructions no. 114/2013, does not pose problems of interpretation, being the persons with an individual labor contract under the Labor Code, but unlawfully excludes civil servants.

[10] Art. 63 para. (1) of the Law no. 360/2002 on the status of the policeman provides. "The officer is responsible for the damage caused to the patrimony of the unit, according to the legislation applicable to civilian staff in the Ministry of Internal Affairs.

• Without going into details, we quote the decision of the High Court of Cassation and Justice no. 23/2018 approving the appeal in the interest of the law formulated by the Prosecutor General of the Prosecutor's Office attached to the HCCJ: In the interpretation and uniform application of the provisions of art. 43 of the Government Ordinance no. 121/1998 on the material liability of the military, approved by Law no. 25/1999, referring to art. 109 of Law no. 188/1999 on the Civil Servants' Statute, republished, as subsequently amended and supplemented, litigations having as object the annulment of the imputation decisions and the judgments of the jurisdictional commissions of the imputations established at the level of the ministries and central public authorities promoted by the military nominated by art. 7 of the Government Ordinance no. 121/1998, by the soldiers on mission outside the boundaries of the country provided by art. 9 of the Government Ordinance no. 121/1998 and the civil servants from the structure of the public institutions stipulated in art. 2 of the Government Ordinance no. 121/1998, are within the jurisdiction of the court - the administrative and fiscal contentious division[11].

As a consequence, the High Court of Cassation and Justice arguing that the aforementioned Decision considers that the civil servants from the institutions provided by art. 2 of O.G. no. 121/1998 are subject to the special provisions on material liability.

• According to the provisions of art. 43 of the Law no. 346/2006 on the organization and functioning of the Ministry of National Defense, the personnel of the military institution consists of military personnel and civilian personnel.

The notion of "civilian personnel" is synonymous with the "civilian employee" used by OGnr.121/1998, which according to the Explanatory Dictionary of Romanian Language means "worker,, clerk etc. who receives a salary.

In this context, unlike the Ministry of Internal Affairs, in the practice of the Ministry of National Defense, there were no problems of interpreting the notion of civilian employee, the provisions of OGnr.121/1998 applying to all categories of civilian personnel: civil servants, according to Law no. 188/1999, or persons with an individual employment contract, according to the Labor Code.

• Civil servants in the structures of the public institutions in the defense sector, public order and national security that accompany a military force on missions outside the national territory are, in our opinion, subject to Government Ordinance no 121/2001 even if the text of the normative act does not clarificate in this respect; the civil servant's membership in one of the institutions referred to in art. 2 of O.r. 121/1998 is sufficient to make incidental special provisions regarding material liability if the damage occurred on a mission outside the national territory.

[11] The decision of the ICCJ no. 23/2018 was published in the Official Gazette no. 109 of 12.02.2019.

• Civil servants with special status from the National Administration of Penitentiaries are patrimonial in compliance with art.76 of the Law no. 293/2004[12], so that, with the demilitarization of this structure under the Ministry of Justice, the provisions of O.G.nr.121/1998 are no longer applicable.

6. The material liability for damages caused to the institutions referred to in art. 2 of O.G. 121/1998, can only be established if they have been found within 3 years at most.

The 3-year term is a waiver if the act causing the damage does not constitute an offense, in which case the prescription periods is provided by the criminal law act.

The date of the damage must be established on the basis of documented evidence from evidence, expertise, testimony, etc.

The burden of proof, in this case, lies with the Administrative inquiry Committee.

If no proof of the damage is established within 3 years of its occurrence, the injured unit can no longer recover it from the direct author or from those who were obliged to find it within this term. Except when the omission to establish the damage is a crime, the damage shall be deducted, regardless of the amount, on the basis of the research document approved by the commander/chief of the damaged unit [13].

We emphasize that setting the exact date of injury is not a requirement for the validation of material liability, but is relevant only for the purpose of determining whether the 3-year period for determining the damage has been complied with since the date of its occurrence, the expected deferment period by art. 24 paragraph (1) of O.G.no. 121/1998[14].

7. The obligation to pay damages for the damages caused or the value of the goods and services that are not due, as well as the obligation to repay the uncollected sums, is made by imputation decision.

The imputation decision is issued by the commander or the head of the unit whose commission has conducted the administrative inquiry and is the enforceable title from the date when it was communicated to the person liable for the restitution[15].

In practice, the question arises whether the enforceability of the imputation decision is by itself a ground for suspending that title.

