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FACULTY OF SOCIAL SCIENCES
POLITICAL SCIENCES SPECIALIZATION &
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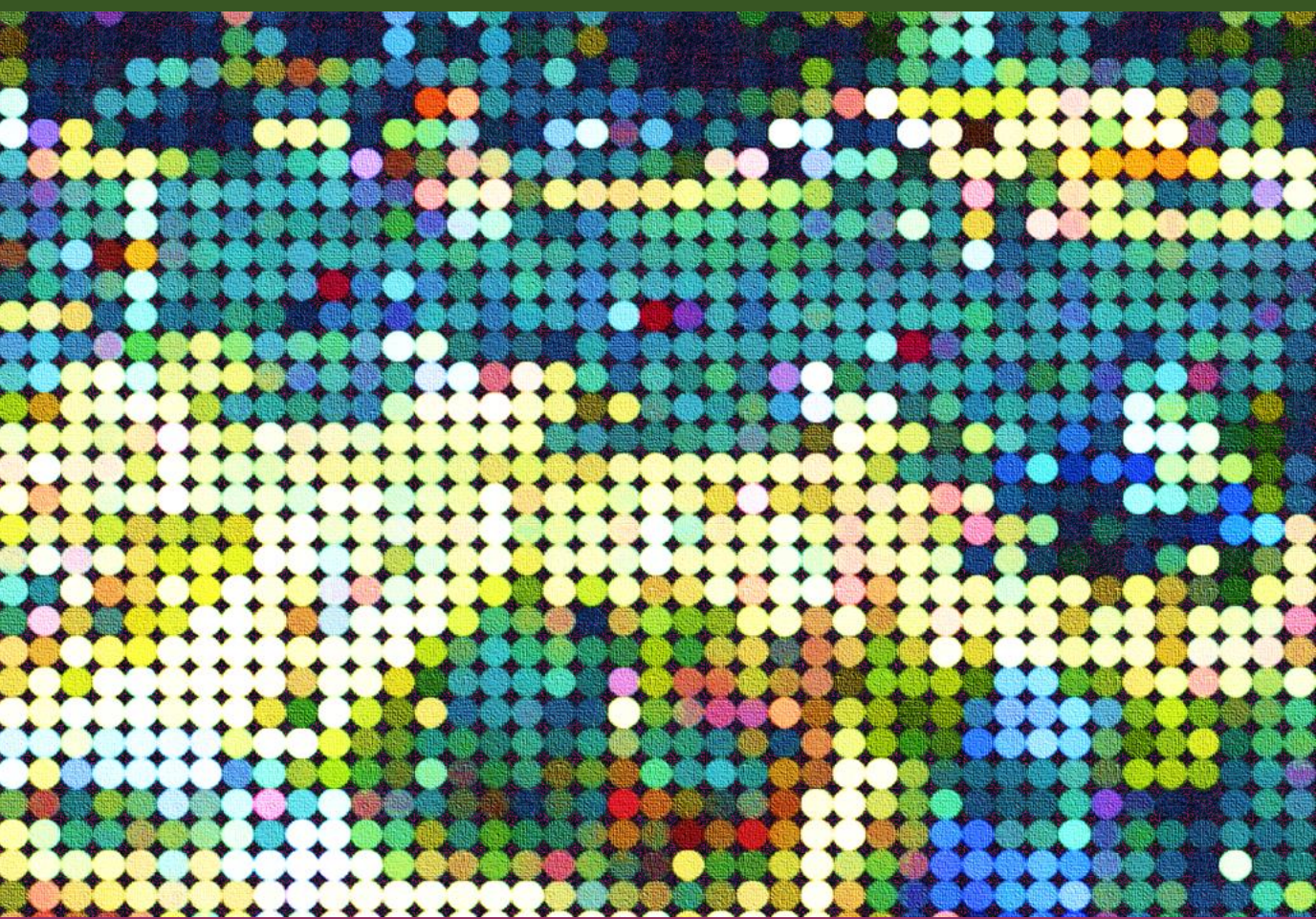

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Rule of Law, Administration and Justice Reform: Eastern and Western Challenges

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EDITORS' NOTE

Rule of Law, Administration and Justice Reform: Eastern and Western Challenges

Note of the Editors of the *Revista de Ştiinţe Politice. Revue des Sciences Politiques*

Anca Parmena Olimid[*]**,**
Cătălina Maria Georgescu[**]**,**
Cosmin Lucian Gherghe[***]

Editorial tasks

In April 2018, the first issue of the Revista de Științe Politice. Revue des Sciences Politiques (hereinafter **RSP**) enables an interdisciplinary linkage between the rule of law – administration – justice reform.

RSP issue 57/ 2018 (April 2018) defines a normative framework of the justice reform in Eastern and Western landscape at a time of complex challenges and encounters across the transition and integration periods.

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Rule of Law, Administration and Justice Reform: Eastern and Western Challenges

The objective of the current issue is to provide a multi-level matrix of the linkage rule of law – administration – justice reform.

As such, the first issue of 2018 desires to be relevant and operative in the field of justice reform and rule of law. The journal comprises nine types of papers analyzing:

(i) Freedom, rights and liberties: constitutional encounters and legal practice:

A. Gabriela TĂNĂSESCU, *Cohabitation as a Problem of the Romanian Semi-presidentialism* (focuses on the legal modalities of cohabitation and the analysis of the cohabitation mechanism in the Romanian post-communist constitutional development);

B. Marijana RAŽNJEVIĆ ZDRILIĆ, *Human Rights and Freedoms in Croatia in 1989/1990 Using the Example of Local Newspapers* (focuses on the issue of human rights, liberties, freedoms and journalism practice in Croatia in the period 1989/1990);

(ii) Administration and justice sector reform:

A. Cristian Radu DRAGOMIR, *Autonomous Administrative Authorities - a Means to Achieve Administrative Justice in the Rule of Law* (focuses on the establishment and functioning of the autonomous administrative authorities and the rule of law encounters);

B. Dan Claudiu DĂNIȘOR, *The Expert or the People? – On the Justification of Autonomous Authorities* (legal, social and interpretative patterns of the autonomous authorities);

(iii) Romanian Civil Code analysis :

Sevastian CERCEL, Ștefan SCURTU, *Liability of the Carrier in the 2009 Romanian Civil Code and the Convention on the Contract for the International Carriage of Goods by Road, Geneva, 1956* (focuses on the comparative legal analysis between the 2009 Romanian Civil Code and the legal framework of the Contract for the International Carriage of Goods by Road, Geneva, 1956);

(iv) Legality of measures:

Mircea Mugurel ȘELEA, *The Right of a Person Subject to a Technical Surveillance Warrant to Contest the Legality of the Measure in case He/She Did Not Become a Defendant* (focuses on "the provisions of Article 145 of the Criminal Procedure Law in accordance with the decision no. 224 of April 6th 2017 of the Constitutional Court")

(v) Administration-law-policies encounters:

A. Ana Maria MĂLĂESCU, *The Role of the Accountancy Profession in Tackling Corruption in Romania;*

B. Narcis Eduard MITU, *A Basic Necessity of a Modern Fiscal Policy: Voluntary Compliance* (focuses on the accountancy profession and the role of public interest in Romania);

(vi) *Legal provision in other legislations:*

Al Jashami Muhammed Khariy QSAIR, *The Provisions of Compensation in Iraqi Civil Law and the Position of Punitive Damages* (focuses on the "current situation of punitive damages in Iraqi law" and a legal comparative analysis with other countries);

(vii) EU comparative legal framework:
Roxana Cristina RADU, Marina Loredana BELU, *Collective Bargaining and Solving Collective Labor Conflicts in the European Union: Several Models of Representing the Interests of Workers* (focuses on the legal determinants of solving collective labor conflicts in the European Union: comparative factors and indicators);

(viii) *Other legal commentaries:*
Mariana PĂDUREANU, *The Protection of Sexual Freedom and the Incrimination of the Sexual Assault in Romania* (focuses on the changes and challenges in the post-communist Romania regarding sexual freedom);

(ix) *Electoral framework in transition countries:*
Marian ZIDARU, *The General Election in 20th of May 1990 in the County of Constanța* (focuses on the electoral legislation and electoral performance in the general elections May 20th, 1990).

Research methodology

The articles of issue 57 provide a "win-win" approach to the rule of law and justice sector reform supplying a challenging legal analysis and "opinion case law" on past or current legal themes relevant to the transitional landscape.

All nine thematic areas set up a methodological matrix of institutions, legal framework and mechanisms licensing theoretical and methodological insights of the current, but also prospective norms.

The biggest challenge of the issue 57/ 2018 is to research and then associate the rule of law approach – the administration system up-to-date legislation and the justice reform essentials dealing with who and how operates and implements the legal provisions.

The research methodology of the current issue includes original research papers mapping a legal forum for the most recent contributions and systheses focusing on the following research methods and methodologies:

(i) Doctrinal legal analysis and research;
(ii) Qualitative legal research;
(iii) Legal case study/ case law;
(iv) Case study research
(v) The exploration of the interdisciplinary concepts and thematic areas;
(vi) Comparative contextual analysis of legal settings;
(vii) The legal interpretation of law texts;
(viii) Researching of constitutional law;
(ix) Researching of administrative law;
(x) Jurisprudence analysis and legal studies;
(xi) The analysis of the legal documents/ official reports/ documentation/ treaties;
(xii) Law reform research and methods;

(xiii) The social and legal research;
(xiv) Sociology of law;
(xv) Literature review of the law and economics relationship;
(xvi) Social and legal network analysis in the field of transitional justice;
(xvii) Monitoring of the interdisciplinary research.

Editorial policies

RSP issue 57/ 2018 (April 2018) focuses on the rule of law-administration-justice sector reform understanings and analyses.

The contents enable the following editorial policies developing: current legal analyses, high-quality legal reviews networking scholar, professionals, experts and academics in the field of law, social sciences, political sciences, sociology, administration sector.

The conceptual design of the **RSP** issue 57/ 2018 (April 2018) responds to the editorial policies securing originality and relevance to the law and social sciences sectors.

All views expressed in the articles of **RSP** issue 57/ 2018 (April 2018) foster the legal understanding of the concepts, legal advances, legal procedures, legal tools and mechanisms framing the Eastern and Western challenges of the justice sector reforms.

Wishing you all the best,

The RSP Editors

RSP • No. 57 • 2018: 13-24

ORIGINAL PAPER

The Expert or the People? On the justification of the autonomous authorities

Dan Claudiu Dănişor*

Abstract:
The introduction into the structure of the present states of certain autonomous authorities and their exponential multiplication over the last decades requires a careful analysis of the principles underpinning their justification. Modern States are based on political freedom, that is, the liberation of man from the objective laws, created by divinity or the implacable historical evolution of society. Modern man is his own master. The expression of this freedom by vote is the basis of all the institutional mechanisms of modern constitutionalism. Instead, autonomous authorities are set up to free the regulation of certain social mechanisms from political influence. They are not based on modern political freedom. Formed by experts who know the "objective" laws of social development and apply them "scientifically," these authorities are "objectives". They are removed from the influence of ideological subjectivism, fed by the dependence of politicians on the elections, so by a passionate and sometimes irrational people. Thus is created a dichotomy: the people or the expert? The following study attempts to answer this fundamental question and the principle on which the choice of contemporary legal systems is based for the multiplication of autonomous authorities: the neutrality of the expert.

Keywords: *autonomous authorities; determinism; expert; neutrality; objective laws of society; modern constitutionalism; political liberty; libertarian philosophies; markets*

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Is it necessary to create autonomous authorities?

Modernity has given man the dominion of history and society. Man is, with the modern age, free of divinity and objective or quasi-objective determinations. He is the one who decides on his own fate, the one who chooses. The social expression of this new capacity is political freedom. Modernity centers everything on this kind of freedom. The decision-making processes are, in modern societies, the institutional consequences of this freedom, and the legal norms are based on the free political choices of the people. All the mechanisms of modern constitutionalism aim to limit the tendency of social processes to get autonomy towards individuals. The separation between the State and the constitutive power, the separation of powers, the vertical separation of powers, the prevalence of human rights, etc. have the purpose of limiting Power, that is, of that force that no longer depends on men, no longer takes them into account and which consequently imposes laws that do not depend on the will of the subjects, their free choices. The mechanisms of democratic legitimacy, as well as the mechanisms of the rule of law, have the ultimate aim of ensuring people control over their own development, history and society, which they create for them, not for the good situated above them. In this logic of things, there are no "natural", "objective" social laws ... All social laws are human and based on the political freedom of people, that is, in the final analysis, their liberation from polis. The laws of the city are based on social policy, resulting from the free choice of people, not from any social science that would describe the objectives laws of the city. The underlying assumption of this conception is that man is able to be free and decide for himself. However…

Society is too complex to be understood by people without proper education, who do not have the intellectual criteria necessary to decide what is good for society and what is not. Whether we like it or not, the mechanisms of modern democracy are rather chanting about liberty rather than liberation tools. People cannot and often do not even want to decide their own fate. They do not make rational choices, and the mechanisms based on their choices can only lead to incompetence and therefore crisis. Politicians, dependent on people's political choices based on emotions, are not looking to build a better society, but to be re-elected. They do not allow themselves to be rational and base their decisions on scientifically substantiated laws. Democracy is a self-destruction mechanism with delayed programming. The underlying assumption of this concept is that the average person is not able to be free and does not want this freedom. The logical consequence is that some of the most delicate, fundamental social mechanisms must be removed from the influence of the political choices of the people and must be based on the objective laws of society, which only the holders of scientific competences can know.

The problem is that this shift from politics to scientific expertise is coming back in time. The modern man, who had taken his fate in his own hands, building his own laws only on the basis of his free choices, that is, on the basis of his political freedom, an assertion of freedom towards the *objectives* of *polis*, is again subjected to laws that he cannot control and which do not depend on his choices, laws that are imposed on him, this time on behalf of *science*. Politics is suspicious. Because it is irrational, it is based on subjective choices and not on objective laws. So, one has to *depoliticize*. That is, to lose our political freedom. Politicians, the result of expressing this freedom, must give way to *experts*, which base their decisions on objectively acquired and objectified skills, not on the irrational choices of people subject to contingency, and which only see their own interests.

The tendency to give credit to the expert rather than the politician betrays our desire not to choose. We are afraid of our political freedom. So we have to entrust sensitive social decisions to some better than us, who know the laws of society. Depoliticization means that the modern man has surrendered. He wants to be driven. And who is better suited for this than the expert. We do not give up political power, we neutralize it. It is only clear that the expert is *neutral*. He does not *choose* a law, but he imposes an objective one, he *choose* it. Social *policy* is replaced by social *science*. Man does not build society anymore, he lives it. Modern men's freedom has died. The polis is objective. Hegel would be delighted: history has reversed the self-development of the Idea. Let us not imagine any Leviathan. It is only about political, autonomous, expert-populated authorities that regulate social processes (ie regulate, supervise, balance and sometimes sanction) outside the modern democratic legitimacy chain. These authorities are generically called "independent" or "autonomous" public authorities. We do not have to worry. They do not kidnap our freedom, because they are "neutral". Autonomous authorities are somewhat self-imposed in the new contemporary institutional environment due to the "crisis" in which the democratic political legitimacy of power has inevitably entered. They are the result of a profound mutation in mentalities, from the valorisation of the encyclopaedic or philosophical knowledge, generic, typical of the politician, to the increasing emphasis on specialized, scientific, expert skills. This has led to a shift of trust of the population from the politician to the expert. A new type of legitimacy is required, based on *scientific reason* and, with it, a new figure becomes the centre of the democratic organization: the *specialist*. This movement cannot remain without effect on how the separation and balance of State functions and, consequently, neutral power is understood.

The public is the one that demands that certain balances be set apart from political influences. Politicians cannot resist, because they depend on this *public*. So they themselves are depriving themselves of certain competencies to give them to the experts of politically neutral authorities. The neutrality of the *authorities called upon to ensure these balances is due, on the one hand, to the "scientific" competences of those who form them and, on the other hand, to their autonomous functioning. This type of authority combines the neutrality "based on a competence liberated from all selfish interests" with the neutrality of being situated "outside the political sphere". They are therefore disinterested and apolitical.

Apparently paradoxal, this type of legitimacy of a new, neutral power from the political forces and powers is the effect of imposing the libertarian philosophies. Insisting on the freedom of the markets to the state power, libertarians imposed the necessity of objectification of their laws. They are deterministic, because their reasoning inevitably leads to the idea that these laws are universally valid, therefore objective. They position themselves apolitically, but they are not really on the side of the individual's liberation. Modernity has made man the master of his own history and society. The apparent exacerbation of liberty by libertarianism is in fact a mastery of the objective laws of the economy on society and on the individual. The denial of political involvement in the economy is, from a certain point of view, a regress, as it is equivalent to denying human control over society and history. As a matter of fact, even modern liberalism firstly had an accentuated reluctance towards democracy, especially because of the mistrust in the competency of the people to decide his own fate.

The politician conceived by the nineteenth-century liberalism was himself an *expert*, even though his expertise was different from that of the official of the current autonomous authorities. The imposition of objective laws on the development of

society requires a desubjectivation of regulation. This is now revealed in the natural laws of society, not in the conjunctural will of politicians. Politics must obey social laws, and the politician must listen to the expert who knows them, if not give up his place. Experts become a kind of new philosophers who should lead, as Plato once claimed, the ideal city. The reason is simple: "The nature of things is more imperious than the will of men. Do we not regard him as unwise of the prince who, drunk by his power, imagined that it stretched so far as to command the waves of the sea, and who ordered that the waters of Hellespont be struck because they had obeyed the winds and not the his decrees ? This is, however, the madness of those who try to arrange society according to their whims"((Say, 2002 : 340). In this optics, only a specialized knowledge of social laws can legitimize a regulation, because only this can ensure the objectivity of the decision. From this point of view, it is true that "if the scholars would have leaned upon the discovery of the laws of the political and social evolution of the nations before seeking the laws of physics and chemistry, States would now be all governed by scientists instead of being the most often governed by ignorant, impulsive, stupid or angry fools" (Fourastié, Laleuf, 1957: 211-212).

The autonomous regulating authorities (a term sometimes translated as "regulation" in Romanian as these authorities "regulate" the various "markets", are not limited to regulating them) are based on such a logic of legitimation, foreign to modernity and hostile to the chain of legitimation of the powers resulting from the right to vote, thus the political freedom of all individuals. They are based, if not on political annihilation, on politics neutralization. The syllogism that leads to their imposition is simple: "the two premises are: 1 / there are universal and immutable economic laws that are impossible to defeat for a long period without disastrous consequences for the Society, and 2 / the political people do not know them (incompetence) and, even when they know them, their personal interest (re-election) pushes them not to follow them (which leads to serious inefficiencies for communities in the medium and long term). Consequently, and as a logical conclusion of the combination of the two prerequisites, all the political interventions in the field of competition must be neutralized for the good of society" (Deschamps, 2012: 70), a competition that becomes the fundamental law of all social phenomena, not just of the economy (against this claim of universalization of competition, see Amin, 2014). Institutionally speaking, this translates into the suppression of the interventions of the government and parliamentarians, or at least of the political forces that face the parliamentary arena, to the benefit of independent authorities (Amin, 2014).

This type of authority has its presence in all contemporary constitutional systems under various names: in the United Kingdom Non-governmental Public Bodies or Quasi Autonomous Non-Governmental Organizsations (Quangos), Independent Regulatory Agencies in the United States, Autorités administratives indépendantes in France (Rosanvallon, 2008 : 121), etc.

In Romania the Constitution regulates them under the generic name of „autonomous administrative authorities" (Gîrleșteanu, 2012: 272-277). Whatever the name, the function of these authorities (Gîrleşteanu, 2011) is "the development of a sector of social life through the effort to ensure certain *balances*" (Chevallier, 1986, I.3254, [8]), besides the political (irrational?!) choices of individuals and of structures that make their expression, especially political parties, based on objective laws of social development.

So it seems we are in the presence of a dichotomy: the people or the experts? The third way does not seem to be perceived unless we force ourselves to see such an alternative in the various combinations of the two solutions.

If we opt for the people, the legitimation of power is ensured by the political freedom of individuals, and the limits of power are assured by all the processes of modern constitutionalism. But the irrationality of individual choices, in the absence of a real desire to participate and the ability to do so, leads to a lack of chronic quality of the representatives and to a *policy* which has practically nothing to do with *policies*, which creates rejection reactions of the *politics* in itself and a profound crisis of democracy. If we opt for experts, we base the legitimacy of social decisions on 'objective' and 'scientific' laws, but at the cost of giving up political freedom. Are these laws, of economics, finance, social development, truly objectives or are they created (not discovered) by experts, who thus self-rank as leaders of society? If the authorities based on such a legitimation are required, and the reality is that they do, we need new procedures to limit the powers of the experts, for those stemming from modern constitutionalism are not effectively enforceable. If we do not want to counter political freedom and political representation of the scientific expertise of the autonomous authorities, we must find mechanisms to limit the power of the latter, which are not based on modern political ideas. Or, at least until now, these mechanisms seem to be lacking. The proliferation of autonomous (even independent) authorities is not without risk (for an analysis of these risks in the current Romanian system, see Tudor Drăganu, 2000: 68-78 and Drăganu, 2001: 28-43).

What kind of neutrality is the basis of the authority of the autonomous authorities?

Carl Schmitt, analyzing the forms of neutrality (Schmitt, 1972: 159-164), found among them the one of the expert, "founded on a power freed of all selfish interest" Based on experts, the power of autonomous authorities should be neutral in such a sense. In order to preserve this neutrality, arrangements must be made to ensure that the experts are released from the interests at stake, that is, from the political ones, but also from the actors acting in the various "markets".

Consideration is given to explain the neutrality of the autonomous authorities to three issues which, although linked, remain distinct: 1 / if the liberation from selfish interests neutralizes the power of the experts; 2 / how can be obtained, in a State based on political freedom, a neutrality of experts towards political powers; 3 / how to neutralize the power of the experts of the autonomous authorities towards the active actors in the markets they regulate.

Freeing selfish interests neutralizes the power of experts?

The power of the autonomous authorities must be neutral. It is the different nature of the experts that make up the one that guarantees neutrality. This conception is in fact only a derivation of the idea of neutral power that a part of modern philosophies gave to "special beings" over the political representations resulting from the vote of the members of the electoral body: the aristocrats constituted in a "superior" Chamber (Dănișor, 2018a) or the Head of State not dependent on the people, or neutralized, if it is, however, directly or indirectly dependent on it (Dănișor, 2018b). The difference lies in the fact that this particular nature still places the aristocrats or the head of state *in the political sphere*, even if their power was not *politically active*, while the experts of the autonomous authorities *brings them out of the political sphere*, placing them within the scope of scientific objectivity. Experts do not choose, they do archaeology, discovering how to regulate the social mechanisms in the "nature of things." Their power resembles that of judges, for they are also "inanimate beings," "who pronounce the words of the law," without being able to

"modify neither their strength nor the rigor" (Montesquieu, L XXI, Ch. VI.). However, it is different because the laws that judges apply are created by political power, while experts claim to transpose natural laws into society. What kind of neutrality is this? Political? In fact, the power of the experts is not *politically* neutral, but *is not*, simply, *politics*, meaning it does not rely in any way on the political freedom, the individual's autonomy over the objective, divine, natural, social laws, etc. The power of the autonomous authorities is *anti*-political, not a-political. It is *not* the nature of the judge's neutral power. It remains in the sphere of politics, it is not *anti*-political. That is why Kelsen could rightly say that by "authorizing the judge, within certain limits, to choose between contradictory interests and to resolve a conflict in favour of one or the other, the legislator confers a power of creation of the right and thus a power that gives the judicial function the same "political" character as it gives to legislative power, even if it exercises it to a wider extent. Between the political nature of legislation and that of justice there is only a quantitative, not a qualitative difference" (Kelsen, 2006: 75-76). Unlike a judge, the autonomous authorities develop a power of another nature, which is situated *not above* political confrontations but in the same plan, but *versus* political confrontations, based on objective laws, which political intervention can only de-*form*. If I am allowed a paraphrase, the expert "is subjected to something that is born among men and for him another divinity does not exist (...). In this earthly church, the human spirit worships the inter-human spirit" (Gombrowicz, 1988: 291).

The "neutral" expert actually "discovers" those laws that his scientific or economic ideology commands, even if they claim to be "objectives." To ask the expert to leave his identity based on an ideology of science, it is no different than to ask the politician to leave his religious, ethnic, etc. identity to the door of politics. Social Sciences *are* ideological. They cannot be neutral. Any expert is a politician who ignores or wants to be ignored. The so-called objective laws are actually reconfigured by the expert according to his scientific predispositions. Scientific ego is not less dangerous than politics. So the quasi-political choices of the experts (who are the exponents of some groups of particular scientific conception) between the various "objective" ways of addressing social realities must in turn be subject to neutralization procedures. It becomes so crucial how experts are elected to be released not only by the selfish interests of politicians or market actors but towards their own selfish, material and scientific interests. Current solutions differ not only from one legal system to another but from one autonomous authority to another within the same system. I think this already says a lot about systemic hesitations in the field. In Europe, solutions are so diverse that their systematization can be daunting. Spain tried to unify the rules for all autonomous authorities, but only in the economic and financial field, in a single law adopted in 2011 (Law no. 2/2011 of 4 March 2011 on a sustainable economy (BOE, nr. 55, March 5, 2011, p. 25033) (Delzangles, 2012: 714-715). Otherwise, European legal systems seem to follow the idea that each authority should be regulated separately (see, for example, Martucci, 2012: 726-727; Walther, 2012: 693-706; Perroud, 2012 : 735-746; Goranson, Volkai, 2003: 7-94; Maggetti, 2014 : 281-303; Hoynck, 2012: 791-801; Conseil d'État, 2001).

In Romania this conception was even routed by some doctrinaires, stating that "it is advisable that each autonomous authority has its own organic law, although the constitutional text admits another possibility" (Vedinaş, 2008: 1123).

There is a logic of autonomy that can be met by this authority's intended regulation, for each time Parliament has to debate the necessity and status of such authority, which can be interpreted as guaranteeing that it is not established and defined

conjunctural. However, this process is not without risk in the absence of a principle consistency provided by the constitutional detailing of certain principles that concern autonomous authorities. Most of the Constitutions, including that of Romania, are quite succinct in this area. Thus, the Romanian constitutional system is pleased to state, when the central specialized public administration regulates, only that "other specialized bodies can be organized under the subordination of the Government or of the ministries *or as autonomous administrative authorities*"[Art. 116 (2), and that autonomous administrative authorities "may be established by organic law" (art. 117 (3)]. No word about what the autonomy of these authorities means or the neutrality on which they are based.

European regulations in the field of autonomous (independent) authorities define the neutrality of experts on two levels: towards the political power and the actors whose relations the authority has the power to regulate. They are not concerned with the neutrality of experts over the various scientific doctrines that claim to objectively explain the social reality they have as an object. It is this neutrality that should give them the status of experts to those who make up the autonomous authorities and base their neutrality on the upstream of political autonomy and social actors. The first problem is how we define an expert, the second is how we define the status, and only the third is how we choose it to be part of an autonomous authority. But the current legal systems are not very concerned about the first issue. The criteria for defining experts are rather incantations than guarantees. I will only exemplify the solutions in the Romanian laws, saying that the problem is general, being present in all European systems. Thus, experts who may be members of the Competition Council "must have real independence", enjoy a "high professional reputation and civic probity", give "proof of high professional competence in the field of competition "and" have a minimum of 10 years' experience in economic or legal activities ".

The President of the Council "must have fulfilled a managerial function with wide responsibilities, in which he has demonstrated his professional and managerial competence" (Art. 15 of the Competition Law no. 21/1996, republished, Off .J. no. 153/2016). The President and Vice-President of the National Integrity Agency are appointed following a competition to which candidates who have "higher juridical or economic studies certified under the law" can participate (Art. 13 (2) e from Law no. 144/2007, republished, Off .J no. 535/2009). This is the only proof of expertise required. It is true that it is a contest, but the expertise cannot really be proved by a written test and an interview. In order to be a member of the National Securities Commission, the qualities that were required were: experience and technical qualification in the supervision of the financial sector (Art. 3 (2^1) from Statute of the National Securities Commission, Off. J. no. 226/2002), a good reputation and professional training in the economic or legal field and a minimum of 5 years' experience in the financial sector ((Art. 4(3) from Statute of the National Securities Commission, Off. J. no. 226/2002).

In order to be a member of the Financial Supervisory Authority, an autonomous administrative authority resulting from the taking-over and reorganization of all the powers and prerogatives of the National Securities Commission, the Insurance Supervisory Commission and the Private Pensions Supervisory Commission, requires " a good reputation and professional training and appropriate professional experience in areas where ASF has competencies "[*]. The examples could continue, but this study is not the subject of a thorough analysis. What is important for the moment is that the expertise

[*] (Art. 9a of the Emergency Ordinance no. 93/2012, Off. J. no. 874/2012).

requirements are vague, non-objective, less, sometimes, the minimum conditions of study and seniority, which are not necessarily a test of expert quality. In some cases these conditions are completely absent. For example, in the case of the National Audiovisual Council, whose members do not have to fulfil any particular condition that would provide them with any expertise in the field (Law no. 504/2002, Chapter II - National Audiovisual Council (Art. 10 - Art. 20), Off .J no. 534/2002).

What kind of experts are they? One cannot help thinking that in fact the chanting of the expertise is meant to actually ensure the removal of the political power (which in one way or the other chooses it) from democratic control, based on the political freedom of the citizens, rather than an equidistant regression.

Neutrality of experts towards political powers in the state based on political freedom

Under the conditions described above, the neutrality of the autonomous authorities' experts over political power has the significance of removing certain political powers from the scope of guarantees given to citizens by the mechanisms of separation of powers. The substrate of this statement is the following: in a state based on the mechanisms resulting from the separation of powers (constitutive and constituted, legislative, executive and judicial, central and local) based on modern political freedom, it is not possible to introduce neutral authorities which are not founded on this freedom, but which exercise the powers that normally belong to those powers.

In order for these innovations not to become a trap for freedom, it is either for these authorities either to give them the mediation powers or the modern powers-limiting mechanisms to be added to others, adapted to the anti-political nature of the autonomous authorities. Autonomous authorities regroup, settle conflicts, sometimes investigate and sanction (Taibi Achour, 2013: 463-480). The fundamental problem is that these attributions *are political* and that the doctrine that justifies autonomous authorities claims they are not. This claim is also a political one, and politicians cover the desire to extend the powers of the state without providing the guarantees of modern constitutionalism under the guise of political neutrality of experts.

Perhaps these statements appear to be dangerous when constitutional justice could consider that "the designation of an independent administrative authority (...) constitutes a fundamental guarantee for the exercise of public freedom" (French Constitutional Council, Decision no. 84-173 DC, 26 July 1984, Rec. 63; RDP 1986.395, note Favoreu, quoted by Olivier Gohin, 2002: 230). However, such authority, when it has powers traditionally in the sphere of one of the same three powers, may restrict the exercise of the law without respecting the limits imposed to them by modern constitutionalism. Autonomous autonomies are thus in an ambiguous middle position between guaranteeing fundamental rights and restraining them without the limits imposed on classical powers. Some authors try to get out of this dilemma by considering that the autonomy (independence) of this type of authority must be configured in relation to the fundamental right (s) it is called upon to protect (Martucci, 2012: 726-727).

Autonomy is thus configured in relation to the type of authority's intervention in the sphere of law, which necessarily limits its exercise. Depending on this mission, of mediator between the assertion of the fundamental right and its restraint, the organic autonomy of authority must be configured. This option would mean that safeguards to restrict the power of autonomous authorities are chosen, among those applicable to classical powers, in relation to the type of restriction of the exercise of fundamental rights

that the autonomous authority is able to impose. But, should not other limiting mechanisms be envisaged?

If we opt for such an analysis, then the neutrality of the experts of the autonomous authorities "exists only for teachers and naives" (Holleaux, 1987, quoted by Olivier Gohin, 2002: 234). These authorities are not politically neutral. They are a danger both to the political direction of society and to freedom. Here is what the French State Council endorsed in its 2001 Report on independent administrative authorities: „The multiplication of independent administrative authorities is not really without risk to the Government. It deprives him of the means of legal intervention he had, although at the same time, in the face of a dangerous and strongly mediated situation, his political responsibility remains complete. The experience of the last few years has shown it to a great extent: in times of crisis, what can be called "*administrative screen*" is not working. Public opinion does not allow political powers to hide behind the expertise or independence of regulatory authorities" (Conseil d'État, 2001: 371).

A contrario, in normal situations the public wants to be convinced of the political neutrality of the experts, even if it is not real. Under the mask of the expert, the politician is hiding, even if this "policy" is the "scientific" one.

Fundamental ambiguity of expert neutrality towards 'markets'

The establishment of autonomous authorities is the reflex of trust and, at the same time, mistrust in "markets" or, in other words, in the power of society (modern capitalist) to self-regulate. The capacity of the society to produce *spontaneously* the rules that structure it, is an old claim. The requirement of autonomy over political power and the right created by it from top to bottom as well. It translates into the autonomy requirement of *civil society* to political society (I have dealt more extensively with the forms of this autonomy, which will be outlined below in my study *The Autonomy of Civil Society - a Guarantee of Freedom*, which is being published in another magazine). The first form of autonomy claimed by this type of society was one to the army and the clergy. With the separation of the state from the church and the transformation of the army into a body subordinated to the political power, the opposition between military and religious society and civil society fades, leaving the place of another, the one between the modern political society based on the disengagement of the citizen against the classes of the old regime; or, broader than primary identification groups, and identity claims, which make it necessary to build an autonomous sphere towards politics, a *civil* sphere, where people find their *private* identity, which they can no longer manifest in the public space, *politically*. Civil society is rebuilt by opposition to political society. It is a depoliticized society.

The quintessence of this autonomous society to politics is the economy. The political separation is in the sphere of economy, which is why capitalism seems to be consubstantial with modernity. And, as the state becomes the ultimate form of politics, relying on the *mandatory* membership and dominating the public space by representing the general interest, its limitation must be by establishing a sphere of social life which *remains the expression of particular interest* and is based on *voluntary* association. This new identity of civil society is built up in opposition to the state. The "civil" society is built on the basis of the free association and the free satisfaction of the private interest.

With the imposition of fascism, the associative space was "made public". Associations have become a way of fitting and controlling themselves. They were no longer just counter-powers, but also manifestations of power on another level. Civil

society is redefined from now on by opposition to "political" corporations resulting from association or necessary to free exchange.

In the next stage, the post-modern one, several tendencies of claim of autonomy are exacerbated *sui generis*. The first is the claim of the autonomy of society to any form of manifestation of politics. It transforms populism into a particular political stream, *antipolitism*. The second exacerbated trend of post-modernism is the claim of individual autonomy. It transforms autonomy into the sovereignty of the individual.

From these seemingly contradictory developments, a multiform "civil" society emerges, which is rather used as a communicative justification of autonomy claims placed on so many different levels that it is difficult to describe it in a unitary concept. The central idea, however, is that regardless of the form of the manifestation of power, the guarantee of freedom implies a certain form of autonomy of society, that separation of the sphere of power and social autonomy, however multiform the two realities, is still necessary. Everything can be, in this conception, regarded as a "market" (It was even possible to argue that "there is a free market of love affairs" (Pierre Lemieux, 1983)) so as a social sphere that can produce the rules that are needed, from bottom to top, spontaneously, without the intervention of political power.

This claim could not have any effect on the creation of legal rules by the political powers. Their disbelief in people's ability to self-govern and to give themselves the necessary rules for cohabitation and progress was initially translated into the establishment of the representative government and the banning of popular interventions in the exercise of powers after they are constituted on the basis of the expression of political freedom. The people sends representatives in the competent bodies to create the law and that is it! He never creates the legal rules himself. When the representation no longer satisfies the people, satisfaction with the requirement of autonomy of civil society towards political power must be given, by creating autonomous authorities towards it, regulating "markets". But the law must not spontaneously result from the will of individuals, but from the objective laws of these social structures, which only the experts know. The liberation of the markets has nothing to do with the liberation of individuals and their direct participation in creating the rules that constraint them. On the contrary, the participation, which was present in the system of election of the political representatives, fades with the strengthening of the regulators' autonomy over the political powers resulting from the vote and set up on the basis of the separation of powers theory. This fundamental dichotomy means that the neutrality of the experts of the autonomous authorities towards the actors in the "markets" is an institutional transposition of a dual requirement: on the one hand, the requirement that the markets are *not* regulated by political power, on the other hand, the requirement that they do *not* self-regulate. Regulating markets through the autonomous authorities is neither political nor spontaneous.

It is ambiguous. The whole issue of the autonomy of authorities that regulates society outside of politics is dependent upon this double negation, which, like any double negation, may seem like an affirmation.

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ORIGINAL PAPER

The General Election in 20th of May 1990 in the County of Constanța

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Abstract:
The first free election in Romania, after the coup d'état in 1989 represented a crucial moment in the Romanian history. The results of these first post communist free elections can not be analyses and explain without the presentation of the socio-economic and historical contextual which is specific both the forty five years of the communist dictatorship, and the five months of Post-Communism. The paper "The general election in 20th of May 1990 in the county of Constanta" which is my proposal for this conference contains a presentation in a chronological succession of the main events during the coup d'état in 22nd December 1989, and after the coup d'état till the election of may 20th 1990. I also included some juridical and political analysis and consideration about the election law system. On the basis of the documents from the personal archive of the honorable judge Dan Iulian Drăgan, a member of County Election Bureau, and his oral testimony, I succeded to have a clear image of the development of the 20th may 1990 election in the county of Constanta. Regarding the speculation of election fiddle, during the election, I can state that according to documents, there were some attempts, but the final result was not very much influenced. I also try to answer to the question why the electorate gave a massive vote to the National Salvation Front?

Keywords: *free election; County Election Bureau; Constanța; Romania*

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The first free election in Romania, after the coup d'état in 1989 represented a crucial moment in the Romanian history. The results of these first post communist free elections can not be analyses and explain without the presentation of the socio-economic and historical contextual which is specific both the forty five years of the communist dictatorship, and the five months of Post-Communism. (Ohanisian, 1991: 43). In the National Salvation Front's Communiqué to the Romanian people, read at the Romanian television by Ion Iliescu during the evening of 22nd of December 1989, they claim that „all the political power in Romania was assumed by the National Salvation Front Council". At 27th of December 1989 was edited The Decree –law no. 2 regarding the organization and the operation of the National Salvation Front Council and the local Councils. This decree was a kind of a small revolutionary constitution and contains provisions about the organization of the new revolutionary power. It proclaims the principle of the democratic pluralism which was developed by the The Decree –law no. 8 from 31st December 1989 regarding the foundation of the political parties and collective organization in Romania. (Official Gazette no. 9 of 31 December 1989).

The organization of the Romanian political parties were made on the basis of the respect of the independency and sovereignity of Romania, and the democratic orientation of the country. They claim that they will respect the freedom and human rights of the Romanian citizens. There were no limitation of race, nationality, sex, religion, in internal organizations of these political parties. The fascist and nazi parties were forbidden, as well as those parties who claims against the state order of Romania. With a view to its registration as a political party had to submit status and political programme, to declare premises and financial resources and to have at least 251 members. Military and civilian personnel of the Ministry of defence and Ministry of Internal Affairs, judges, prosecutors and diplomats as well as operative staff of Television, they were forbidden to belong to political parties. Political parties were required to register with the Bucharest Courthouse. At 24th of Januariy 1990 the FSN announcement that they will go to the polls provoked a political crisis and some protest from the old political parties (Drăganu, 1998: 399).

The leaders of the FSN were forced to negociate a new formula of the organization of the political power with the representatives of the others political parties. At 1st February they agreed a new formula which replaced the National Salvation Front Council. In the new organization of the state political power the members of the old Council had 50% and the remaining 50% were shared by the other political parties and the representatives of the national minorities. As a result of this agreement was adopted Decree-Law No. 81 of 9 February 1990 (Official Gazette no. 27 of 10 February 1990) concerning the Provisional Council of National Unity which has been said to express "the political reality of Romania legislature determined the emergence of political parties and the need for their participation in the political governance of the country" (Muraru, Tănăsescu, 2001: 123).

This first parliamentary structure was quickly altered by Decree-Law No. 82 of 13 February 1990 that increases the number of members at 253. It was organized the executive bureau with 21 executive members including the Chairman, 5 Vice-Presidents, 1 Secretary and 14 members. They also have created specialised commissions: the Commission C.P.U.N. for reconstruction and economic development, the Committee on agriculture, Commission for human rights, the Commission on youth, the Committee on Foreign Affairs, Committee on education, science and Technology Commission, the Commission for culture, the Committee on the environment and ecological balance, the

Commission for national minorities, the Commission for local administration, Commission for health, the Commission for labour and social protection, the Commission for investigation of abuse and to rehabilitate the victims of the dictatorship. National Salvation Front was established as an independent political structure registered in the electoral race. In a very short period of just a few months before the elections in Romania were about 75 of political parties that presented themselves for election.

In Romania, since January 1990, the number of political parties has grown at a rapid pace. The most significant factors for the determination of this trend are: a. one-party system failure (negative reference: the PCR was a formation of the mobilization and identification of dictatorship); b. the pluripartidist tradition before 1938; c. efficiency of the multi-party system in relation to the guarantee and exercise of democratic rights and freedoms (positive experience: the experience of democratic States); d. the diversity of policy options, economic, ideological, and strategies of economic and social development; e. diversity of interests (personal interests that have acquired the possibility of designing into political parties until the interests of communities) (Ohanisian, 1991: 58.)

In the elections of 20 May 1990, was recorded a high political involvement on the part of citizens. So, a month before the election an IRSOP opinion poll show that 8 percent of voters were registered in a political party, and 12% were poised to do so. (Datculescu, P. (1991).Alegerile postdictatoriale în perspectivă sociologică internaţională cu referire specială la cazul României.(Post-Dictatorial Elections in International Sociological Perspective with special reference to Romania's case) în Datculescu, P., Liepelt, K. (editors). *Renaşterea unei democraţii, Alegerile din România de la 20 mai 1990,* (The Revival of a Democracy, The Romanian Elections, May 20, 1990), Bucharest: IRSOP, p.: 22) Must, however, be pointed out that the representation of political parties has been extremely uneven, and can distinguish the parties: a. national; b. regional; c. local. Only four political parties have candidates in all 43 constituencies. (Garbis Ohanisian, 1991: 59.).

The internal situation in Romania in the run-up to elections five months has been characterized by instability and tension. However we agree with the view expressed by the researcher Garbis Ohanisian that "general policy although somewhat confused and agitated, marked by the crisis did not affect in any way the dramatic public optimism about the positive evolution of Romanian society and sense of confidence early in the May 20 election" (Garbis Ohanisian, 1991: 58). The vote there was a turnout of about 85%. (Petre Datculescu, 1991: 26).

The most important document adopted by the Temporary Council of National Unity was the Law –Decree nr. 92 from 14th marc 1990 (Official Gazette no. 35 of 18 March 1990, pp. 1-11) about the elections of Parliament and the Romanian President. This Law –Decree reorganised Romanian political institution, by providing the separation of state power. According this Law –Decree legislative power to be established from a Parliament compound of the Senate and the Assembly of Deputies and the Executive was a Government led by a Prime Minister and President. Bicameral Parliament established by Decree-Law No. 92 resume a tradition begun in 1866 and broken up in 1940. The elections were taking place on the basis of the vote list, lawmakers are elected through universal suffrage, equal, secret and free suffrage. The organizations of national minorities which were not represented in Parliament, were also entitled to a Deputy mandate. This first Parliament created after the events of December 1989, serving both functions of a legislative Assembly, as well as those of a Constitutional Assembly. Once the Constitution is adopted, new elections should be held within a period not exceeding one year. The President designate Prime Minister in the person of the representative of a party

or political party alliance which won the most seats in Parliament, after consultation with the parties represented in Parliament. The President could not remain a member of any political party or political parties alliance.

President-Parliament relations were well defined and with very little self-control possibility. The President could not be removed from Office only if they have committed acts, which would have made him unworthy to occupy such a state dignity. The President did not have the power to dissolve Parliament unless the Constitution had not been adopted in the nine-month period (Drăganu, 1998: 404). The election campaign took place from 28 March-20 May 1990 (Bejan, 1991: 83).

Provisions of Decree-Law No. 92 of 14th march 1990 concerning the holding of elections

According to the article. 5 the citizen have the right to one vote for the election of the President, the Senate and the Assembly of Deputies.Next article establishing the number of members of both Chambers. Thus, the number of members of the Assembly of Deputies was 387. Also, the Senate was composed of elected Senators according to counties: population in counties with a population exceeding 500,000 inhabitants chose two senators; in counties with a population of 750,000 inhabitants the 500001 elected three Senators; in other counties choose 4 Senators; in Bucharest were elected 14 senators. (Iorgovan, Muraru, Vasilescu, Vida (1992): 15-16).

Article 11 regulating two categories of candidates: candidates proposed by political parties or independent candidacies and political formations in the sense that if a citizen wanted to run individually for a mandate could do this. In terms of the number of candidates that could be entered on a list, he could not be greater than the number of Deputies and senators, who were elected in the constituency. The provisions of this article regulated some conditions, in principle, to the proposal of candidates. Thus, a candidate for the Presidency had to be supported by at least 100,000 people. Some conditions were laid down for the independent candidate for Deputy or senator mandate, meaning that it had to be supported by 251 to citizens with voting rights. With regard to minorities, the law provided for the possibility to associate their lists of independent candidates. The last paragraph of this article within the meaning of rule which provided for Parliament can be run only in a single constituency. According to the article. 13, each county and Bucharest had been an electoral constituency. Specialists have defined the constituency as the organizational framework for the elections of Deputies, Senators and of the head of State. From the wording of art. 13 it is concluded that any candidate shall submit to the County and the municipality of Bucharest, understood as constituencies, and in some parts of their territory. From here it follows that to be elected as an independent candidate had to meet a much larger number of votes than would have been necessary in the hypothesis in which the electoral district would have represented only a portion of the population of the County, bounded to the criterion of residence in a particular portion of its territory.

By decision No. 283 of 21 March 1990 (Official Gazette no. 39 of 21.03. 1990) the Romanian Government established the number of Deputies and senators were to be elected in each constituency. According to this regulatory action in the Constanta County were to be elected 12 deputies and 3 Senators (Iorgovan, Muraru, Vasilescu, Vida, 2001: 28) Article 19 stipulated the conditions for setting up a polling station, which evoke the notion where each voter can exercise his right to vote. This article provides the Organization of polling stations in cities, villages and municipalities. From the first two letters of the provisions of this article, it appears that in municipalities with a population

under 2,000 inhabitants is organizing a single polling station, and in the towns and cities they hold, one polling station at least 1,500 people and a maximum of 3000 inhabitants. For example, in a municipality that have compact villages at distances of less than 5 miles from the City Hall and a total population of 2,900 inhabitants, was to organize a single polling station. On the contrary in a neighbouring municipality, which has the same grouping of villages, but a population of 3010 people will organize two polling stations. Paragraph 2 provided for an exception to the above rule, admitting the possibility to organize polling stations in villages for up to 500 inhabitants, provided they are placed at a distance of 5 km from village center (Iorgovan, Muraru, Vasilescu, Vida, 2001: 28).

Art. 18-19 allowed for the possibility of organizing polling stations for certain special categories of voters-military, citizens hospitalized students in hospitals, in addition to the diplomatic and consular missions, ships under the Romanian flag in sailing on election day (Iorgovan, Muraru, Vasilescu, Vida, 2001: 28) According to the 21 article jurisdiction for the delimitation and polling station numbers belongs to the county councils (Iorgovan, Muraru, Vasilescu, Vida, 2001: 28).

For the elections a definite utility operation, was drawing up electoral lists. Voter lists was utility documents in which the records of all Romanian citizens who, having the right to vote, participate in the election of the President and Parliament. Preparation of voter lists was entrusted to the mayoralties, municipal law, city, municipal and other sectors of Bucharest, for that town halls had records of citizens who were residing in the setlements. Voters lists should be allowed to clear identification of voters, so that they were intended to contain the name and surname, age and place of residence and the number of the constituency in which each voter. Each voter may be entered only in one electoral roll. Article 28 provided for setting up the Central Electoral Bureau, bureaus and offices, constituency polling station. Central Electoral Bureau was composed of seven judges of the Supreme Court of Justice chosen by drawing lots and 10 representatives of political parties (Iorgovan, Muraru, Vasilescu, Vida, 2001: 40-42).

Art. 31 stated that the Bureau of the Electoral District was of 3 judges, and no more than 6 representatives of political parties participating in elections in the County and in the city of Bucharest appointed in descending order of the number of candidates who have proposed (Iorgovan, Muraru, Vasilescu, Vida, 2001: 47) In accordance with article 34, Polling precinct are comprised of a President, a Deputy and not more than 7 members. The President and his Deputy were normally judges or other lawyers who were not part of any political party or political party designated by the President of the Courthouse and of the Bucharest County by drawing lots (Iorgovan, Muraru, Vasilescu, Vida, 2001: 28).

Article 39-40 established the conditions under which they could be submitted lists of candidates for the Assembly of Deputies and the Senate. Thus, they could be made only on electoral constituencies and not later than 30 days before the election. The proposals of the candidates were written in triplicate by the political parties who were participating in the election, under the leadership signature or, in the case of independent candidates, on the basis of lists of supporters. Independent candidate was required to submit a notarized statement by the State notary system stating supporters signatures (Iorgovan, Muraru, Vasilescu, Vida, 2001: 58-59). Articles 54 to 64 provided a series of organizational measures for the proper conduct of elections, such as the location of polling stations, the security, the time interval in which voting takes place, the conditions for suspending the vote, etc. (Iorgovan, Muraru, Vasilescu, Vida, 2001: 71).

After the closing of the voting, the Chairman of the electoral board proceed to set aside the remaining unused ballots and open ballot boxes, in the presence of members of

the bureaux and where appropriate of persons referred to in article 56, paragraph 1. 3. The President read aloud, at the opening of each bulletin, , the name and surname of the candidate and will show the ballot of those present. In addition, ballots were declared void for several reasons: the bulletin wore the stamp of the Department were different model than the one legally approved; to which stamp was applied votes more quadrilaterals; Which were opened in error before being included in voting ballot (Iorgovan, Muraru, Vasilescu, Vida, 2001: 82).

Elections of 20 May 1990 in Constanţa County

On 3 May 1990, the Commission established, in accordance with article 5. paragraph 1 of Decree-Law No. 93./1990 proceeded to: retrieving the list of persons designated by the city of Constanta, by decision No. 176/90; the establishment of judges and persons will be placed on County Electoral Bureau; preparation of drawing of lots: typing numbers corresponding to those shooting 439 precincts; typing the name of 63 municipalities in the County including polling stations; Group of numbers corresponding to those in table of proposed persons, centres and localities and the formation, in this way, lots of shooting; operations by drawing lots by removing the tickets with the numbers on the settlements, according to polling station, first time for Presidents and, then, for Parliament; completing the nomnal table on the wards, locations and functions. The materials used, and the Town Hall's decision, and a copy of the list of drawing lots have filed for conservation at first Registrar. (*The personal archive of Judge Dan Iulian Drăgan. Minutes of May 3, 1990*). On May 4, in accordance with article 5. 31 of Decree-Law No. 92\/1990 was held the meeting to complete the County Electoral District Electoral Office 14.

In the County, according to the provisions of the Decree law No. 92/1990, was founded the constituency Constanţa No. 14 which contain bureaus of 439 precincts of the municipalities and cities within the County and the municipality of Constanta. After the establishment of the Central Electoral Board were held by the President of the Countyhouse Court, judge Marin Voicu, the election of the County electoral Board by drawing lots (ticketed with the name and surname of the judges were extracted from a Busby by Mrs. Maria Camilleri principal clerk). There were appointed three judges namely: Mrs judge Victoria Barozi, Ms Judge Dumitru Mihaela and Mr judge Dan Iulian Dragan. Those three judges were elected as the President of the Office of the electoral district Mrs. judge Viorica Barozi.

Previously, on the basis of electoral provisions, no Decision 142 of 6 April 1990 of Constanta Prefecture signed by County prefect, Adrian Radulescu and the Prefecture Secretary Vasile Rusescu has been issued.. Through this decision polling stations were divided within the County of Constanta, in locations with the following configuration: - Constanța at no. 1-151 (pp. 1-39 of the decision); the city of Basarabi; 152 to 156 (p. 40 of the decision); the city of Cernavoda from 157 to 164 (pp. 41-43); the city of Eforie from 163 to 172 (pp. 44-46); the city of Hârşova from 173 to 177 (pp. 46-47); the city of Mangalia from 178 to 196 (pp. 47-52); the city of Medgidia from 197 to 216 (pp. 53-61); the city of Năvodari from 217 to 228 (pp. 61-64); the city of Negru-Vodă from 229 to 231 (pp. 64-65); the city of Ovidiu from 232 to 237 (pp. 65-66); the city of Techirghiol from 238 to 241 (pp. 68-69); all municipalities in the county-from 242 to 405 (pp. 70-85);polling stations to vote in the military units, for conscriptors; 406 at 439 (Archive Drăgan, pp. 85-86).

After the election of the judges for the Office of the Electoral District No. 14, was necessary to supplement it with the representatives of political parties, so that the report concluded on 4 May 1990 were nominated: Cojocaru Aurelian National Peasants ' Christian and the Democratic Party; Niculescu Paul Democratic Unity Party; Muncaciu Sorin Titus, National Liberal Party; Muflic Adrian The Draftsman Party; Mihai Nicolae Democratic Union of Roma from Romania. In the same report of 4 May 1990 they quoted: "were recorded and became the definitive list of candidates:

Table 1. Candidates for the Chamber of Deputies

Party of origin)	*Assembly of Deputies*	**Senat**
Turkish Muslim Democratic Union of Romania	2	1
Democratic Union of Hungarians in Romania	1	-
Romanian Social Democratic Party	10	2
National Peasants 'Christian and Democratic Party,	12	3
Lipovan community of Romania	2	-
Cooperative Party	12	3
Democratic Unity Party	12	3
Socialist Party of Justice (independent)	1	-
The Hellenic Union of Romania	1	-
The Christian Democratic Union	5	1
The Socialist Democratic Party of Romania	12	3
The National Liberal Party	12	3
Roma Democratic and the rudars musicians Union Party, of Romania	1	-
National Salvation Front	12	3
The Draftsman Party	12	3
Environmentalist movement in Romania	12	3
Romanian Peasant Party	3	-
Democratic Union of Roma from Romania	12	3
The Republican Christian Party of Romania	1	1
National Reconstruction Party	3	-
Social Democratic Christian Party	9	3
Alliance for Unity of the Romanians (AUR) – Party of Romanians in Transylvania and the Republican Party	4	2
Democratic Agrarian Party of Romania	12	3
The Liberal Union Bratianu	1	-
The democratic centrist group	8	2
Union Party "Orthodox Christian"	1	-
Labour Party	4	1
The Alliance for democracy party	5	1
Democratic Labour Party	9	3
Independent Candidates	2	2
TOTAL	193	49

Source: Author's own compilation

The report was signed by: Viorica Barozi, president, Dumitru Mihaela and Dan-Iulian Drăgan – judge members, and representatives of political parties and political formations, namely: Cojocaru Aurelian, Butoi Bucur, Cuciuc Mihaela, Bostacă Toma, Muncaiu Sorin-Gheorghe, Târşoagă Niculina, Stoleru Gheorghe, Nicolae Gheorghe, Traşcă Constantin, Panait Vasile, Paul Niculescu, Drezaliu Nicolae, Mihai Relu.

On the same day may 4, 1990 at 12.00 at the Headquarters Office of the Electoral District No. 14, in the presence of the three judges and representatives of political parties has been made to the drawing of lots, for printing in the order used in the lists of candidates

on the ballots. The draw was conducted by Panait Vasile representative of the Christian Social Democratic Party. The order of the lists of candidates participating in the elections parties in ballot was as follows:

Table 2. Candidates for Parliaments

No.	*The name of the party*	*The parliamentary houses*	**Nominee**
1	The Draftsman Party	Senate	Albu Constantin Pârvulescu Zamfir Cârnici Costică Cuciuc Mihaela Sgarcea Valentin Gheorghe Petre
		Assembly of Deputies	Todea Nicoleta Postelnicu Mihai Ţopârdea Monica-Luminiţa Ţoringhibel Marius Vasile Florin Enescu George Ichim Enuţă Tănase Felician-Liliana Tănase Ion
2	The Republican Christian Party of Romania	Senate Adunarea Deputaţilor	Bocancea Mihai Aporcăşoaiei Viorel
3	The Alliance for democracy party	Senate	Zamfirescu Florea Ghinescu Petre
		Assembly of Deputies	Urucu Petrişor Dumitru Romeo Nichi Neguţu Gheorghiţă Dima Dumitru Dumitraşcu Gheorghe
4	National Salvation Front	Senate	Rahău Nicolae Lascu Stoica Manole Adrian Radu Alexandru
		Assembly of Deputies	Dumitru S. Nicolae Moinescu Dumitru Dumitrescu Ioan Mangiurea Marin Anton Ţurlacu Ioan Georgescu Ioan Simatiuc George Nemirschi Nicolae Moise Ştefan Marinescu Călin Dragomir
5	Democratic Union of Roma from Romania	Senate	Drezaliu Nicolai Dumitru Vasile Anghel Petre Cioroiu Costel Dănilă Ivanciu Constantin Dumitru Garabet Ion Petrache Ivanciu
		Assembly of Deputies	Căldăraru Petrache Mihai Bică Drezaliu Florea Avădanei Adrian Petre Ion Cercel Titi Cristea Nicolae
6	The United Democratic Party of Roma people, Rudars, Musicians from Romania	Senate Assembly of Deputies	Fără candidat Ţăranu Ion
7	Alliance for Unity of the Romanians (AUR) – Party of Romanians in Transylvania and the Republican Party	Senate	Pilcă Teodor Constantin Todosciuc Boris

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		Assembly of Deputies	Clocean Mihai Mârşu Valentin Ionescu Valentin Gheorghe Tănăsescu Gabriela Şerban M. Ion
		Senate	Manole Dumitru Lup V. Aurel Surdu D. Victor Iuruc Şt. Nicolae Palan V. Ştefan
8	Democratic agrarian party of Romania	Assembly of Deputies	Florea I. Dumitru Gota P. Gheorghe Stere I. Ion Stoica D. Victor Marcoşanu M. Leonard
		Senate	Tuşa Gh. Stere Păunescu A. Justin Mândilă H. Ion Bucur N. Ştefan
9	The Christian Democratic Union	Assembly of Deputies	Pitciu Ortansa Lazăr Laurenţiu Berlea Gheorghe Caraniciu Maria Ioniţă Dumitru
		Senate	Cîmpeanu Zamfira Albiţa Gheroghe Bosoi Constantin Dumitru Cornelia Bujeniţă Alexandru
10	The Democratic Socialist Party of Romania	Assembly of Deputies	Mihalcea Aurel-Codruţ Ciumbargi D. Rifat Marinescu V. Ion Chirilă Aura-Lucica Păvălucă Traian
		Senate	Cătălina Georgeta Grigore Laurenţiu Viorel Brănescu Valentin Săndulescu Vasile
11	The democratic centrist group	Assembly of Deputies	Năstase Gheorghe Grigorie Claudia Băluţ Lucian Popescu Nicolae Butuşină Cristian
		Senate	Moga Nicolae Melicescu Roland Mirea Gheorghe Mocanu Elena Tolea Stelea
12	Social Democratic Christian Party	Assembly of Deputies	Melincovici Adrian Constantinescu Nicuşor Greavu Nicolae Bucur Cornel Paşa Tănase
		Senate	Zaifu Nicolae Vasile Dumitru Mocanu Corneliu Ardelean Vasile Mocanu Mihai
13	Democratic Labour Party	Assembly of Deputies	Niculescu Vasile Zlate Dumitru Moţoi Petre Petraru Sandu Bătrînu Nicolae
		Senate	Jurja Ioan Trăstaru Traian Popescu Ioan Diaconescu Dumitru Tudorică Ion
		Assembly of Deputies	Lupşor Vasile Zdru Mihai Petre Florin

			Vasilescu Ioan
			Brătescu Savi
			Voicu Elena
14	Lipovan Community in Romania	Senate	Fără candidat
		Assembly of Deputies	Samoilă Vartolomei Epsih Sidor
15	Socialist Party of Justice (independent)	Senate	Fără candidat
		Assembly of Deputies	Coteţ Florentina Florica
16	The Hellenic Union of Romania	Senate	Fără candidat
		Assembly of Deputies	Antoniadis Eftimie
17		Senate	Mihăescu Gheorghe
			Manu Ioan
			Trocan Dorin
			Zaharia Valentin Stelu
			Porcescu Adrian
	Romanian Social Democratic Party	Assembly of Deputies	Ragan Nicolae
			Tomnaru Petre Viorel
			Mihălcescu Dan
			Ghegeliu Alexandru
			Caragheorgheopol Dumitrache
			Caraban Iulian
		Senate	Secară Eugeniu
			Popescu Gheorghe
			Paraschiv Coţofană Anton
			Lischievici Alexandru
			Lungu Costel
			Guter Constantin
18	Democratic Unity Party		Sallo Ştefan
			Liţu Costel
		Assembly of Deputies	Ana Doru-Claudius
			Deleanu Virgil
			Vlăducă Marin
			Dorneanu Constantin
			Aurel Constantin
			Georgescu Mihai-Petre
19	"Orthodox Christian" Union Party	Senate	Fără candidat
		Assembly of Deputies	Doxan Adrian
20	Democratic Union of Hungarians in Romania	Senate	No candidate
		Assembly of Deputies	Erdös Arpad
21	Muslim Turkish Democratic Union of Romania	Senate	Mehmet Ali Mustafa
		Assembly of Deputies	Gemil Tahsin
			Baubec Sucri
			Sabin Ivan
		Senate	Harlambie Remus
			Purcărescu Constantin
			Roşculeţ Radu-Voicu
			Ivănescu Victor-Şerban
			Cojocaru Petre Constantin
22	The National Liberal Party	Assembly of Deputies	Culeţu Dan
			Boboş Mihai
			Zamfir Cătălin-Constantin
			Iustian Mircea-Teodor
			Mărgineanu Robert
			Agop Daniel-Edmond
			Preda Ovidiu
			Zlate Nicolae
			Lungu Virgil
		Senate	Bucur Gheorghe
			Davidescu George
23	The Labour Party	Assembly of Deputies	Ghişerel Ion
			Basno Heidun Icebord
			Traşcă Constantin
		Senate	Bavaru Adrian
			Marin Mincu
			Nicola D. Gheorghe

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24	Environmentalist movement in Romania		Mazilu Gheorghe Dimoftache Constantin Adrian Tîrnoveanu Ioan Panas Ioan Teofil
		Assembly of Deputies	Arsenie Mihai Sababei Grigore Oglindă Nicolae Prendea Alexandru Andronescu Maria Dumitru Virgil Stoleru Gheorghe
		Senate	Fără candidat
25	Romanian Peasant Party	Assembly of Deputies	Smason Constantin Pantelimon Marin Bogatu Mihail Decu Paul
		Senate	Rafte Pasca Dumitriu Nicolae Lup Ioan
26	National Peasants 'Christian and Democratic Party,		Pariza Mihai Frăţilă Constantin Enache Neculai
		Assembly of Deputies	Luca Nicolae Dogaru Gheorghe Mihail Ştefan Sava Neculai Sachir Tair Virgil Puiu Mier Ioan Udrea Ilie
27	National Gratitude Party in Romania	Senate	Fără candidaţi
		Adunarea Deputaţilor	Limona Alexandru Gogan Nicolae Năndragu Corneliu
		Senate	Fără candidaţi
28	The Liberal Union Brătianu	Assembly of Deputies	Ivan Nicolae-Victor Căliminte Moisi
		Senate	Biciuşcă Aurel Voican Ionica Ionescu Paul Şerban Gheorghe
29	Cooperative Party		Giurcă Traian Bostănaru Gheorghe
		Assembly of Deputies	Boghici Neculai Dimancea Gheorghe Năstase George Moşoiu Traian Nedelcu Mihaela Lia Crăciun
		Senate	Ţiriac Vasile
30	Independent candidates in elections		Ţuţuianu Gheorghe
		Assembly of Deputies	Stănescu V. Gheorghe Racu Constantin

Source: Author's own compilation

In the ballot for the election of the President of Romania were placed in the order of drawing of lots at the national level, the following candidates: National Salvation Front-Ion Iliescu; The National Liberal Party - Radu Câmpeanu; National Peasants ' Party Christian and Democratic Party - Ion Rațiu.

The leadership of the County Courthouse and Constanţa Municipality in order to meet the requirements of election Law have drawn up a plan titled Activities from 7-16 May 1990.

All activities according to the law and the plan, above, have been carried out within, without major incidents. There was a good cooperation between the institutions concerned to the elections of 20 May 1990. In whole County, on 16 May 1990 were

enrolled in a total of 445 983 voters. This also included Constanta (197 647) and the military persons in the performance of the service (20117). It was like the day of May 20th, 1990 to be enrolled in a total, in County 556 723 voters.

Office of the Electoral District No. 14 had its headquarters on the third floor of the building who was known by the name of the White House.

In front of this building at all times, day and night were made not knowing by whom, manifestation of groups of people chanting and threatening everyone, including members of the Office of the Electoral District No. 14. In order to prevent violent events or the penetration into the Electoral Office in order to take the documents it was requested, in accordance with the legal provisions, the securing of the representatives of the Ministry of the Interior and the Ministry of national defence, who were acted with responsibility for the mission.

At 7 in the morning of 20 May 1990, all the polling stations were opened allowing the voters present to exercise their right to vote, which was made until 23, when it was finished by the voting activity, according to the electoral law.

Mention that at polling stations, from those laid down by the Office of the electoral district No. 14, according to the Central Electoral Bureau, received telephone briefings about the presence and behavior of voters and of incidents.

Members of the county electoral board in relation to the parties ' reports, journalists, others, traveled, at the polling station in question, observing that the majority of cases were resolved positively and promptly by the heads of polling stations by the Ministry of the Interior. The news in some journals were simple exaggerations or to create the impression of election fraud.

Most of those who refer to the different incidents, under the justification of the election fraud, do not fear knew that fraud is carried out by members of the polling station, which, especially in rural areas, had family ties (godparents, fini, kids at school) connections of friendliness or subordination relations, etc.

The circumstance that many polling stations in villages and municipalities have done during lunch choices, were justified by the members of the polling station by the massive presence of voters on the morning of May 20, 1990. However, the final data collection, it was found that the National Salvation Front was given a large, impressive number compared to other parties, which created the suspicion of fraud in the sense that other people have voted in place of many voters.

Of course, that no one has demonstrated in concrete terms the actions of fraud, but I appreciate that outside voting instead of other people, there are the following explanation: voters, especially in rural areas, recognized in the National Salvation Front's candidates in the lower echelons of the former Romanian Communist Party, which became very influential in the aftermath of the coup of 1989, and that continues, under the forms, disguised their promotion in the structures of the State, to fill the void of great power; - voters had a negative perception of old or new political parties, taking into consideration the spread of aggressive exerted against them in about 5 months after the coup d ' état; candidates from other parties, most of them were strangers to most voters, being elected in the end only the neighbors at home or work colleagues; in the case of parties or unions, final election results showed that there were no candidates who were supported by members of that party, some receiving fewer votes than the number of members from regional, although attendance has been on the list of candidates and not the first. After the conclusion of the elections and of the protocols, the final results have the following configuration:

Table 3. The general election for the Romanian President

I. The general election for the Romanian President		
No.	The voters situation	No of votes
1.	Number of voters according to the check list	556 723
2.	The absolute majority of the voters in constituency	278 362
3.	The number of electorate who voted	501 110
4.	The total number of electorate	489 792
5.	Number of invalidate votes	11 318
...		
8.	Repartition of the ballot for the Presidential candidates	
1.	Ion Iliescu	439 435
2.	Radu Câmpeanu	31 553
3.	Ion Raţiu	18 804

Source: Author's own compilation

Table 4. **The minutes of the election for the Romanian Lower House in the County of Constanța in the 20th of May 1990. The final results**

No.	*The voters situation*		**No. Of votes**
1.	Number of voters according to the check list		556 723
2.	The absolute majority of the voters in constituency		278 362
3.	The number of electorate who voted		500 954
4.	The total number of electorate		462 112
5.	Number of invalidate votes		38 842
6.	The number of representativess elected on the constituency		12
7.	Number of electorate necessary for a representative election		38 509
8.	Repartition of the ballot and the Parliamentary mandate on election list		
Nr. crt.	The name of the political parties/ The name of the independent nominee	Numbers of votes obtained	Number of the representative mandate obtained
1	National Salvation Front	321 559	8
2	Democratic agrarian party of Romania	38 200	-
3	The National Liberal Party	37 146	-
4	Environmentalist movement in Romania	9 790	-
5	Turkish Muslim Democratic Union of Romania	8 600	-
6	National peasants ' and the Christian Democratic Party	7 391	-
7	Free Party-Assistant	4 245	-
8	Democratic Labour Party	3 705	-
9	The Socialist Democratic Party Of Romania	3 025	-
10	Lipovan community of Romania	2 472	-
11	The democratic centrist group	2 365	-
12	The Democratic Party of Roma, and the Rudars musicians of Romania	1 966	-
13	Union Party "Orthodox Christian"	1 923	-
14	Br[tianu Liberal Union	1 808	-
15	The Republican Christian Party of Romania	1 795	-
16	Social Democratic Christian Party of Romania	1 760	-
17	Romanian Social Democratic Party	1 728	-
18	The Labour Party	1 437	-
19	Racu Cnstantin	1 400	-

20	Alliance for The Romanians – AUR-National Unity Party of Romanians in Transylvania and the Republican party	1 337	-
21	Stănescu V. Gheorghe	1 147	-
22	The Hellenic Union of Romania	1 055	-
23	Democratic Union of Hungarians in Romania	972	-
24	The Alliance for democracy party	888	-
25	Democratic Union of Roma from Romania	791	-
26	Cooperative party	769	-
27	The Christian Democratic Union	673	-
28	Democratic Unity Party	625	-
29	Romanian Peasant Party	603	-
30	Socialist Party of Justice (independent)	515	-
31	National Gratitude Party in Romania	382	-
	TOTAL	462 112	-
	List of the electee representatives		
Nr. crt.	The name of the electee representatives		Political party
1	Manole Adrian		National Salvation Front
2	Radu Alexandrescu		National Salvation Front
3	Dumitrru S. Nicolae		National Salvation Front
4	Marinescu Dumitru		National Salvation Front
5	Dumitrescu Ioan		National Salvation Front
6	Mangiurea Marin-Anton		National Salvation Front
7	Turlac Ioan		National Salvation Front
8	National Salvation Front		Frontul Salvării Naţionale

Source: Author's own compilation

Table 5. The minutes of the election for Romanian Senat in the County of Constanța in the 29th of May 1990. The final results

No.	*The voters situation*		**Number of votes**
1.	Number of voters according to the check list		556 723
2.	The absolute majority of the voters in constituency		278 362
3.	The number of electorate who voted		501 175
4.	The total number of electorate		469 978
5.	Number of invalidate votes		31 197
6.	The number of senators elected on the constituency		3
7.	Number of electorate necessary for a senator election		156 659
8.	Repartition of the ballot and the Parliamentary mandate on election list		
Nr. crt.	The name of the political parties/ The name of the independent nominee	Numbers of votes obtained	Number of the senator mandate obtained
1	National Salvation Front	342 895	2
2	The National Liberal Party	38 117	1
3	Democratic agrarian party of Romania	15 981	-
4	Environmentalist movement in Romania	15 691	-
5	National peasants ' and the Christian Democratic Party	9 345	-
6	Turkish Muslim Democratic Union of Romania	8 489	-
7	Free Party-Assistant	6 202	-
8	Ţuţuianu Gheorghe	5 732	-
9	The Socialist Democratic Party Of Romania	3 925	-
10	Alliance for The Romanians – AUR-National Unity Party of Romanians in Transylvania and the Republican party	3 134	-

11	The democratic centrist group	2 890	-
12	Țiriac Vasile	2 700	-
13	Democratic Labour Party	2 525	-
14	The Labour Party	2 032	-
15	The Republican Party of Romania Christian	1 802	-
16	Romanian Social Democratic Party	1 793	-
17	Social Democratic Christian Party of Romania	1 516	-
18	Democratic Union of Roma from Romania	1 455	-
19	The Alliance for democracy party	1 169	-
20	The Christian Democratic Union	1 077	-
21	Cooperative party	1 001	-
22	Democratic Unity Party	567	-

List of the electee senators

Nr. crt.	The name of Senators	Political party
1	Dumitraşcu Gheorghe	National Salvation Front
2	Rahău Nicolae	National Salvation Front
3	Sabin Ivan	Partidul Naţional Liberal

Source: Author's own compilation

After summarizing final results protocols with dossier was submitted to the Central Electoral Bureau, with a military guard. Assembly of Deputies and the Senate, on the 20th day after the date of the election, have validated the mandates of Senators and deputies in the joint meeting, was established, as a constituent Assembly to adopt the Constitution, according to the article. 80 of law No. 92 of 14 March 1990. For the Assembly of Deputies according to the number of voters lists of registered voters was 556723. The electoral quotient was 38509. FSN has obtained 321559 and 8 seats of Parliament as follows:. Have obtained seats deputies: Amet Hogea, turkish minority, Gemil Tahsin tartar minority, Nicolae Iuruc, PDAR, Victor Surdu, PDAR Voicu Radu Roşculeţ, PNL. The number of voters to the Senate according to lists of voters was 556723. The absolute majority of the voters in the constituency was established in 278362 voters. The number of voters who have showed up at the polls was 501175. The total number of valid votes cast was 469978. The electoral quotient has been 156659. FSN won 342895 votes and the Liberal National Party 38117. The following candidates were elected Senators: Dumitraşcu Gheorghe Frontul Salvării Naţionale, Rahău Nicolae, Frontul Salvării Naţionale, Sabin Ivan, Partidul Naţional Liberal. *(*Arhiva Drăgan, Procesul Verbal cuprinzând rezultatele alegerilor pentru Senat de la 20 mai 1990; *The Minutes including the election results for the Senate on May 20, 1990*)

Conclusions

On May 20, 1990, elections were held on the Sunday of the blind, being the 6th Sunday after Easter, the Christian holiday, that day, healing man blind from birth, opening the eyes and receiving the light from our Savior Jesus Christ. The name "Sunday blind" was speculated by the pamphlet of some commentators of the election, meaning that the NSF – new political movement after the Romanian Communist Party – has achieved yet another 67.2% of the Senate and the Assembly of Deputies 66,3% of the votes cast by the electors present to vote, due to the fact that they voted blindly, anyone unable to open eyes to vote in favor and at the expense of other parties in this Front. We believe that this appreciation to Blind people at a worldwide deluge of voters is out-reality. The Romanians have voters perceived as "Sunday spooky Judgments" and not "Blind" since Sunday to power was done by people who, through their harsh actions present or future foreshadow directly or indirectly coercive actions under the guise of democracy. Voters were not blind,

but frightened by the "crisis" (judgement) of the Romanian State and its institutions, as well as shortages of materials, etc., remembering about recent actions of shooting of former leaders following a mock trial, committed in violation of the most basic laws, as well as statements and speeches of Ion Iliescu, who has led the voters to understand the continuation of the old regime, maintaining rules or the return of socialism. The Romanians were not blind during the elections but wary attitude, frightened by the "crisis" (Judgement) was born in the aftermath of the coup. In summary, we must consider that voters "saw" as a single solution, to support the new powers so that this date of 20 May 1990, should be considered "Sunday Spooky " Judgements and not "Blind" Sunday as derogatory (even if in the form of a pamphlet) were made remarks unfavorable to voters.

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ORIGINAL PAPER

Cohabitation as a Problem of the Romanian Semi-presidentialism

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Abstract:
The paper aims to present by comparison the role of the two Romanian Presidents, Traian Băsescu and Klaus Iohannis, in the four spells of *cohabitation* occurred in Romania since 1990, both in situations of parliamentary majorities controlled by the Prime Ministers (*divided majority*) and of parliamentary minority represented by the Prime Minister (*divided minority*). As such, the paper focuses on the modalities in which the Presidents refused to cohabit and attended to prevent the *cohabitation* with Prime Ministers and governments coming from different political parties, after an analysis of the cohabitation category in semi-presidentialism. It mainly focuses on the types of strong intra-executive conflicts so generated and manifested as struggles over the control of the executive branch through obstructive or antagonistic behaviours. The assumption of this approach is that these behaviors of refusing cohabitation or of high level intra-executive conflicting are illustrative for different degrees of presidentialization of Romanian politics in all its three faces, namely of increasing leadership power resources and autonomy providing "a larger sphere of action" and assuring the protection "from outside interference".

Keywords: *cohabitation; divided majority; divided minority; intra-executive conflict; presidentialization of politics*

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Cohabitation and constitutional witchcraft

The cohabitation reflects the mixed nature of semi-presidential system or its defining feature: the dual executive authority. The dual authority structure is established in the semi-presidential constitutions as a "two-headed configuration" or a "diarchy between a president, the head of state, and a prime minister that heads the government" (Sartori, 1994: 122). In the purely constitutional definition, "semi-presidentialism is the situation where a constitution makes provision for both a directly elected fixed-term president and a prime minister and cabinet who are responsible to the legislature" (Elgie, 2010: 29). Sartori highlights that the two heads are *unequal* and *in oscillation* among themselves and that by custom (the conventions of the constitutions or the material constitution) the "first head" is the president, by law (the written text of the constitution, the formal constitution) the "first head" is the prime minister. The oscillations among them reflect the majority status of one over the other (Sartori, 1994: 123). Thus, another defining feature of semi-presidentialism is the *flexible* character of the dual authority structure, of "bicephalous executive, whose 'first head' changes (oscillates) as the majority combinations change" (Sartori, 1994: 125). In situations of unified or consolidated majority (named by Pasquino *duet* of the president and the prime minister) the president prevails over the prime minister, having thus the possibility to become an "imperial" president, namely to be "recognized leader of the parliamentary majority" and, therefore, to "cumulate executive and legislative power," to concentrate of power which can lead to the risky of hyper-presidentialialism (Pasquino, 2007: 24). The constitution that applies in these situations is the material one (the conventions of the constitution). In situations of split or divided majority (according to Pasquino, the *duel* between the president and the prime minister) prevails the prime minister, supported by his own parliamentary majority. The constitution that applies is the formal one that supports his claim to govern on his own right (Sartori, 1994: 125).

The split or divided majorities, or the situations where the majority that elects the president is not the majority that controls parliament, determine *cohabitation*. More precisely, a situation of cohabitation is defined "as resulting when: (1) The president and the prime minister opposing parties; and (2) The president's party is not represented in the cabinet" (Samuels and Shugart, 2009: 14, Elgie, McMenamin, 2010: 1; Elgie, 2010: 45) or "where opposing parties separately control the president and prime minister or government..." (Tsai, n. d.: 3). Being overwhelmingly the result of elections – whose legitimacy is the ground of democracy – cohabitation "is likely to be seen as a legitimate element" of the electoral process, "albeit perhaps an unwanted one" (see Elgie & McMenamin, 2010: 15).

Table 1. Three electorally generated subtypes within semi-presidentialism

Subtype 1: CONSOLIDATED MAJORITY	**Subtype 2: DIVIDED MAJORITY**	**Subtype 3: DIVIDED MINORITY**
President and PM have same majority in legislature. ("full authority")	PM has majority, president does not. ("cohabitation")	Neither president nor PM has majority. (fragmented authority)

Source: Cindy Skach, C. (2007: 101). Retrieved from: http://icon.oxfordjournals.org

Whether cohabitation is considered legitimate, then the main political actors are likely to work within the constitutional framework and not to undermine it (Elgie & McMenamin, 2010: 15) and whether cohabitation is regarded as normal result of semi-presidentialism, then there is likely a "peaceful coexistence" between the president and the premier (Chang, 2014: 32). If the president does not accept the will of the legislature to co-exist with a political opponent, he can resort, "if the constitution allows," to the stratagem "to defy the legislature and dismiss the head of government in the knowledge that the legislature may simply appoint as prime minister someone who is equally opposed to the president" (Elgie, 2010: 31). Doing this, the president expresses the character particularly problematic in the young democracies of the prospect of an ongoing intra-executive conflict which "may lead to gridlock situations in which neither the president nor the prime minister is willing to compromise and where decision-making comes to a halt" (Elgie, 2010: 31). Thus, to accept parliament's will, to co-exist with a political opponent, to share, or even yield up, the executive power with the premier is essential for a president in order to avoid the constitutional deadlocks (Elgie, 2010: 31). But the worry that the president and prime minister will be unwilling to share power is a constant of semi-presidentialism, as well as what may involve this unwilling to share power, namely the president or the prime minister trying "to seize power unilaterally at the expense of the other actor" in a destructive manner for democracy (Elgie, 2010: 29). The Irish authors specify that there is a general worry concerning that a president will rely on his/her personal authority and rule by decree, so undermining the legislative majority, and that the personalisation of presidential power may well be a general problem, but they show, in an systematic research of the conditions under which cohabitation is likely to occur, that "the critics of cohabitation may have exaggerated its problems," that "the negative impact of cohabitation may not be as great as the received wisdom would have us believe" (Elgie, McMenamin, 2010: 15-16) and that "there is little prima facie evidence to support the association between cohabitation and the collapse of young semi-presidential electoral democracies" (Elgie, 2010: 37). However, the conflict relationship or the intra-executive conflict "characterized by intense confrontation between a president and a premier who is supported by parliament" (Protsyk, 2006, 221sq) may be the effect of their different interpretations of cohabitation which may cause the gap between the normative and practical aspects (see Chang, 2014: 35). In general, the intra-executive conflict is understood "as struggles between the president and the prime minister/cabinet over the control of the executive branch," more specifically, as a "conflict-ridden" relationship "manifested through obstructive or antagonistic behaviour from either side, directed towards the other" which may encompass "public statements where critique is levelled against the other side," "disagreements over key appointments or dismissals," "different interpretations of constitutional prerogatives," "interference in each others' political domains," "personal disputes," "strong disagreement over policy directions" (Sedelius, Mashtaler, 2013: 113).

As such, cohabitation conveys the idea, expressed in the French literature, of forcing two ideological incompatible individuals to live together (Skach, 2007: 102). It is regarded by many observers as "the Achilles Heel of semi-presidentialism" since in it the president and the prime minister "can both claim to be the legitimate source of political authority" (Elgie, McMenamin, 2010: 1) or "to have the authority to speak on behalf of the people" (Elgie, 2010: 31). It is considered by other authors, in the recent studies on "the newest and least understood separation-of-powers system of the world: semi-presidentialism" (Skach, 2005: 96), as being not statistically significant in determining

democratic breakdowns (Elgie, 2010), as having passed the test in France, where the conflict between the president and prime minister did not necessarily threaten democracy (Skach, 2005: 116), as being, in France and Portugal, periods during which the president and prime minister have exercised self-control not to cause a serious deadlock in order to accumulate popularity for their prospective elections on presidency (Pasquino, 2007) (see Tsai, 2012: 2-3). As such, cohabitation has been in the center of a considerable academic and political debate, the discussions of the effects of cohabitation being always involved in the debates about pros and cons of semi-presidentialism (Elgie, McMenamin, 2010: 3).

Cohabitation has been particularly discussed in the field of recent comparative politics, mainly in the two representative research lines stressing "the demerits" or "the perils of cohabitation" (Elgie, 2011: 12) and its "merits". The reserved and critical line of research – the most prominent among the two, constituted as "academic consensus against semi-presidentialism" (Elgie, 2010: 32), as standard wisdom considering cohabitation as problematic (Elgie, McMenamin, 2010: 3) illustrated by J. J. Linz, A. Stepan, E. N. Suleiman, S. Fabbrini, B. R. Rubin, L. Kirschke – highlights that the institutional lock-in conflict between the president and prime minister can endanger democratic stability (Linz, 1994) or can reverse the course of democracy into authoritarianism (Kirschke, 2007). Most observers consider that cohabitation is problematic, that it can lead in consolidated democracies and, even more, in newly democratized societies to problems of executive coordination, legislative and executive gridlocks and constitutional deadlocks. Shugart and Carey consider that cohabitation makes obvious and insurmountable the power relation between the president and the premier, the specific hierarchical and dominant transactional relationships, and their influence on the relation to the parliament (Shugart and Carey, 1992). Linz points out that there is no democratic principle to resolve disputes between the executive and the legislature about which of the two actually represents the will of the people (Linz, 1990: 63). As "possibility of constitutional conflict between two electorally legitimated executives," cohabitation is seen as the central problem of semi-presidentialism (Stepan and Suleiman, 1995), as its main weakness (Fabbrini, 1995), as potential endangering the legitimacy of structure of rule and as potential putting in conflict two branches of democracy (Linz and Stepan, 1996, apud Elgie, 2010: 31-32, Elgie, McMenamin, 2010: 2-3, Elgie, 2011: 12-13).

The empirical findings and evidences analyzed by some of the most important authors of the theme of semi-presidentialism and, subsumed, of cohabitation and intra-executive conflict, as G. Sartori, R. Elgie, D. Samuels and M. Shugart, O. Protsyk, G. Pasquino, S. de Roper, prove that cohabitation is less problematic "than the established wisdom would suggest" (Elgie, 2010: 16). The thesis which subsume their findings is that cohabitation should not be understood as synonymous with intra-executive conflict but as entailing some positive systemic consequences (Pasquino, 2007: 14 sq) and also as a solution of conflict in the measure in which it accommodates conflict with compromise and proposes „a gridlock-avoiding machinery" (Sartori, 1994: 124). So, the line of research focused on the merits of cohabitation rejects the view that "cohabitation is the destiny of semi-presidentialism" (Shyu, 2000; apud Chang, 2014: 31). Assessing the French, Portuguese and Polish cohabitations, Pasquino considers that there have not been major and devastating conflicts deriving from institutional causes (Pasquino, 2007: 21) and that there have been "interesting formula for power sharing between the popularly elected president and changing parliamentary majorities" (Pasquino, 2007: 22). Based on results of a rigorous empirical study, Samuels and Shugart state that the most important potential advantage of the premier-presidential sub-type of semi-presidentialism is the

institutional flexibility of semi-presidentialism expressed itself through the potential for a shift from a unified executive to cohabitation, the prospect of cohabitation which offers the possibility to oscillate between the presidential and parliamentary worlds (Samuels and Shugart, 2010: 337).

In this favourable understanding, cohabitation is considered as maximal illustrating the exigency of power-sharing, "the motivation behind the creation of the semi-presidential system" and "its greater support for democracy" (Elgie, 2011: 14). Thus, "in the context of a society that is polarized between two opposing groups, semi-presidentialism offers the opportunity for representatives of both groups to have a share of power," even more if the electorate options generate a divided executive. In such an understanding, the cohabitation, is argued as "a delicate mechanism for solving the problem of divided situations between the president and parliament with an opposing majority in semi-presidentialism" (Tsai, n.d.: 2), as "a gridlock-avoiding machinery" (Sartori, 1994: 124sq). Analyzing the advantage of semi-presidentialism over presidentialism with regard to split majorities or the situations where the majority that elects the president is not the majority that controls parliament, Sartori stressed that a divided majority inevitably leads to conflict and gridlock, that any dual authority structure can become confrontational and thereby stalemated by an executive divided against itself, but that the semi-presidentialism also possesses a gridlock-avoiding machinery (Sartori, 1994: 124). In contradistinction to Vedel and Duverger who – considering that semi-presidentialism is not "a *synthesis* of the parliamentary and presidential systems, but an *alternation* between presidential and parliamentary phases" (Duverger, 1980: 186, apud Sartori, 1994: 123) –, assume that the French system is presidential when the president's and parliamentary majorities are consonant, and parliamentary when they are dissonant – , Sartori considers that in the French cohabitations the presidents and their "contrary" prime ministers "played their respective cards with moderation and intelligence. But the smooth working of their cohabitation cannot be simply attributed to the personality traits of the players. While hot headed leaders and compromise busters can disrupt any mechanism of power sharing, yet the French bicephalous arrangement has worked because it *can* work... semi-presidentialism proposes a gridlock-avoiding machinery" (Sartori, 1994: 124). Sartori points out that in minority, a French president can no longer exploit his "usurped powers" that arise from the material constitution, "but never becomes a figurehead and that he still is a president that stands on his own, direct legitimacy, and a president empowered by the letter of the constitution to prerogatives that parliament elected presidents seldom if ever have" (Sartori, 1994: 124). According to Sartori, as the French system works precisely across the re-balancing provided by the *flexible diarchy*, "the problem of divided majorities finds a solution by 'head shifting,' by reinforcing the authority of whoever obtains the majority. And this is a most brilliant, if unintended, piece of constitutional witchcraft" (Sartori, 1994: 125).

According to Elgie, in order to place the debate about the effects of cohabitation in its appropriate institutional context, is important to identify regularities in the onset of cohabitation or the conditions under which cohabitation is most likely to occur (Elgie, McMenamin, 2010: 4, Elgie, 2010: 38). The very specific set of circumstances where the very specific political situations of cohabitations occur comprises, according to Elgie:

(1) exceptional circumstances, *outside elections* – cohabitation may occur in these cases only if an anti-presidential majority forms in the legislature part-way through the legislative term, if the president is extremely unpopular or if resources are being hoarded.

(2) *in the context of an election* or as a result of three types of electoral situations: (a) when synchronized presidential and legislative elections return opposing majorities; (b) when a presidential election returns a candidate who is opposed to the majority in the legislature – cohabitation occurs when the president does not have the power of dissolution and when the legislature contains a coherent and cohesive majority that is opposed to the new president; (c) when legislative elections return a majority opposed to the incumbent president – cohabitation occurs when the president and prime minister are from opposing parties and when the president's party is not represented in government, when the president is totally isolated within the executive (Elgie, 2010: 38, Elgie, McMenamin, 2010: 8).