[12] Law no. 293/2004 on the Statute of civil servants with special status from the National Administration of Penitentiaries was republished in the Official Gazette no. 264 of April 10, 2014.
[13] Art. 71-73 of Instructions no. 114/2013 on material liability of personnel for damages produced to the Ministry of Internal Affairs.
[14] Decision no. 2156/2015 of the ICCJ, Administrative and Tax Appeals Section, published on www.scj.ro., verified on 15.04.2019.
[15] Article 25 of OG 121/1998.

The High Court of Cassation and Justice considers that, undoubtedly, the enforceability of the imputation decision and the possibility of use the enforcement of this title in the future is not a reason to request the court to suspend it without having to prove the fulfillment of the two conditions imposed by the provisions of art. 14 of the Administrative Contentious Law no. 554/2004 - the existence of the well-founded reason and the imminent damage.

The existence of a well-founded reason can be dealt with if, in the circumstances of the case, a strong and obvious doubt arises over the presumption of legality, which is one of the grounds for the enforceability of administrative acts.

Practically, due to the presumption of legality, based on presumption of authenticity and veracity, the administrative act is enforceable ex officio, being itself a executory title. Due to this specificity, it becomes necessary to suspend its execution when it is challenged from the point of view of legality, and by enforcement it would cause damage to the persons protected by the administrative contentious institution.

Suspension of the enforcement of administrative acts is therefore an exceptional situation in which the court has only the possibility to carry out a summary examination of the appearance of the law, since the substantive litigation can not be prejudiced in the procedure provided by the law for the suspension of the enforcement of the administrative act.

The two legal conditions (the well-founded reason and the imminent damage) can only be considered together, because there can not be a well-justified case unless the imminence of significant and mutually damaging prejudice is at the same time, the pre-imminence of imminent damage is an essential element in motivating the existence of the justified case for the admission of the provisional suspension.

The court observes that, in addition to these two conditions, the reasons for the suspension must appear prima facie, so it must, from the outset, create a strong doubt as to the legality of the contested act[16].

8. If the damage caused by the persons referred to in Art. 7, 9 and 14 is the result of an offense, the administrative inquiry file is sent to the competent military prosecutor's office to take legal action.

When the criminal mechanism reaction can not be used or if it has no effect and the military prosecutor has ordered such termination the act of settlement shall be communicated to the institution from which it was received referral, in order to take the necessary measures.

But what happens if the reason for which the criminal action was terminated because the reconciliation of the parties under the criminal law?

[16] Decision no. 5167/2010 of the ICCJ, Contentious, Administrative and Fiscal Section, published on www.scj.ro., verified on 15.04.2019.

The question is legitimate because, according to art. 159 paragraph (1) of the Criminal Code, reconciliation may occur if the criminal action is initiated ex officio, if the law expressly provides for it, and the reconciliation removes the criminal liability and extinguishes the civil action.

In this situation, we consider that the file is transmitted to the damaged unit and the material liability is determined by the persons who have arranged/made the reconciliation from the institution without following the recovery of the damage caused by the criminal offense.

We are in the hypothesis provided by the provisions of art. 46 of O.G.no. 121/1998, namely the termination of the criminal proceedings for lack of prior complaint for the authorization or notification of the competent body or of another condition stipulated by the law.

As a consequence, we recommend that the reparation of the damage be a sine qua non condition for reconciliation by the injured public institution, a condition which is subject to a modification of the secondary legislation implementing the Government Ordinance no. 121/1998.

9. The person who considers that the imputation or retention was done without a legal cause or in violation of the law and who, after signing a payment commitment, finds that he is not actually the author obliged, in part or in full, the amount claimed by the unit can do contestation within 30 days from the date of signature of the imputation decision or from the date of signing the payment commitment.

In our opinion, the appeal procedure provided by art. 30 of O.G.no. 121/1998, is a mandatory internal remedy which allows the competent bodies to review the contested administrative act.

Against the decision pronounced on in the graceful appeal, the dissatisfied person has two possibilities:

a) either go through the administrative-judicial procedure that takes place in front of the jurisdictional commission of the imputations provided by the provisions of art. 31-39 of O.G.no.121/1998;

b) either addressed to the competent court.

We make these claims in view of Decision no. 34/2016 of the Constitutional Court, by which the phrase “after exhaustion of these remedies”, from the provisions of art. 43 of O.G. 121/1998 was declared unconstitutional.