Elgie, McMenamin showed in their exploration of the conditions under which cohabitation is likely to occur, the first systematic research of this type; that cohabitation is more likely to occur in countries with a premier-presidential form of semi-presidentialism; that when cohabitation follows a presidential election, it is likely to occur in a country where there is only a very weak president; that the conditions under which cohabitation is most likely to occur are also the ones under which it is likely to be most easily managed (Elgie, McMenamin, 2010).

Cohabitation is often associated, as specify, not only with the interaction of certain types of electoral situations but also with the degree of presidential power in a country (Elgie and McMenamin, 2010: 2) – presidential constitutional authority – and with prime ministerial power composition.

Variables that especially accounts for differentiating the types of cohabitation in semi-presidentialism are:

(1) unilateral authority of the president, namely: (a) *decree power* – possibility of establish law in lieu of action by the assembly, (b) *dissolution power* – a weapon to turn down the prime minister and cabinet, (c) *veto power* – power to affect the outcome of legislation. These forms of unilateral authority constitute president's levers in confrontation with the prime minister who controls a majority opposed to the president and they give the president a considerable say in policy making (Tsai, n.d.: 5). "If the president in semi-presidentialism does not have any unilateral power, he can only play second fiddle to the prime minister" (Tsai, n.d.: 6).

(2) composition of the cabinet as "very crucial to the operation of the prime minister's power," as such: (a) if only one party forms the cabinet, the prime minister is the leader of the party; (b) "if a coalition cabinet and the prime minister's party has a dominant position such as the largest party in the cabinet, the prime minister can be preponderant only when other coalition parties do not oppose"; (c) "if the cabinet is a coalition one and two or three or more parties almost equally share seats in parliament, the prime minister has to proportionally share executive power with other coalition parties" (Tsai, n.d.: 6).

A classification of cohabitations which I consider especially useful in the perspective of an operationalization is that proposed by Tsai and that comprises as types:

(1) *shared cohabitation*, illustrated in France, which imply that (a) the president does not have unilateral constitutional powers such as decree, veto, and dissolution power and the president's party only has a minority in parliament; (b) the cabinet is composed of more than one party; (c) the prime minister has to share executive power with coalition parties; (d) the president retreats to the second line and gives executive ground to the prime minister with an opposition majority; (e) the president may delay the process of decision-making by way of expressing his disagreement in public but cannot stop

it becoming laws; (f) the prime minister leads the way on day-to-day matters of government;

(2) *premier-tilt cohabitation*, illustrated in Portugal, thus: (a) only one party forms the cabinet; (b) the prime minister as the party leader is more important than the prime minister in the coalition cabinet because he is supported by a more unified base; (c) the president and prime minister can have divergent views of policy and the conflicts between them can arise, but "the prime minister still can gain the upper hand with a coherent majority in parliament";

(3) *unbalanced cohabitation*, illustrated in Poland, as such: (a) the president holds some unilateral authority in some reserved domains, as power of decree, veto, dissolution of parliament or of nomination the portfolios of foreign affairs and defense – such that "he can act independently in some reserved domains and to serve a rallying point for the opposition majority"; (b) the prime minister still lead the government but "the president can have discretion on certain spheres"; (c) if the coalition government does not act as in full agreement, it can make vulnerable the political power of the prime minister;

(4) *balanced cohabitation*, illustrated in Sri Lanka, thus: (a) the president is granted some unilateral authority; (b) the opposing cabinet is only made up of one party; (c) it is more likely to see grandstanding between the president and prime minister (Tsai, n.d.: 7-8sqq).

The found regularity is that the degree of conflict increases progressively from shared cohabitation, premier-tilt cohabitation, unbalanced cohabitation to balanced cohabitation (Tsai, n.d.: 20). The occurrence of cohabitation has really put *the constitution* and its practice into an acid test. During the period of cohabitation, the president and prime minister have to enact their authority according to the competencies of the president and prime minister demarcated in the constitution. *The ambiguity of constitutional articles* pertaining to the prerogatives of presidents and prime ministers may trigger clashes between the president and cabinet. But, in the same measure, in cohabitation an important role plays the "political rationality, while factors such as political culture, social structure and necessary institutional design could influence the practice of cohabitation as well" (Chang, 2014: 41).

Cohabitations in Romania or cohabitation as a problem

In comparison with the provisions of the French Constitution of the Fifth Republic, the Romanian Constitution circumscribes, since 1991 and in its 2003 revised form, a "presidential centre," "not very strong", characteristic, as Sartori has shown, for a "weak", "alleviated" or "parliamentary-like" semi-presidentialism, an "impure" two-headed executive (Sartori, 2008: 313, 315, 317; Tănăsescu, 2016: 151). Constitutionally, the Romanian president has the role of *guarding*
the observance of the Constitution and the proper functioning of the public authorities and *mediating* between the Powers in the State. The prime minister and government have the role to ensure the implementation of the domestic and foreign policy of the country, and exercise the general management of public administration. Parliament is the supreme representative body of the people and the sole legislative authority of the country (Constitution of Romania, 2003: Art. 80 (2), Art. 102 (1), Art. 61 (1)). I consider essential to underline with respect to the Romanian semi-presidentialism (see Tănăsescu, 2016: 152-153) that the model of this type of constitutional disposing, as Shugart clarifies, is the balance of powers containing three types of formal institutional relationships: (1) a

hierarchical "vertical relationship" between parliament and government or the government subordination to parliament – "the prime minister (and cabinet) – has its survival fused with the assembly majority" (Shugart, 2005: 327); (2) a hierarchical "diagonal" relationship between president and government by virtue of president's right to have some initiative in the prime ministerial nomination, and concomitantly (3) a "transactional" relationship between the president and the government, because the government, once appointed, does not depend on the president but on the parliamentary confidence, so that the president and the government are "co-equals" because they have different sources of authority and must cooperate to accomplish some task ("horizontal juxtaposition of co-equals" (Shugart, 2005: 328) or *inter pares* of the Executive). I also believe that it is essential to underline that, according to the Constitution, the elected President is not established as chief of the Executive or as chief of the State, and also that the role of *guardian* of the Constitution observance, which places Romanian president in the position of *supra partes* in the political game and not in that of *pares* ("co-equal"), removes the president from the "active" role of "player" or of part in the act of governing (Tănăsescu, 2016: 154).

In an analysis of the performances of different types of cohabitation, which selected countries of "moderate" and "high" intra-executive conflict in order to examine whether an unstable intra-executive interaction will ease the executive-legislative confrontation, it is considered that in Romania the executive powers belong to the presidents (Chang, 2014: 37). This cataloguing contradicts Shugart's classification of Romania as a "prime minister – presidential regime" country, even if, according to the new Constitution the president needs the parliament's agreement to remove the premier and the cabinet official, being mainly responsible for national defense and foreign policy. But this cataloguing is explained by the president powers to appoint important executive officials – the heads of the High Court of Cassation and Justice of Romania, the Superior Council of Magistracy, the Constitutional Court, the National Integrity Agency, the National Agency for Tax Administration, the National Anti-corruption Division, the Audiovisual Commission, and, of course, the heads of Romanian intelligence services –, to participate in the cabinet meetings, and to influence the legislative agencies through veto power. Chang shows that in Siaroff's categorization, Romania gets 5 point, which means that the president has much executive power than the premier (Chang, 2014: 38).

Table 2. Presidential powers in European semi-presidential countries (until 2011)

Country	Siaroff (max. 8) (2007)	Original Shugart and Carey (1992)	Metcalf-revised Shugart and Carey (2000)
Austria	0	4	5
Bulgaria	2	2	2
Croatia	3	7	-
Finland	1	1	8
France	**6**	**5**	**9**
Iceland	0	11	13
Ireland	2	0	7
Lithuania	3	6	8
Macedonia	3	2	3

Montenegro	-	1	-
Poland	2	6	9
Portugal	2	7.5	10.5
Romania	**4**	**7**	**9**
Serbia	-	2	-
Slovakia	1	3	5
Slovenia	0	4	3

Source: Elgie, R. (2012: 23). Retrieved from: http://doras.dcu.ie/20743/1/President_in_Comparative_Perspective_Elgie_final.pdf

Siaroff (2007) index, which identifies nine powers and gives a score of 1 if the president enjoys that power or 0 otherwise, generates a 10-point scale from 0-9. One of powers that Siaroff identifies is direct election, another is whether the president has the power to dissolve the legislature. He tries to capture whether or not these powers are exercised in practice. If a president has a constitutional power that is never used, then he tends to give a score of 0 for that indicator (Elgie, 2012: 7). In his research Elgie substrates one point from each of the countries with a directly elected president. The indicators used by Siaroff are: (1) the president is directly elected; (2) the president's political party wins the parliamentary election; (3) the president can appoint important executive officials; (4) the president can act as Chairman of the Cabinet meeting; (5) the president can influence legislative institutions through veto power; (6) the president has the power to enact the Emergency Decrees; (7) the president has actual diplomatic power; (8) the president can dissolve the Parliament. Shugart and Carey (1992) identify 10 purely constitutional powers, all of which range from 4 (unrestricted power) to 0 (no provision). The scores reported in Elgie's article are from various sources (Elgie, 2009; Elgie and Moestrup, 2008; Moestrup, 2010; Wu and Tsai, 2010) which use the original Shugart and Carey coding criteria. Metcalf's (2000) measurement is based on a revised version of the Shugart and Carey methodology in which there are identified 11 purely constitutional powers, each of which again ranges from a score of 4 to 0. (Elgie, 2012: 7).

The essential coordinates concerning the electorally generated subtypes within Romania's semi-presidentialism are the following:

- until 2004 the presidential and legislative elections have been concurrent, a very rare case in semi-presidentialism and in general, fact that explains why the Romanian semi-presidentialism does not generated situations of cohabitation (Protsyk, 2006: 235);
- the specific circumstances of cohabitation have been both *outside elections* (2007-2008; 2012-2014) and *in the context of an election* (2014; 2016);
- in the context of the election, there has been:
    - a presidential election that returned a candidate opposed by the majority in the legislature (2014, Klaus Werner Johannis)
    - legislative elections that return a majority opposed to the president (2016, PSD);
- there have been coalition governments, the prime minister's party – PSD – having a dominant position such as the largest party in the cabinet (2012-2014, 2014-2015; 2017-), but there has been also a coalition of two parties – PNL-PDL – almost equally sharing seats in parliament (2007-2008);
- there were situations of *divided majority* (2012-2014; 2014-2015; 2017-) and of *divided minority* (2007-2008);

- the president does not have unilateral constitutional *decree power* – president's decrees or his legal documents, issued in the exercise of his most important attributions, are countersigned by the prime minister, according to art. 100 (1) of the Constitution, *dissolution power* – because president's right to dissolve the parliament, according to art. 89 of the Constitution, is conditioned by six provisions, its application in practice is almost impossible, *veto power* – president's refusal to promulgate a law can be exercised only once, after receiving it.

The Romanian cohabitations are not clearly classifiable in any of the stated types, but they are closer to the *shared cohabitation* and, from this reason, it would be expected that they should be carried out in a manner similar to the way in which cohabitation took place in France, as a *flexible diarchy*, playing the "respective cards with moderation and intelligence," not entailing the personality traits and personal interests and admitting a gridlock-avoiding machinery.

Table 3. List of cohabitation periods in Romania

Period	President – Prime Minister
1) April 2007-December 2008	President – Traian Băsescu (PD/PD-L); PM – Călin Popescu-Tăriceanu (PNL); Coalition – PNL, UDMR
2) May 2012-December 2014	President – Traian Băsescu (PD/PD-L); PM – Victor Ponta (PSD); Coalition – PSD, PNL until March 2014, then PSD, UDMR
3) December 2014-November 2015	President – Klaus Werner Johannis (PNL); PM – Victor Ponta (PSD); Coalition – PSD, LRP, PC, UNPR
4) January 2017- June 2017	President – Klaus Werner Johannis (PNL); PM – Sorin Grindeanu (PSD); Coalition – PSD, ALDE
5) June 2017-	President – Klaus Werner Johannis (PNL); PM – Mihai Tudose (PSD) Coalition – PSD, ALDE

Source: Robert Elgie, List of cohabitations.
Retrieved from: http://www.semipresidentialism.com/?cat=17

Table 4. List of cohabitation periods in European South-Eastern democracies

Country	Cohabitations	
	Number	Periods
Bulgaria	4	1) January 1995 – February 1997
		2) July 2001 – January 2002
		3) January 2002 – August 2005
		4) July 2009 – January 2012
Croatia	2	1) February 2010 – December 2011

		2) February 2015 – January 2016
Czech Republic	2	1) March 2013 – July 2013
		2) January 2014 –
Lithuania	2	1) November 1996 – February 1998
		2) February 2003 – April 2004
Macedonia	2	1) November 2002 – May 2004
		2) August 2006 – April 2009
Poland	8	1) December 1991 – Jun 1992
		2) June 1992 – July 1992
		3) July 1992 – October 1993
		4) October1993 – March 1995
		5) March 1995 – December 1995
		6) October 1997 – October 2001
		7) November 2007 – April 2010
		8) August 2015 – November 2015
Romania	4	1) April 2007– December 2008
		2) May 2012– December 2014
		3) December 2014– November 2015
		4) January 2017 – June 2017
		5) June 2017 –
Serbia	1	1)November 2006 – May 2007
Slovenia	2	1) December 2004 – January 2006
		2) December 2012 – March 2013

Source: Robert Elgie, List of cohabitations.
Retrieved from: http://www.semipresidentialism.com/?cat=17

The Romanian intra-executive conflict is considered moderate (Chang, 2014: 37), but this analysis modifies Sedelius' and Ekman's defining: Romania as in high conflict in its cohabitation period (Sedelius and Ekman, 2010). Shih's research (2010) is mentioned for his ascertainment that "Romanian situations in 2004-2007 and 2007 onward could be described as from the president and the premier's direct confrontation to the president-parliament and premier-parliament confrontations" (Chang, 2014: 37). According to Elgie's research – in which he used experts' evaluations – the statistics of the level of conflict is the following:

Table 5. Descriptive statistics for the level of president/cabinet conflict using a four-point ordinal scale

	Number of cabinet units	Number of expert evaluations included	Outcome Low conflict (1)	Outcome Low-Medium conflict (2)	Outcome Medium-High conflict (3)	Outcome High conflict (4)
Austria	10	3/4	6	2	1	1
Bulgaria	7	5/6	3	2	2	0
Croatia	10	4	4	6	0	0
Czech R.	12	5	1	4	5	2

Finland	10	4	5	4	1	0
France	10	9	7	2	0	1
Iceland	9	4	3	4	0	2
Ireland	8	6	8	0	0	0
Lithuania	15	4	8	4	2	1
Poland	13	7	7	2	2	2
Portugal	9	4/5	5	2	0	2
Romania	**15**	**7**	**7**	**1**	**2**	**5**
Slovakia	8	5	3	2	2	1
Slovenia	13	2	9	1	1	2

Source: Elgie, R. (2017 forthcoming book, 131).
Retrieved from: https://books.google.ro/books?isbn=1137346221

Table 6. President/Cabinet Conflict in Romania – The Results of an Expert Survey

President	Cabinet	Date	Mean conflict score
Iliescu	Văcăroiu II	1994-08-18 – 1996-09-02	0.0
Constantinescu	Ciorbea	1996-12-11 – 1998-04-15	0.2
Constantinescu	Vasile	1998-04-15 – 1999-12-21	**1.0**
Constantinescu	Isărescu	1999-12-21 – 2000-12-20	0.0
Iliescu	Năstase I	2000-12-20 – 2003-06-19	0.2
Iliescu	Năstase II	2003-06-19 – 2004-12-29	0.3
Băsescu	Popescu I	2004-12-29 – 2006-12-07	**0.7**
Băsescu	Popescu II	2006-12-07 – 2007-04-05	**0.9**
Băsescu	Popescu III	2007-04-05 – 2008-12-22	**1.0**
Băsescu	Boc I	2008-12-22 – 2009-12-23	0.1
Băsescu	Boc II	2009-12-23 – 2010-05-19	0.0
Băsescu	Boc III	2010-05-19 – 2012-02-09	0.0
Băsescu	Ponta I	2012-05-07 – 2012-12-21	**1.0**
Băsescu	Ponta II	2012-12-21 – 2014-03-04	**0.7**
Băsescu	Ponta III	2014-03-04 – 2014-12-15	**0.9**

Source: Elgie, R. (2017, forthcoming book). Retrieved from: https://presidential-power.com/?p=6122. Seven expert evaluations have been used. The values of **0**, **0.33**, **0.67**, and **1** are for *Low*, *Low-Medium*, *Medium-High*, and *High* respectively levels of conflict.

Practically, from 16 government units (those between August 1994 and December 2014) 7 exceeded the *medium-high* level of intra-executive conflict (the score of **0.67)**. Four of them have been governments of cohabitation, all with *high level* of intra-executive conflict:

(1) Băsescu – Popescu-Tăriceanu III (2007-04-05 – 2008-12-22) – **1.0**
(2) Băsescu – Ponta I (2012-05-07 – 2012-12-21) – **1.0**
(3) Băsescu – Ponta II (2012-12-21 – 2014-03-04) – **0.7**

(4) Băsescu – Ponta III (2014-03-04 – 2014-12-15) – **0.9**

In addition to these governments of cohabitation there have been 3 coalition governments with *high level* of intra-executive conflict:

(1) Constantinescu – Vasile (1998-04-15 – 1999-12-21) – **1.0**
(2) Băsescu – Popescu-Tăriceanu I (2004-12-29 – 2006-12-07) – **0.7**
(3) Băsescu – Popescu-Tăriceanu II (2006-12-07 – 2007-04-05) – **0.9**

The question I am trying to answer is why so far the cohabitation in Romanian semi-presidentialism presented a high degree of conflict and not, as in French case, "peaceful, constructive coexistences"?

Two Romanian Presidents have been protagonists of cohabitation: Traian Băsescu (2006-2008 and 2012-2014) and Klaus Iohannis (from 2014-).

During Traian Băsescu's terms both the cohabitation with the Prime Minister Călin Popescu-Tăriceanu and with the Prime Minister Victor Ponta began part-way through a legislature and without an election occurring and, practically, the concrete disputes between the President and the Prime Ministers have embraced all forms of intra-executive conflict (Sedelius and Mashtaler, 2013: 113).

In April 3, 2007 it took place a "governmental restructuring". The members of government representing president's party (PD) were dismissed by Prime Minister Călin Popescu-Tăriceanu (belonging to other party – PNL – than the one from which the president came – PD), after a period of two years of intra-executive conflict – in conditions of unified, but not consolidated, majority – and of pressure exercised in an attempt to urge the Prime Minister to resign in order to be held early elections and to configure a comfortable parliamentary majority. The other reason for pressure has been the project of fusion between PD and PNL, tergiversated and failed and, therefore, a major cause of disagreement between Băsescu and Popescu-Tăriceanu as leaders of the two parties. Some authors present, consequently, the government change from April 2007 as a result of the breakdown of the D.A. Alliance and of PD exit from government under the motivation that former partners, especially PNL, do not fulfil the government program (Stan, 2009: 42). As a matter of fact, this rupture was prepared by breaking a wing of the National Liberal Party (PNL), Liberal Democrat Party (PLD), already in December 2006, a party which merged with the Democratic Party (PD) and formed Democratic Liberal party (PDL) in January 2008. The reasons for disagreement before cohabitation were more, one major of them being the activity of the Minister of Justice, Monica Macovei, and what has been initiated by her as a reform in justice, but what has been and has remained a highly controversial topic – the appointment of the prosecutors no longer the Superior Council of Magistrature's attribution, but of president's and minister of justice's. This transfer of attribution was and still is considered a politization of the prosecutor's appointment. Popescu-Tăriceanu formed a new coalition government, although its members – the National Liberal Party (PNL) and the Democratic Union of Hungarians in Romania (UDMR) – got only twenty percent of the seats in the Parliament. Thus, in a situation of *divided minority*, the Government was supported on legislative issues by Social-Democratic Party (PSD), Great Romania Party (PRM) and Conservative Party (PC) and resisted almost two years, till parliamentary elections from 2008. This cohabitation of the President with a minority and ideological different government, was of fierce opposition, of acute, "febrile" conflict between the President and Premier, with attacks meant to discredit the government. The discursive background of President's assuming this position

was one explicitly agonistic, "negative", confrontational, expressed in "the rejecting of the system", in stating the intention to "eliminate the corrupt and mediocre politicians," especially the MPs, in establishing a direct relationship with the people and in amending the Constitution. The President adopted "the state crisis" strategy and that of the necessity of "state reform." Part of this strategy was the purpose of obtaining a PD government and, by establishing a President-Government-Parliament connection and by setting PD on a "populist path", the re-dimensioning of the presidential attributions. In the conflict with the Prime Minister Tăriceanu, the President pointed tasks to the government, put "media pressure" on it, was constantly present in the media attaking aggressively since 2005 "the interest groups" around the government and "the interest groups" of the media sustaining the government and pretending to take a stand against the government on behalf of the people. The forms by which the President maintained and amplified the intra-executive conflict have been personalized both in statements and in political gestures and decisions.

The President rejected the Prime Minister's nominations for several posts of Ministers, demanded to the Prime Minister the resignation of some Ministers and dignitaries for whom DNA asked the initiation of criminal proceedings etc. He singularized himself by the frequency of participation in government meetings and by his unannounced appearance in such meetings, by addressing irrelevant topics, launching public criticism to the government, ironic or incriminating statements, totally atypical for the dignity of presidential function.

The irreconcilability of President's and Parliament's political positions and the perceiving of the conflicting and "agonistic" nature of Traian Băsescu as President were reflected in the two parliamentary initiatives to impeach him. Before the "governmental restructuring" in April 2007, the opposition parties represented in Parliament have proposed the impeachment of the President Băsescu (Meeting of the Chamber of Deputies of 13 February 2007) for unconstitutional conduct as: (1) "clear tendencies of authoritarian leadership, with serious overrun of constitutional limits," his concrete actions demonstrating "that he has a particular and discretionary view on the high position he has been entrusted with, misinterpreting the provisions of the Constitution and the laws of the country, applying them as he likes"; (2) "frequent statements" "merely prove the numerous concrete facts of violation of the Constitution and public conduct, intentionally manifested outside the constitutional framework," "denigration of the activity of the main public authority and discrediting of their authority and credibility, maintenance permanently of an atmosphere of instability and conflict"; conducting "a real campaign of storming civil society against public authorities"; defamatory statements and ratings, often offensive, to certain institutions or people that lead to consequences for them, influencing decisions or public opinion against institutions; (3) "serious offenses" or "legal or political facts" such as: "interventions to influence certain measures in economic or administrative terms, blocking the circuit of a document, concealing a document, giving an audience, attending without a right to a Government meeting, etc., a right to a hearing Government, etc., which violate constitutional principles or provisions;" and the like (Joint meeting of the Senate and the Chamber of Deputies of 28 February 2007). The 700-page Report of the Joint Investigation Commission of the Parliament of Romania (established by Romanian Parliament through the Decision no. 4 of 2 March 2007 on the establishment of a joint investigation commission) found that the president violated at least 27 constitutional articles and was involved in criminal acts. The Constitutional Court of Romania has not denied them, but have not deemed them as being and found no clear evidence of its breach of Constitution. Its approval being advisory, the Parliament voted

(April 19, 2007) for impeachment and Băsescu was suspended from his function as president (Decision no. 20 of 19 April 2007 regarding the suspension of the President of Romania). The Constitutional Court rejected Băsescu's contestation of the Romanian Parliament's decision. The popular vote from the national referendum (May 19, 2007) decided, with a low voter turnout, 74.48% against the dismissal of the President. Between 2007 and 2009, President Băsescu had to cohabite with Tăriceanu government, in fact *ab initio* he rejected, consistently repudiated and boycotted the cohabitation. The leitmotif of the presidential discourse was in this period the "state crisis" that requires new constitutional means of unlocking, the argument for the need to adopt a new Constitution being "the levers by which [the President] may provide a way out" in situations of "constitutional crisis", especially the presidential prerogative to dissolve the Parliament and to refuse the proposed candidatures of Prime Minister in situations of cohabitation.

The other period of President Băsescu's cohabitation was with governments led by Victor Ponta, in his second term and after more than three years in collaboration with an obedient prime minister, in condition of a united majority. In May 2012, the coalition government, which included Democratic Liberal Party (PDL), the President's party, National Union for the Progress of Romania (UNPR) and the Democratic Union of Hungarians in Romania (UDMR), was removed by a motion of censure. The former opposition – Social-Democratic Party (PSD), National Liberal Party (PNL) and Conservative Party (PC) – formed the Government, because the coalition lost its majority in Parliament. The second period of cohabitation of President Băsescu with Ponta governments started under the sign of objection and disagreements and became personalized quite quickly. The cohabitation in President Băsescu's second term strongly antagonized the political life, but it also meant strong institutional conflicts, instability, dysfunctions in the "horizontal accountability" of executive power maintained by the President. According to Sedelius and Mashtaler, the intra-executive conflict between President Băsescu and Prime Minister Ponta in Romania 2012 "have resulted in negative effects such as political instability and stalemating policy situations" (Sedelius and Mashtaler, 2013: 110). President Băsescu has been impeached second time by the Romanian Parliament in July 6, 2012. The disputes of the President with the new Prime Minister USL, Victor Ponta, on Romania's representation at the European Council degenerated into a political and constitutional crisis that culminated with President's second suspension in Parliament (Decision no. 33/2012 regarding the suspension from office of the President of Romania). In the request to suspend the President it was shown that "the majority of the major political decisions over the past 3 years were taken outside the framework of democratic functioning of the state and against the will of the people" (Request regarding the suspension from office of the President of Romania, Traian Băsescu, 4 July 2012; see also European Commission for Democracy through Law, Venice Commission, Constitutional Issues in Romania: Decisions, Rulings and Opinions of the Constitutional Court, 5 September 2012: 4). The reasons of the suspension set out and argued in the document were: (1) usurpation of the Prime Minister's role and his substitution in the constitutional attributions of the Government; (2) repeatedly infringement of the citizens fundamental rights and freedoms provided in the Constitution; (3) repeatedly infringement of the principle of separation of powers in the state and the independence of justice; (4) initiation of an unconstitutional project for the revision of Constitution and infringement the revision of Constitution procedure as it is provided by the Fundamental Law; (5) instigation to the failure to comply with the Constitutional Court's decisions and making direct pressure on the judges of the Court, including by

"visiting" them before important decisions; (6) systematically infringement of the principle of political non-attachment of the person holding the presidential post and abandonment of the constitutional role of mediator in state and society; (7) seriously infringement of the provisions of Constitution and the fundamental principle of representative democracy when it declared that it will not appoint a Prime Minister from the USL, even if this political party will get the absolute majority in Parliament (Request regarding the suspension from office of the President of Romania, Traian Băsescu, 4 July 2012).

Romania is also the only country in which the Parliament voted to impeach the president, President Băsescu, accusing him explicitly, according the Report of Joint Investigation Commission of the Parliament of Romania, of authoritarianism (he has been called by Dietmar Bergtahl in *New Europe* "the last autocrat of Europe"), of exceeding the presidential powers, of intrusion in Government's powers, of being *partes* and dominator of the political game, of being the author of a presidentialized Party, of presidentialized elections and of a presidentialized Government (2008-2012), of securing for himself a constitutionalized autonomy by concentrate the legislative and executive decision making, the justice system and the intelligence under his complete control. Cindy Skach identified in this kind of political proceeding of concentration of power, in this increased use of extraordinary constitutional, administrative and political procedures, and in an ongoing battle for public opinion the "observable symptom of constitutional dictatorship". In this context the cohabitations have had the form of what Tsai called a continuous and degrading "political wrestling," of what Cindy Skach named "a spiral of backbiting and mutual recriminations" (Skach, 2007: 98).

In my view, the common note of President Băsescu's and President Iohannis's political conduct as regard the cohabitations consist in: the refusal of cohabitation, at least in the first instance, passing very easily over the popular will expressed in vote; the refusal to appoint Ministers and Prime Ministers; the delay of promulgation laws; the lack of political transparency and cooperation with the government in the public interest; the blaming the parliament, parties, politicians – "penals," "criminals," "corrupt," "representing the system" –, and a part of "un-frequentable" media; the criticism of the Constitution ("the ambiguities of Constitution") and the desire to change it by increasing the constitutional prerogatives of the president (Tănăsescu, 2015: 133-148).

In his term, shortly after taking the office Klaus Iohannis expressed his wish to have "his government," a PNL government with which to feel comfortable and to implement his vision for ten years. He cohabited highly conflicting with Victor Ponta's PSD-ALDE-PUNR government between December 2014 and November 2015. President Iohannis has repeatedly called for his resignation, accusing the loss of the Government's credibility, given that in September 2015, Ponta was sued for alleged illegal deeds. Prime Minister Ponta stressed that he had been appointed by Parliament and that only the Parliament could dismiss him. In fact, the government faced four simple motions and two no-confidence motions within a few months, all failed. The opposition National Liberal Party introduced a censure motion (June 2015) – in the day in which DNA announced the start of the criminal prosecution of Victor Ponta – which required almost explicitly UNPR, headed by Interior Minister Gabriel Oprea, to give up supporting the Ponta government in the conditions of his criminal trial. Despite the resistance from opposition, Ponta Government promoted a fiscal relaxation in order to boost the business environment. In October the Government amended the tax code that provided additional tax reductions for micro-enterprises with one or two employees and including water for products for which

VAT is reduced from 20% to 9%. Also in October, the resignation of the Interior Minister Gabriel Oprea was requested by protesters after the policeman Bogdan Cosmin Giginǎ died while escorting his official column, although at that time the Minister of the Interior was not entitled to use an official column. The tragic accident with many victims – young people at a rock concert – from October 30, 2015, has been used for organizing street manifestations against "government corruption" and the responsibility for the tragedy. President participated in a street meeting demonstration, in fact he made a "bath of the crowd" in one of the demonstration evenings, proving himself an ardent supporter of the Government's crisis idea. He has been also an initiator of a "crisis-solving" Government by appointing a technocratic government – supported by PNL, UDMR and UNPR –, after Victor Ponta's resignation, and not agreeing to the proposal for a political prime minister made by the PSD, although the parliamentary majority had not changed. Otherwise, PSD voted alongside the opposition the technocratic government, except ALDE, contributing thus to an alleged "the transfer of legitimacy" to it. The members of the technocratic government were considered legitimate as representatives of „civil society", of non-governmental organizations presented at the protests against the government, they being selected to talk with the President by President's councillors. In November 2015, the president explained that the phrase – "my government" – he used at the beginning of the year concerning his desire to have a "government" only referred to the idea of an executive with whom he could work together to find the best solutions together, the best approaches, specifying that the relationship with the Government at that time was an institutional, normal one (D.G., 2015).

In 2016, the parliamentary elections, in which PSD won in a detached way, determinate for the first time in post-communist Romanian history a cohabitation between the incumbent president and the government of the opposite parliamentary majority. The President's party, PNL, and the other parties with which PNL could have made coalitions of government have not received enough votes from the electorate. In these conditions, "President Iohannis found a way to hinder PSD's efforts to dictate the formation of the post-election government" (Bucur, 2017). On one hand, President used as a legal ground to bar PSD's leader Liviu Dragnea from becoming prime minister a 2001 law that forbids convicted persons to be appointed to government. So, on account of a two-year probation sentence for electoral fraud he received in 2015, Liviu Dragnea has remained outside the proposals for the prime minister post. Also, the President Iohannis rejected Sevil Shhaideh's nomination for the PM post without motivating his decision and accepted the Social Democrats' second proposal for prime minister only after the threats of the PSD-ALDE coalition to initiate the proceedings for the president's impeachment (see Bucur, 2017).

Far from being managed like the *shared cohabitation* in France, the cohabitation in Romania illustrated till now not only lack of respect for the popular will and thus denial of the fundamental principle of democracy, but also indifference to the implications of obstructive or antagonistic behaviors: threats to political effectiveness, political instability, situations of stalemate policy, denial of the clear patterns of political identification and solidarity, antagonizing of the society. Likewise, the cohabitation in Romania, the refusal to cohabit and attendance to prevent the cohabitation have revealed the propensity of presidents to autocracy and authoritarianism and their large availability for the presidentialization of Romanian politics in all its three faces – the executive face, the party face, and the electoral face, according to Poguntke's and Webb's model of analysis. These mean the propensity to an increasing leadership power resources and

autonomy which provide "a larger sphere of action," assures the presidential protection "from outside interference," and "a growth of the zones of autonomous control" – government, justice, administration, fisk, audio-visual and media, intelligence. This oversized control may enable the *parceling* and *colonization* of the society by providing key positions in the state institutions to the "loyal supporters who show their gratitude," the exercise of a subversive pressure on most key leaders of state institutions, the compromising and eliminating of the political rivals (Tănăsescu, 2016: 73-74). These all propensities may determine an undesirable undemocratic "considerable *autonomy* vis-à-vis the political parties in Parliament," effectively ignoration of other political actors and overcoming of the potential resistance and even the likelihood of resistance (see Poguntke, Webb, 2005: 7).

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Human Rights and Freedoms in Croatia in 1989/1990 Using the Example of Local Newspapers

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Abstract:
The paper explores the issue of human rights and freedoms and journalism in 1989 and 1990 using the example of local newspapers published in the city of Zadar in the Republic of Croatia. The research is based on newspaper articles on human rights and freedoms published in Zadar local newspapers *Narodni list* and *Fokus*, in the Republic of Croatia. The defined research period for the paper is from 9 February 1989 to 22 September 1990, when the youth monthly newspaper *Fokus* was being published. The socio-political changes in the research period were extremely difficult and demanding for Croatia, and they were marked by the dissolution of the SFRY, the transition process, the liberalization, the commencement of the process of democratization and the creation of an independent Croatia. One of the main issues in the then multinational republic of Yugoslavia were, among other things, human rights and freedoms, especially those connected to religious freedoms which during the initial stages of democratization in Croatia received their space in the researched newspapers. The research includes the newspaper articles which are placed in the Human Rights and Freedoms category, published on the pages of the weekly newspaper *Narodni list* and the youth monthly newspaper *Fokus*. The paper applies a descriptive, explanatory and qualitative content analysis. 104 newspapers and 1175 newspaper articles were analyzed, among which 41 were published under the Human Rights and Freedoms category. The research findings have showed that the examined local newspapers *Narodni list* and *Fokus*, actively informed the readers about the issue of human rights and freedoms.

Keywords: *human rights and freedoms; local newspapers; democratization; Croatia; content analysis*

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Introduction

The Republic of Croatia began its journey to independence and sovereignty in the late 1980s. In that period, Croatia was one of the republics of the former Socialist Federal Republic of Yugoslavia (SFRY), along with Serbia, Bosnia and Herzegovina, Slovenia, Montenegro and Macedonia. Within that state, which had the characteristics of a totalitarian regime, Croatia could not develop its democracy. Slowly, in the late eighties of the last century, the mentioned totalitarian regime weakened, with many socio-political changes, and Croatia then begins its transition process, i.e. the transition from totalitarian to democratic order; then the process of liberalization, political pluralism and finally the beginning of the process of democratization. All these processes, similarly, took place in other countries of Central and Southeast Europe, with a significant difference that Croatia, among other things, had to find its way to statehood by, unfortunately, war, which resulted in the Homeland War that took place in Croatia from the beginning of 1990 until 1995.It was precisely the war that put the mentioned processes in the background, because defence of the territory against the Serbian aggressor was in the foreground, and thus the process of democratization of Croatia slowed down significantly. The basis for the democratic development of Croatia, as well as other countries of Central and Southeast Europe, was certainly the fall of the Berlin Wall in 1989 - the symbol of the Cold War and block division of the world. The year 1989 is in world literature often referred to as the year of miracles because it was marked by important socio-political changes in many states which changed their political histories.

According to Anđelko Milardović, democratization is defined as a process of liberalization, transition and consolidation of democracy (Milardović, 2006:109). As causes of democratization he mentions: pressure of the opposition on the regime elite, weakening of the old regime, expansion of the rights and freedoms of citizens, pluralization of political space (multipartysm) (Milardović, 2006:108). The liberalization process, according to the mentioned author, implies: individual freedoms, expansion of rights and freedoms for groups, release of political prisoners, free discussion and elimination of censorship, creation of civil society, democratization of the media, opening up of a larger political space for greater action of opposition and civil society (Milardović, 2006:108).

An important prerequisite for the development of the process of democratization in every state, including Croatia, is certainly statehood. According to many politologists, statehood can only be achieved if there is democracy as a new form of government within a particular state.

The process of democratization in Croatia started with the introduction of pluralism in Croatia's political life. The Croatian political scene in 1989 was strengthened by the legalization of a large number of political parties when the Republic Administration and Judicial Secretariat issued the first party registrations. Most of them were newly founded parties, although among them there were those who based their programs on party tradition. The first established political party in Croatia was the Croatian Social Liberal Party (HSLS), founded in 1989, after that, the Croatian Democratic Union (HDZ) was founded in 1990, and it won the first democratic elections in Croatia held in April 1990. These elections were a reflection of the disagreement between political actors at the then political scene of Croatia and then Yugoslavia.

Apart from the political changes affecting Croatia in the research period, the democratization of the Croatian society has also influenced by the changes in legislation, the media sector and the area of human rights and freedoms. As for changes in the media, they concerned changes in the way of information, expression and journalist action in general (Ražnjević Zdrilić, 2014:296). The former Yugoslav media system, which was marked by censorship, especially when it came to print media, was slowly replaced by a new democratic pluralistic media system that had its backbone in many new laws and acts.

Human rights and freedoms should be a foundation of every political system, as part of a modern and democratic society. The democracy of a society does not exist unless fundamental human rights and freedoms of every individual are achieved (Hadžić, 2015:9). Human rights and freedoms include, inter alia, "political participation of individuals in the political communication process" (Lohmann, 2004:1). According to Vujčić, human rights are defined as "the content of a democratic political culture as well as the universality, egalitarianism and obligation of human rights that "give" and "protect" important freedoms, identities, chances, powers, benefits, services, etc., makes them as a constituent of the political culture of the democracy of people" (Vujčić, 2000:56). At the beginning of the transition period, the breakup of SFR Yugoslavia and creation of the new Croatian state, according to Bing, "the human rights and freedoms were one of the central political issues of social development of Croatia, manifested in a series of complex problems in the center of which was the problem of harmonization of state building and development of democratization, i.e. civil society" (Bing, 2007:196).In the observed period, at the beginning of the 1990s, human rights and freedoms changed the concept of value: "fundamental" human rights (right to work, education) oppress the rights to political freedom (the right to political organization, self-determination of people, freedom of the media) (Bing, 2007:197). Within the framework of human rights and freedoms, this research will also analyse those articles that relate to religious freedoms.

As a research corps for this paper, local newspapers which were published in the town of Zadar in Croatia were selected. On the world map the city of Zadar is recognized as a cultural, historical and tourist destination, but it is also famous for its long-standing media tradition. The first Croatian-language newspaper, *Kraljski Dalmatin*, was published in Zadar from 1806 to 1810, during the rule of French administration in Zadar, and *Narodni list*, which is also a part of this paper, was launched in 1862 and is published even today. Due to its extremely long tradition of publishing, *Narodni list* is amongst the oldest newspapers in Southeast Europe. The fact that from the beginning of the 19th until mid-20th century there were over 120 different periodicals published in Zadar speaks volumes about Zadar as a center of journalism in Croatia, and wider (Ražnjević Zdrilić, 2014: 296).

Methodology

This paper deals with the research of the communication aspect between human rights and freedoms and journalism in the period between 1989 and 1990 on the example of local newspapers that were published in the city of Zadar in the Republic of Croatia. The research corpus are newspaper articles published in Zadar local newspapers *Narodni list* and *Fokus* in the Republic of Croatia. During the research period, two newspapers were published in Zadar: the weekly *Narodni list* and the youth half-monthly *Fokus*. *Narodni list* published its first issue in 1862 during the Italian government in Zadar under the title *Il Nazionale* in the Italian language, and a supplement in that newspaper was published in the Croatian language and was called *Narodni list*. Since 1876 it has been published only in Croatian. The research period of this paper is the time of publication of

the monthly *Fokus*. *Fokus* is a youth monthly that was published in Zadar from 9 February 1989 until 22 September 1990. *Fokus* was unique in many aspects, and most of all because it was the first independent newspaper in Croatia. The weakening of the communist regime in Croatia made it possible to launch independent media. The editorial policy of this youth monthly was liberal. That is why this newspaper and its articles often broke the barriers of the one-party system of the time and slowly opened the door to the process of democratization in all aspects, not only in Zadar but throughout Croatia.

The research was based on newspaper articles published in the weekly *Narodni list* and the monthly *Fokus* which are classified into the category *Human Rights and Freedoms*. The analysis covered 104 issues and 1175 articles, of which 41 articles were published within the category *Human Rights and Freedoms*. Descriptive and exploratory methods as well as methods of qualitative content analysis were used in this paper. The criteria for qualitative content analysis were the relevance and importance of the topic with regard to the socio-political context of the research period. Given this criterion, four newspaper articles from the weekly *Narodni list* and four newspaper articles from the monthly *Fokus* from each research year, 1989 and 1990, were analysed with qualitative content analysis. The paper is based on the assumption that the political and legislative changes affecting Croatia in the observed period enabled the development of human rights and freedoms in Croatia, which also reflected on newspaper communication on the example of local newspapers in Zadar.

Result of research

Table 1. Issues of *Narodni list* and *Fokus* in 1989 and 1990

	NARODNI LIST	*%*	*FOKUS*	*%*	*TOTAL*	**%**
1989	48	55,81	11	55	59	55,66
1990	38	44,18	9	45	47	44,34
TOTAL	86	100,00	20	100,00	106	100,00

Adjusted according to: Ražnjević Zdrilić (2013: 85)

Table 1 shows the issues of newspapers published in the observed period. 55,66% issues were published in 1989 and44,34% in 1990. Observing each newspaper individually, it is apparent that *Narodni list* published more issues in both researched years, which is to be expected as the newspapers in question had different issuance periods. Namely, *Narodni list* was a weekly, and *Fokus* was a monthly, so in this aspect it was not possible to compare these two newspapers.

Table 2. Comparison of the share of newspaper articles in *Narodni list* and *Fokus* in 1989 and 1990 according to the research category *Human Rights and Freedoms*

	NARODNI LIST	*%*	*FOKUS*	*%*	*TOTAL*	**%**
1989	9	69,24	12	42,86	21	51,21
1990	4	30,76	16	57,14	20	48,79
TOTAL	13	100	28	100	41	100

Adjusted according to: Ražnjević Zdrilić (2013: 86)

Table 2 shows the comparison of the share of newspaper articles in the researched newspapers with respect to the category *Human Rights and Freedoms* in 1989 and1990. Looking at the total, almost the same number of newspaper articles on the investigated category was published in 1989 and in 1990. However, it is important to emphasize that the youth monthly *Fokus* published more articles in the category *Human Rights and Freedoms* compared to *Narodni list*. As an independent and liberal newspaper, in the observed period, *Fokus* gave more media attention to the subject of human rights and freedoms which was of great importance for the development of democratization in Croatia in the mentioned transition period from communism to democracy.

Fokus in 1989

In newspaper articles, *Fokus* frequently discussed the issue of the Declaration of Human Rights. Thus, the article titled *Conscientious Objection*, published in the second issue of *Fokus* on 23 February 1989, talks about the Christian religious community Jehovah's Witnesses (B. Š.,1989:9). Members of this religious community refuse military service because they consider that man cannot be used as a means against another man:"*Who has a Bible-educated conscience refuses to serve military service. For whoso keeps the sword, from the sword shall perish"*(B. Š.,1989:9). Because of their refusal of military service, members of this religious community were often condemned, and the interlocutor in this article states that it is contrary to the *Declaration of Human Rights* in the United Nations, and the signatory of that *Declaration* is also Yugoslavia. In other countries in Europe this problem was solved in a way that the convicts would do community service and after that they would no longer receive invitations to the army (B. Š.,1989:9).The next article also discusses the Declaration of Human Rights. The theoretical background to the concept of human rights and related areas was given in the article *Self-Governing Democracy*, by Željko Luburović. The author defines human rights as a set of fundamental rights of individuals in a society which an individual does not acquire but enjoys them by his/her very birth (Luburović, 1989:9). As historical documents which were the basis for the development of the then Declaration, the author cited the *Declaration of North American Fighters Against English Colonization* and the *French Declaration of the Rights of Man and of the Citizen* from 1789. According to the author, man is *zoon politikon (political animal)*, i.e. he has the right to freedom of thought, expression, affiliation, association, and so on, and all that is taken away from man in socialist societies: "*This is most drastically manifested in the encroachment into freedom of thought, press and speech, lack of freedom in this area puts the modern man in chains, those same chains in which slaves and serfs were put"* (Luburović, 1989:9). In its sixth

issue, *Fokus* published the *Universal Declaration of Human Rights* adopted by the United Nations General Assembly on 10 December 1948. Given the political situation at the time, the newspaper decided to remind the public of the fundamental human rights of every man regardless of the country or territory in which he/she lived and the political status those countries had (OG, 1989: 7). About the issue of people gathering on squares, readers were able to learn in the article titled "*In The Rush Hour, The People Happen*" in which the author mentions the Republic Square in Zagreb as one of the places where people can have fun during their free time, which can also be a gathering place for expressing one's own rights and dissatisfaction with the current political and social situation (Jovanović, 1989: 9).

Fokus in 1990

The newspaper articles analysed in category *Human Rights and Freedoms* in the monthly *Fokus* in 1990 mostly referred to the tragic deaths of Kosovar soldiers during military service in the Yugoslav People's Army. A series of newspaper articles was published, and as contribution to these shocking stories, there were photographs of these terrible crimes. In the article titled *Wastelands Of Kosovar Reality*, the author focuses on the then Yugoslav autonomous province of Kosovo and the violation of human rights of Kosovo's population (Torić, 1990:13). Author M. Torić states that the events that took place in Kosovo in late January and early February 1990 represent another slap on the face of Yugoslavia's democracy. He also states that the endangered inter-ethnic relations in Yugoslavia paint a bad picture in the world. In almost all domestic official news agencies, especially Tanjug, Albanians are given epithets such as nationalists, separatists, terrorists, gangs and fascists, while foreign unbiased reporters report on the unequal conflict in Kosovo between armed special police and youngsters throwing stones (Torić, 1990:13).The author noted in the article that Yugoslavia, by signing the Helsinki Accords and the Vienna Convention, strongly undertook to protect the rights of all peoples and ethical groups, which it did not do, and had not yet adopted the UN's Universal Declaration of Human Rights (Torić, 1990:13). In the15th issue of *Fokus*, a text on isolation of certain persons in Kosovo and their suffering was published for the first time, which had never been published in any other print medium in Yugoslavia. The article titled *Even The Militioners Cried!!!* brings the testimonies of Kosovo's isolates. Professor Ibrahim Rugova also found himself in a group of isolates; just before the defense of his doctoral dissertation, the security personnel imprisoned him for a month (Ivković, 1990:6).The testimony of one ofthe isolates, Bahrim Osmani, stands out: *"It was terrible. Even the militioners who escorted us cried. Even those who heartlessly tied and guarded us cried over out pain and troubles", says Osmani and continues: "One of them grabbed my hair and hit my head against a wall so long until it started to bleed. Even that wasn't enough for them, so three of them beat me with a bat later on, but I did not fall"* (Ivković, 1990:6). The testimonies of the families of tragically deceased Albanian young men during military service in the JNA was published in the 17th issue of *Fokus* in an article titled *Sadness In Locked Caskets*. The intention of this article was to inform the public about the violent deaths of Albanian soldiers. The testimonies were given by members of the families of three Albanian soldiers, stating that the bodies of their loved ones were brought in locked caskets with visible traces of violent death on their bodies (N. N., 1990:7). The sequel to the previous article is the title *Vuk Obradović, Respond!*. The editorial board of *Fokus*, led by its then editor-in-chief Branko Mrčela, sends a public appeal to Vuk Obradović, the then JNA's spokesperson, why the relatives of the killed

soldiers are not allowed to see the bodies of the deceased soldiers before the burial, and why they never learned the motives of suicide of these unfortunate soldiers (Mrčela, 1990:3). *Fokus* still intended to publish a series of articles on the tragic deaths of Albanian soldiers in the JNA, but Naser Jaharija Breci, the correspondent of *Fokus* in Kosovo, was not allowed to work in the Albanian media of public information. The then last published issue of *Fokus* in Kosovo was seized (Mrčela, 1990:3).

Narodni list in 1989

Religious freedoms are included in the category of human freedoms in this paper. With the development of democratization in Croatia, they got their space in *Narodni list*. The article titled *Sveti Roko More Important Than The Flood*, published in the 1962nd issue, mostly talks about how religious celebrations and holidays are no longer a taboo, and all that was enabled by a wave of democracy in Croatia (T.S., 1990:24). *Narodni list* covered a large church celebration in Nin on the occasion of the 110th anniversary of the Croats transition to the patronage of the Roman Catholic Church. It also covered religious ceremonies, among others the one called *Nin '89 - Branimir's Year - The roots of Christianity in Croats.* The report from this ceremony was published in the 1965th issue of *Narodni list* in an article titled *A Dignified Religious Gathering* (M.K., 1989:7). This great homeland celebration gathered over 60,000 people. The solemn concelebration was conducted by cardinal Franjo Kuharić who in his sermon put special emphasis on youth, family and parenthood by describing marriage as sacred and abortion as murder of the child, emphasising to believers the increasing fall in birth rates in Croatia (M.K., 1989:7). The gathering was dignified because there were no excesses or political speeches, and apart from the church flags, there were only two Croatian flags (M.K., 1989:7). The theme of free expression, with special emphasis on political expression, was analysed in article titled *Petition For Free Political Expression*, by Meri Kučina. The citizens' petition was initiated to collect signatures for the abolition of articles 114, 133 and 157 of the SFRY's Penal Code, referring to trials for *"counterrevolutionary action", "malicious and unrealistic representation of the state of the country","enemy propaganda" and "violations of the reputation of the SFRY"* (Kučina, 1989: 11). The petition was addressed to the Presidency of the SFRY, the basic motto of the petition was *Freedom of Another Man is My Freedom Too*; and its goal was to release all political prisoners who were convicted under the aforementioned articles. 14,000 signatures were collected in Zagreb, several thousand in Split, and the main initiator of petition in Zadar was the Zadar Municipal Conference of the League of Socialist Youth of Croatia. However, many complaints came from other parts of the country about these petitions, saying that they are the result of the current political situation, i.e. the trial of Adem Vllasi (Kučina, 1989: 11). The author conducted a brief survey amongst Zadar's youth about this topic. Their views were divided. The majority of surveyed respondents supported the abolition of verbal delict, as well as the text of this petition. Their conclusion was that everyone has the right to their opinion, especially if it is opposed to the ruling politics, all of which leads to the suffocation of democracy (Kučina, 1989: 11).The next issue of *Narodni list* brought an article titled *Four Thousand Signatures*, which provided information on the collected four thousand and 200 signatures in the organized three-day petition at the Zadar National Square, organized by the Zadar Municipal Conference of the League of Socialist Youth of Croatia (M. K., 1989:2).A hundred citizens were against the abolition of the abovementioned articles of the Penal Code. The Zadar Municipal Conference of the League of Socialist Youth of Croatia was very satisfied with the success of the petition.

The citizens of Biograd supported the initiative of the Zagreb City Committee of the League of Socialist Youth of Croatia. They scheduled organized signing for27 and 28 November 1989 (M. K., 1989:2).

Narodni list in 1990

The 1982nd issue of *Narodni list* also talked about human rights and freedoms. The article titled *Full Freedom Of Every Individual* has human rights and freedoms as the main topic. The author addressed the changes in Croatia's political system that enabled the development of a democratic society based on human rights and freedoms (Pavlović 1990: 3). He also mentioned international acts to ensure the protection of human rights: the *Declaration of Human Rights from 1949* and the *Declaration of the Rights of the Child from1959*. He stated that human rights and democracy are inextricably linked: *The human dignity is ensured and the possibility of degrading and transforming a man into object, reducing him to a number and a means of manipulation is eliminated. Human dignity becomes an integral part of human personality* (Pavlović 1990: 3). Apart from fundamental human rights, the author also mentions the rights of man and citizen to an independent and impartial tribunal contained in the 1966 International Covenant on Civil and Political Rights and the human right to a healthy environment (Pavlović 1990: 3). At the end of the article, the author addressed human rights and freedoms in Zadar Municipality in 1989, citing political pluralism as one of the forms of human rights and freedoms, expressed through the founding assemblies of alternative movements, alliances and communities (Pavlović 1990: 3). The topic of human rights and freedoms was also covered in an article titled *Unconstitutionality And Human Rights*, published in the 2002ndissue of *Narodni list*. With the article, the author added to the speech of the then new President of the Presidency of SFRY Borislav Jović, who, among other things, stated that free elections were unconstitutional. The author stressed that human rights were above each constitution and that President Jović obviously forgot about many international human rights conventions that Yugoslavia committed to abide by (Matek, 1990:7). Religious freedoms and celebrations were the subject of article *Fiestas In Zadar And Škabrnja*, published in the 2015thissue of *Narodni list*. Emphasis was put on the religious celebration of Assumption of Mary, celebrated in parishes Puntamika and Škabrnja in the Zadar area (D.J., 1990:9).Along with Christmas and Easter, this holiday was of particular importance to believers. Under the former communist government, every celebration of religious holidays was overseen by enhanced police controls. With the development of democracy and pluralism in Croatia the control of religious celebrations disappears: *Free multiparty elections have broken off the chains of the "controlled dosage of freedom of religious expression" and in the past months the believers have diminished a 40-year "isolation"* (D.J., 1990:9). Article titled *The Pre-Christian Roots Of Christmas* was published in the 1986thissue of *Narodni list.* In that article, the author presented a report from a forum titled "Christmas as a Civilization Heritage", organized by the Section for Culture of the Zadar Municipal Conference of the Socialist League of Working People of Croatia and the Sociological Forum of the Faculty of Philosophy (Kučina, 1990:3). The basic question that was addressed at this forum was whether to celebrate Christmas as a holiday or a non-working day. The scientific, theological and social significance of Christmas was also discussed. Some of the present experts at this forum spoke about the pre-Christian roots of Christmas in Slavic peoples: *Christmas is deeply rooted in the culture of Slavic peoples, including the South Slavs,and from the beginning it had a holiday character. It demanded rest, holidaying in the circle of family and night of vigil,*

in which the spirits of ancestors werecontacted (Kučina, 1990:3).The problem that occurs during Christmas celebrations, according to the author, is which date to determine for this celebration, since in Croatia, apart from Catholics, there are also citizens of other religions. Precisely on the basis of democracy, which knocked on the door of the Croatian society, is was necessary to find the right way and legal provisions for marking Christmas in Croatia, it is the author's opinion (Kučina, 1990:3).

Conclusion

The transition process in Croatia started in the late 1980s and early 1990s.He was a reflection of similar socio-political and economic events occurring in the countries of Central and Southeast Europe. In those countries, as well as in Croatia, which was then part of the Socialist Federal Republic of Yugoslavia (SFRY), there was a breakdown of communist regimes that open the door to the processes of liberalization and democratization. Croatia had a different path towards democratization than the mentioned countries. Due to the inter-ethnic disagreements within the then Yugoslavia, the Croatian War of Independence took place in Croatia between 1990 and 1995, in which Croatia was obliged to defend its territory and thereby secure its statehood. One of the fundamental problems that emerged in the process of democratization of Croatian society was the one related to human rights and freedoms. Since Croatia was part of multinational state, this problem was particularly pronounced. This research investigated the relationship between journalism and human rights issues on the example of two local newspapers in Croatia, *Narodni list* and *Fokus*, published in the city of Zadar. The research showed that these newspapers actively informed readers of the socio-political situation that was reflected in the area of human rights and freedoms. Analysis of newspaper articles on this topic indicated that both newspapers analysed and commented on all socio-political events in Zadar, Croatia, as well as throughout Yugoslavia, and their reflection on the area of human rights and freedoms. The researched media actively reported to readers about the documents that guarantee the freedom of every individual, with particular reference to the Declaration of Human Rights, criticizing the political government of that time for not complying with the documents and acts it was obliged to implement. They also discussed the right to political expression, establishment of new political parties or alternatives and free elections as one of the fundamental human rights. Within this category *Narodni list* devoted more space to religious freedoms, analysing the issues of marking religious holidays and religious ceremonies. The research showed that the youth monthly *Fokus* placed particular emphasis within this category on violations of fundamental human rights and freedoms of Kosovo's population. It brought a series of shocking articles and photographs that corroborate the violent deaths of young Kosovar men during military service in the JNA. Comparing the way of commenting and analysing between these two newspapers, it was established that the monthly *Fokus* had an approach to the issues of human rights and freedoms in a more critical, liberal and open way. Given the editorial policy of the newspaper, Fokus, as an independent monthly, contributed to the development of democratization of media and social space in Zadar, Croatia, as well as throughout the Yugoslavia of that time.

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Liability of the Carrier in the 2009 Romanian Civil Code and the Convention on the Contract for the International Carriage of Goods by Road, Geneva, 1956

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Abstract:
The contract for the international carriage of goods by road is governed by the International Convention concluded at Geneva in 1956 under the aegis of the United Nations Economic Commission for Europe, which entered into force on 2 July 1961. This convention, like other conventions in the field of international trade law, aims to create uniform substantive rules designed to remove legal obstacles to the development of international trade relations. The regulation of the carrier's liability by the Romanian legislature in the Civil Code of 2009 shows obvious similarities, in its essential aspects, with the regulation of the Convention on the contract for the international carriage of goods by road, Geneva, 1956. There are similarities in the two regulations as regards the establishment of the professional carrier's obligation to accept any transport request, as regards the determination of the contractual liability of the carrier, the imposition of a carrier's presumption of fault in the event of injury, as well as from the perspective of limiting the carrier's liability.

Keywords: *transport contract; international carriage of goods by road; carrier's liability; uniform rules of substantive law; international convention*

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The contract of carriage as regulated in Romanian law

The 2009 Civil Code regulates the contract of carriage in Chapter VIII, Title IX ("Various special contracts"), of Book V ("On obligations").

The chapter regulating the contract of carriage comprises three sections: a section containing general provisions, another section containing rules governing the contract for the carriage of goods and the third section containing rules governing the carriage of passengers and luggage.

Since the new Civil Code has enshrined the monistic conception in the system of private law, both the carriage contracts between simple individuals and the contracts between professionals are subject to its provisions.

The chapter on the contract of carriage has three sections. The first section contains general provisions on the notion and the proof of the contract of carriage, the definition of the carriage modes, the scope and liability of the carrier.

Art. 1995 of the Civil Code defines the contract of carriage as the contract by which "a party, called carrier, undertakes principally to transport a person or property from one place to another in return for a price that the passenger, the sender or the consignee undertakes to pay at the agreed time and in the agreed place." This definition of the contract of carriage contains the elements necessary both for the definition of the contract for the carriage of goods and for the carriage of persons (S. Cercel, Șt Scurtu, 2016a:143).

The status of party to a particular carriage contract is also acquired by the carrier who replaces another carrier for the purpose of performing all or part of his obligation. It is inferred from the text of the law that the carrier replacing the original carrier must be a professional (Stanciu, 2015: 63).

In the case of the replacement of the original carrier but also of subsequent carriers, "the payment made to one of the carriers is liberating in respect of all carriers who have replaced or have been replaced" (art. 1960 of the Civil Code).

As for the proof of the carriage contract, art. 1956 of the Civil Code provides that it can be done by transport documents, such as a consignment note, luggage receipt, driver's log book, bill of lading, a ticket or travel card, or the like, from one case to another. Starting from the clarification made by the legislature (the document is required for the proof of the carriage contract), both in the marginal title of art. 1956 of the Civil Code, and in the content of this article, relating to art. 1174 of the Civil Code, we infer that the contract of carriage is consensual in nature. The consensual character of the contract of carriage also results from the provisions of art. 1967 of the Civil Code, concerning the sender's obligation to deliver the goods under the contract to the carrier, an obligation regulated as an effect of the contract, not as a condition of its validity; thus, the law provides that the failure of the sender to fulfill this obligation in time does not affect the validity of the contract, but merely entails the liability of the sender for the damage caused for delay in the performance of the contract.

Referring to the modes of carriage, art. 1957 of the Civil Code makes a distinction, depending on the number of carriers involved, between single carrier and multi-carrier transports.

Where the carriage is made by several carriers, a distinction is made between successive carriage and combined carriage:

(a) successive carriage is defined as carriage under the following conditions: (i) using the same mode of transport; (ii) by two or more successive carriers; (iii) the delivery

of the goods and luggage from one carrier to another must take place without the intervention of the sender or the passenger;

(b) combined carriage is defined as the carriage performed by several modes of transport by the same carrier or by several successive carriers.

The practical importance of this legal distinction is given by the special rules applicable to these categories of carriage as regards contractual liability and the performance of the carriage contract (see, to that effect, the provisions of articles 1999-2001, 2006 of the Civil Code). With regard to the scope of the provisions in the chapter regulating the contract of carriage, art. 1958 of the Civil Code stipulates that the provisions contained therein apply to all modes of transport (air, rail, water, road).

However, it specifies that the special laws, the established practices between the parties and the transport usages shall apply first. It is clear from that express statement of the legislature that, on the one hand, the rules on the contract of carriage contained in this chapter of the Civil Code are part of the general legal framework (as a consequence of the establishment of the rule that the provisions of the Civil Code are general provisions in the matter of the carriage contract, art. 193 of the implementation law provides that paragraph 3 of art. 20 of GO no. 19/1997 shall be amended and shall read as follows: "The public carriage contract shall be concluded between the carrier and the beneficiary in accordance with the Civil Code and shall be proved, for the carriage of persons, by a transport document handed over to the passenger, and for the carriage of goods, by a specific transport document "), and, on the other hand, those rules are subsidiary; consequently, the provisions contained in the treaties ratified by Romania (see, to that effect, the provisions of art. 140 of the implementation law, which must be read in conjunction with art. 1958 of the Civil Code), the special laws, the established practices between the parties and usages in the field of carriage prevail (By referring to the usages in the matter of the carriage contract, art. 1958 of the Civil Code applies the provisions of art. 1 of the Civil Code states that "In the matters regulated by the law, the usages apply only to the extent that the law expressly refers to them", provisions which establish an exception from the rule laid down by art. 1 of the Civil Code, in accordance with which the usages are a source of law only "The usages shall be applied in the cases not provided by the law, and in the absence thereof, the legal provisions regarding similar situations, and when such provisions do not exist, the general principles of law").

Art. 1958 of the Civil Code implicitly establishes the principle according to which the provisions of the chapter on the contract of carriage apply only to onerous contracts; this principle is deduced from art. 1958(2) of the Civil Code, which provides that the provisions of the chapter on the contract of carriage do not apply to carriage contracts free of charge; this rule exempts carriage free of charge if it is performed by a carrier offering its services to the public in the course of its professional activity.

As to the nature of the carrier's obligation, the legislature states that it has a care and diligence duty when transport is free of charge. Per a contrario, in the case of an onerous contract of carriage, the carrier has a result obligation.

Finally, art. 1958(3) of the Civil Code provides that the carrier providing his services to the public has the obligation to accept for transport any person requesting his services and any goods for which transport is requested, unless he has a valid reason for refusal. It also imposes on the passenger, sender and consignee the obligation to comply with the carrier's instructions regarding the security of the goods or persons transported (With regard to the content of the instructions, see also Ș.A. Stănescu, in Fl.A. Baias, E. Chelaru, A. Constantinovici, I. Macovei (coord.), 2012: pp. 1971-1972).

Observing the provisions of the general theory of civil liability, we find that the rules on the carrier's liability are more restrictive. Thus, in accordance with art. 1355 of the Civil Code, the liability for material damage to another by an intentional or grossly negligent act cannot be excluded or limited by convention (Pursuant to art. 1355 of the Romanian Civil Code, one cannot exclude or limit, by conventions, the liability for material damage to another; in the case of damage caused to physical or mental integrity or health, the liability cannot be removed or diminished except under the law); but the clauses that exclude liability for damage caused to the goods of the victim, by mere recklessness or negligence, are valid.

On the other hand, as regards the liability of the carrier, art. 1559 of the Civil Code provides that it cannot exclude or limit his liability by conventions. The carrier may be relieved of liability for delay in the performance of the transport, under the law, only in case of fortuitous event or force majeure. We have to add to this provision the general provisions of art. 1352 of the Civil Code, which, referring to the cases relieving of liability, provides that both the victim's act and the third party's act remove the liability if they have the characteristics of the fortuitous event, in cases where the fortuitous event relieves of liability. The second section of the chapter on the contract of carriage regulates the contract for the carriage of goods and the third section sets out the rules applicable to the contract for the carriage of persons and luggage.

Regulations on the international carriage of goods by road

The diversity of national laws made it necessary to adopt international conventions in this matter. Some international conventions regulate the contract of carriage with the aim of creating a uniform body of law in the matter (the relevant example being the Convention on the Contract for the International Carriage of Goods by Road, signed in Geneva, 1956), others facilitate this type of transport. To illustrate, we will mention some such conventions (for an exhaustive enumeration of these conventions, see the collective work Repertoriul actelor normative privind relaţiile internaţionale şi cooperarea internaţională a României, 1997: 400 sqq): a) the Customs Convention on the International Transport of Goods under Cover of TIR Carnets, concluded in Geneva in 1959. Romania signed this convention in 1963; b) the Convention on Road Traffic, concluded in Vienna in 1968, supplemented by the Geneva European Agreement of 1971; c) the European Agreement concerning the International Carriage of Dangerous Goods by Road, concluded in 1957, to which Romania became a signatory in 1994; d) the European Agreement on Road Markings, adopted in Geneva in 1957, to which Romania became a signatory in 1963; bilateral international agreements, even if they do not expressly refer to this contract, are important for the contract for the international carriage of goods by road insofar as they contain provisions on some contractual elements such as transport charges, transport authorizations, etc.

The Convention on the Contract for the International Carriage of Goods by Road,
Geneva, 1956

Preliminary issues. The Convention on the Contract for the International Carriage of Goods by Road was concluded in Geneva in 1956 under the aegis of the United Nations Economic Commission for Europe and the International Road Transport Union (references in this paper to various article numbers, without any reference to any rule or international convention, concern the Convention on the Contract for the International

Carriage of Goods by Road, Geneva, 1956). The usual abbreviation of this convention is C.M.R., a logo composed of the initials of its French name - Convention Marchandises Routiers. Romania signed this Convention in 1972. The Convention on the Contract for the International Carriage of Goods by Road, Geneva, 1956, was supplemented by the Protocol of 5 July 1978, which was ratified by Romania in 1981. Pursuant to art. 1(1) of the C.M.R., its provisions are applicable "to every contract for the carriage of goods by road in vehicles for reward, when the place of taking over of the goods and the place designated for delivery, as specified in the contract, are situated in two different countries, of which at least one is a contracting country, irrespective of the place of residence and the nationality of the parties".

In other words, the provisions of the C.M.R. are applicable to an international contract for the carriage of goods by road as uniform law when the country of delivery of the goods to the carrier or the country of destination of the goods signed this Convention. The Convention is not applicable if the carriage is only in transit through the territory of a State which signed the C.M.R.

If a contract is not subject to the provisions of the C.M.R., the jurisdictional body must determine the national law applicable to that contract, having regard to the conflict rules of the forum.

As a rule, the contract for the international carriage of goods establishes the law governing the substantive conditions and its effects, as the contracting parties, under the lex voluntatis principle, also enshrined in Romanian private international law, may choose the law applicable to their contract.

The nullity of stipulations contrary to the Convention

The Convention declares that any stipulation which, directly or indirectly, would derogate from its provisions, is null and void, it takes no effect. So, the C.M.R. rules are binding; consequently, parties to a contract of carriage governed by the Convention cannot agree on clauses which would derogate from the provisions of the Convention; nor can states, by special agreements between themselves, derogate from the provisions of the Convention.

Pursuant to art. 41, the clauses giving the carrier the benefit of the goods insurance or any other analogous stipulation as well as the clauses changing the burden of proof shall be declared null and void. However, the nullity of provisions contrary to the Convention do not invalidate the other provisions of the contract; therefore, nullity is regulated as a sanction against those effects of the legal act that are contrary to the Convention and not as a sanction against the legal act itself, thereby derogating from the principle quod nullum est nullum efectum producit.

The form of the contract for the carriage of goods

The document drawn up for the conclusion of the contract for the carriage of goods is called a consignment note. In practice, the contracting parties use standardized printouts in order to facilitate the accurate drawing up of the transport document.

With regard to the purpose of drawing up the consignment note, the C.M.R. provides, in art. 4, that "The absence, irregularity or loss of the consignment note shall not affect the existence or the validity of the contract of carriage" which remains subject to the uniform rules contained in the Convention. Consequently, the conclusion of the contract of carriage in written form is not required for the validity of the contract but serves as the instrument of proof of the existence of the contract.

The contract of carriage must be drawn up by the sender in three original copies, all signed by the sender and the carrier. The first copy is the sender's, the second accompanies the goods to the destination, and the third is returned to the carrier (art. 5, point 1).

Pursuant to art. 7(2) to ensure that the consignment note is drawn up correctly, at the request of the sender, the carrier must specify in the transport document the particulars deemed mandatory for any carriage.

If the goods are to be loaded in different vehicles or if there are several different types of goods or lots, the sender or the carrier is entitled to request the drawing up of consignment notes for each used vehicle or for each type of goods or lot.

As a matter of principle, the C.M.R. model for the consignment note is not a representative title of the goods; however, the states signatories to the Convention may authorize the use of the consignment note representative of the goods in carriage performed exclusively on their territory.

The sender's liability for deficiencies in the consignment note

Pursuant to art. 7(1), the sender is liable for all expenses and damage caused to the carrier due to the inaccuracy or inadequacy of the instructions given by the former for the issue of the consignment note or for insertion therein (i.e. including when the consignment note has been completed by the carrier).

In practice, such deficiencies in the consignment note cause damage such as: payment of a customs fine, because the goods were not correctly charged in the tariff; damage to the vehicle in the event of overload due to incorrect indication of the weight of the goods; damage to the consignee due to the delay caused by the incorrect indication of his address in the consignment note (Căpăţînă, 1997: 230).

The liability of the carrier is entailed only if the consignment note does not state that the carriage is subject to the C.M.R., in which case the carrier is liable for the damage suffered, as a result of that omission, by the person entitled to dispose of the goods.

Documents attached to the consignment note

In accordance with art. 11(1), for the completion of customs formalities and other administrative formalities to be performed prior to the delivery of the goods, the sender must attach to the consignment note or provide the carrier with the necessary documents and provide him with all the required information. The carrier is under no obligation to examine whether these documents and information are accurate or sufficient.

The sender is liable for the damage which the carrier may have due to the absence, insufficiency or irregularity of documents attached to the consignment note or made available to the carrier and to the information provided to the carrier in order to fulfil customs formalities and other administrative formalities.

The carrier is in turn responsible for the consequences of the loss or misuse of the documents that have been attached to the consignment note, but the compensation to which he may be compelled may not exceed that which would have been due in the event of loss of the goods.

Modification of the contract of carriage

The modification of the contract of carriage by road may take place on the initiative of the sender, consignee or carrier.

Pursuant to art. 12, as the sender has the right to dispose of the goods handed over

for carriage, he may make the following changes to the consignment note: i) stopping the carriage; ii) changing the place provided in the contract for delivery; (iii) delivering the goods to a consignee other than that indicated in the contract of carriage.

The sender's right to change the consignment note appears at the time of conclusion of the contract of carriage and ceases when the second copy of the consignment note is handed over to the consignee; from that moment on the carrier must comply with the orders of the consignee. As a rule, the handing over of the second copy to the consignee is made after the arrival of the goods at destination; from that moment on the consignee has the right to ask for the goods and the accompanying documents to be delivered.

By way of exception to this rule, the C.M.R. provides that the right to dispose belongs to the consignee from the moment of drawing up the consignment note if the sender assigns the right to dispose of the goods by making a reference on the consignment note to that effect. If the consignee, while exercising his right to dispose of the goods, orders the delivery of the goods to another person, that person may no longer designate other consignees.

Where the right to dispose of the goods is exercised by the sender or the consignee, the following formal conditions must be met: (i) the sender (or the consignee) must present the first copy of the consignment note. The carrier who complies with the provision without requesting the first copy of the consignment note is liable to the party prejudiced by this action; (ii) the new provisions of the sender (or consignee) given to the carrier must be entered on the first copy of the consignment note.

The following substantive conditions must also be met: (i) the performance of the new provisions must be possible when the consignment note in which they are entered reaches the carrier; (ii) the carrying out of the instructions must not hinder the normal operation of the carrier and do not harm the senders or consignees of other transports; (iii) the provisions must not have the effect of dividing the transport; for example, one cannot designate more places of destination instead of the one initially established, as this would mean the formation of more than one piece of cargo and a contract of carriage would be required for each transport. The person making amends to the contract of carriage must compensate the carrier for the expenses and damage caused by the performance of these provisions.

If the order of the sender (or the consignee, as the case may be) meets the formal and substantive conditions laid down by the Convention, the carrier has the obligation to execute it exactly; otherwise, he will be liable to the person entitled to claim the remedy of the damage caused by this action.

The change to the contract may also be made on the carrier’s initiative in the following situations: i) when it is determined by certain circumstances which prevent the performance of the carriage under the conditions established by the parties; (ii) where it is determined by circumstances which prevent the delivery of the goods at their destination under the conditions established by the parties.

The contractual liability of the carrier

Pursuant to art. 17 (1), the carrier is liable for the total or partial loss of, or damage to the goods received for carriage, between the time of receiving the goods and the delivery of the goods as well as the delay in the delivery of the goods.

Compensation for the total or partial loss of the goods is calculated depending on the value of the goods in the place and at the time of receiving them for transportation. This value results from the invoice with which the goods were purchased. Art. 23(2)

provides that the value of the goods may be determined on the basis of the commodity exchange price or, in the absence of such a price, on the basis of the current market price or, in the absence of both, on the basis of the usual value of goods of the same kind and of the same quality.

The liability of the carrier is limited in the sense that the compensation cannot exceed 25 francs per kilogram of gross weight short (gross weight includes packing). By the 1968 Hague Protocol, the members of the International Monetary Fund agreed that the compensation owed by the carrier could be established in Special Drawing Rights, converting the gold franc with the XDR of the IMF, in proportion to a special drawing right equal to three gold francs; i.e. the compensation of the carrier is limited to 8.33 units of account per kilogram of gross weight.

Pursuant to art. 25, in the event of goods being damaged, the carrier pays the value of the consignment depreciation, calculated on the basis of the established value as in the case of the loss of the goods. If the goods have been damaged in their entirety, the compensation cannot exceed the amount that should have been paid in the event of total loss of the goods. If only part of the consignment has been damaged, the compensation cannot exceed the amount that should have been paid in case of loss of the part affected.

The carrier is also responsible for the delay in the performance of the carriage. Art. 19 provides that there is a delay in the performance of the carriage in the following cases: i) if a time- limit for carriage has been set, when the goods have not been delivered within the agreed time-limit; and ii) if no time-limit has been set, when the actual carriage exceeds the time reasonably granted to a diligent carrier, taking into account the circumstances.

In the event of delay, if the person entitled proves that the delay results in damage, the carrier will be obliged to pay damages, but they cannot exceed the price of the consignment. Exceeding the delivery time-limit entitles to compensation only if the consignee made a written complaint to the carrier within 21 days from the date of placing the goods at his disposal.

The liability of the carrier for other persons. In accordance with art. (3), in order to perform the obligation to carry the goods to their destination, the carrier is liable for the acts and omissions of his agents and servants and any other persons that he is recruiting for the performance of the carriage, if these agents or other persons act in the performance of their duties. Therefore, the carrier is liable not only for his agents, but also for any other person involved in the transport.

Relieving the carrier of liability

Article 17 divides the causes which relieve the carrier of liability in two categories: a) general causes and b) special causes of non- liability of the carrier.

The general causes of the carrier's liability are the following: i) the fault of the person entitled to dispose of the goods; (ii) the order of the person entitled to dispose of the goods, provided that it does not result in a fault on the part of the carrier; iii) the defect of the goods; (iv) circumstances that the carrier could not avoid and the consequences of which could not have been prevented. In the presence of these causes, the carrier is relieved of liability for the loss of or damage to the goods or delay in the performance of the carriage.

The burden of proving the general causes of non-liability of the carrier. In accordance with art. 18(1), the obligation to prove that the loss, damage or delay in the performance of the carriage has occurred due to a cause relieving of liability, from the

ones listed above, lies with the carrier.

The special causes of non-liability of the carrier. The C.M.R. provides that the carrier is relieved of liability if the loss or damage results from the particular risks inherent in one or more of the following: (i) the use of uncovered vehicles, without tarpaulin, if such use has been expressly agreed and referred to in the consignment note; ii) the lack or defect of the packaging for the goods exposed by their own nature to damage when these goods are not packed or are improperly packed; (iii) handling, loading, stacking or unloading of goods by the sender or consignee or by persons acting on behalf of the sender or consignee; (iv) the nature of the goods exposed, due to causes inherent to their nature, to either total or partial loss or damage, in particular by breakage, rust, internal and spontaneous deterioration, desiccation, leakage, normal wastage or by the action of insects or rodents; v) insufficient or imperfect marking or parcel numbers; (vi) the transport of livestock.

The burden of proving the special causes of non-liability of the carrier. In accordance with art. 18(2), where the carrier proves that, in the light of the factual circumstances, the loss or damage could have attributed to one or more of the particular risks provided by the Convention, it is presumed to have resulted from that cause.

In relation to this presumption laid down by the Convention in favor of the carrier, the following clarifications were made in the doctrine (Scurtu, 2003: 340-341): a) the presumption of relief of liability operates only in the cases exhaustively provided by the Convention; (b) in order to apply the presumption of relief of liability, it is necessary for the carrier to prove that the loss of or damage to the goods could have been caused by one or more of the "particular risks" listed by the Convention; c) the application of the presumption of relief of liability concerns only the damage resulting from the loss of or damage to the goods, not that caused by the delay of the shipment; d) the presumption of innocence of the carrier is of a relative nature, so the person entitled to dispose of the goods can prove that the damage has not been caused by one of the risks invoked by the carrier.

The causes of the carrier's relief of liability imposed by the C.M.R. remove the carrier's guilt. In accordance with the general regulatory framework, the carrier can also benefit, independently of the provisions of the C.M.R., from causes which eliminate the unlawfulness of the harmful act, such as the state of necessity, the order of the law or the consent of the creditor (Căpăţînă, 1997: 266-267).

Wilful misconduct or default of the carrier

Pursuant to art. 29(1), the carrier's wilful misconduct and default are considered to be aggravating circumstances of his liability. If the damage was caused by serious wilful misconduct or default, the carrier is not entitled to avail himself of the provisions of the C.M.R. which exclude or limit his liability, or which overturn the burden of proof.

Due to the fact that the C.M.R. does not contain guideline criteria for equalizing a carrier's default with wilful misconduct, the equalizing of the carrier's professional negligence with wilful misconduct must be established by the court in compliance with the law of the country to which the court hearing the matter belongs.

Pursuant to art. 29(2), the rule on the liability of the carrier in the event of wilful misconduct or default is also valid if the acts arising out of serious misconduct or default are committed by the agents or servants of the carrier or any other person that he is recruiting for the performance of the carriage, if they act within the scope of their employment; therefore, in case of wilful misconduct or default, neither the agents nor the

servants or the other persons have the right to avail themselves, with regard to their liability, of the provisions of the C.M.R. which exclude or limit liability or which overturn the burden of proof.

The tort liability of the carrier and the persons for whom he is liable

The liability of the carrier can be both contractual and in tort. For example, "if a loaded truck overturns, killing a pedestrian and the goods fall and are completely destroyed, the transport undertaking shall be held liable for the act of the driver employed, to the victim's heirs and contractually to the consignee for the lost goods" (O. Căpăţînă, Contractul comercial de transport, 1995: 226).

Concerning the carrier's liability in tort, the C.M.R. provides that in the case of extra-contractual damage, the liability of the carrier is governed by the law applicable to the loss, damage or delay in the course of a transport subject to this convention. The referral concerns lex causae, determined according to the conflicting rules of the competent court. The law of the place where the tort was committed is usually applicable. According to this rule, illicit acts are subject to the law of the state in which they occurred. When the adverse consequences of the illicit act occur in a state other than the one in which the tort occurred, the law of that state is applicable.

Pursuant to art. 28(1), the carrier may avail himself, in the context of the claim seeking compensation for extra-contractual damage, of the provisions of the C.M.R. which exclude his liability, or which determine or limit the compensation due.

In the case of loss, damage or delay, the extra-contractual liability of one of the persons for whom the carrier is liable pursuant to the provisions of the Convention, that person may also avail himself of the provisions of the C.M.R. relating to the exclusion of the carrier's liability or causing or limiting the compensation due (art. 28, point 2).

The period of limitation

The usual period of limitation for actions derived from consignments subject to the C.M.R. is one year (art. 32, point 1). It is applicable both to the actions brought by the person entitled against the carrier and to the actions the carrier would bring against the sender or the consignee (about the extinctive prescription in Romanian law, see: Cercel, Scurtu, 2016b: 88-102).

The Convention also regulates an exceptional three-year term, which applies in the case of wilful misconduct or default. The carrier's wilful misconduct or equivalent to it is established in accordance with the law of the country in which the court where the claimant brings the action lie (lex fori).

Pursuant to art. 32(1), the period of limitation runs as follows: (i) in the event of partial loss, damage or delay, from the day on which the goods were delivered; (ii) in the event of total loss, commencing on the 30th day after the expiry of the agreed time-limit or, if no time-limit has been agreed, from the 60th day following the receipt of the goods by the carrier; (iii) in all other cases (for example, the action relating to amounts unduly received by the carrier from the sender as a tax for the carrier's action regarding the payment of carriage expenses) from the expiry of a period of three months from the date of concluding the contract of carriage.

How to calculate the prescription. The day indicated by the Convention as the starting point of the period of limitation is not included within the time-limit, but the day on which the term is reached is taken into account in its calculation (art. 32(1) in fine).

Suspension and interruption of the limitation period. The rule is that, in the matter of the the suspension and interruption of the running of the limitation period, the law of the country in which the court lies is applicable (lex fori).

As a result of the limitation period, the right to action may no longer be used in court, either through an action or by way of a counter-claim or exception.

Successive carriers

In accordance with the C.M.R. (art. 34) successive carriage is considered to be the carriage that meets the following conditions: (i) it is governed by a single contract; (ii) it is performed by several road carriers, each carrying the goods on a certain portion of the itinerary; (iii) each carrier is a party to the single contract of carriage, the second carrier and each of the next carriers becoming parties to the contract, on receipt of the goods and the consignment note, under the conditions set out in the consignment note. Thus each successive carrier's becoming a party to the contract occurs as a result of his receipt of the goods and consignment note.

Each of the successive carriers assumes responsibility for the total carriage operation (art. 34). As a result, the main action regarding liability for loss, damage or delay in carriage may, depending on the claimant, be brought against the first carrier, the last carrier or the carrier who performed that portion of the itinerary during which the event that caused loss, damage or delay occurred. The action may at the same time be brought against several successive carriers (art. 36).

The counterclaim by which the sender or the consignee claims damages from the carrier - claimant must be brought before the court where the carrier introduced the main action. The condition to be met is that both the main action and the counterclaim should be based on the same contract of carriage. And a possible exception raised by the defendant against the main action introduced by the carrier-claimant must be invoked in the court before which the carrier brought the action.

The right of recourse

If one of the successive carriers has been ordered by a court to pay compensation, even if the damage is attributable to another carrier, the carrier who has paid the compensation is entitled to recover the amount paid from the carrier who is guilty of causing the damage, on condition that the former proves the latter's guilt. Art. 37 provides that the carrier who has paid compensation under the Convention has a right of recourse against the carriers who participated in the performance of the contract of carriage for the amount paid, together with the interest and the costs incurred (only these may be the object of the right of recourse).

The repartition of compensation between successive carriers, in accordance with the provisions of the C.M.R. is done according to the following rules (art. 37): (a) if there is only one carrier by the action of which the damage occurred, he must bear the full compensation paid by another carrier. If he himself paid the compensation to the one entitled, he shall not have the right of recourse against another carrier; b) if the damage occurred by the action of two or more carriers, two hypotheses are distinguished: (i) if each carrier's contribution to the damage can be determined, each shall pay an amount proportional to his share of liability; (ii) if the assessment of each carrier's liability is impossible, each of them shall be liable in proportion to his remuneration; c) if it is not possible to determine which of the carriers is liable for the damage, the compensation shall be distributed among all the carriers in proportion to their remuneration;

(d) if one of the carriers is not solvable, it shall be distributed among all other carriers in proportion to their remuneration, whether or not they are liable for having caused the damage (art. 38). Insolvency must be ascertained by the recourse court.

Mixed carriage

Pursuant to art. 2(1), the carriage is mixed when a road vehicle containing goods is carried itself, but only on a portion of the itinerary, in various vehicles - water, rail, road or air, without unloading the goods from the road vehicle in which the goods were originally loaded.

If the goods were transported on a portion of the journey by road, then unloaded and transported by sea to the destination or if they were transhipped and transported on a portion of the road with another road vehicle, the consignment loses its mixed character and the C.M.R. shall apply only for the itinerary covered by the vehicle in which the goods were originally loaded (for this purpose, see Căpăţînă, 1997: 221). The exception concerns the case where the unloading of the goods from the road vehicle in which they were originally loaded is due to the modification of the contract of carriage by the person entitled to dispose of the goods through a counterorder issued under the conditions governed by the Convention.

In accordance with the C.M.R., if the road vehicle containing goods is transported on a portion of the sea, rail, road or air without unloading the goods from the vehicle, the provisions of the Convention (art. 2 point 1) apply throughout the journey.

From this principle, two exceptions are regulated (art. 2, point 2): (a) the liability of the road carrier is not determined by the provisions of the C.M.R., if the following conditions are met concurrently: (i) it has been proved that the loss, damage or delay in the delivery of the goods occurred during carriage by means of transport other than road; ii) the damage was not caused by an act or omission of the road carrier; iii) the damage originates from an event that could only occur during and because of the non-road transport. In such a situation, the liability of the road carrier is determined by the way in which the liability of the carrier by the other means of transport would have been determined if a contract of carriage had been concluded between the sender and the carrier by the other means of transport only for the carriage of the goods in accordance with the legal provisions on the carriage of goods by the other means of transport. In the absence of such provisions, the liability of the road carrier will be determined by the C.M.R.; (b) the liability of the road carrier, which is also a carrier by the other means of transport (on a portion of the itinerary), is determined as if his functions as a road carrier and a carrier by the other means of transport were exercised by two different person. Therefore, for the damage that occurred on a road portion of the itinerary, the carrier will be liable in accordance with the rules laid down by the C.M.R., and for the damage that occurred on a non-road portion, the rules set out in paragraph a) above will apply.

Conclusions

The regulation in the 2009 Romanian Civil Code on the carrier's liability shares many similarities with the regulation under the Convention on the Contract for the International Carriage of Goods by Road, Geneva, 1956.

The causes of the carrier's contractual liability are the same in the two regulations: the carrier is liable for the damage caused by the loss of or damage to the goods, as well as for the damage caused by the delay in the delivery of the goods.

The contractual liability of the carrier starts from the time of the conclusion of the

carriage contract and the time of the performance of the contract. During this period, the carrier has not only the obligation to carry the goods to their destination, but also to guard and preserve them.

Both the 2009 Romanian Civil Code and the Convention on the Contract for the International Carriage of Goods by Road establish the relative presumption of fault of the carrier in the event of damage, considering that the basis of the damage is the non-performance or the inappropriate performance of his contractual obligations.

In both regulations, the carrier's liability is limited in terms of its scope, and the carrier may be required to compensate the beneficiary of the consignment only for the actual damage suffered, not for the unrealized benefit.

The carrier's wilful misconduct and default are considered aggravating circumstances of his liability and, when guilty in such a form, the carrier is not entitled to avail himself of the provisions which exclude or limit his liability or which overturn the burden of proof.

Along the same line, in both regulations, the action for liability, in the case of carriage involving several carriers may be exercised by the person entitled against the carrier who concluded the contract of carriage and took over the goods for transport.

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The Right of a Person Subject to a Technical Surveillance Warrant to Contest the Legality of the Measure in case He/She Did Not Become a Defendant

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Abstract:
Until the amendment of the provisions of Article 145 Criminal Procedure Law in accordance with the decision no. 224 of April 6th 2017 of the Constitutional Court, one encounters in practice difficulties on how the person subject to a technical surveillance warrant may contest the legality of the measure, in case he/she did not become a defendant.

Keywords: *technical surveillance; contestation; procedure; effects*

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If a person that has been subject to one or more measures of technical surveillance did not become defendant after their ending, he/she must be informed in written by the prosecutor about those measures, especially since the Romanian Constitutional Court, in the recent jurisprudence – Decision no. 244/6th April 2017 ruled that such a person should have the right to contest the legality of the measure of technical surveillance.

As regards this decision, we are calling into question the difficulties that appear in practice regarding the way in which it may be enforced to the point where the lawmaker shall amend the provisions of art. 145 Criminal Procedure Law according to the decision of the constitutional court. In this sense, in doctrine it was shown that "the state under the rule of law essentially aims at ensuring a maximum degree of predictability. Everything must be achieved starting from general measures, which the subjects may predict and whose consequences do not surprize them as an arbitrary administrative measure." (Dănișor, 2006: 204).