The justifier, motivating the Constitutional Court, must be able to chose for an administrative-judicial procedure as an expression of his confidence in the fact that his dispute can be resolved in a quick and specialized manner, but he can not be required to resort to a special administrative jurisdiction if he considers it best to refer the case directly to the competent court according to the law. This does not mean that the court can not be required to go ahead with a prior procedure,

such as internal appeals, such as hierarchical appeal or graceful appeal, and which enable the competent authorities to review the contested administrative act. Therefore, the effects of this decision do not apply to the graceful appeal provided by art. 30 of the ordinance. The finding of the unconstitutionality of the phrase "after the exhaustion of these remedies" concerns the administrative-judicial procedure which takes place before the imputation commission, the procedure provided by art. 31-39 from O.G. no.121/1998. As a consequence, ensuring the right of the court to appeal to the court only after the appeal to be solved by this special administrative jurisdiction violates the provisions of the Constitution[17].

10. Establish the substantive jurisdiction of the administrative litigation courts.

Interpretation by the courts of the provisions of Art. 43 of the Government Ordinance 121/1998, according to which "in case, after the exhaustion of these remedies, the persons obliged to compensate the damage under the terms of the present Ordinance consider that they have been harmed by a legitimate right, they may address to the competent court, according to the law, generated a non-unitary, divergent practice in the matter. Thus, some courts have considered that the applicable legal rule is the Law of administrative contentious no. 554/2004, establishing the material competence for settling the dispute based on the criterion of the issuer of the contested act, by applying the provisions of art. 10 par. (1) of this Law; other courts have considered that the common law on service relations for civil servants is Law no. 188/1999, thus establishing the jurisdiction of the tribunals, applying the provisions of art. 109 of this amended normative act[18].

Taking into account the HCCJ Decision No. 23/2018, the competent body to judge the appeal in the interests of the law, including its considerations, we can draw the following conclusions:

a) disputes concerning actions for annulment of imputation decisions and judgments of the jurisdictional commissions of imputations established at the level of ministries and central public authorities, promoted by the military nominated by art. 7 from O.G. no. 121/1998, including the professional soldiers and graduates, by the soldiers on mission outside the country, provided by art. 9 from O.G. no. 121/1998 and the civil servants from the structure of the public institutions stipulated in art. 2 of the same normative act, are within the competence of the court - the administrative and fiscal contentious division. The High Court of Cassation and Justice motivates this decision by the fact that "the material liability of civil servants and, implicitly, of all military personnel, as

[17] Decision no. 34/2016 of the Constitutional Court was published in the Official Gazette of Romania no.286 of 15 April 2016.

[18] Paragraph 91-93 of the Decision No. 23/2018 of the ICCJ, the competent body to judge the appeal in the interest of the law, published in the Official Gazette no.109 of February 12, 2019.

provided by art. 7 and art. 9 Thesis I from O.G. no. 121/1998, derives from their service relations, so that the disputes concerning actions for annulment of the imputation decisions and the decisions of the commissions of jurisdiction of the imputations rest with the material competence of the first instance courts, the provisions of art. 10 par. (1) of the Law no. 554/2004.

b) Disputes concerning actions for challenging tax decisions and/or judgments of imputation commissions, whether or not the special administrative-judicial procedure provided by OG121/1998 was formulated by civil servants in the structures of public institutions provided in art. 2 (contract staff of these institutions), the jurisdiction lies with the administrative court or court of appeal courts, as the imputation decision was issued by a local or central public authority, respectively, depending on whether the object of judicial action is also the decision of the jurisdictional commission of imputations set up at the level of the central public authority, in which case the competence belongs to the courts of appeal.

Bibliography

LEGISLATION

1. Government Ordinance no. 121/1998 on the material liability of the military
2. Law no. 360/2002 on the status of the policeman.
3. Agreement between the States Parties to the North Atlantic Treaty on the Status of their Forces, signed in London on 19 June 1951, ratified by Law no. 362/2004.
4. Law no. 293/2004 on the Statute of civil servants with special status from the National Administration of Penitentiaries.
5. Law on administrative contentious no. 554/2004.
6. Law no. 346/2006 on the organization and functioning of the Ministry of National Defense.
7. Law no. 188/1999 on the Civil Servants' Statute.
8. Law no. 384/2006 on the status of soldiers and professional graduates.
9. Instructions no. 114/2013 on the material liability of personnel for damages produced by M.A.I.

DOCTRINE

1. Şerban Beligrădeanu, (1998), *General Exam on O.G. 121/1998*, in the Law no. 12, pp.3-8.
2. Teodor Bodoaşca, (1999), *Some Typical Aspects Concerning the New Regulation on the Material Accountability of the Military*, in Law no. 2, pp. 67-77.
3. M.N. Costin, M.C. Costin, (2007), *Civil Law Dictionary*, 2nd Edition, Hamangiu Publishing House, Bucharest, p.815.
4. Ion Traian Stefănescu, (1998), *The Material Liability of the Militaries*, in Labor Relations, no. 11, pp. 44-47.