In this respect, we take into consideration the consequences provided by art. 147 par. 1 of Constitution, after the lapse of 45 days after the publication of the decision, but also the effects of the decision on the unconstitutional provisions. Given that, in this case the Romanian Constitutional Court ascertained the unconstitutionality of art. 145 Criminal Procedure Law because of a regulatory omission, we cannot say that during the term of 45 days that article is being suspended because a legal provision which does not exist may not be suspended. By following the same line of reasoning, even if the lawmaker does not enforce the decision of the Romanian Constitutional Court, in the sense of regulating the person's right to contest the legality of the measure of technical surveillance whose subject he/she was, although he/she is not a defendant, art. 145 Criminal Procedure Law does not cease its legal effects. If we interpret it otherwise, it would come to the unacceptable situation in which, after the measures of technical surveillance are stopped, the subjects of the technical surveillance warrants would not be informed, in written, by the prosecutor about those measures due to the fact that no legal ground would exist any longer, given that art. 145 Criminal Procedure Law would cease its effects.

Apart from that, until the moment in which the lawmaker shall intervene in order to align the provisions of art. 145 Criminal Procedure Law with the Fundamental Law, in practice it is necessary that one finds solutions by which the legality of the surveillance measures may be contested also by the subjects of the surveillance warrants that are not defendants, because fair trial is certainly a fundamental right (Guinchard, 1998: 191) , since it is nothing but ''an ideal of true justice which respects the human rights'' (Pradel, 1996: 506).

First of all, the issue in this case is the time limit in which the appeal may be brought and the moment when this time limit starts to run, but the judicial body competent to solve the appeal and the procedure that must be met are of great importance.

In our opinion, the time limit should be long enough in order to give an effective character to the right to contest the legality of the measure, so that it shall not be less than 20 days, and the moment from which it shall be calculated is the date when the appellant actually knows what aspects of his private life formed the object of surveillance, after exerting the right provided by art. 145 par. 2 Criminal Procedure Law, after he was served with the writ by which the prosecutor informs him about the surveillance measure. If in the same case one ordered the issuing of several warrants against different persons, each person, separately, shall be informed about the surveillance measure and if the same

person was surveilled several times for different acts, he/she shall be informed, upon expiry of each warrant, about the fact that he/she was subject to the technical measure of surveillance (Chiriță, 2015: 353).

There are also situations when, from different reasons, the subject of a technical surveillance warrant is not informed by the prosecutor about that measure, but, after the expiry of the time limits provided by art. 145 par. 1 and 5 Criminal Procedure Law he becomes aware of it in other circumstances. For instance, he/she is heard as witness in the course of judicial inquiry, when he/she is asked questions about a telephone conversation or a conversation carried out in the surroundings. In this case, it can be discussed about the moment from which the term limit in which the measure can be contested begins to run. A first hypothesis would be that the term limit is calculated from the day when the person acknowledged, in any manner, that he/she was subject to a measure of technical surveillance, but this option does not fully ensure conditions for an effective and efficient exercise of the right to appeal, as the appellant does not exactly know the duration and content of the measure. In this respect, it is significant the fact that in case the criminal proceedings have been registered at the court, only the defendant, the damaged party, the civil party, the party incurring civil liability and their defenders have the right to study the file and to request the issuing of copies of the writs of the file.

In this context, the second hypothesis is more acceptable, according to which the person who, after the end of the criminal prosecution, found out, in any circumstance, that he/she was subject to a measure of technical surveillance, he/she has the right to ask the prosecutor that has performed the criminal prosecution to inform him/her, in written, if he/she was subject of a surveillance warrant. The prosecutor must transmit him/her an answer within 10 days after the registration of the request at the Prosecution Department he belongs to and if the answer is affirmative, that person has the right to ask to acknowledge the content of the protocols concluded after the surveillance and to hear the conversations or watch the images. The day when the author of the request acknowledges these aspects shall be the moment from which the term of appeal is being calculated. If the prosecutor does not transmit an answer to the initial request within 10 days, the term limit in which an appeal can be lodged shall be calculated from the day after the tenth day since the registration of the request at the Prosecution Department.

Significant is the fact that in case of limitation of human rights, the state must create clear rules by which the conditions that must be met are provided but also the procedure by which the persons concerned may contest the measures of the judicial bodies and claim compensation for the suffered damage. It is a part of the so-called ,,state self-obligation", Hans Kelsen ,,describing it as a reality that would consist of the fact that the existing, independent state under the rule of law, as social reality, firstly creates the law and then, so to speak, shall be willingly subjected to this law" (Kelsen, 2000: 367).

As regards the competence to solve the appeal, we consider that it must be established on a case-by-case basis depending on the moment when the subject of the surveillance is being informed about that measure.

Thus, if the prosecutor informs him/her during the criminal prosecution, according to art. 145 par. 1 Criminal Procedure Law, within 10 days after the cease of the measure, the judge of rights and liberties shall have the competence to render a decision about the appeal, having regard to art. 53 letter e Criminal Procedure Law. In our opinion, this article must be interpreted in the sense that the judge does not only have the competence to approve the use of the special methods and techniques of surveillance, but

also the competence to solve the appeal lodged in relation to the legality of the surveillance measures and of the way in which they have been enforced.

It might be said that, given that a judge approves a surveillance measure, he can no longer analyse in an objective manner the appeal concerning the legality of the measure. In this case, in order to avoid an eventual subjectivity of the judge who approved the measure, he might solve only the appeal concerning the way in which it was enforced. In return, the appeal that refers to the legality of the measure should be solved by the judge of rights and liberties of the court superior to that to which the judge that approved the measure belongs.

If the prosecutor informed the person subject to surveillance about this measure after the finalization of the criminal prosecution or after the closing of the proceedings, the competence to render a decision about the appeal would belong to the preliminary chamber judge from the court competent to try the main issue of the case. If the prosecutor notified the court by indictment, but the subject of the surveillance measure was not arraigned, but other persons, the question arises of the way in which the appeal is being solved.

A first version would presume that this appeal is analysed within the preliminary chamber procedure in the case formed at the court as a result of the notification through indictment, even if the appellant does not have any of the standing in the case provided by art. 344 par. 1 second thesis Criminal Procedure Law in order to formulate requests and exceptions.

This hypothesis shows several drawbacks starting from the fact that the person who wants to submit an appeal is not aware of the moment in which the preliminary chamber procedure starts. This problem can be solved through the establishment of the prosecutor's obligation that when a person is being informed that he/she was subject of a measure of technical surveillance he/she should be also informed about the solutions ordered against the persons investigated in the case and in case an indictment has been issued one should specify the the court seized.

Another drawback of this proposal is related to one of the aspects that make up the object of the preliminary chamber, respectively the legality of the way in which the criminal prosecution bodies have submitted the evidence and carried out the criminal prosecution acts. In this respect, the preliminary chamber judge checks these aspects from the point of view of the damaged party, of the defendant and of the other parties that take part in the criminal proceedings. Thus, by the conclusion with which the preliminary chamber procedure ends, the judge, if he considers that the requests or invoked exceptions are grounded either ex-officio or by the participants provided by art. 344 par. 1 second thesis Criminal Procedure Law, shall exclude the evidence that was illegally produced or shall apply the effects of relative or absolute nullity in case of acts of criminal prosecution. But these solutions are not a way of solving the appeal formulated by the subject of a surveillance measure, in the context where he/she, not having any standing in that case, does not follow or it does not help him/her that an evidence obtained by a technical method of surveillance will not be used anymore in the criminal proceedings, but he/she wants to obtain a fair compensation for the damage caused through the violation of the right to privacy or to the inviolability of the secrecy of correspondence through that measure.

In this context, we also call into question the possibility that the preliminary chamber judge analyses the appeal in a case different than the one created after the notification of the court through indictment, in which he should establish if, in relation with the appellant, the measure of technical surveillance has a legal character or the way

in which it was enforced has respected the inner and conventional rules as well as the requirements of the ECTHR's jurisprudence.

With respect to the procedure according to which the appeal will be solved, a possibility might be the one regulated by art. 341 Criminal Procedure Law, with the adjustment of the solutions that can be rendered, but, in our opinion, this procedure does not offer enough leverage both for appellant and for the judge for the legality of the surveillance to be analysed, given that evidence cannot be produced, but the decision is being rendered only on the basis of the acts in the criminal prosecution file and of the writs submitted by the appellant and no legal remedy can be exerted against it.

Another variant would be the procedure provided by art. 345 et seq. Criminal Procedure Law which presents more guarantees specific for a fair trial, given that, as a result of the decision of the Romanian Constitutional Court no. 802 of 05.12.2017 the participants in the criminal trial have the right to produce evidence that support the critics formulated with regard to the legality of an evidence. In this respect, in paragraph 32 of the decision, the Romanian Constitutional Court ascertained that ''the identity of the act of judicial inquiry realized under the Criminal Procedure Law of 1968 by the court and in the light of the new criminal procedural regulations by the preliminary chamber judge – in order to establish to what extent the criminal prosecution body ensured the legality of the procedure of obtaining and taking the evidence, requires the regulation in the phase of preliminary chamber of some identical procedural instruments, with the exclusion of any judicial formalism''.

An aspect that raises questions is connected to the magistrate that solves the appeal, in the sense that if it can be the same judge that was invested in the preliminary chamber procedure as a result of the notification of the court through indictment. In this respect, it may appear the risk of prejudgment regarding the legality of an evidence obtained through a technical method of surveillance whose legality was contested in both cases. In order to avoid this risk, in our opinion, the appeal formulated by a subject of the surveillance measure that was not arraigned, should be solved by another judge.

Regarding the solutions that can be rendered in the procedure of trying the appeal against a surveillance measure, in case the judge considers the appeal as grounded, he shall ascertain the illegal character of the surveillance measure or of the way in which it was enforced, ordering at the same time the destruction of the information obtained through that measure. In this respect, the conclusion of the Romanian Constitutional Court is significant. In paragraph 71 of the Decision no. 244 of April 6th 2017 it ascertained that ,,besides the positive obligation to regulate a form of *a postiori* control, that the person concerned can access in order to check the compliance with the conditions and, implicitly, of the legality of the measure of technical surveillance, the law-maker has the obligation to regulate also the procedure applicable to conservation and/or destruction of the intercepted data by enforcing the appealed measure."

Related to this solution, there is the matter of the effect concerning the evidence obtained through that surveillance measure if the evidence can be used in the case in which the arraignment of other persons was also ordered, given that one orders the destruction of the intercepted data.

When solving the appeal, the judge analyses the legality of the technical surveillance and of the way in which it was enforced from the point of view of the rights and interests of the person that submitted the appeal. In this respect, it is significant that at the time when the judge of rights and liberties ordered the technical surveillance analysed if the conditions provided by the law are met in relation with the person or

persons suspected to prepare or commit one of the offenses provided by art. 139 par. 2 Criminal Procedure Law.

Or, there can also be situations in which the appellant was not at first suspected of committing any offense and in the course of surveillance he/she became subject to it due to the friendship, family relations or of any other kind with the persons against whom investigations were conducted. In such cases, in our opinion, the legality of the surveillance is being analysed in terms of meeting or not meeting the conditions provided by art. 139 Criminal procedure Law at the time when the person who formulated the appeal started to be technically surveilled.

In this respect, the ECTHR's jurisprudence – Association for European Integration and Human Rights and Ekimdzhiev versus Bulgaria, request no. 62540/00, (ECTHR, 28th June 2007), par. 84 – highlighted the importance of the steps that must be undertaken in case of a surveillance measure, making a distinction between the initial stage – the authorization of the surveillance and the further stages specific for the enforcement, but during the entire procedure, even after the surveillance was concluded, it must give strong guarantees that should prevent an arbitrary and discriminatory surveillance, even if the measure is justified by considerations that are a matter of national security. In this sense, in doctrine it was shown that ,,one might say that, to the international community or to the jurisdictional body that is being summoned to check the fulfilment by a state of the commitments assumed in the matter, the result of the state activity is of interest in the first place; the obligation assumed is of result. But, domestically, he must act *prudently and with the necessary diligence* in order to achieve that result; the obligation is of prudence and diligence." (Bîrsan, 2005: 18).

Returning to the effect of the solution that might be rendered upon the appeal, regarding the case that has as object the investigation of the defendants arraigned through the indictment in which the facts of the case is also based on the evidence obtained by technical surveillance, in our opinion a distinction must be made, on one hand, between the stages in which the illegality intervened and, on the other hand, between the sanctions that may be imposed depending on the violated legal provisions.

Thus, if it is found that already at the time when the surveillance measure was approved, there was one or more reasons that would incur the illegality of the measure – for instance the measure was authorized by a judge from a court that did not have material competence to try the case in first instance or the offense investigated does not belong to the offenses provided by art. 139 par. 2 Criminal Procedure Law – the other stages of the surveillance procedure would also be affected. If the aspects of illegality appear during the enforcement of the measure then both the consequences on the surveilled persons and the weight of that stage in the entire procedure of obtaining the evidence 20 of the Decision no. 383 of 27.05.2015 that ,,the criminal law conceptually delimitates the three concepts: *evidence, piece of evidence and the procedure of taking evidence.* Although in the current legal language the concept of evidence often in a broad sense includes both *the actual evidence* and *the piece of evidence,* from the technical procedural point of view both concepts have *distinct contents and meanings.* Thus, the evidence is factual elements while the pieces of evidence are legal ways used in order to prove the factual elements." At the same time, the Romanian Constitutional Court highlighted both the differences and the connection between the *pieces of evidence and the procedures of taking evidence,* ''concepts that are in a causative relation''. In this respect, the protocols in which the prosecutor, or, where appropriate, the criminal investigation body replay the

communications, calls or recorded conversations, are pieces of evidence obtained through the procedure of taking evidence consisting in the measure of technical surveillance.

The nature of the violated rules has a particular importance having regard to the fact that the judge must establish if any harm was brought to the rights of the person that formulated the appeal, if it is necessary to impose any penalty to the procedure of taking evidence used for obtaining the piece of evidence and especially which is the manner in which the consequences produced by the interference in the private life are being repaired as efficiently as possible. In this sense, in doctrine it was shown that ,,the penalty of nullity, by its application, has the function to remove from the content of the criminal trial those acts that contain violations of the law and that are alleged or proven as harmful for finding the criminal justice." (Iliescu, in Dongoroz (coordinator), 2003: 406).

The Romanian Constitutional Court, in the relatively recently jurisprudence – Romanian Constitutional Court's Decision no. 51 of 16.02.2016, paragraph 32, underlined that ,,the illegality of the ordering, authorization, record or administration of the act incurs the penalty of relative or absolute nullity, according to the distinctions provided at art. 281 and 282 Criminal Procedure Law", so that, if the conditions provided by the provisions of art. 138-146 of the criminal law were not met, the evidence obtained through the measure of technical surveillance becomes null and void and cannot be used in the criminal trial according to art. 102 par. 3 of the same law.

Taking into account that the person who formulated the appeal was not arraigned in the case in which the technical surveillance was carried out, one can raise a question related to the appellant's interest to request to be ascertained that the evidence is null and cannot be used in the case in which the court was notified through the indictment. In other words, can the judge who solves the appeal order such a solution and, if the answer is affirmative, is that solution sufficient in order to remove the consequences of the violation of the appellant's rights? In our opinion, the judged appointed for solving, separately, the appeal formulated by the person who was not arraigned, cannot order the exclusion of the evidence as a consequence of its nullity, this solution being able to be rendered by the preliminary chamber judge invested with the indictment which is supported also by that evidence.

In return, when solving the appeal that was separately formulated, the judge can, he is even obliged to ascertain if there is any reason of relative or absolute nullity or not, because in the light of these reasons one can establish the legality or illegality of the surveillance measure in relation with the appellant.

With regard to the person who can formulate an appeal it is necessary to establish some criteria that the one who wants to use this procedure must follow, such as the period of time during which he was subject to surveillance, the number of data obtained through this measure, their nature. Thus, there are situations in which one hears only a short-term call of a person or he/she appears isolated in the images recorded in the surroundings, cases in which one raises the question of the interest to formulate an appeal by which one calls into question the legality of the surveillance measure and the destruction of the information resulted after the enforcement of this measure. In this respect, in the doctrine it was shown that ,, the right to be informed and to examine the results of the surveillance targets only the person concerned directly by the warrant, not the persons that communicated or had meetings or financial transactions with him/her and were incidentally recorded" (Bulancea, 2015: 445).

In relation with the provisions of art. 29 Criminal Procedure Law which regulates the participants in the criminal trial, we might say that the person that has the right to

formulate an appeal may be included in the category ,,other procedural subjects", as it is defined in art. 34 Criminal Procedure Law, respectively ,, any other persons (...) provided by the law having certain rights (...) in the criminal judicial procedures". In this sense, in doctrine it was shown that ,,it is obvious that, taking into account the principle itself of the generality of laws, their formulation cannot be of absolute precision and a certain imprecision is inevitable, even if this would be due to the wish to avoid an excessive rigidity that would impede the adaptation to the changes of situation. Therefore, a balance point between what is desired and what is possible must be sought" (Renucci, 2009 : 310).

Returning to the penalty of nullity, we notice that from the grounds of absolute nullity provided by art. 281 par. 1 letters a-f Criminal procedure Law, considering the procedure that must be followed in case of authorization and enforcement of surveillance, the appellant could invoke only the violation of the provisions regarding the ''formation of the court panel'' and ''the material competence and the personal competence of the courts when the judgement was performed by a court inferior to the one which was legally competent''.

If in case of absolute nullity appear no problems regarding the participants in the criminal trial that can invoke this nullity, being able to be also invoked ex-officio, the situation changes in case of relative nullity, given that art. 282 par. 2 Criminal Procedure Law expressly and restrictively regulates the participants to whom the law gives the right to invoke relative nullity, the appellant not being included in this category.

In this context, in our opinion, the amendment of these legal provisions would be necessary in the sense of including in the category of the participants in the criminal trial that can invoke the relative nullity of an act also of the persons who, although they were not arraigned, have the right to contest the measure of technical surveillance and to request the removal of the caused consequences. In this respect, the ECTHR jurisprudence is significant - Lambert versus France, request no. 88/1997/872/1084, (ECTHR, 24th August 1998), par. 34 – 41 – that considered that the provisions of art. 8 of ECTHR are violated, in case a national court appreciated that a person, whose calls have been tapped based on the surveillance of a third party's phone line, does not the standing in the case to formulate a complaint against the way in which the extension of the measure was ordered, the European court ascertaining that that person did not benefit from an actual control of the measure, which must be respected in a state under the rule of law. In this sense, in doctrine it was shown that the direct effect presents the essential consequence to confer the litigant a right to action and, accordingly, to give the national judge a right to rule. The national judge is a judge of common law of International Convention with direct effect: first of all, he has the task to ensure the penalty of the right guaranteed by this Convention, especially in case of the European Convention on Human Rights" (Sudre, 2006: 159).

The time limit within which the relative nullity can be invoked by the appellant bears certain discussions in relation with the provisions of art. 282 par. 3 and 4 Criminal Procedure Law. Thus, if in the course of criminal prosecution the prosecutor informs the subject of the warrant of technical surveillance, within 10 days after the cease of the measure, about its existence, according to the provisions of art. 145 par. 1 Criminal Procedure Law the person surveilled has the right to immediately address the appeal to the judge of rights and liberties or to the one who approved the measure or to the one from the superior court, depending on what stage of the measure he/she understands to contest, when he/she will invoke the grounds of relative nullity. After this judge rules, one can raise the question whether the person that formulated the appeal can, after the finalization of the criminal prosecution, turn to the preliminary chamber judge in order to invoke the

same grounds of relative nullity. In this respect, the Romanian Constitutional Court in the paragraph 23 of the Decision no. 126 of 09.03.2017 retained that ,,in case of examination, in the preliminary chamber procedure, of the legality of the resolutions of the judge of rights and liberties – the preliminary chamber judge shall ascertain the eventual cases of nullity and shall exclude the evidence produced with the illegal authorization/confirmation of the judge of rights and liberties just by analysing the aspects of legality and without transforming the preliminary chamber in a legal remedy." In our opinion, the considerations of the Romanian Constitutional Court's Decision are applicable in the preliminary chamber procedure whose object is being regulated by the provisions of art. 342 Criminal Procedure Law, not in the cases in which the person was subject to a surveillance measure, but he/she was not arraigned, but in the course of criminal prosecution contested the legality of this measure or the way in which it was enforced in front of the judge of rights and liberties and the appeal was rejected. If one would accept the idea according to which the same grounds of relative nullity could be invoked two times, in different procedural stages, by the person who was not arraigned, a more favourable situation would be created to him/her comparatively to the persons who were arraigned, given that they can invoke the grounds of relative nullity only in front of the preliminary chamber judge in the case in which they are defendants.

In return, if the person who was not arraigned invokes new grounds of relative nullity after the end of the criminal prosecution might formulate another appeal in the stage of preliminary chamber.

Another question connected to the right of the person to whom the prosecutor, in the course of the criminal prosecution, communicated him/her, according to the provisions of art. 145 par. 1 Criminal Procedure Law, that he/she was subject to a surveillance measure, is that if he/she can wait for the criminal prosecution to be over or is he/she obliged to formulate it within a certain time limit after the receipt of the information in order to be solved by the judge of rights and liberties?

In a first thesis, it might be said that it would be necessary to establish a certain time limit, from the date of the notification, with a sufficiently long duration, within which the subject of the warrant of surveillance may formulate the appeal, in order not to prolong in time the negative consequences of the surveillance on that person. The situation would get complicated if, after the notification carried out by the prosecutor, according to art. 145 par. 1 Criminal Procedure Law, the subject of the surveillance measure becomes suspect or even defendant and he/she is being arraigned, so that in the preliminary chamber procedure he/she has the right to invoke requests and exceptions regarding the legality of producing the evidence and of the acts carried out the criminal prosecution bodies. In practice, such situations do not occur, because the prosecutor postpones the notification until the end of the criminal prosecution, respectively the close of the case. But, theoretically, the occurrence of such cases would be possible, a context where one would raise the question of the effects of the resolution by which the judge of rights and liberties solved the appeal in the course of the criminal prosecution, on the way in which the preliminary chamber judge shall solve the requests and exceptions invoked by the same person, as defendant, regarding the evidence obtained through the surveillance measure. In our opinion, the preliminary chamber judge cannot analyse any longer aspects related to the legality of the measure of technical surveillance of the same person, which the judge of rights and liberties checked when solving the appeal, because, otherwise, the resolution rendered by the judge would have no effect, would be purely formal and, on the other

hand, would give a subject of the surveillance measure the possibility to repeatedly invoke critics of illegality, although these were solved by a final court judgment.

In this context, in our opinion, the second thesis is more appropriate, in the sense that the person that was informed by the prosecutor, in the course of the criminal prosecution, according to art. 145 par. 1 Criminal Procedure Law, that he/she was subject of a surveillance measure, can wait for the moment of finalization of the criminal prosecution, in order to see what solution the judge shall give, after that, even if he/she was not arraigned, to benefit from the right to contest the legality of the measure in front of the preliminary chamber judge. This thesis is being supported also by the provisions of art. 282 par. 4 Criminal Procedure Law, according to which the relative nullity, if it occurred in the course of criminal prosecution, may be invoked until the finalization of the preliminary chamber procedure.

In the case in which the notification of the surveilled person about the existence of the measure has been postponed until the end of the criminal prosecution or, where appropriate, until the close of the case, according to art. 145 par. 5 Criminal Prosecution Law, the grounds of relative nullity may be invoked by the person who was not arraigned, after the time of the notification they are about to be analysed by the preliminary chamber judge.

There are also situations in which a person that was subject to a warrant of surveillance was not informed by the prosecutor about this measure and he/she finds out accidentally, after the finalization of the criminal prosecution and the close of the preliminary chamber procedure, about this measure, so that one can raise the question of the time limit in which the relative nullity can be invoked. In our opinion, the subject of the surveillance cannot be affected by a circumstance that cannot be attributed to him/her, a context where this can invoke the grounds of relative nullity regarding that measure, after he actually acknowledged its content and the information obtained by the enforcement of the measure, because only after this moment he/she can appreciate, if any right has been violated and if he/she has suffered any damage.

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Abbreviations
Art.-Article
ECHR-European Court of Human Rights
RCC-Romanian Constitutional Court
Par.-paragraph

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Autonomous Administrative Authorities - a Means to Achieve Administrative Justice in the Rule of Law

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Abstract:
The evolution of contemporary society and the paradigm shift regarding the centre of the rule of law from philosophical reason to scientific reason was the context that required the establishment of institutions meant to contribute to the achievement of justice and the defence of justice by maintaining the trust of individuals in the rule of law, limiting the interference of the political power and the pressure of different interest groups, but also by taking measures to restore social balance if it has been shaken by the action of various actors in social life. In this context, autonomous administrative authorities are a legal achievement of the rule of law in answer to the increasing social complexity within states and the inability of traditional structures to keep pace with new realities outlining a high degree of technicalness.
The role of the autonomous administrative authorities is to contribute to the very protection of their creator by avoiding the rule of law philosophy from falling into abeyance, by pursuing the protection of fundamental rights and freedoms and liberating individuals from the gripe and oppression of various forces, be it private or public.

Keywords: *autonomous administrative authorities; rule of law; justice; administrative justice; fundamental rights and freedoms*

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Introduction

In contemporary society, which is in a continuous quest for self, concepts such as law, justice, justice, and rule of law are increasingly being discussed.

If we relate to the genesis of mankind, we can say that the idea of righteousness arose when Adam and Eve disregarded divine order, respectively, "God's Law" (Galera et al. 2010: 16) and were excluded from Heaven, this the approach being in agreement with Aristotle's philosophical vision which considers that justice must be divided according to the merits of each, and the rules by which this division is to be achieved must be fair and not changed during the game.

Here are some natural questions: what does it mean to be right and how do we distinguish between right and wrong? When and where do we know we are in the state of justice? How is justice done and, especially, who is responsible for establishing and reaffirming the state of justice? Which is the link between the three concepts - justice, justice and the rule of law - and how is the state of harmony between them?

The definition of each of the three concepts is difficult, it carries a multitude of meanings and visions, but when brought together it provides an overall approach, as, as concluded by Professor Antonie Iorgovan (2001: 3), "each concept involves the identification of dominant notes of its content, which makes them logically ordered according to the genre of proximity, the specific difference thus delimiting in the plane of abstract thinking not only the boundaries of the phenomenon, the process that it evokes, but the very essence of it."

Rawls (2009: 3) considers that justice is the basic virtue of a society, as is the truth for a system of thought, for as a theory – whatever other qualities it has – will have to be rejected or at least revised if is not true, so the laws and institutions of a society – no matter how many qualities they have – will have to be abandoned or at least changed if they are not right.

The notion of justice used by philosophers is transferred to law under the concept of justice. Justice implies the rigorous observance of each person's rights and the granting of his right to everyone (*jus suum cuique tribuere*). Justice represents the general state of society that is achieved by ensuring for each individual and for all together the satisfaction of legitimate rights and interests, being one of the most important means of guaranteeing the respect, protection and promotion of human rights. Administrative justice comes to protect the rights and interests of citizens in their relationship with the public administration (Cilibiu, 2012: 63).

Apparently abstract, these concepts make sense when another state-of-law construction appears in the equation, although this concept is still quite ambiguous given its use over time to mask bleak reality.

The phrase rule of law results from the association of concepts such as state and law. Between state and law there is a relationship of complementarity, even a symbiosis we could say; the state-of-law construction mirrors „the interdependence between the two social phenomena, each of which has opposite tendencies: the state - power and obedience, law - ordering and braking" (Wikipedia, 2015).

The rule of law is a state which, in its relations with its subjects and in order to guarantee its individual status, itself endures a rule of law, because it enforces them by rules, some determining the rights reserved to citizens, others establishing in advance the

ways and means that can be used to achieve state goals (Malberg, 1922: 488). However, the relations that the state maintains with the law are complex and difficult to explain because, on the one hand, the state is the one who creates the right and, on the other hand, it should be itself subject to this so that its actions do not become arbitrary (Dănişor, 2007: 149).

We firmly agree with the opinion expressed by philosopher jurist Kelsen, who considers that law and the state cannot be conceived independently of each other. On the one hand, the right cannot exist outside the state, for only the latter can confer on certain rules the character of legality and compulsion whose application and observance can be imposed by coercive methods. On the other hand, the right (the legal norms) limits the state, imposing a certain type of action on state agents. It is therefore clear that the state ca not exist outside the law (Kelsen, 1928: 22).

By paraphrasing two famous professors (Dogaru & Dănişor, 1997: 7), the rule of law strongly supports the protection of fundamental rights and freedoms and claims to free individuals from the oppression and oppression of various forces, whether private or public, which must be considered an ally in the fight against abuse and not to be seen as a danger; although, not least, the issue of the fight against abuses by certain state organs seems a paradox.

The philosophical principle of the human rights and freedoms of the human being means not only that the human being, in its individuality, is born bearing it, but also the fact that, since the human being exists, its rights and freedoms exist. The rights and freedoms inherent in human nature are impregnable by the state, on the one hand, and on the other hand, they are inalienable by the holder. This means that the state is limited precisely to what is naturally in law, to the human individual, the subject of a system of law being the expression of the law system, which also has its basis in the human condition, on the same coordinates of „omni et soli" (Dogaru & Dănişor, 1997: 7).

Starting from the idea expressed by the professors Ion Dogaru and Dan Claudiu Dănişor (1997: 7), the evolution of the human society and the paradigm shift of the center of the rule of law from the philosophical reason to the scientific reason, respectively from the Parliament to the Executive was the context that helped to "suffocate" individuality, leading to the need for institutions to contribute to maintaining the trust of individuals in the rule of law but, above all, having the ability to limit the interference of political power and the pressure of different interest groups. In this sphere are also the autonomous administrative authorities. Although the emergence of these administrative authorities, after all, although independent, could be seen as part of the inflationary phenomenon of the administrative authorities, they play a significant role in protecting the fundamental values of the rule of law.

Preliminary Aspects on Administrative Justice

An Attempt at Clarifying the Phrase "Administrative Justice"

Administrative justice is a concept that is closely related to the idea of justice as a whole, of which we consider it to be part.

As far as we are concerned, we believe that the emergence of administrative justice is based on the development of the state's administrative apparatus and the need to regulate the relationship between the administration and the administrated, as well as the relations born between the administrations, but which have been assigned to the management of the administrative apparatus state.

Justice is the foundation of administrative justice, so the legitimacy of the latter derives from the former. We cannot deal with administrative justice without first a brief review of justice.

„Justice is one of the most important moral and political concepts that comes from the Latin word *jus* which means right or law" (Pomerleau, 2013).

Justice is a complex concept that has been subject to a number of approaches over the years. Plato considers justice to be a virtue that dictates the rational order in which everyone knows their role and does not disturb the rest of others. In Aristotle's view, justice is given by legality and fairness, which implies fair distribution and eradication of what is unfair. „Hobbes sees justice as an artificial virtue, necessary for civil society, a function of voluntary agreements of the social contract. In Kant's view, justice is a virtue that determines respect for the freedom and dignity of others without interfering with their voluntary actions as long as they do not violate the rights of others; John Stuart Mill, British philosopher of the Victorian age, said that justice is a generic name for the most important social relationships that promote the promotion and protection of human freedom" (Pomerleau, 2013).

Justice is the point of convergence of the social construct, the governing principle of regulating life in common; the principle of justice is a rational principle, being alongside the truth, beautiful, well, useful one of the essential characteristics of the human spirit (Dănişor et al, 2008: 66).

Analyzing these views, we believe that justice is a complex phenomenon that springs from the inner feelings of the individual, as for D.C. Dănişor, I. Dogaru and Gh. Dănişor, justice is above all the moralization of the individual, that is, the process by which he is made right, because a balance of justice cannot be conceived in the absence of human balance.

Justice is intended to organize the general framework that combines the law with the morale in which the individual, when acting to satisfy the legitimate rights and interests, is aware of the purpose of the action so that what is good for himself does not degenerate in harm for the other individuals.

The notion of justice, in the most profound sense, only reinforces the construction of the rule of law because, through its purpose, justice seeks to create harmony between state authorities and individuals, on the one hand, and on the other, between individuals as part of society.

Justice must be understood as a complex construct with a double role: a modelling character that educates and instils the appetite for justice, ethics and morality by creating an inner balance state that is reflected in their social relations, but also a punisher of inequities through the fact that it pursues righteousness, so that everyone receives what they deserve.

Administrative justice is a modern construction, a means of protection of the rights and freedoms of individuals in the relationship with the state administration, as well as a limitation and control of the acts of the public administration.

Administrative justice should not be limited or confused with administrative jurisdiction. In order to avoid abuses and errors that can be generated by those who carry out administrative justice, administrative law has nothing but to exert control over the acts and actions of administrative authorities or civil servants in relation to individuals. Administrative justice is distinguished from administrative jurisdiction and the fact that the former is carried out through administrative authorities, whereas administrative jurisdiction falls to the judges, judges who cannot rule on a dispute only after a request

emanating from a person who considers that a right or a legitimate interest has been prejudiced, while an administrative authority may be sued or may be notified. Another key element that supports the distinction between the two is that, following judicial review, the judge decides by a judgment which no longer allows him to return to the case from the time the judgment is handed down, in contrast to acts emanates from administrative authorities, acts that can sometimes be revoked.

We conclude that administrative justice must be understood to mean, on the one hand, all the institutions which provide the necessary levers for the protection of fundamental rights and freedoms within the State under conditions of impartiality and transparency and, on the other hand, the control exercised by these institutions for limiting abuses.

The Mission of Administrative Justice within the Rule of Law

The mission of administrative justice is to ensure the respect and protection of the rights and freedoms of the administered by attempting to eradicate any abuses of power that may arise in the administrative process and create a state of social balance.

Administrative justice, through its mission, is the bridge between the administration and the administrated, in that each must receive what it deserves.

The mechanisms for achieving the administrative justice mission vary according to the powers that the legislator has given to the competent authorities to support those administrated.

In order to accomplish their mission, the administrative authorities in charge with the administration of administrative justice must demonstrate impartiality, independence, transparency and the conduct of all their activities in accordance with the legal rules.

The Paradigm of Autonomous Administrative Authorities in the Rule of Law

Autonomous Administrative Authorities – a Legal Creation of the Rule of Law

The history of the evolution of the rule of law has shown that by changing the philosophical paradigm, the legal inflation generated by raising the interests of the different groups at the normative level, as well as the appearance in the landscape of the political life of the clowns[‡] were strong reasons for which "human rights protection has also taken other forms than parliamentary control over the Executive, control becoming largely an illusion" (Dănişor et al, 1997: 17).

In this context, the rule of law required the creation of legal mechanisms that offer "guarantees of impartiality, professionalism and efficiency of state action" (Conseil d'État, 2001: 275), the desideratum to be achieved and the creation of autonomous administrative authorities.

Teitgen-Colly believes that autonomous administrative authorities are a new way in which public powers respond to problems arising in certain sectors of activity as a result of the growing complexity of social life (Teitgen-Colly, 1988: 24, 27). A similar view is expressed by Guédon, in whose view the creation of autonomous administrative authorities is a response both to the emergence of new problems and to the existence of problems that have become more acute; the birth of this type of authority was a sign that

[‡] We use the term "clown" to characterize politicians who were elected in public positions through manipulation, taking advantage of people's weaknesses, trying to channel public power to their own interest or to the interest of the groups they are a part of.

traditional state structures could no longer respond to the evolution and complexity of the social problems faced by the state (Guédon, 1991: 16).

Jean-Jacques Daigre argues that the birth of this type of authority was based on the observation that the rule of law was no longer able to regulate a certain number of activities because of their too technical nature (Daigre, 2002: 8). Taking this view further, we believe that the responsibility for the technicalization of the activities carried out within it is precisely the rule of law in terms of excessive legislation, which not only led to the complication of social life, but it was the cause that put individuals in the impossibility of knowing the legal norms, leading to a state of general delirium.

Autonomous administrative authorities appear as a "device" that could be interpreted as the source of the relationship between the rule of law and individuals.

The rationality of autonomous administrative authorities is twofold: on the one hand, they are a creation of the rule of law and, on the other, they are meant to ensure the very existence of their creator by protecting the rights and freedoms of individuals and by abating the abuses and violations of norms legal.

In this context, we agree with all those who believe that the autonomous administrative authorities are a creation that contributes to the strengthening of the rule of law, by "protecting the freedoms of the administered ones and limiting the power of the administration" (Diarra, 2000: 4).

Autonomous Administrative Authorities – a Source of Protection of Fundamental Rights and Freedoms?

The reason behind the thinking of the autonomous administrative authorities was the building of a modern structure with the ability and the strength to contribute to striking a fair balance between the legitimate requirements of public order or the general interest on the one hand, on the other, the exercise of the rights and freedoms of individuals by preventing errors and abuses that can occur through the interpretation and application of the legal norms at the discretion and unilateral interest of the various interest groups, as well as the limitation of the political power that has often tended to overrides the general interest, the particular interest.

This view is shared by the French Council of State, which, in the 2001 report, reiterated the idea that Autonomous Administrations are illustrated as a mechanism designed to "provide public opinion with a reinforced guarantee of the impartiality of state actions", which clearly demonstrates that these authorities do not wish to be a spontaneous legal construction that supports forms without substance, for if justice becomes diluted it completely loses its meaning.

In view of these issues, a legitimate question arises: How can this kind of authorities cope with political pressure and succeed in being a real force fighting for respect for the rights and freedoms of the governed?

In order to efficiently endow the actions of the autonomous administrative authorities, the legislator understood that they should grant them autonomy in relation to the three powers of the state – legislative, executive and judicial - by providing them with a series of institutional and legal safeguards to ensure their independence, otherwise we would have found ourselves in the situation of a legal museum behind which the political power would have divided individuals into privileged and exploited.

Autonomous Authorities do not constitute a conglomerate of experts to issue judgments of value and to find out anything that is endowed with a viable decision-making power, investigative power, advisory power, power of referral and opinion, power the regulation of the state bodies and even the sanction. The members of the autonomous

administrative authorities have many essential guarantees of their independence, which are subject to express legal provisions and aim, in principle: irremovability, irrevocability, incompatibilities (Gîrleşteanu, 2001: 45).

All these levers made available to the autonomous administrative authorities give them the ability to effectively contribute to the removal of bottlenecks and "misuse" [§] in law enforcement and thus lead to the presumption that they are capable of effectively contributing to the protection of the rights and freedoms of individuals within the rule of law.

The Contribution of Autonomous Administrative Authorities to the Achievement of Administrative Justice and the Protection of the Rule of Law

Autonomous administrative authorities are a legal creation arising from the need to limit the political show and avoid the desolation of the philosophy of the rule of law. This type of authorities has a major role to play in the achievement of administrative justice by defending the general interest in the interventions and pressures of the various interest groups that, for the realization of their own goals, go over the rights and freedoms of individuals, for the latter lack of defense, to the strangers who conduct the application of legal norms" (Leisner, 1974: 69 apud apud Dogaru & Dănişor, 1997: 20).

In a democratic society, autonomous administrative authorities are a mechanism preoccupied with achieving a social equilibrium by protecting the supremacy of legal norms in the relationship between administration and those administrated.

In practice, autonomous administrative authorities contribute to the achievement of administrative justice and the protection of the rule of law through the manner of carrying out the tasks that have been drawn to them through the normative acts that establish them.

In order to better understand the contribution of the autonomous administrative authorities to the achievement of administrative justice and the protection of the fundamental values of the rule of law, we have chosen to resort to a short radiography of the activity carried out by the most known autonomous administrative authorities within the Romanian state, starting from the information made public in the annual activity reports of several institutions belonging to that category.

The institution specifically charged with the protection of the rights and freedoms of natural persons in their relations with public authorities is the People's Advocate.

In order to fulfil its essential role as a human rights defender, the People's Advocate has at his disposal the most varied legal means: from solving the complaints of violations of certain rights of individuals through surveys, visits, recommendations, special reports, to fulfilling the role of a national mechanism for the prevention of torture in places of detention, involvement in the control of the constitutionality of laws and ordinances, the formulation of points of view on draft laws concerning the rights and freedoms of individuals, going to the High Court of Cassation and Justice appeals in the interest of the law, with a view to ensuring a unitary judicial practice throughout the country, as well as the administrative courts, when, following the checks carried out, considers that the act of illegality or the excess power of the administering authority can only be eliminated through justice (People's Advocate, 20016: 1).

For example, in 2016, the People's Advocate, as noted in the Annual Activity Report, has carried out a series of actions aimed at contributing to the achievement of

[§] Here, by "misuse" we understand the betrayal of general interest by deviating from the faithful implementation of legal guidelines, concretised in illicit acts or deeds of political power.

administrative justice: received 13,699 petitions claiming violations of the rights of individuals, who were given explanations of the issues raised, receiving specialist support for problem solving; conducted 194 inquiries on the prevention of torture in places of detention; in 200 cases concerning the violation of the rights or freedoms of natural persons, it was notified of its own motion; issued 44 recommendations to the public administration authorities when it took note of the unlawfulness of the administrative acts; at the request of the Constitutional Court, issued 1,493 points of view regarding the constitutionality or unconstitutionality of legal provisions that might contain contradictions with the fundamental act; raised 5 exceptions of unconstitutionality regarding the provisions contained in Emergency Ordinances issued by the Government, but also regarding amendments to the Tax Code; filed two actions in administrative litigation for the annulment of administrative acts issued by local authorities; filed 3 appeals in the interest of law to ensure that the law is interpreted and applied uniformly by all courts.

In its work, the Court of Accounts found in the financial activity of public institutions violations of the principles of legality, regularity, economy, efficiency and effectiveness of training, administering and using the financial resources of the state and the public sector. The cause of these deviations has been generated by non-compliance with financial legislation, with insufficient concern from public entities to ensure the accuracy of data in financial statements and for sound financial management governed by sound economic and financial management. In 2016, for example, the Court of Auditors made 158 referrals to the criminal prosecution bodies for facts for which it was estimated that there were indications of a criminal nature, mainly referring to crimes of corruption and assimilated to corruption, crimes in service, crimes for the infringement of public finance, public procurement, financial, tax and accounting laws, as well as the infringement of commitments (investment commitments) of buyers in the privatisation process (Court of Auditors, 2016: 10).

In its activity, the National Audiovisual Council has applied a series of sanctions following the observance of the provisions of the broadcasting legislation regarding: the protection of human dignity and the right to its own image, as well as fundamental freedoms and human rights, child protection, electoral campaign for local elections; electoral campaign for parliamentary elections, right to access audiovisual programs for people with hearing deficiencies, non-compliance with sponsorship rules, publicity and teleshopping in audiovisual, ensuring accurate information and pluralism (National Audiovisual Council, 2016: 10).

The National Authority for Integrity, another autonomous administrative authority, found in the activity carried out a series of irregularities related to conflicts of interest, cases of incompatibility, unjustified differences between the acquired wealth and the realized incomes, the committing of criminal deeds (false declarations, assimilated offenses corruption cases) (National Integrity Authority, 2016: 10). At the same time, this autonomous administrative authority applied during its activity a series of fines for failing to submit the declarations of assets and interests within the time limits stipulated by the law or the non-application of the disciplinary sanctions as a result of the final remaining of the evaluation report (the National Integrity Authority , 2016: 10).

The National Council for Combating Discrimination is another autonomous administrative authority that advocates respect for fundamental rights and freedoms, investigating and finding cases of discrimination, has imposed a series of sanctions for

restricting access to public services, non-respect for human dignity, and discrimination based on disability , nationality, ethnicity, social category or race.

Autonomous administrative authorities are legal constructions which through the way of doing business try to contribute to the accomplishment of the administrative justice and implicitly to the protection of the values protected by the rule of law. By this we consider that they have an active role in the realization of administrative justice.

In this context, we can say that the autonomous administrative authorities are one of the modern mechanisms for achieving the foundations of the rule of law and can be considered an innovation and a response given by the democratic state to the new social order. Their emergence is justified by the need to promote a modern manner of governance under conditions of transparency, consultation and negotiation.

If, from an organizational point of view, this type of authorities are included in the administrative apparatus, although they are not subject to the influence of the Government and have autonomy in the social activity, they appear as a "genuine justice" promoting and defending the rights and freedoms of those administered and eliminating abuses in the activities of state authorities.

However, their work must not be absolutized because their members, by the nature of the human side, are susceptible to subjective visions, but the guarantees of impartiality and independence are meant to contribute to psychological independence in the sense that they are not held accountable to bosses for the application of one or other of the legal norms. However, in order not to create a fourth state power that would tend to become a superpower, the legislator gave the administration the opportunity to challenge the acts of the autonomous administrative authorities within the administrative jurisdiction.

Conclusions

Contemporary realities have changed and led to a restructuring of the rule of law approach. In order to avoid the emptying of content and the failure of the rule of law, it was necessary to rethink its configuration and to find levers that would contribute to the protection of its values. The state of justice, justice, respect for the right of everyone and the attempt to strike a balance are not achieved and are not guaranteed to be respected only by simply affirming and including them in the content of binding legal norms. More needs to be done: the observance of the content of these norms should be pursued, as well as taking measures to restore the social balance if it was endangered by the actions of the various actors of social life. Autonomous administrative authorities can be considered as a legal creation of the rule of law that is intended to respond to increasing social complexity within states and the inability of traditional structures to keep up with the new, highly technicized realities.

Through their work, the autonomous administrative authorities seek to contribute to the protection of the rule of law by pursuing the protection of fundamental rights and freedoms and liberating individuals from the oppression of various forces, whether private or public.

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The Role of the Accountancy Profession in Tackling Corruption in Romania

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Abstract:
Many specialists, outside and within the accountancy profession, see its role in a rather narrow, passive way of reflecting the economic operations of an organization. In the last few years, starting from the level of international professional bodies in the field, it is advocating for the accountancy profession to assume and to recognize a more important role of public interest, including combating corruption, expanding economic growth and improving quality life. Romania is one of the states in the European Union where corruption, perceived at the level of a citizen or an economic agent, is very high. In this article we aim to identify some directions in which the profession and the Romanian professional accountants can be involved in tempering this phenomenon.

Keywords: *corruption; public sector; accountancy profession; code of ethics*

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Introduction

Corruption in Romania is a very acute problem which, after experiencing a period of tempering after Romania's integration into the European Union, seems to have escalated in the past 2-3 years. Corruption is strongly felt at both individual and corporate level

According to the latest Eurobarometer (EU, 2017), 68% of Romanian respondents (the highest share, followed by respondents in Croatia - 59% and Spain - 58%) believe they are affected by corruption in everyday life. Moreover, compared to 2013, this percentage is increasing by 11 percentage points. The report also contains a section titled "Corruption as part of the business culture". 81% of Romanian respondents believe that corruption is an integral part of the national business environment (extremely high compared to other states). Compared to 2013, the situation has deteriorated slightly, at least at the level of public perception. Also, a very large percentage of Romanian respondents (81%) consider that the only way to succeed in business is a strong connection with the political environment. A similar percentage (82%) believes that corruption and favoritism hinder free competition in business.

Not surprisingly (L'enfer, c'est les autres), only 6% of Romanian respondents say that they have been involved in the past 12 months in an act that could be assimilated to corruption. Generally, all Europeans who have experienced corruption do not report them. The causes for Romania are: it is considered to be difficult to prove the facts that would be reported (35% of the respondents); mistrust that the reported facts will be sanctioned (30%); there is no protection for those who denounce such facts (30%).

A relatively similar situation is also revealed by Transparency International Corruption Perceptions Index (CPI). According to the latest report (Transparency International Romania, 2018), made public in February 2018, Romania achieved a score of 48 points (out of 100), identical to the one in 2017, on a par with Greece. At the EU level, the only countries with a lower score are Hungary (45 points) and Bulgaria (with a score of 43 points). At the EU level, the CPI average is 66, similar to the previous year. The index is calculated on the basis of data provided by 12 independent institutions that transmit governance and business reviews.

Also, Transparency Romania's report reminds that in order to combat corruption, solutions should be considered for public administration, but also for private business. One of Transparency International Romania's anti-corruption proposals at national level is the development of an ethics and compliance management system at the level of private organizations, namely the implementation of moral and deontological values absolutely necessary for an efficient functioning of the organization, good governance, increased trust among stakeholders. In this approach, an important role can be played by the accountancy profession and the professional accountants.

At a very general level, the role of the accountancy profession is to provide a fair and accurate picture of the position and financial performance of an entity, i.e. to provide intelligent, relevant, credible, comparable information to help users in their decisions such as managers, investors, employees, creditors, suppliers, customers, public administrations (Tiron-Tudor, 2014).

Unfortunately, business people do not understand and appreciate the role of professional accountants and, on the other hand, professionals are quite passive in the exercise of their profession. An IFAC report (IFAC, 2017) shows that the accountancy profession and accountant professional can and should play a more active role in fighting

corruption across the different countries. Professionals (accountants, auditors, tax advisers) are extremely important actors in the country's economic landscape, along with business leaders, the financial sector, and public administration. The report shows that there is a strong correlation between the proportion of professional accountants in the labor force and Corruption Perceptions Index Transparency International. Financial reporting in the public sector according to international standards, rigorous education in the field, implementation and follow-up to the ethical code of the profession are some of the ways in which the accounting profession can contribute to the anti-corruption fight.

Surprisingly or not, in this landscape, especially from the outside, the accountancy profession sometimes has a bad image in the Romanian collective mind, being seen as guiding or hiding certain irregularities at the organizational level. It is a well-known joke that synthesizes this pretty well. To the question "What is 1 + 1?" a mathematician answers "Exact 2," an economist "Probably 2" and an accountant answers" How much do you want to be?". The causes of this image must be sought especially in the history of the communist period, as well as how it was reflected in the media at that time. Being treated somewhat with disregard, ie as an unproductive activity in official documents and approaches, this reflection was somehow tolerated. Thus, the bureaucratic image of the accountant, created in the interwar period (1918-1938), was added to elements of lack of integrity and inhibitor factor through his actions of real processes in companies during the communist period.

The purpose of this article is to investigate to what extent these concerns are also found in the Romanian context in relation to the accounting profession.

Conceptual delimitations

First of all, we need to make some delimitation of the concept of corruption. In the Oxford Dictionary there is the following definition: "dishonest or fraudulent conduct by those in power, typically involving bribes".

Transparency International defines general corruption as "the abuse of entrusted power for private gain". Transparency International also refers to several forms of corruption: grand, petty, and political. Grand corruption consists of acts committed to a high, top-level, government that distorts the policies and the functioning of the state. Petty corruption refers to repeated abuse of lower-level civil servants in interactions with ordinary citizens (may occur in health, education, police, and other state agencies). Political corruption implies a manipulation of policies, institutions, and procedures in resource allocation and in making various funding by policy makers in order to maintain their power, status, or enrich.

In Romania, the main normative act on corruption is Law 78/2000 on the prevention, detection and sanctioning of corruption. It is important to note that under Romanian law, as in the regulations of various international bodies, corruption implies the involvement of a person who exercises a public office or performs a post in a public service or in a state-owned company (Transparency International Romania, 2016). So, not any illegal or immoral action at the level of a company can be assimilated to corruption, as sometimes confused by non-specialists, at the level of public opinion.

In the second part of the article we will address the issue of how the accountancy profession can contribute to fighting corruption in Romania. In our opinion, this can be done by acting on the causes that lead to the appearance of corruption either by eliminating them or by diminishing their effect. Schematically, the main causes of corruption are: an incoherent or insufficient legislative framework; working conditions and lack of moral and / or material incentives for public sector employees; the existence of a degree of

politicization of the administration; the passive attitude of the citizens (the lack of an active civil society) in relation to the public administration (Păceşilă, 2004); the lack of rigorous ethics management in public organizations.

Next, we believe that some clarifications are needed on the accountancy profession. This, in an exhaustive approach, represents "all the activities (services) that require knowledge in the field of accounting, the specialists who perform them (their profession) and their professional bodies" (Toma and Potdevin, 2008).

The main actors of the accounting profession are accountants. According to IFAC, the professional accountant's definition is as follows: "*a person who has experience in the field of accounting, achieved through formal education and practical experience and who: demonstrates and maintains competence; complies with a code of ethics; is held to a high professional standard; and, subject to enforcement by a professional accountancy organization or other regulatory mechanism.*" (IFAC, 2011, p. 7).

In Romania the main categories of professional accountants are: accountants and authorized accountants (coordinated by the Body of Expert Accountants and Certified Accountants in Romania - CECCAR); auditors (under the tutelage of the Chamber of Auditors of Romania - CAFR) and tax consultations (under the tutelage of the Chamber of Romanian Tax Consultants). Very synthetically, accountants are responsible for elaborating financial statements; financial auditors certify, as a result of audit missions, accuracy and reliability of the financial statements; tax consultants certify and validate tax documents that entities submit to tax authorities (Matiş et al, 2012).

Often, under the influence of North American literature following the two major crises of recent years (2000 - the dot-com crisis, 2008 - the subprime crisis), it is considered that, among professional accountants, only auditors, or primarily auditors, an active role in combating corruption. Taking into account the specific attributions of each professional category, at least as they are delimited in Romanian regulations, we consider that besides auditors, accountants and tax advisers can and should play an equally important role with auditors in the anti-corruption fight.

Literature review

The link between the profession and the professional accountants and corruption, respectively the accounting practices, between the quality of financial accounting at the level of an organization and the involvement of the company in actions related to corruption has been the subject of several specialized studies in recent years. We review the conclusions of some of the most significant of these studies.

Wu (2005), in a study of Asian countries, pointed out that better accounting practices can reduce the incidence of corruption-related activities, but compliance with high-quality standards does not necessarily improve the quality of accounting practices and does not automatically lead to discourage companies from engaging in corruption.

Everett et al. (2007) identifies two trends in accounting engagement in anti-corruption. First-time followers believe that accounting is a part of the noble cause, and to do so must do more. The second trend is that some socio-cultural factors may influence the way in which accountants exercise their profession. From this point of view, the accounting profession would have its own vices and to contribute to the anti-corruption struggle, it does not have to do more, but to do differently. Depending on the approach, different solutions are identified for accounting engagement in anti-corruption.

Malagueno et al. (2010) investigates the relationship between the perception of corruption and the perceived level of accounting and audit quality in 57 countries. The

conclusion was that there is a negative relationship between the two. In other words, better accounting and auditing leads to the reduction of corruption.

A similar conclusion has Owolabi (2011). Following a study conducted in 13 Anglo-African countries in Africa, a study investigating the relationship between corruption and the environment of accounting and auditing. Thus, the author points out that African countries can reduce their level of corruption by strengthening institutions that have a positive impact on the quality of audit and accounting.

There are authors who consider that accounting practices can even be found in the backbone of corruption networks (Neu et al., 2013).

Ijeoma (2015) introduces another perspective on how the accounting profession can contribute to the fight against corruption - forensic accounting. Through forensic accounting, certain forms of creative accounting are discouraged and can also increase confidence in companies' financial statements.

Farooq and Shehata (2018) also seek to identify factors that lead to the reduction of corruption practices at the level of private companies. In doing so, the authors compare the corrupt practices of more than 50,000 firms in 126 countries that have audited and unaudited financial statements. The conclusion was that companies that have audited financial statements are less involved in corruption practices. The authors also propose an interesting research direction. Thus, they question the extent to which the audit acts as a shock or its influence is visible in the long run, acting as a modelling tool on organizational culture.

In our opinion, the action is reciprocal. Corrupt accounting practices lead to a culture of perverted values, and a culture built on non-values can also corrupt accounting practices.

Synthesizing, there is unanimity among specialists in considering that the accountancy profession, through its specific activities, can diminish the level of corruption in a country. The way in which this desideratum can be achieved, the concrete mechanisms, the time period in which positive effects may occur, but they know multiple approaches. The influence of the accounting profession on the diminution of corruption can be exercised both at the level of private companies and at the level of public institutions.

A dimension that is rather poorly analyzed when studying the relationship between the accounting profession and corruption is the human one, namely the ethics and deontology of the professional accountant. In view of this, the following part of this article will pay particular attention to issues such as: How do professional accountants acquire certain values in the spirit of ethics and deontology of the field? How are these values kept in touch with certain pressures? How can it inhibit / stimulate national culture certain values of the accounting profession? How are corrupt behaviors identified by professional bodies, how do they remove corrupt professionals?

Our approach will be circumscribed to the Romanian accounting profession. This after remodelling after new coordinates after 1990, after having undergone certain stages of segmentation, is in a consolidation phase and, in our opinion, can turn into an important lever in the fight against corruption.

Directions of intervention of the accountancy profession in Romania in the fight against corruption

In this part we will try to outline some directions of engagement of Romanian accounting professionals and professional bodies in anti-corruption fight. For this purpose, we will take into account the coordinates set out by IFAC in the above-mentioned report (IFAC, 2017): the implementation of international accounting standards in the public sector; education in the field of accounting; implementation and, above all, the pursuit of codes of ethics in the profession.

Currently, IPSAS (International Public Sector Accounting Standards) is the only set of internationally recognized public accounting standards. A European Commission (2013) report shows that 15 EU Member States have some convergence of national standards with IPSAS standards. It is also advanced that even though IPSAS is an indisputable reference, it cannot be easily implemented in the EU. Under these circumstances, we can discuss the development of a set of European standards for public accounting, called EPSAS. Such an approach was initiated in 2013 and is due to end in 2020. The project's progress is, however, very slow. The objective of implementing such standards is to increase the degree of transparency and accountability in public financial management and, as a result, to eliminate/mitigate corruption phenomena.

What is the situation in Romania? Tiron-Tudor and Crișan (2017) analyze the level of harmonization of Romanian accounting regulations with IPSAS. 14 standards are grouped on: presentation of financial statements; income/expenses; financial position. The instrument chosen to assess the harmonization of Romanian legislation is represented by the Jaccard coefficients. The comparison shows low values of these coefficients. For only one standard (IPSAS 10), the coefficient value is higher. The in-depth analysis reveals, however, that the common elements are primarily related to the definition of certain terms. The conclusion that can be drawn is that the level of harmonization is very low.

In 2013, KPMG Romania and the Bucharest Academy of Economic Studies conducted a survey of 318 city and city halls across the country. 84% of respondents believe that the application of ISPAS would help improve the comparability and transparency of public reporting and, at the same time, increase the accountability of entities with regard to cost management and financial performance; 74% believe that applying IPSAS will increase reporting relevance and transparency in their institutions (KPMG, 2014).

Although the positive effects of the IPSAS implementation are acknowledged until the actual implementation of the road is still very long. Sampled specialists do not seem very familiar with IPSAS: 58% say they are "somewhat familiar" or "not at all familiar with" IPSAS. Another important obstacle to the implementation of IPSAS, identified in other studies (Ristea et al., 2010), is the cost of such an effort (for training and improving the human resource, for reconfiguration of computer systems, for auditing).

Beyond these objective obstacles, we believe that a delay in / delay of implementation of ISPAS can also be a lack of political will. From the Ministry of Public Finance, the main normalization actor in Romania, the catalysis actions on this line are missing.

CECCAR pronounced for the implementation of ISPAS standards in Romania. In this respect, CECCAR has translated and published several editions of the International Accounting Standards Manual. In an interview in 2013, the president of this body notes: "*The accounting profession plays an important role, having responsibilities for the public*

interest but also for the sustainable and balanced economic development of Romania. The main challenge is to unite the efforts of all the actors involved to support public institutions."

In November 2016 a Congress of the Romanian Accounting Profession took place, a section of the congress titled "Public Sector Accounting - Trends in the Digital Age". In an intervention in this section, FEE Group member Francesco Capalbo underlined: "*What is important to remember is that we will never be able to determine civil servants to care for accrual accounting if we do not begin to be even we are interested in this type of accounting, as citizens, of voters. If we start ourselves to be interested accrual and performance of public entities, certainly not public servants will not promote this way of working.* "

Thus, as a conclusion, accountants should put pressure on changing / triggering changes, not only through professional bodies, but also through citizen activism involved.

The second important direction concerns education in accounting. We believe that the professional accountant, in order to play an active role in the anti-corruption fight or not to be involved in corruption, must be educated in ethics and accounting deontology. This component should be included in the faculty's curricula, even at the undergraduate level. An analysis of the curricula of the "Accounting and Management Informatics" program at the main universities in the country revealed the following: at the Bucharest Academy of Economic Studies and Alexandru Ioan Cuza University of Iasi there is no ethics or deontology course in the mentioned study program; at the University of Craiova and at the West University of Timisoara there is a course on "Business Ethics"; at Babeş-Bolyai University in Cluj Napoca, there is a course on "Business Ethics" as well as a "Professional Ethics in Accounting" course.

We believe that more needs to be done in this respect. In a society where corruption acts are numerous, where some minor corruption acts are no longer treated as such, but have become a cultural element, education in ethics and professional ethics is absolutely necessary and should not be treated as having a secondary importance.

CECCAR, in partnership with many of the country's economics faculties, for the Accounting and Management Informatics program should advocate the introduction of such disciplines. "Business Ethics", which generally refers to the economic field and rather involves introductory elements, is not sufficient. It takes one or two disciplines in the field of integrity and deontology, with aspects specific to the accounting profession.

For those who have left the formal education system, ie those who will never integrate into a formal education program, education in the field of ethics and deontology, updating and nuance of certain challenges in this field will be done through trainings organized by the various professional bodies in the field. In the case of this category of professional accountants, it is also important to develop certain ethical leadership qualities and to stimulate their ability to induce ethically and deontologically desirable values and behaviors for those with whom they work. Being highly experienced professionals, it is very possible to find themselves as managers or mentors for younger professionals. Their actions, mentalities, values, and advices for these younger collaborators are extremely important for their future ethical and deontological profile.

The latest direction concerns the existence, applicability and the way in which the use of codes of ethics in the field of accounting profession can contribute to the limitation of corruption acts in Romania.

CECCAR and CAFR have adopted a code of common ethics, the so-called National Code of Ethics for Professional Accountants. The document is in line with the Code of

Ethics for Professional Accountants, developed by IFAC, and was last revised in 2011. The Code is comprehensive and we believe it is absolutely necessary to organize ethical training meetings on a regular basis by the two professional bodies. Within them, specific contexts for the application of ethical code principles should be considered, sometimes assuming some subtlety and a moral deliberation.

Although knowledge of the code of ethics is verified at the entry into the profession of both CECCAR and CAFR, we consider it to be a superficial mechanical knowledge. For a professional accountant's ethical behavior, it needs to internalize certain values, and sometimes needs guidance, mentoring in this approach. CECCAR and CAFR should organize more ethical training meetings, presenting concrete situations and discussing desirable behaviors in these situations, according to professional ethics and deontology. Ethical issues must not be addressed only by seminars, conferences, congresses by the presentation of the theoretical, general materials, without the interactive participation of those present. Certain situations raise issues in relation to certain ethical principles, assuming some subtlety and a moral deliberation.

The three bodies of the Romanian accounting profession are not very transparent with the way they sanction their members as a result of ethical problems. For example, the CAFR website contains: the Code of Ethics, the Disciplinary Accountability Regulation of the Financial Auditors and, respectively, the Rules of Good Reputation of the Financial Auditor. The decisions on sanctioning financial auditors from 2013-2016 are published on the site. In all cases, a template decision was drafted, the motivation being the non-fulfilment of the membership obligations within the legal deadlines established by CAFR (but in quasi-totality of cases it seems to have been the non-payment of the contribution).

Relatively similar is the case with CECCAR. The National Code of Ethics for Professional Accountants is published on the site. Also, the list of members sanctioned during 2011-2015 is on the site. For example, 168 physical and legal persons were sanctioned in 2015. Sanctions included reprimand, written warning, suspension of the right to exercise the profession for a period of 3 months to one or suspension of the right to exercise the profession. The motivations of these sanctions are not public, but probably some legal or professional misconduct, in addition to non-payment of the legal contribution.

Unlike the other two organizations, there is no ethics section on the CCF website. The Code of Ethics and Professional Conduct on Tax Consultation is contained in the Fiscal Consultants' Decisions. As one of the first decisions (2007, as the case may be), an uninformed visitor of the page appreciates that it will be quite difficult for him to find, especially since the page does not have a "Search" option. Also, there is no list of members sanctioned for possible violations of the code of ethics.

Considering all these aspects, our view is that ethical issues are given little importance. There is a certain preoccupation for formal compliance, a certain mimetism of the rules imposed by the international bodies of which these professional bodies are part, but there is still a long way until certain values and procedures for eliminating those who do not respect become elements of organizational cultures of these professional bodies in Romania. In the future, it must be understood that the ethical deviations of professional accountants are equally serious, or perhaps even more serious, than professional misconduct.

Finally, we highlight an issue that is not addressed in this code of ethics (unfortunately, nor in other CECCAR or CAFR norms) whistleblowing procedures (the

issue is extremely poorly regulated in Romania, regardless of the type of entity or domain activity – Ogarcă, 2009). These could, insofar as they were normalized and used, be transformed into important levers that accountants could use in anti-corruption, or more generally, but in the longer term with the same consequences, level of integrity in the Romanian business environment.

Conclusions

As a result of the analysis, we can state that although the professional accountants and the main accounting body in Romania (CECCAR) is very involved in the public statements in the anti-corruption fight, but at the level of the concrete actions, the involvement is discreet.

The measures proposed in this article are aimed at a medium and long-term horizon in a country where the corruption situation is quite serious and calls for immediate solutions. Our choice was to propose durable, substantive solutions, not just palliative solutions. Under these proposed measures, although professional bodies are not the main actor in all cases of implementation, they must represent the catalyst for concrete implementation measures. A more active role of these professional bodies will equate to a more active role of the accountancy profession in the fight against corruption.

The main limit of this research is that the socio-cultural determinants that determine the accounting profession's configuration and the way in which the influence of these factors is achieved have not been analyzed.

As a research perspective, each of the directions addressed must be the subject of more detailed analyses with more focused solutions. We also believe that another future direction of research could be represented by how the accounting profession is perceived, from the perspective of integrity, among business people and also at the level of public perception. Such a study should be the basis for synchronized actions of bodies in the field of accounting profession through which the image of this profession removes those associations that are not compatible with ethics and deontology. This should not only be a marketing company but supposes that the activity of a significant, significant part of the professional accountants should be in line with the principles of ethics and deontology specific to the field.

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ORIGINAL PAPER

A Basic Necessity of a Modern Fiscal Policy: Voluntary Compliance

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Abstract
Paying taxes can be considered a contribution to the welfare of a society. Taxpayers should perceive the exchange between tax payments and provision of public goods and services as higher. Taxpayers' willingness to cooperate with the state and its institutions in general, and their willingness to pay taxes in particular, depend on a variety of variables. While researchers in the field of taxation highlights the relevance of external variables such as tax rate, income and probability of audits and severity of fines, psychological research shows that internal variables are of similar importance. In this article we present a view on the relevance of citizens' knowledge of tax law, their attitudes towards the government and taxation, fiscal language, level of tax education, as well as motivational tendencies to comply.

Keywords*: taxation; taxpayer behaviour; tax education; tax compliance; fiscal language; social influences*

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Introduction

An efficient state is able to mobilize revenue and spend it in a manner that stimulates both human capital and community welfare, as well as private investment and creation of new jobs. Also, an efficient state manages the public financial resources to ensure a stable macroeconomic balance: with neither too restrictive policies that discourage private investment and economic growth, nor too adjustable (flexible) to generate high inflation rates or crowding-aut effects (expansive effect of government expenditure growth on total aggregate demand is severely mitigated when investment and acquisition of durable goods are funded by resorting to the monetary-financial market).

The impact of fiscal policy on the economy is complex and profound. In this regard, the accumulation of productive factors by investing in physical (infrastructure), human (education, health) and technological capital (research-development and innovation); ensuring a stable macroeconomic environment in which 'healthy' public finance contributes to economic stability and support monetary policy in maintaining price stability; adequate incentives through the tax system and tax benefits for the positive influence of labour, saving and investment decisions are just some of the real ways to boost economic growth. It can be noticed that, more and more frequently, a wider range of tax issues lie at the heart of the sustainable development process.

Countries with efficient institutions may be more effective at deterring tax non-compliance attitude (Andrighetto et al., 2016). Failure, whether it is taxation, budgetary expenditure or management of the budget deficit and of the public debt, may quickly undermine the economic growth of a state. Tax weaknesses can be, in this regard, fatal for business environment and social peace: when one or more professional, ethnic, religious, gender, regional, etc. groups are taxed inequitably (Hartner et al., 2008; Hofmann, Hoelzl, Kirchler, 2008; Torgler, Valev, 2010; Ross, McGee, 2011; Strielkowski, Čábelková, 2015) or are subject to an inequitable allocation of the public expenditure (Barone, Mocetti, 2009; Walsh, 2012).

The propensity to tax evasion is born out of a game of interest that is often only a form of selfishness and human cupidity. When tax burdens push too hard or unclear on a taxable object, it tends to evade. It is a category of 'economic reflex' that makes the capital that the fiscal body imposes too much to disappear. Excessive taxation puts taxable object on the run (Drosu-Şaguna, 2013). On the other hand, a modern tax administration that relies on efficient public institutions can encourage voluntary compliance of citizens to the extent that they feel they are receiving something (high quality public services) in exchange for their money (Levi, 1989; Smith, Stalans, 1991; Edlund, 1999; Frey, Torgler, 2007; Cummings et al., 2009).

In this context, it is extremely important for the taxpayer to understand its tax liabilities, to realize the importance of correct declaration and full and timely payment of due taxes so that the state can, in turn, provide citizens with quality services timely. In relation to fiscality, taxpayers' attitudes may be defined as positive or negative views of tax compliance behaviour. The outcome of positive views is tax voluntary compliance and negative views are tax non-compliance.

Voluntary compliance is the most effective and easy attitude through which budgetary revenue can be collected, being the process by which taxpayers, natural and legal persons, declare voluntarily and pay in full and on time their tax liabilities. This is a hypothesis according to which taxpayers will strictly adhere to tax laws and, more importantly, will honestly report revenues and other taxable objects and an all-time

desideratum of all public administrations (Simon, Clinton, 2002). Therefore, voluntary compliance in taxation has a broader meaning, it covers filing compliance (filing returns on time), reporting compliance (reporting incomes correctly) and payment compliance (paying tax due on time) (Walsh, 2012).

Today there is a general consensus that the basic strategic objective of a modern tax administration (implicitly, of a modern fiscal policy) is to raise the levels of voluntary compliance by taxpayers through two main lines of action: service facilitation and simplification for those who want to comply voluntarily with tax liabilities on the one hand and, on the other, a radical fight against tax evasion (Mitu, Stanciu, 2018). These two lines of action are fully complementary, because the major objective of a modern tax policy should not be centered on finding the tax fraud but rather on its reduction. The fraud discovery in the tax area is extremely important, but a modern public administration needs to focus on prevention, and therefore needs to think more 'ex ante' and less 'ex post'.

Deeper understanding of taxpayers' behaviour can determine tax administrations to develop efficient and more serious compliance risk treatments (Walsh, 2012). For a long time, the tax compliance has been attributed to fiscal policies that are based on punishment, such as the use of tax punishment instruments like tax audit, fines or other penalties (Allingham, Sandmo, 1972; Alm, McClelland, Schulze, 1992; Weber, 1992; Brockmann, Genschel, Seelkopf, 2016). The attempt to explain the taxpayers' behaviour, centered on threats and discouragements, was unable to offer a realistic, comprehensible and comprehensive imagine of tax compliance. Simply management of traditional factors of tax compliance are an expensive way to attempt to improve compliance. Therefore, many researchers have introduced in the equation of explaining the tax compliance and non-compliance behaviour of the taxpayers, in addition to economic, classical factors (factors related more broadly associated with economic conditions: the level of actual income, tax rate, tax benefits, tax audit, audit probabilities, fines and penalties) (Bărbuță-Mișu, 2011) and a number of non-economic factors (Lillemets, 2010; Loo, Evans, McKerchar, 2012). The latter, also called socio-psychological factors, were taken into account to explain the behaviour of tax compliance from a deeper and more realistic perspective, thus forming a modern fiscal policy, centered on the typology and needs of the citizen. In the category of non-economic factors, we can include, for example, public education, tax morale etc. (Hyun, 2005). Likewise, Lisi (2015) and Shafiq (2015) suggest that moral and ethical factors are more dominant factors that contribute to tax compliance attitude among taxpayers.

Therefore, in the following, we shall try to outline some non-economic factors (personal and social norms) of voluntary compliance that can provide a modern dimension of tax policy promoted by public administrations.

Preconditions for a modern fiscal policy: analysis of some socio-psychological factors of voluntary compliance

A society infested with the phenomenon of tax evasion (tax non-compliance) is condemned to economic, social and political devolution. The degree to which citizens engage in fiscal non-compliance actions differs quite widely from one state to another (Schneider, Enste, 2013). However, there are a number of socio-psychological factors that influence more or less the attitude of tax compliance or non-compliance.

Attitudes toward taxes. Improving tax compliance requires long-term reform efforts. Modern tax administrations need to become aware that high-quality services are encouraging compliance (Le Baube, 1992) and reduce taxpayers' costs (Araki, Claus,

2014). They need to focus on simplifying the performed operations and implementing robust collection systems (e.g., payment and withholding systems). Reform of the legal framework and judiciary is also often required to ensure that the necessary powers, penalty regimes, and dispute resolution processes are in place. If tax rules and restrictions are well written, understandable, and relevant to a taxpayer, they will voluntarily comply and follow the procedures, rules, etc. because they understand and see their value and necessity (Silvani, 1992; Russell, 2010). Taxpayers' attitude to tax rules depends very much on how they understand them, perceive them as being or not being accessible to them in knowledge, interpretation and application.

While values (personal, social and national norms) represent beliefs that influence behaviour across all situations, attitudes relate only to behaviour directly towards specific objects, process, or situations and are a learned predisposition to respond in a consistently favourable or unfavourable manner (Fishbein, Ajzen, 1975).

Fiscal Psychology Theory explains that the taxpayer's perception of the fiscal policy is an important factor. Increasingly more often, Fiscal Psychology Theory emphasizes the loss of motivation of the taxpayer to pay taxes because there is no real and obvious advantage of the benefits of tax payments (Hasseldine, Bebbington, 1991).

In order for the taxpayer's attitude towards the tax system to be positive, the used tax laws and language should be very clear and well calibrated.

The many obligations that tax laws impose on taxpayers, the burden of these obligations and legislative instability have in all phases stimulated the ingenuity of taxpayers to invent various tax evasion processes (tax non-compliance).

The lack of tax compliance is a logical result of the defects and inadvertence of a legislation with a high degree of imperfection and badly assimilated, of the defective methods and modalities of implementation, as well as the lack of vision and the incompetence of the legislator to develop clear normative acts.

In Romania, the study titled ‘Increasing Integrity in the National Agency for Fiscal Administration through Institutional Co-operation and Capacity Building’ (April, 2016) identifies among the main vulnerabilities of the tax system, the unstable, cumbersome and often incoherent tax legislation (containing unclear provisions or even contradictory). The vulnerability has been identified by all target groups: citizens, economic agents and tax and customs officials.

The need for a solid and rigorous legislative framework in Romania is underlined by the results of the study in 2016 conducted by EY (Ernst & Young) Romania in association with Raiffeisen Bank, entitled ‘The Romanian Entrepreneurship Barometer’. In this study, 70% of respondents ranked among the biggest problems of the tax system, the increased instability of the legislative framework. Among the measures that could have the greatest impact in supporting entrepreneurs in the short term (and implicitly, in increasing the degree of voluntary compliance), the second place as relevance (15% of respondents) was occupied by ‘creating a clear, effective and simplified legislative framework’. The simplification of tax rules and regulations regarding the calculation of tax liabilities would have a greater impact on improving the fiscal environment in Romania than a reduction in taxes.

Thus, it becomes obvious that Romania needs an immediate stabilization of the tax normative framework and a decrease in the degree of tax complexity that will cause a greater number of taxpayers, placed on an asymmetric level of information and understanding degree, to adopt an attitude prone to voluntary tax compliance.

A good attitude towards tax is closely linked to the use of a fair and appropriate 'fiscal language' for both interpreting and implementing the tax legislation. *Fiscal language* expresses much more than simple words, notions, concepts and expressions, it expresses how taxpayers are in relation to tax liabilities, how they interpret and apply tax legislation. This specific language must be used so that the legal provisions that make use of it are understood, believed, heard and met.

In other words, taxpayers use fiscal language to understand correctly and fully tax legislation and, as a consequence, to know their payment obligations to the state. Therefore, fiscal language is a tool of daily communication, knowledge and compliance for taxpayers, and power for tax authorities and government.

The tax authority also comes from the power of seduction and understanding of the fiscal language used. It should be used so as to constitute both a way in which the legislator can enable taxpayers to comply voluntarily and a 'power attribute'.

Tax education is a crucial element for having an appropriate, easy to understand language and clear tax legislation, without gaps leading to voluntary compliance behaviour.

Supporting the previous research made by Witte and Woodbury (1985), Beron, Tauchen and Witte (1992) found a positive connection between tax compliance and education level. Mohani (2001), has found that voluntary compliance is directly proportional to the level of professional qualifications. Higher qualified taxpayers have more abilities and greater confidence in managing tax issues. This view is supported by Eriksen and Fallan (1996); Chan, Troutman and O'Bryan (2000), and also Richardson (2008), who identified a positive association between voluntary tax compliance and education. A taxpayer with a high level of education and a better understanding of the tax mechanism should realize how important tax revenues are for the development of the society it is part of. Therefore, it will be more aware of its responsibility towards the country and, at the same time, will be sufficiently informed to understand the repercussions and sanctions imposed if it violates the legal tax framework.

However, there is a limit of this education level effectiveness in which a curvilinear effect has discovered. It means at the certain level, additional knowledge and education will not proportionately decrease the intention by the taxpayers to voluntary comply (Hassan, Nawawi, Salin, 2016). Likewise, Collins, Milliron and Toy (1992) find that the tax knowledge is not significantly correlated with tax voluntary compliance behaviour.

Like Wong and Lo (2015), our opinion is that these divergent conclusions may be explained by '*an inadequate understanding of tax education and its impacts on changing individual tax voluntary compliance behaviours.*'

In Romania, the level of financial education (and, implicitly, tax education) is worrying, with citizens lacking basic knowledge of the financial notions and concepts needed to make decisions tailored to their needs. Awareness of the real level of financial education of the population is the first step in finding solutions tailored to different social categories (Behrman et al., 2012; Lusardi, de Bassa Scheresberg, 2013; Lusardi, Mitchell, 2014; Lusardi, Tufano, 2015).

Biriș (former Secretary of State in the Ministry of Public Finance), an important tax specialist, referring to the tax education in Romania, made the following statement:

> *Romania needs a coherent program of tax education, both in schools and in the media or through the distribution of educational materials [...] it is necessary to*

create taxation faculties to prepare both tax advisers and future heads of tax authorities and judges specialized in tax disputes (Biriș, 2012, pp. 231-232)

According to the S & P Global Finlit Survey (2014) study, developed by Standard and Poor's Ratings, which was conducted on a sample of 150,000 people in 143 countries, Romania ranks 124 out of 143 in a global financial education ranking. Only 22% (1 out of 5) of Romanians have adequate financial education. In the EU, Romania is in the last position of financial education. Worldwide, only 1 out of 3 people have financial education, Romania being below this average. '*The main source of financial education for the young people in Romania is the family, in 95% proportion, while the school has a percentage of 9% and the banks only 5%*' according to the Erste study: What do the Romanians spend the money on and why do they save (2015).

Comparative treatment, when it comes to the issue of taxpayer - tax liabilities relation, is a concept based on the theory of equity and takes into account that the alleviation of inequalities in the exchange relationship between government and taxpayers would lead to an improvement in voluntary compliance (McKerchar, Evans, 2009).

In the field of tax policies, the comparative approach has both a vertical (taxpayers - government) and a horizontal (taxpayer - taxpayer) dimension. There is social contract between government (ruler) and taxpayers (ruled) which embodied effective delivery of political goods (Besancon, 2003). Levi (1988), analysing the correlations between taxpayers and government, notes that voluntary compliance is influenced by the vertical contract. He notes that there is a direct link between the magnitude of the rate of transformation from tax to political goods and the degree of citizens' satisfaction. If this rate is low, the taxpayers will believe that the government has not maintained the contractual commitment, consequently, voluntary tax compliance will worsen. Often, the understanding of how taxpayers' money is being utilized becomes very subjective; the fact that they do not receive a fair share of government benefits or others do not meet their obligations are considered as possible factors influencing tax compliance behaviour (Ho, Loo, Lim, 2006).

Neither citizens nor the state can stand outside of the fiscal game. These are not actors who can maintain their neutrality from fiscal policy. In this relationship, they influence and interrelate mutually (Ali, Fjeldstad, Sjursen, 2013). Generally, taxpayers do not think of their fellow citizens without considering their own relationship with the state. Building relationships between civic engagement and citizen participation is vital (Olimid, 2014). As such, the tax behaviour of a citizen is influenced by its own relationship with the state, but also by the way the state is related to its citizens. If the state treats preferentially certain groups, it will influence the citizen's relationship with the state and the group receiving favours (D'Arcy, 2011). In this context, it is very important not only the fiscal treatment that a citizen benefits from the state but also the treatment applied by the state to the taxpayer in question compared to other persons in a similar situation.

An illustrative example of unequal tax treatment in similar situations is given by the inequality created in Romania by the differential approach of the tax burden on taxpayers who obtain similar income but have different forms of organization.

Thus, as of January 2018, the tax burden on an employee is much higher compared to a taxpayer who is organized as PFA (authorized physical person) or through a micro-enterprise. Wage labour implies a high degree of taxation, about 45% (35% social security + 10% income tax), while in the case of a micro-enterprise, we are dealing with

a much lower taxing rate, of 6% (1% turnover tax, if there are employees + 5% dividend tax).

Even if the tax gap is not so great between wage labour and PFA, and there are differences to consider in favour of PFAs and other people who earn income from self-employment, including copyright. Specifically, the latter pay social contributions at the level of a gross national minimum salary (at the time of writing this article: 1900 lei), no matter how much they earn in a calendar month. For example, an employee with a gross salary of 5,000 lei/ month now has the same tax burden (income tax and individual social contributions) as a person who earns an income from independent activities of over 14,000 lei, i.e. three times more. Thus, liberal professions are favoured because the tax burden is lower. An unhealthy status quo is created: the more you earn the less taxes you pay. As a result of the significant differentiation in terms of tax treatment, between wage labour and activity carried aut by authorized physical person (PFA), it is adversely affected the concept of voluntary compliance with implications for good governance because a large part of the taxpayers will feel unjustified, generating dissatisfaction and social imbalance. Such a differential treatment destroys the balance, almost fragile, among all those involved in this issue, the balance between citizens and the balance between citizens and the state (government). Torgler (2003) argues that when government's honesty is down, tax compliance may be disrupted, in a negative sense, because government fails to honour his honesty.

Comparative treatment is a causal mechanism in the debate on good governance and sustainable economic development. Rothstein and Teorell (2008) believe that impartiality in the exercise of power is a determining characteristic of a 'good governance'. The state's legitimacy rests on its impartiality; it's proven ability to treat citizens equally in its dealings with them (D'Arcy, 2011).

Social influences (social contagion). Because human beings are social and learn from observation rather than depending entirely on instinct, almost all aspects of human psychology and behaviour are socially influenced. Snaveley (1990), referring to tax behaviour, notes that it is subjected to strong disruptive factors, such as the influence that the social environment generates, the behaviour of an individual's reference group such as relatives, neighbours, friends, public figures etc. (the horizontal dimension of behaviour). Therefore, if a taxpayer knows more individuals who are part of significant human groups for itself, who evade tax liabilities, its own desire to comply will be weaker. Perception of the honesty of others can affect voluntary compliance (Sah 199; Banerjee 1992). The likelihood that a person will make a decision depends on how many others have already done it (Hedström, Ibarra, 2010). According to Torgler (2008), the social interactions are one of the most underexplored issues in the field of tax compliance individuals. Likewise, he notes that who have tax evaders as peers or friends in their personal circle are more likely to evade themselves.

To know is to prevent. Unfortunately, there are no studies in Romania that determine or quantify the degree of social influence in the field of taxation. However, it is easy to see that citizens have an approximate idea of the level of tax compliance at the level of country, region, social category or economic sector. The image that each citizen creates is derived from information received through the media, personal interactions, or direct comparisons (for example, behaviour, lifestyle, and wealth may be deduction elements in the tax payments by friends, neighbours or people we interact with) (Alm, Gómez, 2008; Gino, Ayal, Ariedly 2009; Diekmann, Przepiorka, Rauhut, 2015).

Acquiring a certain behaviour through contagion (rational or non-rational imitation) can have both negative and positive effects. In the field of taxation, the balance can be tilted to positive (voluntary compliance) or negative (non-compliance) depending also on the examples that public administration as well as society as a whole give them about combating and condemning evasion. Learning through contagion can lead to negative, deviant behaviours, but people can also learn from their colleagues' failures or suboptimal choices of how not to behave (how to have a positive attitude).

In Romania, social influence has a rather negative connotation. The impossibility of the tax authorities, often too obvious, to discover tax evasion by some taxpayers, the application of some mild punishments in some cases, disproportionate to the gravity of the facts, excessive mediatisation and with positive connotations of those who managed to trick the system, creates an environment in which those who do not obey the legal framework are advantaged towards those who comply with it, with extremely negative effects on voluntary compliance attitude. The discredit of public power in front of taxpayers, the use of power in cases of tax evasion, inevitably leads to an increase in the number of tax evaders, and the impossibility of controlling the phenomenon.

Conclusions

The need to reconcile the interests of the two parties involved in the tax mechanism, on the one hand, the taxpayers (natural and legal persons) and on the other side the state, requires a profound research of the levers and phenomena that influence its proper functioning. Highlighting and analysing factors with an impact on voluntary compliance offer a possible way to do so, even though literature has made a major step forward in the past few years, it requires more in-depth and longer-term research to fully understand the complex relationship that is created between citizens and the state.

Public governance quality influences tax compliance. Where there is public governance high quality, the tax system should to be good, these being in a very close interdependence (Everest-Phillip, Sandall, 2009). Fiscal policy may have either positive or negative influence on the tax compliance behaviour. Therefore, the behaviour of taxpayers may be affected by public governance either positively or negatively. Improving the balance in the relationship between taxpayers on the one hand and tax authorities on the other hand is the basis for increasing taxpayers' confidence in the tax system and tax policy promoted by it.

It is extremely important for the taxpayer to understand its tax burden and liabilities, to become aware of the importance of voluntary compliance so that the state can, in turn, provide citizens with quality services and ensure that all taxpayers are treated properly and equal. Taxpayers choosing to comply voluntarily realize that taxes are the price we pay to have a modern and prosperous society.

Voluntary tax compliance is based on a very complex mechanism. The factors that determine and reinforce it are, as it has already been well outlined in the literature, both economic and non-economic.

The main driver of voluntary compliance is the taxpayer’s perception (Kiow, Salleh, Kassim, 2017). In the absence of complex connections with non-economic factors of influence, the phenomenon of voluntary compliance cannot be fully understood. Individual mindset on dealing with issues like tax policy, constitutes the socio-psychological determinant of tax compliance behaviour. Thus, socio-psychological perception plays an important role for taxpayers to properly fulfill their tax obligations.

Tax revenue collection is an art in which voluntary compliance occupies a fundamental place. The success of this approach depends on the degree of involvement and understanding of the phenomenon by both sides (taxpayers and state). That is why, along with Kirchler, Kogler and Muehlbacher (2014), we believe that the approach of the Dutch Tax and Customs Administration - 'horizontal monitoring', which is based on the firm belief that a positive relationship based on mutual trust between taxpayers, tax practitioners and tax authorities, reduces unnecessary supervisory costs and burdens, complex discussions about tax designs on the edge of legality, and aggressive tax planning with retrospective adjustments. This pioneering approach to tax policy, introduced in 2005, proposes horizontal monitoring as an alternative to the classical vertical monitoring (Committee Horizontal Monitoring Tax and Customs Administration, 2012). Therefore, we believe that at the moment, the attitude towards tax, fiscal language, tax education, comparative treatment, etc. are factors that are becoming more and more important in the deep understanding of the mechanism that determines the attitude of voluntary compliance.

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ORIGINAL PAPER

The Provisions of Compensation in Iraqi Civil Law and the Position of Punitive Damages

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Abstract:
Compensation is a penalty determined by the law for the civil liability officer in each of them (contract and harm) for the benefit of the person who suffered the damage and cannot be determined before the error occurs but is left to the court to be determined according to the criteria that take into account the seriousness of the fault and behavior of the defendant. States, including Iraq and France, adopt the principle of full compensation, but developments on the economic side as well as the tendency of some courts to apply the idea of punitive damages as a means of deterrence and the method of punishment allow for the possibility of applying punitive damages in Iraqi laws and specifically in recent decisions of the courts in some Libel cases. This research attempts to shed light on the current situation of punitive damages in Iraqi law and its compatibility with the practices of other countries. The research relies on comparative methodology and analysis of legal texts**.**

Keywords: *punitive; compensation; tort; damage; civil*

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Introduction

Compensation is the money provided by public law courts for civil wrongs (Schembri, 2009: 48) The damages are compensatory in nature and are awarded to the claimant as compensation for the actual loss incurred as a result of the infringing activities of the defendant, such as assaulting the right to life and the right to integrity of the body, name or other. The appearance of the obligation on the shoulders of the actor is the payment of compensation and the source of illegal work. The agreed principle is that "any fault caused harm to others that is necessary for the person who committed the compensation. The civil liability is the obligation to compensate for the breach of a previous original obligation, and the original obligations arise from the contract and are called contractual liability, others are arising from the law The obligation to compensate for damage was based on the notion of punishment of the offender, and then turned into the idea of a reform function aimed at reparation. However, the emergence of the notion of punitive damages described as "semi-punitive" introduced a new concept of compensation, as it aims to punish the perpetrator of misconduct or fraud or recklessness that resulted in harm to others, and at the same time to deter others from committing the same act in the future through the imposition of financial compensation is unexpected. Although compensation in general works to redress the penal law is not part of its priorities. The Iraqi civil law is based on the principle of full compensation. It contains detailed provisions for compensation, but its position on punitive damages is unclear. It does not take them openly. In both cases, the judicial application is probably its decisive opinion in the matter.

In this paper I try to address the provisions of compensation dealt with in the Iraqi civil law, and try to determine the extent of convergence or intersection between those provisions and the idea of punitive damages.

The concept of compensation

Compensation is financial compensation is granted to a person who has suffered injury in order to replace the loss resulting from the injury mentioned, such as compensation of workers. Wages paid to the employee, fees, salaries or allowances in general. An amount is paid from the landowner to compensate for the damages incurred as a result of the seizure when its territory is taken by the government. In other words, the compensation is intended to compensate the harm caused to the victim, and in this concept it differs from the criminal penalty which is intended to punish the offender for his act and to deter others from committing the same act. The difference is that the compensation is as much as the damage, Estimated as much as the culprit's fault and degree of seriousness. Compensation is a sum of money awarded by a court as compensation for a tort or a breach of contract. Compensation is the normal effect of liability for damage to others, whether this liability is contractual or injurious. However, it is noted that the Iraqi Civil Code did not provide a comprehensive definition of compensation because Iraqi law was influenced by Islamic jurisprudence and used the term "guarantee" to express the idea of compensation. In accordance with Iraqi civil law, any person whose right is unlawfully used must be guaranteed in the following cases: (A) If the purpose of such use is to harm only third parties; (B) if the interests to which this use is intended are insignificant so as not to be entirely commensurate with the harm caused to others; (C) The interests to which this use is intended are unlawful (ICC: 1951:7).In the sense that compensation is the natural consequence of civil liability, where the injured person seeks compensation for the

damage to him, compensation for the damage must be complete (Schwarzkopf, McNamara, 2001: 4).

Forms of compensation in Iraqi civil law

The Iraqi civil law includes various forms of compensation, and each form has its reasons and method as follows:

Substantive compensation

The theory of substantive compensation considers damage only, so that it is capable of being far removed from the related items and other elements, whether it relates to personal elements that are attributable to the victim or to the wrongdoer. It does not consider the fault of the official in terms of gravity and does not pay attention to his personal circumstances nor to his financial position, It also does not take into account the circumstances related to the injured, such as his health status and social and financial status and others (Story, 2010: 20). ·The substantive compensation estimate is consistent and unchanged from one person to another for the same injury. In other words, substantive compensation is estimated as one estimate for all persons in the same injury without distinction between a person, a small person, a man or a woman. The Iraqi civil law has taken substantive compensation In accordance with article 202 states that "any act of self-harm, such as killing, wounding, beatings or any other type of victimization, shall be liable to compensation for the most recent injury". Substantive compensation is found in the system of security in Islamic jurisprudence, whether it concerns the protection of self-harm or the guarantee of the destruction of money. It was also stipulated in Jordanian Law (JCC, 1976:274), and (ECC, 1948: 161). In our opinion, substantive compensation is compensation far from reality, although it achieves equality in dealing with the damage, but does not achieve justice from the eyes of the injured person. Also, the objective compensation, despite his interest in error as an important element in determining the responsible compensation, but does not care about the gravity of the error, aspires to justice through reparation for the injured person, so that substantive compensation can be described as a picture without colors.

Realistic compensation

In contrast to substantive compensation, realistic compensation is primarily concerned with the personal circumstances of the victim, because the damage varies from one person to another depending on the specific circumstances of each of them despite the congruence of the harmful act. The damage caused by the same act is not necessarily the same in all the different cases. The realistic estimate of compensation is based on what actually happened in the place of the act causing the compensation, in addition to the need to take into account the personal circumstances of the victim. The judge must stand on his health and physical condition, his financial and social status and his various sources of income. On the incident of missing chances of gain was hoped by the affected, compare these elements before and after the act. It is the personal circumstances surrounding the injured person that are taken into consideration and the judge is based on determining the amount of compensation. These circumstances are variable and not necessarily identical. For example, the health conditions of the affected person may significantly affect whether the victim has diabetes, another person is healthy, and the financial conditions have an effect too. The rich person is not like the poor person who may have lost his livelihood because of that damage, note that the Iraqi Civil Code provides for realistic compensation in Article 205, and Egyptian Civil Code in Article 170.· It is noted that the only criterion

adopted here is the personal circumstances of the victim, and in no way the personal circumstances of the person responsible for the damage, it is not worth being rich or poor or any other circumstances.

Full compensation

"All damages and nothing but harm" is the well-known formula in which French law creates the principle of civil liability: the well-known principle of reparation for integrated harm. The basic principle that controls the assessment of damage is the principle of "full compensation" or the principle of "equivalence between damage and compensation". This means that the judge must take into account the true value of all the resulting damage, and may not grant an amount exceeding this amount. This principle of equivalence applies regardless of the cause of the claim on which the liability is based (Picard, Bermann, 2008: 260). That the jurisprudence and the French judiciary have an important role in the development of general rules and principles in the assessment of compensation for damage, especially the principle of equivalence between compensation and damage, whether within the scope of liability or contractual tort, and under the terms of article 1149 of the French Civil Code (FCC: 1804), which states that "(a) the damages owed to the creditor include, in general, the loss and loss of the loss". In the area of tort liability, despite the lack of a text, the view is stable on the work of the principle by deriving from the provisions of article 1382 a French civilian who commits the wrongdoer to compensation for the damage caused ·The determination of the scope of the principle of full compensation for damage and its limits depends on the type of damage done, whether it is financial, moral or physical harm. It is not difficult to do so, since the damage was financial. It is sufficient to take into consideration the elements of compensation for loss and loss. And the extent of its scope, but if the damage is physical or moral, the judge will have difficulty in determining the elements of compensation, and this difficulty is not only technical, but it comes from the fact that these damage affects the most expensive aspect of human life is his body and feeling.

Consequences of the application of the principle of full compensation:

The first result we will face is the lack of any possibility of applying punitive damages because the principle of full compensation prevents you from completely, because full compensation is limited only to restore the situation to where it was before the injury without increase or decrease and does not include punishment or deterrence. The issue is to erase what happened as if nothing was done, while punitive damages are reparations, punishment and deterrence, punishing the perpetrator, and deterring others from committing the same act in the future. The second conclusion is that the compensation depends on the reality, but realistic compensation away from the estimates that do not take into account the fact that the injury suffered by the injured, so it is not desirable to be compensated at one rate despite the different damages to different people, especially if the damage is variable. It is fair that the courts or the law are based on fixed schedules that determine the amount of compensation that the injured person deserves. The third result is that the injured person is not entitled to compensation for more than the damage caused to him. The judge does not take the financial situation of the parties into account in assessing compensation for the purpose of granting compensation in excess of the extent of the damage. In order to provide him with a reason for hardening with him and to give the injured person an amount of compensation in excess of the fact of the damage actually occurring, where the damage was poor or he had a single obligation to

compensate the injured person for appropriate damage and nothing else. The full compensation shall be deemed to include all damage to the injured person, noting that there are a number of specific restrictions on the principle of full reparation, in particular the rule prohibiting double recovery and perhaps the rule of inadmissibility unless the opponent requests it or more. Relate more to the citation of responsibility than to the determination of value in relation to the principle.

The power of the court to assess compensation:

When the judge before him is satisfied that the civil liability conditions are available and that elements of liability are established in accordance with the general rule of civil liability and include, firstly, unacceptable or unlawful conduct by the plaintiff, secondly the damage and thirdly, the causal link between the damage and the illegal act (Bucan Gutta, 2014: 207), he will decide the appropriate compensation for the injured person. The judge has the absolute power to determine the manner in which compensation is made. The judge determines the appropriate method for estimating compensation. The law gives the court full power to determine the method of compensation. In case of compensation by agreement, if the amount of compensation has not been determined initially, the amount of compensation shall be determined by the court. Some may believe that the phrase "the amount of compensation is determined by the court" gives the court broad discretion without any limitation in estimating compensation. However, this trend is not entirely correct. This is because the court does not have absolute powers to estimate the compensation. The estimate includes the plaintiff's claim of loss and loss of profits due to the loss of the right to him or due to the delay in the fulfillment of that right provided that all this is a natural result of the liability of the defendant. Moreover, if the court finds that the defendant did not commit fraud or serious error. The court, although it is the one who will estimate the compensation, but it will be in the case. The finest binding that the compensation amount does not exceed the expected time of injury (Briggs, 2016: 6). Iraqi Civil Code Article 170, paragraph 1 of which provides for the idea of compensation by agreement, "the contractors may determine in advance the value of compensation provided for in the contract by subsequent agreement", noting that the contractual compensation is not receivable if the debtor proves that the creditor did not cause any damage, Compensation by agreement The creditor may not claim more than this value unless it is proved that the debtor has committed fraud or a serious mistake. The Egyptian Civil Code No. 131 of 1948 stipulates the same content in article 223. In our estimation, the idea of compensation by agreement closes the door in the face of the application of punitive damages for two reasons: First, compensation by agreement is incompatible with the basis of the idea of punitive damages and with the functions that are aimed at achieving the punishment of the wrongdoer and deter others. The second reason we imagine that a person wishes to punish himself from during the adoption of sanctions has no limits.

The absolute power of the Court to assess compensation:

The law gives the court absolute power to estimate compensation without any limitation, including penal restrictions. Unlike compensatory damages, punitive damages cannot be compensated as a matter of right. The amount of compensation for punitive damages is left to the discretion of the jury and is determined by consideration of the nature of the defendant's misconduct, the nature and extent of the plaintiff's injury, and the defendant's wealth (Cotchett, Molumphy, 1998). The court decides on civil liability and the amount of compensation without being bound by the rules of criminal liability or

the judgment, Article 206 of paragraph 2 of the Iraqi Civil Code provides that "the court shall determine the civil liability and the amount of compensation without being bound by the rules of criminal liability or the sentence issued by the court of delicts". However, the law described the court as a road map to be used to estimate the compensation, which is full compensation (Article 207). This is not a restriction on the court insofar as it is a guide to the Court's failure to estimate the compensation. The result is that the court can estimate the compensation it deems fit within the limits of the injured attachment of damage and loss of profits provided that this is a natural result of the illegal act. The law may indicate that the court may not be able to determine the amount of compensation sufficiently, and once again intervene to assist the court by giving it the right to retain the right to demand the review of the assessment within a reasonable period of time (art. 207, Para. 2). The law also granted the court the authority to choose the appropriate method of compensation and authorized the court to award compensation in the form of premiums or salary income, article 209 of the Iraqi Civil Code stipulates in paragraph 1 that "the Court shall determine the manner of compensation in accordance with the circumstances and the compensation shall be deemed to be a fine or a salary". This provision also provides for Kuwaiti Civil Code (KCC, 1980: 252). Although the law made the compensation in cash, it again granted the court broad authority to order the reinstatement of the case or to rule on a certain measure or to return the case, all as compensation. The law also granted the court the possibility of returning from the compensation it decides to reduce Or to refrain from the judgment of compensation when the victim has participated in his mistake in the events of necessity increased or impaired the status of the debtor, And this is stated by Article 210 of the Iraqi Civil Code which stipulates that "the court may reduce the amount of compensation or not to grant compensation if the injured person has participated in his fault in causing the damage or increased it or has not been the center of the debtor". This provision is stipulated in the Civil Transactions Law of the United Arab Emirates (CTLUAE: 1985).

Restricted power of the court to estimate compensation

Although the law gave the court broad discretion in estimating compensation, in some cases the law also limited that authority. In fair compensation, for example, the law required the court to take into consideration the compensation status of the litigants, Such as the personal circumstances of the injured party, his health and physical condition, his financial and social status, and his various sources of income (Brodof, McClellan, Anderson, 2004: 609). He must also take into consideration the potential loss of the chances of success that the injured party hoped for, comparing these elements before and after the act, and that was stated the Iraqi Civil Code contains article 191, paragraph 3, of this provision by stating that "in determining fair compensation for damage, the court must take into account the status of liabilities". The same provision was included in the Algerian Civil Code (ACCD: 1975:125).The second restriction, although the law has decided to estimate the compensation in cash, and although it authorized the court to order the return of the case to where it was, but the law at the same time restricted it to be at the request of the victim, note that the Iraqi Civil Code provides for this in article 209 paragraph 2 by saying, "the compensation is estimated in cash as the court may, depending on the circumstances and at the request of the aggrieved, order the return of the case to what it was or ... also the same provision in Article 171 of the Egyptian Civil Code. The third limitation is that the assessment of compensation determined by the court is subject to the control of the Court of Cassation. In this regard, the Iraqi Court of Cassation issued many

decisions that the compensation is commensurate with the actual damage. If that compensation is excessive, the Court of Cassation may reduce it, This is a view Court of Cassation decision (ICCD: 1974), and also if the Court of Cassation finds that the compensation is small and disproportionate to the gravity of the damage, it has the right to decide to overturn that decision.

Characteristics of compensation and comparison with the characteristics of punitive damages

In general, the characteristics, or functions of compensation are deterrence and reform.

Compensation as a Means of Deterrence

It is clear that deterrence involves two things at the same time: it is deterrence and punishment for the wrongdoing person, the person responsible for the damage, which is to deter others from committing that act in the future. This is intended to deter or punish the person responsible for the damage, noting that the latter never comes alone, in the sense that punitive damages cannot be judged unless the court decides to award compensation, and vice versa. We believe that the function of deterrence in punitive damages is more powerful and influential and effectiveness, which is totally unpredictable what compensation in its general form, the function of deterrence is limited by the principle of full compensation. There is a consensus among legal scholars that deterrence, along with punishment, is the goal of punitive damages. Deterrence is, moreover, a well-defined objective enough that deterrence is not the only objective served by punitive damages, "and that attention was only through economic deterrence, but deterrence is nonetheless a very important justification for punitive damages (Sharkey, 2003: 364). In the scope of punitive damages, deterrence is seen as the main function of punitive damages: from this point of view, punishment is not a function of punitive damages per se but rather a means to an end: deterrent, the supposed deterrent effect of punitive damages is one of the reasons why civil treatment has been replaced Interesting in continental Europe (Meurkens, 2014: 160).

Compensation as a means of repair

The general purpose of compensation is to redress the damage and restore the situation to the extent that it existed prior to the injury. The basic function of the modern damage law is to compensate the injured person for the actual loss suffered. This function is usually achieved by awarding financial compensation, where compensation is not compensated and compensation may be the rule while in-kind compensation is the exception. In addition to financial compensation, judicial and other reasonable remedies may be sought, depending on the legal system available, however, most cases of compensation relate to monetary compensation. The compensation is intended to reach a situation of just compensation. The result of the fair compensation is that it is not permissible to combine compensation. This is not the case with punitive damages. They are compensation that does not aim at restoring the situation to the extent that it was before the damage. It is a severe punitive compensation. This is sometimes called "quasi-criminal. Punitive damages are, in a real sense "quasi-criminal, “standing half-way between the civil and the criminal law (Zipursky, 2005: 170).

They are "awarded" as "damages" to a plaintiff against a defendant in a private lawsuit (Owen, 1994: 365). The most important feature of punitive damages is that they

are very large and unpredictable sums of money, and cannot be predicted by the parties to the case. The Iraqi Civil Code does not allow punitive damages for the existence of the principle of full compensation, but the recent period has witnessed a development not at the level of law, which provides parties against defendants, especially in the case of defamation and libel suits. The amount of compensation sought by a person in a libel suit was estimated at five hundred thousand US dollars, this lawsuit was filed by a deputy in the Iraqi parliament against another deputy in the parliament, and the cause of the lawsuit is the defendant's attorney accusing the prosecutor of plotting against the arrival of a person to the prime minister's position, and has requested in a petition the amount mentioned above. The claim is registered at 577847 on 28/10/2014.

The modern functions of punitive compensation

At the beginning of the twentieth century, punitive damages were used to protect consumers from unfair and oppressive trade practices. In this sense, punitive damages would prevent large productive companies, for example, from committing future misconduct by declaring such behavior unacceptable. This point is contrary to compensatory a damage which aims only to bring the victims back to the situation they were in before they were hurt. Punitive damages are designed to punish those who threaten health and safety deliberately. Punitive damages also relieve pressure on the criminal justice system (Gottlieb, 2011: 5), a remedy that turns to filling enforcement gaps that arise because of the inadequacy of criminal law in every historical era. The most obvious function is "compensation" Punishment is that it acts as a protective device for society from any illegal acts that may be committed by producers particularly in the field of trade. There are other additional functions of punitive damages, which are modern functions that have developed with increasing recourse to them. In addition, they are compensations in the strict sense. They also work in relation to lawyers' fees. When the court decides compensation for the winning party, it decides that compensation without regard to legal fees. The amount of compensation implicitly includes the fees of lawyers, and in this sense, the compensation will not be as complete as some might imagine. In the case of the assessment of punitive damages, they include in their accounts attorney's fees (GCCP, 2006:91). Second, punitive damages can be used to help if there is a difficulty in measuring or estimating the amount of compensation. This function of punitive damage can be easily identified and followed up in cases where compensation for pain and suffering is estimated. Such compensation, due to pain and suffering, is limited or unavailable. In this sense, punitive damages serve two purposes at the same time: on the one hand, it is working to punish the wrongful act committed by the defendant, and on the other hand focused on the plaintiff who suffered the pain, pain and suffering and these cannot be estimated because they differ from person to person and did to do, but according to the estimate of traditional compensation did not match the amount of pain and suffering suffered by the injured party, but punitive damages addressed the issue preferred. The third and final function in which punitive damages can be used for compensatory purposes is sometimes when it is difficult to prove actual damage. It occurs in cases related to intellectual acts, such as infringement of intellectual property and monopoly cases. Punitive damages can be used to eliminate the difficulties we face in determining the amount of actual losses (Behr, 2003: 125).

Conclusion

Iraqi law dealt with compensation as a penalty for civil liability. This compensation may be determined in the contract, which is called "compensation by agreement" and may be a provision of the law. In the absence of such cases, it is the court's discretion. The court shall evaluate the compensation to the principle of full compensation, which aims to restore the damage, the victim for the loss he suffered and for the lost earnings. Any act of self-harm, such as killing, wounding, beatings or any other type of victimization, is liable for damages. The right to compensation in addition to physical damage also includes moral damage, which includes any infringement of liberty, honor, reputation or social status. It is also found that the law does not draw red lines to prevent the court from taking them, but the judicial request has not yet determined the possibility of providing punitive damages in cases where the damage is caused by fraud or recklessness or illegal action.

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Collective Bargaining and Solving Collective Labor Conflicts in the European Union: Several Models of Representing the Interests of Workers

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Abstract
Collective bargaining is one of the foundations of labor relations, which is common across most of the European Union's Member States, with the aim of establishing working and employment conditions, regulating relationships between employers and workers, and developing relationships between employers or their organizations and employees, represented by workers' organizations (trade unions) or otherwise provided for by national law. Depending on its scope, collective bargaining can take place at several levels: at the national level, at branch or sector level, at the level of profession, interprofessional negotiation, local or regional negotiation, bargaining at enterprise level. At the same levels, therefore, a collective labor conflict may also erupt. The present study illustrates several European models of representation of workers' interests in the conduct of collective bargaining and in solving collective labor conflicts.

Keywords: *trade union; employer; negotiation; collective labor contract; collective labor conflict*.

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The role of collective bargaining and collective agreements in the development of working relationships

Protection and exercise of employees' rights to collective action has both theoretical and practical importance because only by doing so they can promote their professional, economic, social interests through collective bargaining (and express their points of view regarding the legislative measures) or may obtain greater rights in addition to those covered by labour laws (by conclusion of collective agreement) and can defend their rights violated (by the onset and resolution of labour disputes).

Priority enjoyed by the national law on collective bargaining in labour legislation is fully consistent with international rules. Both the International Labor Organization and the European Union norms confer an important position to collective bargaining. Representation and collective defence of the interests of workers and employers being included, as a result of the Treaty of Lisbon, between the powers of support, complementarity or coordination between the European institutions and the Member States (Avram and Radu, 2008a: 44-51), a Member State may entrust the social partners, at their joint request, the implementation of European directives adopted in areas where the EU supports and supplements Member States to achieve social objectives (art. 153 par. 3 of the Treaty of Lisbon). There are specific issues of employment excluded from Union competence – wages payments, right of association, right to strike, the right to impose lock-outs (art. 153 par. 5 of the Treaty of Lisbon) that can be governed by means specific to national social dialogue, particularly by collective bargaining agreements concluded by social partners (Avram, Radu, 2012: 104). As regards the relationship between EU norms and national law, the principle of the primacy of EU law does not apply to those relations which do not fall within the scope of the EU competence and in respect of which the sovereign attributes of the State will continue to manifest (Avram, Bărbieru, 2009: 63).

Collective bargaining is one of the foundations of labor relations, which is common across most of the European Union's Member States, with the aim of establishing working and employment conditions, regulating relationships between employers and workers, and developing relationships between employers or their organizations and employees, represented by workers' organizations (trade unions) or otherwise provided for by national law. Depending on its scope, collective bargaining can take place at several levels: at the national level, at branch or sector level, at the level of profession, interprofessional negotiation, local or regional negotiation, bargaining at enterprise level.

Due to the formation of trade union federations at branch level, collective bargaining has become, in Europe, the main form of trade union-patronage relations. Patrons responded to this type of syndicalism by creating their own sectoral organizations. Branch-level negotiation has the advantage that it puts the company in the shelter of union activism. Of course, conflicts that arise around branch negotiations disrupt business activity, but they are not directed against a particular business or employer, for the employers' association is the one targeted. Consequently, "collective bargaining at the branch level moves the workshop or enterprise conflict to the branch level and does not affect the employer's decision-making power - at least in terms of salary levels" (Frățilă, 2001: 51-52). Branch-level negotiation is advantageous not only because it diminishes the reasons for conflict at the workshop or enterprise level, but also because it facilitates the conduct of inter-branch national negotiations. In support of interprofessional negotiation came large companies that span different areas of activity and who continued to face multiple local claims and union activism, even after branch negotiation became a natural

act in professional relationships. In an interprofessional negotiation, the most dynamic sectors have to accept some moderation in wages, while the less developed sectors benefit from an increase in pay levels (Frățilă, 2001: 51-52).

Italy has the strongest tradition in branch negotiation, but most often the agreement reached at this level serves only as a starting point for local and business negotiations, without too much influence (D'Agostino, Loiacono, 2009: 267-269). Unlike other European countries, collective bargaining at the branch level is less developed in the United Kingdom. In the British system, each trade union negotiates on behalf of its members with the employer or a group of employers (enterprise level negotiation) so that the results of the negotiation do not apply to all employees in a sector. Consequently, the variety of modalities and results of collective bargaining is much higher than on the continent (Avram, Radu, 2008b: 60-61).

However, interprofessional negotiation can not be considered a constant of professional relations in all European countries. Only in the Scandinavian Peninsula persisted for a longer period; in the countries of Latin Europe (France, Italy, Portugal, Romania, Spain) was very rare. Employers' associations have become increasingly hostile to national wage interprofessional agreements because they have found that they do not lead to wage moderation and do not allow for special private situations of companies to be taken into account. Unions, on the other hand, began to complain about the weakening of their position in front of their members because, in exchange for accepted wage moderation, they did not get any other compensatory advantages.

In Latin European countries, local or regional bargaining prevails for two reasons: firstly, employers' associations have lean structures and leave a lot of freedom to the individual employer; secondly, local negotiation offers employers the opportunity to be directly involved in the preparation and conduct of negotiations.

Enterprise-level negotiation is also relatively developed in Europe, but it is conducted within the framework of branch policies. In the UK, enterprise negotiation is permanent and often takes place in an informal, unregulated manner, but widely spread are the negociations between employee and employers, which have a wide range of autonomy and the legal possibility to deny wage payments or other benefits to workers who refuse to sign personal contracts – "a clear blow at collective bargaining" (Eaton, 2000: 76).

In France, collective bargaining can take place at branch, professional or interprofessional level, and the territorial scope can be national, regional or local (Lyon-Caen, Pellisier, Supiot, 1994: 880-886). Enterprise-level negotiation may have as its object the creation of a conventional rule supplementing legal provisions or adapting and completing a convention or agreement concluded at a higher level (Frățilă, 2001: 51-52).

In all Germanic countries (Austria, Belgium, Denmark, Germany, the Netherlands), collective bargaining is doubled synchronized. First, the confederations unify the claims of federal organizations; then, the branches considered to be the most important lead the "benchmark" negotiations. The fundamental principle of this bargaining system is that the results of the negotiations are imposed on both employers and employees, members of the negotiating organizations. Thus a set of branch agreements emerged, to which no enterprise can escape. At the same time, enterprises are not obliged to negotiate, as they are covered by branch agreements, unlike in Romania, where collective bargaining (not the conclusion of the collective labor contract) is compulsory at the level of all units with a minimum of 21 of employees. Therefore, collective bargaining in Germanic Europe is characterized by the fact that it protects the

enterprise (the department, the workshop, etc.) from conflicts, the application of branch agreements being mandatory and also by the fact that the state favors the negotiation, although it is involved little in the development of professional relationships, and his role is rarely subject to contestation (Frățilă, 2001: 51-52). In the Germanic model, the tradition of collective bargaining has led to the building of a trustworthy relationship between the social partners over the years, which is also reflected by the terms by which they are appointed: Tarifspartners in Germany, social partners in Belgium and the Netherlands (Avram, Radu, 2008b: 61).

The collective bargaining agreement underpins relations established between employers and employees covered by this contract are both rights and obligations of both parties. Also in the collective agreement are provided possible solutions to resolve any misunderstandings between employees and employers. For example, pursuant to the stipulations of article 39 par. 1 of Law no. 202/2002 concerning the equality of chances for men and women, when the employees consider themselves sexually discriminated, they have the right to submit petitions to the employer or against him, if he is directly involved, and ask for the support of the trade union or the employees' representatives for solving the work situation. Unlike other state laws providing in detail the mediation procedure at the employer/unit level, Romanian Labour Code does not regulate the procedure of solving employees' individual petitions at employer's level. Because of the fact that this aspect is not regulated by law, it should be included as a distinctive issue in the content of collective labour contracts concluded at the unity level or internal regulations. Thus, in order to create and mantain a working environment meant to encourage the respect of each persons's dignity, through the agency of collective labour contract concluded at unity level, there shall be established procedures of amiably solving the individual complaints of the employees, inclusively the ones concerning cases of moral or sexual harassment (Radu, 2015: 95-99).

The collective bargaining agreement is leading to harmonize the interests of employers, employees and the general interest of society. Analyzing Law no. 53/2003 - Labour Code and labour law as a whole, unquestionably stands out that, in all respects, including in terms of content regulation, collective bargaining plays a preeminent role in Romania. After the emergence of Law no. 62/2011 on social dialogue the interests of employees have been severely affected by eliminating the possibility of negotiating and concluding a collective agreement at national level. As for contracts negotiated at the level of sectors, the collective labour contract will be registered at that level only if the number of employees in establishments-members of the signatory employers organizations is greater than half of the total number of employees in the business sector. If this condition is met, the application of collective labour contract registered at the level of a sector will be extended to all establishments in that sector by the order of the Minister of Labour, Family and Social Protection, with the approval of the National Tripartite Council, based on the request of the signatories of collective labour agreement at sectorial level (Article 143 para. 5 of the Romanian Law no. 62/2011 on social dialogue). Otherwise, the contract will be registered as a contract of group of units. A similar situation is registered in Hungary, where the revised Labour Code stipulates that the ministry of labour can extend branch agreements to the entire industry or sector in response to a joint request by the contracting parties but only if the parties are „representative in the industry concerned" (Kollonay-Lehoczky, Ladó, 1996: 136; Pollert, 2000: 192). These conditions lead to a continuous deterioration of industry agreements which are fewer and week, providing only minimum standards for pay, leaves and work conditions, usually just above those provided

for by law.

Collective bargaining and the conclusion of collective labor agreements/ conventions are equally important for unitary and federal states. In all federal countries, collective bargaining is subject to two-pronged coordination. First, the confederations unified the federal claims, then the trade union confederations in the branches of activity that are considered the most important conduct the basic negotiations.The fundamental principle of this system is that the results of the negotiations are imposed on both employers and workers, members of the organizations involved in the negotiation. The consequence is a set of industrial agreements that no company can avoid (Radu, Avram, Nacu, 2011: 304).

In Germany, collective agreements (Tarifverträge), usually concluded at the branch level by the appropriate trade union and employers' association, are legally binding as long as they keep in line with the statutory minimum standards (Halbach, Poland and Schwedes, 1991: 303-304). A particularity of German law system is that there is no trade union law. Even though trade unions are generally defined as associations with no legal capacity, they are legally entitled to participate in collective bargaining as well as to take legal action or to be taken to court (Section 2 par. 1 of the Act on Collective Agreements and section 10 of the Labour Court Act). The duties and rights of trade union members are laid down in the relevant trade union's status (the constitution act). Even though the statuses may vary between different trade unions, they traditionally establish similar essential duties and rights. There are also written agreements concluded between the employer and the works council (a body representing the employees of the establishment) because „the relationship between the industrial unions and work councils in Germany seems to have been highly significant. Pressures for the decentralization of collective bargaining have been deflected onto the works councils. The works council system and its linkage with industry-wide bargaining has endowed the German economy with a unique capacity for what Thelen called "negociated adjustment" (Thelen, 1993: 75). One factor that should not be neglected is co-determination, which contributes to the elaboration of various trade union policies that play an important role in the organization and functioning of the national economy (Eaton, 2000: 53-54).

Collective bargaining takes place over a written text (usually based on the previous collective agreement and legislation) on which the parties reach an agreement and which includes a social peace clause, that limits the possibility of triggering collective labor disputes to the (re)negotiation period. New employees' claims and other collective labor conflicts with the same object and between the same parties are forbidden throughout the duration of the collective agreement. In this way, peace between the social partners is ensured both at the level of the enterprise and at the level of the branch of activity for the entire period of the collective convention's validity (Radu, Avram, Nacu, 2011: 305).

Collective bargaining can also take place at the enterprise level but companies are not obliged to negotiate, because they are covered by branch agreements (this does not mean that enterprise-level bargaining is prohibited).

German government has a discrete role in employment relations. Its contribution is notable in two aspects: first, sets the legal framework of negotiation and conflict; second, government can intervene when there is an extension of a collective agreement, its role being to convince companies that are not members of employers' organizations to meet agreement's conditions. A collective agreement may be declared as generally applicable to all employment relationships within its geographical scope, whether or not the employer or the employee are members of the parties to the agreement. This

declaration is done by the Ministry of Labour, if at least 50% of the employees who come under the agreement's geographical area are hired by employers already bound by the agreement; the accordance of both industrial partners is required (Radu, Avram, Nacu, 2011: 305).

Solving collective labor conflicts in EU member states

Collective conflicts are the traditional weapon of trade unions. Its use is based on strengths and union capacity. In states where syndicalism is influential, the strike is essentially used as a threat. In countries with weak syndication, the strike often "escapes" the control of organizations.

The kind and the level of a dispute often have important legal and strategic consequences for determining the method for resolving it. The "classical" classification of labor conflicts divides them into conflicts of interest and conflicts of rights. While conflicts of interest are work conflicts which have as their object the establishment of working conditions when negotiating the collective labor agreements and which refer to the interests of a professional, social or economic nature of employees, conflicts of rights concern the exercise of certain rights or the fulfillment of obligations under laws or other normative acts, as well as collective or individual labor agreements. Such conflicts therefore concern the rights of employees already born. The current Romanian regulations on labor conflicts - Law no. 62/2011 - divides labor conflicts into: a) collective labor conflict - the labor conflict between employees and employers that breaks out as to the commencement, conduct or conclusion of negotiations on contracts or collective agreements; b) individual labor conflict - the work conflict which has as its object the exercise of certain rights or the fulfillment of obligations arising from individual and collective labor contracts or from collective agreements and civil service relationships, as well as from laws or from other normative acts.

In the case of a conflict of rights its settlement can be done under the conditions and according to the procedure provided by the law - as a rule, by introducing an action at the court – or, if there is a valid collective contract in force, this same agreement might include dispositions setting out the mechanism the parties must follow in the event of a individual dispute. Depending on the national legislation, there may be legal provisions requiring that certain collective disputes must follow certain compulsory steps or must be solved in a specified manner for reasons of public or private interest protection; e.g. a collective dispute involving an essential public service may be subject to compulsory arbitration under the law (ILO Office, 2007: 19).

In European countries, collective labor disputes are settled either in amicable ways (alternative dispute resolution) or through strike. All methods of alternative dispute resolution (conciliation, mediation, arbitration) involve the participation of a neutral third party and the degree of its intervention makes the difference between one procedure or another (ILO Office, 2007: 3).

In some EU member states, there is no distinction between conciliation and mediation or these terms tend to overlap (Malta and Slovenia). In other states, there is a definite difference, yet subtle, between the two amiable forms of solving the conflicts. While the conciliator has the task of facilitating communication between the parties of the dispute, without being able to make any concrete proposal to resolve the conflict, the role of the mediator also involves the presentation of some variants of settlement that the parties can accept or reject (ILO Office, 2007: 3).

Conciliation procedure may be compulsory or conventional – depending on the legal frame specific to each country. In France, conciliation is, as a rule, conventional. Normally, any collective agreement must include a clause concerning the conciliation procedure if a conflict arises between the two parties. Often, conciliation is direct; it takes place between the two parties without the participation of a third party. If there is no conventional procedure or if it has not been able to function, the parties may resort to the formal procedure, which has a subsidiary character. It involves the conciliatory intervention of public authority. Thus, at first the informed prefect can take the initiative to bring together the parties and try to reconcile them. In addition, a conciliation attempt will be carried out within regional or national tripartite commissions (employers' representatives, employees and public authorities). Conciliation only leads to a voluntary agreement. If it succeeds, the minute has the value of a agreement, with the same authority and effect as a collective agreement. In the event of failure, the minute shall record the points of disagreement in order to facilitate a possible mediation.

In Romania, conciliation is compulsory. The representative trade union or employees' representatives shall notify in writing the territorial labor inspectorate or the Ministry of Labor about the triggering of the collective labor conflict. The Delegate of the Ministry of Labor/ the Territorial Labor Inspectorate plays the role of conciliator.

In some EU countries, labor inspection services play a prominent part in the prevention and resolution of collective conflicts. Basically, there can be distinguished two models (systems). Under the French system, labor inspectors often function as conciliators in cases of collective disputes (Greece, Spain, Turkey, Romania). Under the British tradition, labor inspectors are strictly forbidden from interfering in industrial disputes (Cyprus, Germany, the Nordic countries). The Polish system is an intermediary model in which the law compels employers to bring a dispute to the attention of the regional labor inspector who then typically requires that a workplace inspection be carried out. Although the labor inspector does not behave as a conciliator or as a mediator, the recording of the results of the inspection, the finding of contraventions and the possible sanctioning of the employer with the fine contributes to the solving of the collective labor conflicts at the enterprise level (ILO Office, 2007: 13).

Mediation is a procedure that follows, in principle, conciliation in case of failure. Unlike the Romanian system, in France, if the parties wish, they can resort directly to mediation without using the conciliation procedure. Also, in the event of a failure of conciliation, parties may prefer mediation to arbitration, and finally, after the failure of conciliation, it is common for neither the parties to the conflict nor the chairman of the National Commission of Collective Negociation nor the Minister of Labor to trigger the mediation procedure. Mediation, initially optional (requires the parties' agreement), may be binding if the chairman of the National Commission of Collective Negociation or the Minister of Labor asks the parties to resort to it after the failure of the conciliation, even if none of the parties wants it (Roy, 2009: 150). In France, the mediator is either elected by the parties or, in the absence of the agreement, elected by the minister from the list of impartial and competent persons established by him after consultation with the most representative trade union organizations. In the first instance, the mediator plays the role of a qualified investigator. Like a training judge, he collects documentation on the dispute (economic situation of the enterprise, worker's condition). For this purpose, he has investigative powers: he can use expertise (e.g. accountancy expertise), witness audition, and gather information from all interested parties. After receiving the memoirs of the parties, he summoned them and tried to reconcile them. The mediator's mission must be

completed within one month (which may be extended with the agreement of the parties to the dispute). It shall be expressed in reasoned proposals bearing the title of recommendation. This recommendation, proposed to the parties, is not binding. The parties may reject the mediator's proposals. This rejection must be motivated. Otherwise, the mediator records the parties' agreement, which has the same value as a collective agreement (Lyon-Caen, Pellisier and Supiot, 1994: 880-886).

Arbitration is another stage in solving a collective labor conflict, which may be mandatory or voluntary, binding or advisory – depending on the legal circumstances or the choice of the parties. As a general rule, arbitration should be freely chosen and the parties should be bound by the final decision. Compulsory arbitration, which is imposed by law, is generally contrary to the principle of voluntary negotiation of collective agreements (Gernigon, Ordero and Guido, 2000: 40-41). There is an exception, however, in cases involving essential services, the interruption of which would endanger human life, personal safety or health of the whole or a part of the population.

Usually, arbitration typically follows after attempts at conciliation and/or mediation between the parties have proven unsuccessful (the case of Romania). In Bulgaria, when a collective dispute is not solved through mediation, the parties may voluntarily agree to submit the conflict to an individual arbitrator or an arbitration commission (voluntary arbitration). Whichever option is chosen, the arbitration process involves the hearings of both parties after which the arbitrator(s) deliver(s) a binding decision in the matter. Alternatively, during the course of the hearings, the parties may be persuaded to sign an arbitration agreement, which has the same legal value as an arbitration decision but the way of resolving the dispute is freely chosen by the parties instead of being imposed by the arbitrator(s). Mandatory arbitration is provided only in one hypothesis: if no agreement is reached between the parties to the conflict on the performance of minimum activities during the strike (Alexandrov Sashov, 2018: 195).

The usual way of solving collective labor disputes in Germany is arbitration. This procedure aims at reconciling conflicting interests and preventing the outbreak of collective actions (collective cessation of work, for example). Even when a collective dispute broke out, arbitration trials can also be made to reach an agreement and thus end this action. In any case, arbitration always has the purpose of contributing to the conclusion of a new collective agreement and thus to maintain social peace. There are two kinds of arbitration: conventional and state arbitration. Conventional arbitration intervenes if the parties to a collective agreement have agreed in a separate agreement that they will go to arbitration before a conflict begins. The state arbitration procedure is triggered only if the direct conciliation between the parties has been discontinued or the conventional arbitration procedure has failed (Halbach, Poland, Schwedes, 1991: 303-304).

In Greece, a collective labor dispute is subject to arbitration either directly, with the agreement of both parties or after a failed mediation. In the latter case, the party who requested failed mediation and the party that accepted the mediator's proposal unilaterally may request arbitration. Employees retain the right to strike during negotiations and during mediation or arbitration. However, this right is temporarily banned if trade unions or employee representatives have resorted to arbitration after accepting the mediator's proposal (Kerameus, Kozyris, 1993: 254-255).

In any event, arbitration involves the participation of a neutral third party who has the duty to examine all the case documents and the evidence provided by both parties and to issue a decision that definitively ends the conflict (ILO Office, 2007: 17-18).

The decision rendered in arbitration is binding on the parties, being equivalent to a collective agreement. Thus, triggering a strike with the same object and between the same parties after the end of the arbitration procedure becomes illegal.

One feature existing in nearly all EU member states – excepting France – is the peace obligation deriving from the collective agreements, the clause on which the collective action/strike is forbidden during the lifetime of the collective agreement.

The right to strike is, in most EU countries, guaranteed in the Constitution, with the exception of Austria, Belgium, Ireland, Luxembourg, Malta, the Netherlands, and the UK (Warneck, 2007: 7). In some countries (Germany and Finland) the right to strike derives from the constitutional freedom of association. There are also some states in which this right has been mainly developed through the jurisprudence of the courts: Belgium, Denmark, France, Ireland, Italy, Luxembourg and the Netherlands (Warneck, 2007: 7).

Prohibitions and limitations on the exercise of the right to strike may result from certain legal dispositions concerning collective disputes resolution. In some countries, strike among public employees in the military, police and emergency services is restricted or even prohibited by law. Wild cat strikes are illegal; also strikes with a clear political character.

Procedural conditions for declaring, conducting, suspending and terminating the strike are governed by either law or collective agreements and relate most often to conciliation and mediation procedures, notice periods, the minimum number of votes to be scored before a strike is taken. Only trade union organizations (representative or not, as the case may be) and elected representatives of the employees have the right to declare strike in order to support and defend the social, professional and economic interests of the employees as well as their statutory rights. The obligation of the strike's organizers to hold a ballot before adopting the strike decision may be laid down either in legislation (Romania) or in the collective agreement (Denmark) or in the trade union statutes (Germany and the Netherlands).

Requiring the parties to pursue conciliation or mediation before strike is legitimate as long as these two amiable procedures are not so complex or slow that a legal declaration of strike becomes impossible in practice or loses its effectiveness (ILO, 2006: 132).

Exercise of the right to strike must not be done abusively by employees. Abuses make strike illegal. In most EU countries the fact of stopping work by the employee in order to take part in a legal strike can not constitute a reasoned justification for termination of the employment contract; neither the contract can be abolished, nor can the employer dismiss the strikers. During a legal strike, the employment contract is suspended and wage entitlements are not paid during this period. Nevertheless there are still some European states in which participating in collective action/ strike is still considered a breach of the main obligation of employees – that of performing the work: Austria, Denmark, Ireland and the UK. An illegal strike is considered a termination of the contract with serious consequences. The employer may claim damages (either to the union, or the individuals or both) and dismiss the strikers, provided that such dismissal is done in a manner that does not constitute an abuse of rights.

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ORIGINAL PAPER

The Protection of Sexual Freedom and the Incrimination of the Sexual Assault in Romania

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Abstract:
In the multitude of problems that Romania faces at the beginning of 21st century, the emergence of offences that refer to the sexual life represents a reality that has reached a controversial point, sometimes manifesting through constraints and threats on addressing the victim, extremely violent actions that can lead to the death or even the suicide of the victims. The period that followed after the Romanian Revolution from December 1989 was marked by substantial changes that took place in our perception on sexuality and sexual freedom, and the causes and the negative implications of the facts that infringe this freedom are combated with the penal legislation. The successive legal modifications show progress on the incrimination of different modalities in committing the offences that infringe the sexual freedom (especially rape, sexual aggressions, sexual harassment) and the inclusion of the acts of homosexuality and lesbianism in the material elements of these offences, and also a lack of clarity and coherence of the Romanian legislator in defining the sexual acts, or "other modalities to obtain sexual satisfaction". This study underlines, on one side, the ambiguity and discordance between the legal norms that sanction the acts of sexual assault, sexual aggression, sexual intercourse with a minor person, sexual harassment, and, on the other side, the different aspects that these offences can display into practice. Another aspect preponderantly discussed has been the criteria for differentiating between rape and other sexual offences, especially when the victims are minors, owing to the increasing amount of texts from the Penal Code that refer to such facts committed against minors.

Keywords: *sexual act/intercourse; rape; victim; minor; Penal Code; offence*

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Sexual freedom is related to the human's right to dispose of their body, their physical integrity and the freedom to make their own choices on addressing the private and sentimental life, to choose the sexual orientation and the sexual partner, including the right to avoid the risk of an unwanted pregnancy and the right to abortion.

Broadly presented, the right to the respect of intimate life encompasses a great variety of situations that refer to sexual, sentimental or family life, to the person's health condition, and to the right to dispose of their own body, to patrimony, to domicile's inviolability (Radu, 2010: 79-80).

The Romanian Constitution, revised through Law no.429/2003, regulates, with the value of principle, the right to intimate, family and private life. Although it is not expressively mentioned, not only family life is protected by the law, but the sentimental and sexual relations, due to the fact that they represent voluntary affective relationships that person enjoys. The offences stipulated by the Romanian penal legislation, through which there is infringed the sexual freedom, (they refer to sexual intercourse, of any nature, through constraints or menace, or taking advantage of the impossibility to defend of the victim – rape, sexual aggression, sexual harassment); the ones that infringe the public order and good morals (they address, because of their committing in public spaces, or their mentioning, the emerging of a public scandal – sexual perversion, including the one that involves minors, or that committed for producing pornographic materials; indecent exposure; child pornography); the ones in which the offender intends to determine minors to have sexual intercourse, or do/assist to obscene acts: the sexual intercourse with a minor, sexual corruption, use of child prostitution, recruiting of minors for sexual purposes. Moreover, we can consider that they can be sub-divided in offences that infringe directly the sexual freedom of a person (when their consent lacks or if it is obtained through constraint, threats, promises and so forth), and offences that involve the production, possession, obtaining, storing, exposure, promotion, distribution of images that cannot be shown to the public legally (Robert & Duffar, 1993: 95), along with the providing, of any kind, of pornographic materials with minor participants, the watching of pornographic shows with minors, or the accessing, without the right, through electronic means or ways of communication, of pornographic materials with minors.

Rape represents the most severe infringement of the sexual freedom, with profoundly and extremely serious psychological implications. Depending on the way and circumstances it is committed, this act that implies a high degree of social danger, can infringe, directly, but extremely brutal, other important values too, which are defended by the legal system, such is the right to dignity (Radu, 2015: 92-93), the right to life and physical and psychical integrity, the right to health, the right to freedom. From the victim's point of view, the most severe infringement is that against the dignity and honour, through the committing of such an act the victim being subjected to threats, violence, constraints, humiliation that would decrease the self-esteem and self-trust, sometimes leading even to suicide.

In the initial form of the Penal Code from 1968, rape, in its typical variant, was defined as "the sexual intercourse with a female person, through her constraint or taking advantage of her impossibility to defend or express her will", respectively when the victim is asleep, or under the influence of drugs, alcohol, pills, or other substances, and can be easily immobilised to force her to engage in the sexual intercourse. The penalty in case of rape was prison from 2 to 7 years. For the same act, committed in aggravating

circumstances – for example, the victim did not reach the age of 14, the rape was committed by several people, the victim was enjoying the care, education, guardianship, or treatment of the offender, or the victim was suffering from body or health impairment, the penalty was prison from 3 to 10 years, and in case of death or suicide of the victim, the limits of the penalty were raising from 7 to 15 years.

The marriage of the offender with the victim could acquit the first from penal liability, besides when rape was committed by two or more persons together. The reason for the penalty acquaintance was that, on one side, the offender showed remorse, and wanted to rectify the harm did to the victim, and it was created a home for the child that could result from this forced union. The inflicting of penalty on the offender, after the marriage, could lead to the disturbance, and even the breaking of family relations, by constantly maintaining, in the conscience of the persons involved, the committed act. This solution was continuing a tradition of the Romania legislation in this matter, which would obligate the man who would rape a virgin to marry her, case in which he would remain unpunished. Nonetheless, the Civil Code would allow that, when the regret of the offender would prove to be only a formal one, the marriage being just for appearance and having behind mean interests, the deception and the fiction, the rapist wishing only to avoid penalty, the marriage would be annulled, with the consequence of the offender to be sentenced.

The specialists in the field of law criticised for many years the possibility to acquit the author of the rape, if he married the victim. The main argument was residing in the fact that a marriage concluded under these circumstances cannot be a long-lasting one, even if the man showed good-will, because his consent is given under the menace of prison and the two spouses would always be suspicious. Nevertheless, the dominant opinion was favourable to this solution, because it could be considered that, through marriage, the woman would be offered the possibility to remove the memory of the violence she was subjected to, and to obtain a social status that would attenuate the sufferance and the infringement to her honour and dignity.

The evolution of social relations, the changing of mentalities after the Romanian Revolution from 1989, and the research that has been carried out in this area, imposed several successive modifications, which made that the incrimination of rape in the penal law to appear under a different formula, introducing fundamental differences, as confronted to the anterior regulation, both as regarding the modality to commit the felony (the material element) and the penalty, and on addressing the persons that can constitute the subjects of this offence. Thus, article 197 of the Penal Code was sanctioning "the sexual intercourse of any kind, with a person of different or the same sex", committed "through their constraint, or taking advantage of their impossibility to defend or express their will", with prison "from 3 to 10 years, and the interdiction of certain rights". Consequently, there was made the transition towards the protection of any person's sexual freedom, regardless their sex, not only of the woman, as in the old regulation. Moreover, the introduction of the concept of "sexual assault of any nature", although it was not defined by the law, denotes the clear intention of the legislator to regard it through a different perspective, not only as the conjunction of sexual male and female organs (Antoniu, Bulai & Chivulescu, 1976: 235), and which was clearly different from the other sexual activities, so far incriminated through the other offences. The introduction of this new variant of the material element, through Law no. 197/2000, triggered a constitutional controversy, bringing forward, among other issues, the problem of including the material element of the offences of sexual relations between people of the same gender, still

incriminated at that time, among the offences of rape or sexual intercourse with a minor. By rejecting this opinion of the doctrine, through the Decision no. 211/2000, the Constitutional Court of Romania considered as constitutional the dispositions from article 197 that incriminated rape, mentioning that the notion of "sexual intercourse" did not include that of "sexual intercourse between people of the same gender", which the article 200 from the Penal Code was referring to. Motivating its decision, the Constitutional Court declared that, through the new material element of the offence of rape, there was designated the notion of sexual act, instead of sexual intercourse, "to incriminate the sexual perversions that people are subjected to, and which occur, until the committing of the sexual intercourse". Nonetheless, this opinion was later contradicted by the legal modifications introduced in the subject, through the abrogation of article 200, and the maintaining of article 201 from the Penal Code, which incriminated sexual perversion. The legislative evolutions that occurred on addressing the offence of rape denotes obviously that, in the notion of "sexual act of any nature", there are also included the sexual relations between people of the same gender, as long as they happen through constraint, or taking advantage of the victim's impossibility to defend or manifest their will.

However, in the specialised literature, the discussions continued, on addressing the acts of *sexual perversion*, considering that there are situations in which the material element of the offence of rape can coincide to that of the sexual perversion. In the practice of the courts, there were situations in which the judges embraced this opinion, asserting that "the committing through constraint, of abnormal sexual acts, as the oral ones, against a person of different gender, is considered rape" (Court of Appeal Bucharest, Penal Section I, decision no. 1053/2004). Moreover, the Supreme Court of Justice decided, in 2003, that it is rape, and not the offence of sexual perversion, if the defendant engaged, through violence and threats, in sexual intercourse, normal and anal, with a minor (Supreme Court of Justice, Decision no. 3342/2003). On the line of the same thought, the specialists underlined that: "It is obvious that the acts of sexual perversion, such as oral and anal sex, are included in the notion of sexual act of any nature, which expresses the material element of the rape. For this cause, the sexual anal or oral act, committed through the constraint of the victim, represents the offence of rape. In such a hypostasis, there cannot be taken into consideration an eventual ideal background of the crime, because, besides the coincidence of the material element, we also face the coincidence of the legal object, owing to the fact that, through the incrimination of the violent perversion, it is the sexual freedom of the person that is presumably protected" (Cioclei, 2004: 41). The problems of delimitation appear when the oral or anal act, or both of them, are superposing over the existence of a sexual intercourse with the victim. In such a situation, the judges can consider, according to the meaning conferred to the notion of sexual act, either one offence of rape, or an offence and a sexual perversion too, besides the one of rape. This might be the reason for which, embracing the opinion of the specialised authors that the sexual oral or anal act, regardless the fact that it is done by a person of opposite or the same gender falls in the category of sexual act of any nature and can constitute, depending on the case, the offence of rape or the offence of sexual act with a minor (Cioclei, 2005: 34-38), the legislator renounced, in the new Penal Code, elaborated and adopted in 2009, the incrimination of sexual perversions.

Returning to the modifications suffered by the Penal Code in 2000, for the first time the parties were no longer circumstantial, unlike the old regulation, in which the passive party was the woman, and the active party could be only the man, because it was

considered, at that moment, that only he owned the physiological capacity to complete a sexual intercourse through constraint. This major difference confronted by the old regulation appears as a very important one, a turning point in the evolution of the conception on rape, due to the fact that the condition on addressing the physiological capacity of the man seems to not be valid any more (Fuchs, 2004: 93-121). If the fact was perpetrated in aggravated circumstances – for example, there were more persons participating to the rape, the victim enjoyed the care, education, guardianship or the treatment of the offender, or a member of the offender's family, or if the victim suffered from the violation of the body or health integrity – the sanction was prison from 5 to 18 years, and if after this episode there occurred the death/ suicide of the victim, the limits of the penalty were from 15 to 25 years. If the age of the victim was lower than 15 years old, the penalty was prison from 10 to 25 years.

The offence of *seduction* used to be considered an infringement of the woman's sexual freedom, that was the obtaining of a female person's consent, of under 18 years old, to engage in sexual intercourse, with the promise of marriage. The offender was the man who would promise the victim that he would marry her, or he would even engage with her, to obtain her consent to live together, after a period of time intending to leave her, without fulfilling his obligations taken upon himself. The consent of the victim could not be considered valuable – on one side, due to her age, and on the other side, because it was obtained through treachery, and false promises of marriage. Owing to these reasons, the act of the offender are equivalent, from the point of view of the infringement brought to the sexual life, to the acts of constraint, in case of rape, and the abusive acts, in case of sexual intercourse with a minor. The penalty for seduction was prison from 1 to 5 years. For the existence of the offence of seduction, it was irrelevant weather the minor had had or not previous sexual intercourse, if she was a widow or a divorcee (taking into consideration that, under the provisions of the old legislations, the minor could be married starting with the age of 16, and, in some exceptional cases, 15). If the marriage promise was coming from a married man (the situation being known by the victim), she could not assert that she had been deceived to give her consent for sexual intercourse; the same was the situation when the promise was coming from a man with whom the minor girl had had sexual intercourse before.

In 2002, there was introduced, for the first time in Romanian penal legislation, the offence of *sexual harassment*, representing the menacing or the constraining of a person "to obtain sexual satisfaction, by a person who abuses of their authority, or the influence conferred by the position at work". The incrimination of sexual harassment, which is part of the Romanian legislator's innovations meant to bring the internal penal law to the European one, was considered of real use for the repression of behaviours, especially of the employers, who condition the employing or the performing of services, or the access to certain services to the obtaining of sexual favours (Mateuț, 2002:3). Defined as "any active or passive behaviour that, through the effects that it generates, advantages or disadvantages unjustifiably, or subjects to unjust or degrading treatment a person, a group of people, or a community, as confronted to other people, groups of people or communities" and it is sanctioned as a convention, by the G.O. no. 137/2000 on the prevention and sanctioning of all forms of discrimination, sexual harassment became an offence through the use of menace or constraint, with the purpose to obtain sexual satisfactions, by a person who abuses of their quality or influence conferred by the position at work. Yet, the new penal norm also had imperfections noticed by the law specialists, who remarked that, the employed minors represent an extremely vulnerable social

category, exposed to the risk of sexual harassment, and the offence committed against a minor would have constituted, if considered the social danger aspect, an aggravating circumstance, the Romanian legislator omitting to make a difference on addressing the penalty (Tanislav & Tanislav, 2003: 67; Avram & Radu, 2010: 100-108; Radu, 2017: 96-97).

The new Penal Code, in force since the 1st of February 2014, incriminates rape by specifying that it represents any sexual intercourse, oral or anal sexual act with a person, regardless their gender, committed through constraint, in the impossibility to defend or express their will, or taking advantage of such a condition in which the victim is. As it can be observed, the material element was rethought by those who elaborated the Penal Code; it can be represented by any act of penetration, either standard sexual intercourse, the conjunction of sexual male and female organs, or any sexual act consisting of oral or anal penetration, committed against a person of the same or opposite gender. In a variant assimilated by the law, it is considered rape any other act of vaginal or anal penetration (for example, the introduction of objects or fingers in vagina or anus), which can be done directly by the offender, on the victim's body, but it can also be performed by constraining the victim to do the actions of penetration, on their own bodies.

The offence of *sexual aggression*, stipulated distinctively in art. 219 from the new Penal Code, consists in any other sexual act which does not involve penetration or sexual oral act, committed through constrain, or with a victim in the impossibility to defend or express their will, and taking advantage of this condition of the victim – for example, the act of masturbation constitutes the offence of sexual aggression (Udroiu & Constantinescu, 2014: 300). If the offender, on the same opportunity, commits sexual acts that include penetration, and both acts that do not involve penetration, the criminal act in its assembly is to be qualified as offence of rape (Udroiu & Constantinescu, 2014: 298).

Sexual intercourse performed during the offence of rape represents the lack of the victim's consent, who has their sexual freedom infringed. This can be realised directly, through constraint or menace, or indirectly, if the offender takes advantage of the victim's condition, who is in the impossibility to express their will, or reject the offender's advances.

The constraint can be of two ways – physical and moral, of such effectiveness and intensity that would render the victim powerless. It is not taken into account whether the victim put up physical resistance or not, this aspect can be neglected if the victim expressed their rejection clearly. The condition from the old legislation, according to which the victim had to put up resistance, become obsolete as long as the victim would expose themselves to the risk of being injured by the offender who threated to do harm; thus, if the victim rationalise that the injury can be avoided if adopting a passive attitude, that is the acceptation of the sexual act, the request referring to the existence of constraint can be considered fulfilled. Moral constraint, on the other side, involves the menace in such a manner that would inspire the victim a very strong feeling of fear that would break their resistance or opposition.

Threat is another modality to break the resistance of the victim, it ought to be seriously expressed and to really frighten the victim. The judge is the one who appreciates concretely the serious character of the threat, depending on the case and a multitude of factors, such as the object of threat, the victim's psychical construction, the constitution and the person of the offender, or the circumstance when the victim, in a certain psychical condition, was easier to be intimidated and "ceded", "accepting" the sexual act, due to the fact that it was appreciated that in such a manner it is avoided the harm of the threats.

In the conception of the Romanian legislator, the sexual intercourse committed forcedly against a person, who is directly related, brother or sister – meets the conditions for being considered offence of rape, in the aggravating circumstance provisioned by article 218, section 3, letter b), from the Penal Code in force, not being considered an offence of rape correlated to that of *incest*, because, in case of incest, the law provisions the condition that the sexual intercourse to be consented.

The criterion of differentiation between the offence of rape and sexual aggression consists of the modality to commit, respectively it is mentioned any other sexual act than those provisioned by the law for the offence of rape, the offence also including the annihilation or the lack of the victim's consent.

Rape committed against a minor constitutes an aggravating circumstance of the offence, being punished with prison, whose limitations are between 5 and 12 years, and the accessory penalty of forbidding the exercising of certain rights.

The offences on sexual freedom, which imply the minor's consent, regardless the manner it was obtained, are differentiated from the material point of view, as following: if there were committed acts that involve vaginal or anal penetration, or oral sexual acts, there can be identified a sexual act with a minor, and if there were committed other sexual acts, the offence is to be considered corruption of minors.

On addressing the age of the minor, there can be noticed that, compared to the previous regulations, the actual Penal Code stipulates the aggravating circumstance of rape of a minor, which involves the taking into consideration those who have not come at age, while the old codes were sanctioning even harsher the same offence committed against minors under 14, and 15 years old respectively.

Referring to the other sexual offences committed against minors, the Romanian legislator differentiated the age of the passive party, considering that it is imposed a better protection of the minor's integrity and sexual freedom, in their relation with a major person, whereas the sexual acts between minors are further on unsanctioned. The age limitations, for the incrimination of the sexual act committed by a major person with a minor, are between 13 and 15 years old, the penalty being harsher in case of aggravating circumstances, which involve the minor not reaching the age of 13. The sexual act between a major and a minor, whose age is between 15 and 18 years old, is punished, according to the new Penal Code, with prison from 2 to 7 years, and the accessory penalty of forbidding the exercising of certain rights, in case the minor is a family member of the major person, if the offence was committed against a minor under the care, protection, education, guardianship, or treatment of the offender, or abusing of their position, or authority over the minor, or the extremely vulnerable condition of the minor, due to physical/psychical handicap, or created through a situation of dependence, if by the committing the offence was prejudiced the life of the minor, or there were produced pornographic materials. The legislator considered that the agreement of the victim for the committing of sexual acts has no value, as confronted to the lack of discernment and the incapacity of minors to consciously conduct their sexual life. It ought to be underlined that, when the minor is a direct line relative, brother or sister, with the offender, even if the minors consented for the sexual intercourse to take place, there are cumulated several offences, between that of sexual act with a minor, and that of incest (Gorunescu, 2010: 103).

According to the provisions of the old Penal Code, the offence of sexual act with a minor could be cumulated with that of seduction, consisting of the determining of a female person, younger than 18, to have sexual intercourse, her consent being obtained

after the promise of marrying her, while in the actual penal legislation, the offence of seduction is absorbed by that of sexual act with a minor (Gorunescu, 2010: 105-108).

In practice, there has been discussed the hypostasis in which the sexual offender does not realise that the victim is under 18. There are situations when the victim hides their age, and, from their appearance, it cannot be concluded that they are 18 or not. If the offender proves that they did not know that the victim was under 18, and, under these specific circumstances, the defence results to be verisimilar and trustworthy, the court can discharge the defendant, being considered an error for the existence of the penal character of the offence – except for the rape, which is to be sanctioned in its simple version.

The last sexual offence, which has received a new systematisation through the new Penal Code, in force since 2014, is *sexual harassment*. The incidents of the subject matter are two distinct texts from the Penal Code: the first, which incriminate "the repeated request of sexual favour, in a relation of work or a similar relation, if, through it, the victim was intimidated or positioned in a humiliating situation" (the proper harassment); the second, which sanctions "the offence of the civil servant, who, with the purpose of not carrying out, or delaying their duty at work, or with the purpose of acting contrary to these duties, pretends or obtains sexual favours, from a person directly or indirectly interested in the effects of this work duty" (the abusive use of the position for sexual purpose). In another variant, the civil servant pretends or obtains sexual favours, availing themselves or taking advantages of a position of authority, or superiority over the victim, a situation that derives from their position.

If studying comparatively the two incriminating norms of the sexual harassment – the former article 203^1 and the actual articles 221 and 229, there can be noticed that the Romanian legislator assumed the criticism from the specialised literature, according to which, on one side, the sphere of manifestation of the acts of sexual harassment was limited only to menace and constraint, and, on the other side, the differentiation between sexual harassment and that of rape, which implies necessarily the existence of constraint or menace, was, most of the time, complicated to be made because "it is difficult to make a distinction between the constraint that is followed by the consent of the victim, and the constraint that annuls any consent" (Radu & Avram, 2011: 64). It seems that the Romanian legislator, trying to offer a solution, eliminated, from the new Penal Code, the condition that the sexual favours to be obtained through menace and constraint, being sufficient to be pretended, or obtained within a relation of work, from a job, or a similar relation, if the victim was intimidated, or humiliated after this situation, or the author – civil servant – would avail or take advantage of a position of authority/superiority over the victim, a situation generated by the position at work.

The minors can be a passive party of the offence of sexual harassment, only if they gained the quality of employee, consequently, if they are between 15 and 18 years old. Nonetheless, as underlined in the specialised literature, sexual harassment committed against an employed minor, regardless their gender, constitutes an aggravating circumstance (Tanislav & Tanislav, 2003: 67; Avram & Radu, 2010: 100-108; Radu, 2017: 96-97), the Romanian legislator omitting, once more, to sanction this offence with a higher penalty.

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Udroiu, M. and Constantinescu, V. (2014). *Noul Cod penal. Codul penal anterior: prezentare comparativă, observaţii, ghid de aplicare, legea penală mai favorabilă*, Bucharest: Hamangiu Publishing.

CEPOS NEW CALL FOR PAPERS 2019
9TH INTERNATIONAL CONFERENCE AFTER COMMUNISM. EAST AND WEST UNDER SCRUTINY

Craiova (Romania), House of the University,
29-30 March 2019

Dear Colleagues,

We are delighted to invite you to participate in the 9th International Conference AFTER COMMUNISM. EAST AND WEST UNDER SCRUTINY in Craiova, Romania, 29-30 March 2019. More than two decades after, an event is both history and present. The annual conference organized by CEPOS involves both the perspectives of the researches in the field of Communism and Post-Communism: research experiences and scientific knowledge. Like a "pointing puzzle", 30 years after the fall of communism, the conference panels explore emotional detachments, but also a peculiar involvement creating and exploiting the inter-disciplinary developments of the East-West relations before and after the crucial year 1989 in the fields such as: political sciences, history, economics and law. The conference will be hosted by the University House and during two intense and exciting days, participants all over the world (professors, professionals, doctoral and post-doctoral researchers) are invited to raise the issue of the study of recent history of the former communist space in connection with the Western world. We are confident that all of us will focus during these two days on what is important to move the research in the field forward. We dear to state that we even bear the moral obligation to do that.

Best regards,

The Board of Directors of CEPOS 2019 Conferences and Events Series

PROPOSED PANELS for CEPOS CONFERENCE 2019

Center of Post-Communist Political Studies (CEPOS) proposes the following panels:

- Political culture, civil society and citizen participation
-History, politics and ideologies in modern and contemporary Europe;
-Communism, transition, democracy;
-Post-communism and colective memory;
-Social changes, political history and collective memory
-Politics, ideologies and social action in transition;
-Revolution and political history;
-Political culture and citizen participation
-Law, legal studies and justice reform;
-Law, transitional justice, democratization;
-Constitution(s), legality & political reforms;

-Political parties, electoral systems and electoral campaigns;
-Security and diplomacy in national and Euro-Atlantic environment;
-Rights, identities policies & participation;
-Education, media & social communication;
-Education, social inclusion and regional policies;
-Administrative history and governance within South-Eastern Europe during transition;
-Political leadership, democratization and regional security;
-Comparative policies, sustainable growth and urban planning;
-Knowledge transfer and competitiveness in regional economies;
-Global environment and cultural heritage;
-Integration, identity, and human rights in European systems;
-Religion, cultural history and education;
-Media, communication and politics;
-Discourse, language and social encounters;
-Bioethics and transition challenges;

ABSTRACT SUBMITTING (SEE CEPOS CONFERENCE 2018 REGISTRATION FORM-on http://cepos.eu/)

The proposals must be sent in English and must contain the title of the paper, the abstract (no more than 300 words) and a short presentation of the author(s) (statute, institutional affiliation, short list of relevant scientific contributions).

DEAD-LINE FOR SUBMITTING A PROPOSAL: 15 MARCH 2019

Proposals must be submitted until 15 MARCH 2019 at the following address: cepos2013@gmail.com

CONFERENCE VENUE

Casa Universitarilor/University House (57 Unirii Street, Craiova, Romania). You can view the Conference location and a map at the following address: http://www.casa-universitarilor.ro/

- More information about the Conference venue can be found at the following address: http://www.ucv.ro/campus/puncte_de_atractie/casa_universitarilor/prezentare.php'
- More photos of the conference room can be viewed at http://www.ucv.ro/campus/puncte_de_atractie/casa_universitarilor/galerie_foto.php

CEPOS CONFERENCE PAST EDITIONS

More information, photos and other details about the previous editions of the Conference and CEPOS Workshops, Internships, and other official events organized in 2012-2018 are available on:

- CEPOS official website sections **CEPOS Previous Events Photo gallery CEPOS Events**
- CEPOS FACEBOOK ACCOUNT: https://www.facebook.com/pages/Center-of-Post-Communist-Political-Studies-CEPOS/485957361454074

TRANSPORT

The 9th International Conference "After communism. East and West under Scrutiny"

(2019) will be held in Craiova, a city located in the South-Western part of Romania, at about 250 km from Bucharest, the national capital.
The airport of Craiova (http://en.aeroportcraiova.ro/) has flights to Timisoara, Dusseldorf, Munchen, Ancone, Rome, Venezia, London, Bergamo etc.
Other airports, such as Bucharest (Romania) (http://www.aeroportul-otopeni.info/) is located at distances less than 240 km from Craiova and accommodate international flights.
Train schedule to Craiova can be consulted at InterRegio CFR (http://www.infofer.ro/) and SOFTRANS (http://softrans.ro/mersul-trenurilor.html).

CEPOS CONFERENCE 2019 FEES AND REGISTRATION REGISTRATION DESK

The Conference Registration Desk will be opened from Friday, 29th of March 2019 (from 08.00 a.m. to 18.00 p.m.) until Saturday 30th of March 2019 (from 08.00 a.m. until 14.00 p.m.), for registration and delivery of conference bag with documents to participants. The Conference Registration Desk is located in the lobby of the University House Club, 1st Floor.

REGISTRATION FEES

90 euros/paper can be paid directly via bank transfer on CEPOS Bank account as follows:
Details for online payment
Banca Romana pentru Dezvoltare (BRD)
Owner: ASOCIATIA CENTRUL DE STUDII POLITICE POSTCOMUNISTE
Reference to be mentioned: CV taxa participare si publicare CEPOS
Account Number: RO64BRDE170SV96030911700 (RON)

MEALS AND OTHER ORGANIZING DETAILS

The registration fee covers:
* Conference attendance to all common sessions, individual and special panels
* Conference materials (including a printed version of the Book of Abstracts of the Conference)
* Conference special bag - 1 for every single fee paid, no matter the number of authors/paper
* Coffee Breaks-March 29, 2019 – March 30, 2019. During the two days conference, 3 coffee breaks are offered.
* Welcome reception (March 29, 2019)
* Lunch (March 29, 2019) offered in the University House Mihai Eminescu Gala Room
* A Festive Gala Dinner and Cocktail (March 29, 2019) offered in the University House Mihai Eminescu Gala Room
* A Free Cocktail Buffet will be served from 19:00 p.m. to 21.00 p.m.
* A Free Entrance Voucher is provided inside of each Conference Bag.
* Lunch (March 30, 2019)
* Certificate of attendance (offered at the end of the conference March 30, 2019)
* Publication of the Conference Papers in the International Indexed Journal Revista de Stiinte Politice. Revue des Sciences Politiques (previous publication of the 2012-2018 Conference papers is available at
http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php
* One original volume of the International Indexed Journal Revista de Stiinte Politice. Revue des Sciences Politiques (where the personal conference paper was published) will

be delivered to the authors (an additional fee of 10 euros is required for the mailing facilities)
* Computer & Internet Facilities. There is available videoproiector and connection to Internet services.
* Language. The official language of the Conference will be English. The Organizing Committee does not provide simultaneous translation.

NEW! FREE SOCIAL AND CULTURAL PROGRAMME OF THE CEPOS CONFERENCE 2019

* Participants in CEPOS CONFERENCE 2019 have free acces to the Social and Cultural Program of the Ninth Edition of the International Conference After Communism. East and West under Scrutiny, Craiova, 29-30 March 2019: including free guided tours of the:
Craiova Old City Tour and CEPOS Headquarters
Museum of Arts Craiova, http://www.muzeuldeartacraiova.ro/
Oltenia Museum (all sections included): http://www.muzeulolteniei.ro/index.php?view=content&c=26
Casa Baniei http://www.muzeulolteniei.ro/index.php?view=content&c=26

CERTIFICATES OF ATTENDANCE

Certificates of attendance will be offered at the end of the conference on Saturday, March 30, 2019

INTERNATIONAL INDEXING OF REVISTA DE STIINTE POLITICE/REVUE DES SCIENCES POLITIQUES

Revista de Stiinte Politice/Revue des Sciences Politiques is an International Indexed Journal by:
ProQuest
ERIH PLUS
ProQuest Political Sciences
EBSCO
CEEOL
KVK
Gale Cengage Learning
Index Copernicus
Georgetown University Library
Elektronische Zeitschriftenbibliothek EZB
Journal Seek
Intute Social Sciences.

Revista de Stiinte Politice. Revue des Sciences Politiques. Indexing and abstracting in other relevant international databases, services and library catalogues (Statistics 2015-2018)

Google Scholar
https://scholar.google.com/citations?user=geaF_FgAAAAJ&hl=ro

ProQuest 5000 International

http://tls.proquest.com/tls/servlet/ProductSearch?platformID=1&externalID=770&vdID=6 14505/ PM ID 99 909

Birmingham Public Library, United Kingdom
http://www.bplonline.org/virtual/databases/journals.as/px?q=R&p=36

Harold B. Lee Library, Brigham Young University
http://sfx.lib.byu.edu/sfxlcl3?url_ver=Z39.88-2004&url_ctx_fmt=info:ofi/fmt:kev:mtx:ctx&ctx_enc=info:ofi/enc:UTF-8&ctx_ver=Z39.88-2004&rfr_id=info:sid/sfxit.com:azlist&sfx.ignore_date_threshold=1&rft.object_id=1000000000726583&rft.object_portfolio_id=&svc.holdings=yes&svc.fulltext=yes

Miami University Oxford, Ohio, USA
http://www.lib.miamioh.edu/multifacet/record/az-9ce56f97d1be33af92690283c0903908

German National Library of Science and Technology
https://getinfo.de/app/Revista-de-%C5%9Ftiin%C5%A3e-politice-Revue-des-sciences/id/TIBKAT%3A590280090

Bibliotek Hamburg
http://www.sub.uni-hamburg.de/recherche/elektronische-angebote/elektronische-zeitschriften/detail/titel/144583.html

Sabre Libraries of University of Sussex, University of Brighton and Brighton and Sussex NHS
http://sabre.sussex.ac.uk/vufindsmu/Record/1584224X/Details

University of Southern Denmark
http://findresearcher.sdu.dk:8080/portal/en/journals/revista-de-stinte-politice%28ca92579a-2621-46ec-946f-21e26f37364d%29.html

Edith Cowan Australia
http://library.ecu.edu.au:2082/search~S7?/.b2071921/.b2071921/1%2C1%2C1%2CB/marc~b2071921

University College Cork, Ireland
http://cufts2.lib.sfu.ca/CJDB4/CCUC/journal/375867
Region Hovedstaden Denmark
http://forskning.regionh.dk/en/journals/revista-de-stinte-politice%2811468a3a-a8be-4502-b8d6-718255c47677%29.html

WorldCat
https://www.library.yorku.ca/find/Record/muler82857

York University Library, Toronto, Ontario, Canada
https://www.library.yorku.ca/find/Record/muler82857

The University of Chicago, USA
https://catalog.lib.uchicago.edu/vufind/Record/sfx_1000000000726583

Wellcome Library, London, United Kingdom
http://search.wellcomelibrary.org/iii/encore/search/C__Scivil%20law__Orightresult__X0;jsessionid=86D8DE0DF1C54E503BEF1CB1168B6143?lang=eng&suite=cobalt

The University of Kansas KUMC Libraries Catalogue
http://voyagercatalog.kumc.edu/Record/143742/Description

University of Saskatchewan, SK
http://library.usask.ca/find/ejournals/view.php?i

Academic Journals Database
http://discover.library.georgetown.edu/iii/encore/record/C%7CRb3747335%7CSREVISTA+DE+STIINTE%7COrightresult?lang=eng&suite=def

Journal Seek
http://journalseek.net/cgi-bin/journalseek/journalsearch.cgi?field=issn&query=1584-224X

Sherpa
http://www.sherpa.ac.uk/romeo/search.php?issn=1584-224X&showfunder=none&fIDnum=%7C&la=en

University of New Brunswick, Canada
https://www.lib.unb.ca/eresources/index.php?letter=R&sub=all&start=2401

State Library New South Wales, Sidney, Australia,
http://library.sl.nsw.gov.au/search~S1?/i1583-9583/i15839583/-3,-1,0,B/browse

Electronic Journal Library
https://opac.giga-hamburg.de/ezb/detail.phtml?bibid=GIGA&colors=7&lang=en&flavour=classic&jour_id=111736

Jourlib
http://www.jourlib.org/journal/8530/#.VSU7CPmsVSk

Cheng Library Catalog
https://chengfind.wpunj.edu/Record/416615/Details

Open University Malaysia
http://library.oum.edu.my/oumlib/content/catalog/778733

Wayne State University Libraries
http://elibrary.wayne.edu/record=4203588

Kun Shan University Library
http://muse.lib.ksu.edu.tw:8080/1cate/?rft_val_fmt=publisher&pubid=ucvpress

Western Theological Seminar
http://cook.westernsem.edu/CJDB4/EXS/browse/tags?q=public+law

NYU Health Sciences Library
http://hsl.med.nyu.edu/resource/details/175011

Swansea University Prifysgol Abertawe
https://ifind.swan.ac.uk/discover/Record/579714#.VSU9SPmsVSk

Vanderbilt Library
http://umlaut.library.vanderbilt.edu/journal_list/R/139

Wissenschftszentrum Berlin fur Sozial
http://www.wzb.eu/de/node/7353?page=detail.phtml&bibid=AAAAA&colors=3&lang=de&jour_id=111736

Keystone Library Network
https://vf-clarion.klnpa.org/vufind/Record/clarion.474063/Details

Quality Open Access Market
https://zaandam.hosting.ru.nl/oamarket-acc/score?page=4&Language=21&Sort=Ascending&SortBy=BaseScore

Elektronische Zeitschriftenbibliothek EZB (Electronic Journals Library)
http://rzblx1.uni-regensburg.de/ezeit/searchres.phtml?bibid=AAAAA&colors=7&lang=de&jq_type1=KT&jq_term1=REVISTA+DE+STIINTE+POLITICE

Harley E. French Librayr of the Health sciences
http://undmedlibrary.org/Resources/list/record/129818

Open Access Articles
http://www.openaccessarticles.com/journal/1584-224X_Revista_de_Stiinte_Politice+---

Vrije Universiteit Brussel
http://biblio.vub.ac.be/vlink/VlinkMenu.CSP?genre=journal&eissn=&issn=1584-224X&title=Revista%20de%20Stiinte%20Politice

The Hong Kong University
http://onesearch.lib.polyu.edu.hk:1701/primo_library/libweb/action/dlDisplay.do?vid=HKPU&docId=HKPU_MILLENNIUM22899443&fromSitemap=1&afterPDS=true

Biblioteca Universitaria di Lugano
https://en.bul.sbu.usi.ch/search/periodicals/systematic?category=10&page=34&per_page

=10&search=

Olomuc Research Library, Czech Republic
http://aleph.vkol.cz/F?func=find-
&ccl_term=sys=000070018&con_lng=eng&local_base=svk07

California State University Monterey Bay University
http://sfx.calstate.edu:9003/csumb?sid=sfx:e_collection&issn=1584-
224X&serviceType=getFullTxt

University of the West
http://library.uwest.edu/booksub.asp?OCLCNo=9999110967

Elektron ische Zeitschriften der Universität zu Köln
http://mobil.ub.uni-
koeln.de/IPS?SERVICE=TEMPLATE&SUBSERVICE=EZB_BROWSE&SID=PETER
SPFENNIG:1460334557&LOCATION=USB&VIEW=USB:Kataloge&BIBID=USBK&COLORS=7&
LANGUAGE=de&PAGE=detail&QUERY_URL=jour_id%3D111736&REDIRECT=1

Biblioteca Electronica de Ciencia y Technologia
http://www.biblioteca.mincyt.gob.ar/revistas/index?subarea=148&area=34&gran_area=
5&browseType=discipline&Journals_page=17

University of Huddersfield UK
http://library.hud.ac.uk/summon/360list.html

Saarlandische Universitats-und lasdesbibliotek Germany
http://www.sulb.uni-saarland.de/index.php?id=141&libconnect%5Bjourid%5D=111736
EKP Pulications
http://www.sulb.uni-saarland.de/index.php?id=141&libconnect%5Bjourid%5D=111736

OHSU Library
http://www.ohsu.edu/library/ejournals/staticpages/ejnlr.shtml

Valley City State University
http://www.ohsu.edu/library/ejournals/staticpages/ejnlr.shtml

Centro de Investigaciones Sociologicas, Spain
http://www.cis.es/cis/export/sites/default/-

Archivos/Revistas_de_libre_acceso_xseptiembre_2010x.pdf
Drexel Libraries
http://innoserv.library.drexel.edu:2082/search~S9?/aUniversitatea+%22Babe%7Bu0219
%7D-Bolyai.%22/auniversitatea+babes+bolyai/-3%2C-
1%2C0%2CB/marc&FF=auniversitatea+din+craiova+catedra+de+stiinte+politice&1%2
C1%2C

Impact Factor Poland
http://impactfactor.pl/czasopisma/21722-revista-de-stiinte-politice-revue-des-sciences-

politiques

Pol-index
http://catalogue.univ-angers.fr/OPD01/86/61/40/00/OPD01.000458661.html

ILAN University Library
http://muse.niu.edu.tw:8080/1cate/?rft_val_fmt=publisher&pubid=ucvpress&set.user.locale=en_US

Dowling College Library
http://wwwx.dowling.edu/library/journaldb/keyword4.asp?jname=revista

Universite Laval
http://sfx.bibl.ulaval.ca:9003/sfx_local?url_ver=Z39.88-2004&url_ctx_fmt=info:ofi/fmt:kev:mtx:ctx&ctx_enc=info:ofi/enc:UTF-8&ctx_ver=Z39.88-2004&rfr_id=info:sid/sfxit.com:azlist&sfx.ignore_date_threshold=1&rft.object_id=1000000000726583&rft.object_portfolio_id=&svc.fulltext=yes

For more details about the past issues and international abstracting and indexing, please visit the journal website at the following address:

http://cis01.central.ucv.ro/revistadestiintepolitice/acces.php.

CONFERENCE INTERNATIONAL INDEXING OF THE PAST EDITIONS (2014-2018)

CEPOS Conference 2018

The Eighth International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 23-24 March 2018) was evaluated and accepted for indexing in 15 international databases, catalogues and NGO's databases:

Conference Alerts, https://conferencealerts.com/show-event?id=186626
Sciencesdz, http://www.sciencedz.net/conference/29484-8th-international-conference-after-communism-east-and-west-under-scrutiny
ManuscriptLink, https://manuscriptlink.com/cfp/detail?cfpId=AYAXKVAR46277063&type=event
Maspolitiques,http://www.maspolitiques.com/ar/index.php/en/1154-8th-international-conference-after-communism-east-and-west-under-scrutiny
Aconf, https://www.aconf.org/conf_112399.html
Call4paper,https://call4paper.com/listByCity?type=event&city=3025&count=count
Eventegg, https://eventegg.com/cepos/
10 times, https://10times.com/after-communism-east-and-west-under-scrutiny
Biblioteca de Sociologie, http://bibliotecadesociologie.ro/cfp-cepos-after-communism-east-and-west-under-scrutiny-craiova-2018/
Science Research Association http://www.scirea.org/topiclisting?conferenceTopicId=5

ResearcherBook http://researcherbook.com/country/Romania
Conference Search Net, http://conferencesearch.net/en/29484-8th-international-conference-after-communism-east-and-west-under-scrutiny
SchoolandCollegeListings, https://www.schoolandcollegelistings.com/RO/Craiova/485957361454074/Center-of-Post-Communist-Political-Studies-CEPOS
Vepub conference, http://www.vepub.com/conferences-view/8th-International-Conference-After-Communism.-East-and-West-under-Scrutiny/bC9aUE5rcHN0ZmpkYU9nTHJzUkRmdz09/
Geopolitika Hungary, http://www.geopolitika.hu/event/8th-international-conference-after-communism-east-and-west-under-scrutiny/

CEPOS Conference 2017

The Seventh International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 24-25March 2017) was evaluated and accepted for indexing in 10 international databases, catalogues and NGO's databases:
Ethic & International Affairs (Carnegie Council), Cambridge University Press-https://www.ethicsandinternationalaffairs.org/2016/upcoming-conferences-interest-2016-2017/
ELSEVIER GLOBAL EVENTS LIST http://www.globaleventslist.elsevier.com/events/2017/03/7th-international-conference-after-communism-east-and-west-under-scrutiny
CONFERENCE ALERTS-http://www.conferencealerts.com/show-event?id=171792
10TIMES.COM-http://10times.com/after-communism-east-and-west-under-scrutiny
Hiway Conference Discovery System-http://www.hicds.cn/meeting/detail/45826124
Geopolitika (Hungary)-http://www.geopolitika.hu/event/7th-international-conference-after-communism-east-and-west-under-scrutiny/
Academic.net-http://www.academic.net/show-24-4103-1.html
World University Directory-http://www.worlduniversitydirectory.com/conferencedetail.php?AgentID=2001769
Science Research Association-http://www.scirea.org/conferenceinfo?conferenceId=35290
Science Social Community-https://www.science-community.org/ru/node/174892

CEPOS Conference 2016

The Sixth International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 8-9 April 2016) was evaluated and accepted for indexing in the following international databases, catalogues and NGO's databases:

ELSEVIER GLOBAL EVENTS-http://www.globaleventslist.elsevier.com/events/2016/04/6th-international-conference-after-communism-east-and-west-under-scrutiny/
Oxford Journals – Oxford Journal of Church & State-http://jcs.oxfordjournals.org/content/early/2016/02/06/jcs.csv121.extract

Conference Alerts-http://www.conferencealerts.com/country-listing?country=Romania
Conferences-In - http://conferences-in.com/conference/romania/2016/economics/6th-international-conference-after-communism-east-and-west-under-scrutiny/
Socmag.net - http://www.socmag.net/?p=1562
African Journal of Political Sciences-http://www.maspolitiques.com/mas/index.php?option=com_content&view=article&id=450:-securiteee-&catid=2:2010-12-09-22-47-00&Itemid=4#.VjUI5PnhCUk
Researchgate-https://www.researchgate.net/publication/283151988_Call_for_Papers_6TH_International_Conference_After_Communism._East_and_West_under_Scrutiny_8-9_April_2016_Craiova_Romania
World Conference Alerts-http://www.worldconferencealerts.com/ConferenceDetail.php?EVENT=WLD1442
Edu events-http://eduevents.eu/listings/6th-international-conference-after-communism-east-and-west-under-scrutiny/
Esocsci.org-http://www.esocsci.org.nz/events/list/
Sciencedz.net-http://www.sciencedz.net/index.php?topic=events&page=53
Science-community.org-http://www.science-community.org/ru/node/164404/?did=070216

CEPOS Conference 2015

The Fifth International Conference After Communism. East and West under Scrutiny (Craiova, House of the University, 24-25 April 2015) was evaluated and accepted for indexing in 15 international databases, catalogues and NGO's databases:

THE ATLANTIC COUNCIL OF CANADA, CANADA-http://natocouncil.ca/events/international-conferences/
ELSEVIER GLOBAL EVENTS LIST-http://www.globaleventslist.elsevier.com/events/2015/04/fifth-international-conf
GCONFERENCE.NET-http://www.gconference.net/eng/conference_view.html?no=47485&catalog=1&cata=018&co_kind=&co_type=&pageno=1&conf_cata=01
CONFERENCE BIOXBIO-http://conference.bioxbio.com/location/romania
10 TIMES-http://10times.com/romania
CONFERENCE ALERTS-http://www.conferencealerts.com/country-listing?country=Romania
http://www.iem.ro/orizont2020/wp-content/uploads/2014/12/lista-3-conferinte-internationale.pdf
http://sdil.ac.ir/index.aspx?pid=99&articleid=62893
NATIONAL SYMPOSIUM-http://www.nationalsymposium.com/communism.php
SCIENCE DZ-http://www.sciencedz.net/conference/6443-fifth-international-conference-after-communism-east-and-west-under-scrutiny
ARCHIVE COM-http://archive-com.com/com/c/conferencealerts.com/2014-12-01_5014609_70/Rome_15th_International_Academic_Conference_The_IISES/

CONFERENCE WORLD-http://conferencesworld.com/higher-education/
KNOW A CONFERENCE KNOW A CONFERENCE-http://knowaconference.com/social-work/
International Journal on New Trends in Education and Their Implications (IJONTE) Turkey http://www.ijonte.org/?pnum=15&
Journal of Research in Education and Teaching Turkey-http://www.jret.org/?pnum=13&pt=Kongre+ve+Sempozyum
CEPOS CONFERENCE 2015 is part of a "consolidated list of all international and Canadian conferences taking place pertaining to international relations, politics, trade, energy and sustainable development". For more details see http://natocouncil.ca/events/international-conferences/

CEPOS Conference 2014

The Fourth International Conference After Communism. East and West under Scrutiny, Craiova, 4-5 April 2014 was very well received by the national media and successfully indexed in more than 9 international databases, catalogues and NGO's databases such as:

American Political Science Association, USA-http://www.apsanet.org/conferences.cfm;
Journal of Church and State, Oxford-http://jcs.oxfordjournals.org/content/early/2014/01/23/jcs.cst141.full.pdf+html;
NATO Council of Canada (section events/ international conferences), Canada, http://atlantic-council.ca/events/international-conferences/
International Society of Political Psychology, Columbus, USA-http://www.ispp.org/uploads/attachments/April_2014.pdf
Academic Biographical Sketch, http://academicprofile.org/SeminarConference.aspx;
Conference alerts, http://www.conferencealerts.com/show-event?id=121380; Gesis Sowiport, Koln, Germany, http://sowiport.gesis.org/; Osteuropa-Netzwerk, Universität Kassel, Germany, http://its-vm508.its.uni-kassel.de/mediawiki/index.php/After_communism_:_East_and_West_under_scrutiny_:_Fourth_International_Conference
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References:

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References of the same author are listed chronologically.

For books

Olimid, A. P., (2009a). *Viaţa politică şi spirituală în România modernă. Un model românesc al relaţiilor dintre Stat şi Biserică*, Craiova: Aius Publishing.
Olimid, A. P., (2009b). Politica românească după 1989, Craiova: Aius Publishing.
For chapters in edited books
Goodin, R. E. (2011). The State of the Discipline, the Discipline of the State. In Goodin, R. E. (editor), *The Oxford Handbook of Political Science*, Oxford: Oxford University Press, pp. 19-39.

For journal Articles

Georgescu, C. M. (2013a). Qualitative Analysis on the Institutionalisation of the Ethics and Integrity Standard within the Romanian Public Administration. *Revista de Ştiinţe Politice. Revue des Sciences Politiques*, 37, 320-326.

Georgescu, C. M. (2013b). Patterns of Local Self-Government and Governance: A Comparative Analysis Regarding the Democratic Organization of Thirteen Central and Eastern European Administrations (I). *Revista de Ştiinţe Politice. Revue des Ştiinţe Politice*, 39, 49-58.

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